

Chapter RL 18

TRUST ACCOUNTS

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Note: Chapter REB 9 as it existed on February 28, 1983 was renumbered to be chapter RL 18, effective March 1, 1983.

RL 18.01 Authorization. The following rules are adopted pursuant to ss. 227.11, 452.07 and 452.13, Stats.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.01 and am. Register, February, 1983, No. 326, eff. 3-1-83.

RL 18.02 Definitions. In this chapter:

(1) "Client funds" has that meaning given in s. 452.13 (1) (a), Stats.

(2) "Cooperating broker" means a broker who is assisting a buyer or a tenant in negotiations with a seller or landlord who is represented by a listing broker. A "cooperating broker" may be the agent of the buyer, the tenant, the seller, or the landlord.

(3) "Department" means the department of regulation and licensing.

(4) "Depository institution" has that meaning given in s. 452.13 (1) (b), Stats.

(5) "Real estate trust account" means an account for real estate trust funds maintained at a depository institution for which withdrawals or transfers can be made without delay, subject to any notice period that the depository institution is required to observe by law, and includes:

(a) Interest-bearing common trust accounts established for client funds;

(b) Non-interest bearing real estate trust accounts maintained for real estate trust funds other than client funds; and

(c) Interest-bearing real estate trust accounts maintained for real estate trust funds other than client funds.

(6) "Real estate trust funds" means any cash, checks, share drafts, drafts or notes, other than promissory notes, received by a broker or a broker's salespersons or time-share salespersons on behalf of a principal or any other person including, but not limited to:

(a) Payments on land contracts, mortgage payments and any other receipts pertaining to mortgages;

(b) Tax and insurance payments held in escrow;

(c) Advance fees and finder's fees, unless non-refundable;

(d) Rental application deposits and rents, but only when received while acting as an agent for another;

(e) Payments received for subsequent repayment to a third party;

(f) Security deposits on rental property, except as provided in s. RL 18.031 (4); and

(g) Initial and additional earnest money downpayments and other monies received in connection with offers to purchase, options and exchanges, even if the broker, salesperson or time-share salesperson receives the downpayments or monies when negotiating the sale of real estate or a business opportunity which the broker, salesperson or time-share salesperson owns in whole or in part, or when negotiating the purchase of real estate or a business opportunity for ownership in whole or in part by the broker, salesperson or time-share salesperson.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; r. and recr. (3), Register, April, 1982, No. 316, eff. 5-1-82; renum. from REB 9.02 and am. (1), Register, February, 1983, No. 326, eff. 3-1-83; cr. (2m), am. (3) (a) (intro.), renum. (3) (c) and (d) to be (3) (a) 4. and 5. and am. 5., Register, June, 1984, No. 342, eff. 7-1-84; r. and recr. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.031 Deposits and types of accounts. (1) **TIME OF DEPOSIT.** A broker shall deposit all real estate trust funds received by the broker or broker's salespersons or time-share salespersons in a real estate trust account within 48 hours of receipt of the trust funds. If funds are received on a day prior to a holiday or other day when the depository institution is closed, the broker shall deposit the funds within the next 2 business days of the depository institution. If a broker receives funds which cannot be deposited by the broker, the broker shall, no later than one business day after receipt, either:

(a) Forward the funds to the payee, if someone other than the broker; or

(b) Return the funds to the payor.

(2) **DUTY OF SALESPERSON.** A salesperson or time-share salesperson who receives real estate trust funds shall promptly submit the funds to the employer-broker of the salesperson or time-share salesperson.

(3) **INTEREST-BEARING ACCOUNTS.** (a) Client funds shall be deposited in an interest-bearing common trust account and the department of administration shall be the beneficial owner of the interest accruing to the account, minus any service charges. At no time may the broker remove or use the interest earned on such accounts.

(b) Real estate trust funds, other than client funds, may be deposited in an interest-bearing account if the broker obtains from the persons for whom the funds are being held written authorization to deposit the funds in an interest-bearing account and if the authorization specifies how and to whom the interest will be disbursed. None of the interest earned on the funds deposited into an interest-bearing account may inure to the benefit of the broker.

(4) **SECURITY DEPOSITS.** A licensee having an ownership interest in a rental property shall either place security deposits related to that property in a real estate trust account or shall provide in a lease for security deposits to be held in an account maintained in the name of the owner or owners.

(5) **RENTAL OWNER'S ACCOUNT.** (a) In this subsection, "owner's account" means an account maintained by an owner of rental property for depositing and disbursing any funds payable to or by the owner.

