

SECTION 2 - Trust Fund Handling

Additional detail and illustrations for trust fund handling can be found in the Department of Real Estate's RE 13 booklet entitled "Trust Funds"

Trust Fund Handling Questionnaire

- 1. Is the bank account used for trust fund handling in the name of the broker as trustee or appropriately designated as a trust account?**

Correct Procedure:

The broker's trust account should be set up in the broker's name, or in the name of a fictitious business name if the broker is the holder of a license bearing such fictitious name, and either be designated a "Trust Account" or be in the name of the broker, or licensed fictitious name, as trustee.

Example 1: If the individual broker's name is John Doe and the broker has the name 25th Century Realty as a fictitious business name, the following designations would be compliant for the broker's trust account:

John Doe Trust Account
John Doe as Trustee
25th Century Realty Trust Account
25th Century Realty as Trustee

Example 2: If the corporate broker's name is ABC, Inc. and the broker has the name ABC Realty as a fictitious business name, the following designations would be compliant for the broker's trust account:

ABC, Inc. Trust Account
ABC, Inc. as Trustee
ABC Realty Trust Account
ABC Realty as Trustee

Reference: Real Estate Law Book, Regulation 2832

2. Is the bank account used for trust fund handling an interest-bearing account?

Correct Procedure:

Trust funds may, at the request of the owner of the funds, be placed into an interest-bearing account at a bank or savings and loan association if the following requirements are met:

- a) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.
- b) All of the funds in the account are covered by insurance provided by an agency of the United States.
- c) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.
- d) The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to the broker at the time of establishing the account, the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and the possible notice requirements or penalties for withdrawal of funds from the account.
- e) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or to any person licensed to the broker.
- f) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract must have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

It should be noted that this would require the broker to maintain a separate bank account for each beneficiary who wishes to earn interest.

Reference: Real Estate Law Book, Section 10145(d) (1)-(6)

3. Are control records complete and accurate?

Correct Procedure:

Every broker must keep a record of all trust funds received, including uncashed checks.

- a) If a broker does not maintain a trust account or maintains a trust account but forwards all trust funds received to either the escrow or to the owner of the funds, then the broker must maintain a Record of Trust Funds Received but not Deposited to the Trust to include:

- i. Date funds received;
- ii. Form of payment;
- iii. Amount received and from whom received;
- iv. Description of property or other identification;
- v. Identity as to whom funds were forwarded; and
- vi. Date of disposition.

However, a broker is not required to keep the above records of passing through checks made payable to service providers (e.g., escrow, credit, and appraisal services) when the total of such checks from any one principal for any transaction does not exceed \$1,000. Upon request of the Department or the maker of such checks, a broker must account for the receipt and distribution of such checks. A broker must retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks.

- b) If a broker does maintain a trust account, the broker must maintain a Columnar Record of all Trust Funds Received and Paid Out of the Trust Fund Bank Account (for example, DRE Form RE 4522). This record should show the following in chronological sequence:

- i. Date