(b) A broker may directly deposit into an owner's account rental application deposits, rents and security deposits which may have been made payable to one or more owners. The broker may be designated as a signatory on the owner's account and may make disbursements from that account to the extent authorized by the owner in writing.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.032 Number of real estate trust accounts. A broker may maintain more than one real estate trust account, including more than one interest-bearing common trust account for client funds, if the broker notifies the department of these accounts, as required in s. RL 18.035.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.033 Time when real estate trust account shall be opened or may be closed. (1) **OPENING AN ACCOUNT.** A broker shall open a real estate trust account if the broker receives real estate trust funds.

(2) **CLOSING AN ACCOUNT.** A broker may close a real estate trust account if no real estate trust funds remain in the account.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.034 Account designation. (1) A broker shall name the broker's real estate trust account with the name appearing on the broker's license or with a trade name submitted to the department under s. RL 23.03 and shall include the words "trust account" in the name of the account.

(2) **NAME ON CHECKS.** A broker shall imprint the name of the real estate trust account on real estate trust account checks, share drafts or drafts.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.035 Duty to notify the department. (1) **OPENING AN ACCOUNT.** No later than 10 days after opening any real estate trust account a broker shall provide the department with the name and number of the account, with the name of the depository institution in which the broker holds the account and with information concerning whether the account is for client funds or for real estate trust funds other than client funds. The information shall be provided on a form, as required in s. RL 18.037.

(2) **CHANGING OR CLOSING AN ACCOUNT.** A broker shall notify the department no later than 10 days after a broker changes a real estate trust account name or number, changes the real estate trust account from one depository institution to another, closes a real estate trust account or changes a real estate trust account to or from an interest-bearing common trust account established for client's funds. The notification shall be provided on a form, as required in s. RL 18.037.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.036 Authorization to examine real estate trust accounts and records. (1) **BROKER'S AUTHORIZATION.** No later than 10 days after opening a real estate trust account a broker shall furnish the department authorization for the department to examine and audit all of the broker's real estate trust account records and authorization for the department of administration to examine all of the broker's interest-bearing common trust accounts maintained for client funds. The authorization shall be provided on a form, as required in s. RL 18.037.

(2) **DEPOSITORY INSTITUTION'S CERTIFICATION.** No later than 10 days after opening a real estate trust account a broker shall obtain the certification of every depository institution in which the broker maintains a real estate trust account attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the department or, in the case of interest-bearing common trust accounts maintained for client funds, the department of administration. The certification shall be provided to the department on a form, as required in s. RL 18.037.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.037 Form for notification and authorization. A broker shall provide the information and authorization in ss. RL 18.035 and 18.036 on a form provided by the department. This form shall be designated "consent to examine and audit trust account." However, when closing a real estate trust account, a broker may inform the board by letter only.

Note: A copy of this form may be obtained from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.04 Authorization to sign trust account checks. A broker may authorize other persons to sign real estate trust account checks, share drafts or drafts drawn on the broker's real estate trust account if the person is at least 18 years of age.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.04 and am. (1), (2), (4) and (5), Register, February, 1983, No. 326, eff. 3-1-83; am. (1), (2), (3) (intro.) and (4), Register, June, 1984, No. 342, eff. 7-1-84; am. (1), r. (2) (a), renum. (2) (b) to be (2) (a) and am., Register, June, 1988, No. 390, eff. 7-1-88; am. (1), r. (2) to (6), Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.05 Receipt for earnest money received by the broker. A broker shall indicate on the offer to purchase the receipt of earnest money received from a buyer at the time the offer is drafted.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.05, Register, February, 1983, No. 326, eff. 3-1-83; am. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.06 Escrow agreement for earnest money not held by the broker. If the parties to a transaction do not desire that the broker hold the earnest money in the broker's real estate trust account, and wish to designate an escrow agent other than the broker, the broker may not draft the escrow agreement. The escrow agreement shall be drafted by the parties or an attorney. The broker may not hold the funds in the broker's real estate trust account, nor may the broker act in any way as custodian of the funds for the parties. The funds, pursuant to the escrow agreement, shall be held by some other party, such as a bank, a savings and loan association, a credit union or an attorney.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.06, Register, February, 1983, No. 326, eff. 3-1-83; am. Register, June, 1984, No. 342, eff. 7-1-84; am. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.07 After closing escrow agreements. (1) BY SEPARATE AGREEMENT. If the parties to a contract wish, or are required, to place funds in escrow which are to be held after closing by the broker in the broker's trust account or by another person until some future occurrence, an agreement to that effect shall be prepared by the parties or an attorney. If the broker holds these funds, the broker shall place them in the broker's real estate trust account. The broker may draft the escrow agreement if a form for this purpose has been approved by the department for use by licensees pursuant to s. RL 16.03.

(2) ON CLOSING STATEMENT. A broker may hold in the broker's trust account without a separate escrow agreement occupancy or possession escrows, escrows for final proration of taxes, and escrows for charges incurred by a seller but not yet billed, provided that the closing statement shows that the broker is holding the funds.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; am., Register, April, 1982, No. 316, eff. 5-1-82; renum. from REB 9.07, Register, February, 1983, No. 326, eff. 3-1-83; renum. to be (1) and am., cr. (2), Register, June, 1984, No. 342, eff. 7-1-84; am. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.08 Real estate trust funds and cooperating brokers. If a transaction involves a cooperating broker and the parties have not agreed otherwise, the cooperating broker shall transfer any trust funds received to the listing broker or other person designated by the parties to hold the trust funds within 24 hours of the deadline stated in the offer, option, exchange agreement or lease for transfer of the funds. If the trust funds are received in the form of a personal check, share draft or draft, the cooperating broker may withhold transfer of the payment pending evidence of clearance from the payor's depository institution. In any case, the cooperating broker shall transfer the trust funds to the listing broker within 30 days after receipt, unless the cooperating broker has obtained definitive information from the depository institution that the personal check, share draft or draft has not cleared.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; am., Register, April, 1982, No. 316, eff. 5-1-82; renum. from REB 9.08, Register, February, 1983, No. 326, eff. 3-1-83; renum. to be (1) and am., cr. (2), Register, June,

1984, No. 342, eff. 7-1-84; r. and recr. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.09 Disbursement of trust funds. (1) PROPER DISBURSEMENT. A broker who disburses trust funds from his or her real estate trust account under the following circumstances shall not be deemed to have violated s. 452.14 (3) (i), Stats.:

(a) To the payor upon the rejection, expiration or withdrawal prior to binding acceptance of an offer to purchase, lease, exchange agreement or option on real estate or a business opportunity;

(b) As directed in a written earnest money disbursement agreement signed by all parties having an interest in the trust funds. A closing statement is a written earnest money disbursement agreement for the purposes of this subsection. An offer to purchase, lease, exchange agreement or option is not a written earnest money disbursement agreement for the purpose of this subsection.

(c) To a court having jurisdiction over a civil action involving all parties having an interest in the trust funds;

(d) As directed by order of a court;

(e) Upon a good faith decision based upon advice of an attorney not representing any party to the contract;

(f) Upon authorization granted within the contract; or

(g) As otherwise provided by law.

(2) NOTIFICATION OF DISBURSEMENT. Prior to making a disbursement of trust funds under sub. (1) (a) where the broker has knowledge that not all parties agree that the rejection or withdrawal occurred prior to binding acceptance, and prior to making a disbursement under sub. (1) (e), (f) and (g) where the broker has knowledge that either party disagrees with the disbursement, the broker shall attempt to notify all parties in writing of the intent to disburse. The notice shall be delivered by certified mail to the parties' last known addresses and shall state to whom and when the disbursement will be made. The disbursement may not occur until 30 days after the date on which the notice is sent.

(3) WITHDRAWAL OF COMMISSIONS. (a) A broker shall withdraw commissions or fees earned by the broker from real estate trust accounts maintained by the broker within 24 hours after transactions are consummated or terminated, or after the commissions or fees are earned in accordance with the contract involved.

(b) A broker providing property management services shall disburse the fee earned for providing property management services as a regular monthly basis unless otherwise agreed in a written property management agreement signed by the parties to that agreement.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.09 and am. (3) (intro.), Register, February, 1983, No. 326, eff. 3-1-83; am. (2), (3) (a) and (b) and (4), Register, June, 1984, No. 342, eff. 7-1-84; r. and recr., Register, July, 1993, No. 451, eff. 8-1-93; renum. (3) to be (3) (a), cr. (3) (b), Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.10 Commingling prohibited. A broker shall deposit only real estate trust funds in the broker's real estate trust account and shall not commingle the broker's personal funds or other funds in the trust account except that a broker may deposit and keep a sum not to exceed

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\$300.00 from the broker's personal funds in any real estate trust account, which sum shall be specifically identified and deposited to cover service charges relating to the trust account. A broker shall deposit additional personal funds in the broker's real estate trust account within 10 business days following receipt of a statement or other notification from a depository institution that a service charge has been made against the account for which insufficient personal funds are available in the account.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.10, Register, February, 1983, No. 326, eff. 3-1-83; am. Register, July, 1984, No. 342, eff. 7-1-84; am. Register, January, 1992, No. 433, eff. 2-1-92; am. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.11 Non-depositable items. (1) OTHER THAN PROMISSORY NOTES. With the exception of promissory notes, a broker shall not hold any instrument, equity or thing of value which is not depositable in a real estate trust account. Non-depositable items other than promissory notes shall be held by one of the parties to a transaction or some other party, subject to an escrow agreement prepared by the parties or an attorney.

(2) **PROMISSORY NOTES.** A broker may accept and hold earnest money downpayments in the form of promissory notes received from the parties to a transaction, if the broker, the parties or the parties' attorney or attorneys:

(a) Delete or modify the earnest money provisions in a form approved pursuant to s. RL 16.03 to show receipt of a promissory note;

(b) Grant the broker the authority to hold the note; and

(c) Provide appropriate disbursement directions for the broker.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.11, Register, February, 1983, No. 326, eff. 3-1-83; am. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.12 Branch office trust account. In the event a branch office, as defined in s. RL 19.01, maintains one or more real estate trust accounts, separate from any trust account at the broker's main office, a separate bookkeeping system shall be maintained in that branch office.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.12 and am. Register, February, 1983, No. 326, eff. 3-1-83; am. Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.13 Bookkeeping system. Each broker shall maintain and be responsible for a bookkeeping system in the broker's office consisting of at least the following:

(1) **CASH JOURNAL.** A broker shall maintain a record, called a journal, which shall show the chronological sequence in which real estate trust funds are received and disbursed as follows:

(a) For funds received, the journal shall include the date, the name of the party who is giving the money, and the amount.

(b) For disbursements, the journal shall include the date, the payee, the number of the check, share draft or draft and the amount.

(c) The journal shall identify each transaction by including the name of the principal, an identification number or other means of identification which will link the journal to the transactions and the ledger described in sub. (2).

(d) The journal shall show a running balance for each day on which receipts or disbursements are entered.

(2) **LEDGER.** A broker shall maintain a record which shows the receipts and the disbursements as they affect each particular transaction e.g., transactions between buyer and seller, landlord and tenant, etc. The ledger entry shall include the names of both parties to a transaction, the dates and the amounts received and the name of the party giving the money if different from the buyer. The ledger entry shall include the date, payee, number of the check, share draft or draft and amount when funds are disbursed. The ledger shall show a running balance and segregate each transaction. The broker shall maintain a separate ledger or separate section of the ledger for each of the various kinds of real estate transactions, e.g., sales, rental collections or mortgage and land contract collections.

(3) **ACCOUNT RECONCILIATION.** The broker or a person designated by the broker shall reconcile the real estate trust account in writing each month except in the case where there has been no activity during the month. The written reconciliation shall include the ending account statement balance, the date and amounts of the deposits in transit, the number of the check, share draft or draft and amount of checks, share drafts or drafts written but not paid by the depository institution as of the ending date shown on the account statement to be reconciled, and the reconciled account statement ending balance.

(4) **TRIAL BALANCE.** The broker shall prepare or have prepared, in conjunction with sub. (3), a written listing, "trial balance", of all open items in the real estate trust account. The list must show the names of the parties to the transaction and the amount held in trust for the parties at the time corresponding to the account reconciliation. The broker may in lieu of the names of the parties to the transaction substitute the ledger page number or other means of identification from the ledger to label the funds in the trial balance.

(5) **VALIDATION.** The broker or a person designated by the broker shall review the reconciled account statement balance, the open ledger account listing, and the journal running balance to ensure that all of these records are valid and in agreement as of the date the account statement has been reconciled.

(6) **USE OF COMPUTERS.** A computerized system may be used to maintain the broker's bookkeeping system if:

(a) The system complies fully with subs. (1) to (5).

(b) All bookkeeping entries required by this chapter are made in the computerized system, even if other records are being simultaneously maintained.

(c) A backup copy of the bookkeeping records required under subs. (1) to (2) is made on any day on which entries are made in the computerized bookkeeping system. The backup copy shall be made on a disk or other medium which is separate and distinct from that on which the source documents reside.

(d) After complying with subs. (3) to (5), the document which records the account reconciliation, trial balance and validation is immediately copied to a backup medium and maintained by the broker.

(e) All records which are not maintained as written paper records are capable of being immediately converted to written paper records and immediately made available without charge to the department for the purposes of department audit or investigation.

(f) All computerized trust account records are retained pursuant to s. RL 15.04.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.13, Register, February, 1983, No. 326, eff. 3-1-83; am. (intro.), (1) (b), (2) to (6), Register, June, 1984, No. 342, eff. 7-1-84; am. (1) (intro.), (a) and (b), (2)

and (4), renum. (1) (c) to be (1) (d), cr. (1) (c) and (6), Register, August, 1994, No. 464, eff. 9-1-94.

RL 18.14 Violation of rules. A broker who fails to comply with the rules in this chapter shall be considered to have demonstrated incompetency to act as a real estate broker in a manner as to safeguard the interests of the public, as specified in s. 452.14 (3), Stats.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.14 and am. Register, February, 1983, No. 326, eff. 3-1-83; am. Register, June, 1984, No. 342, eff. 7-1-84.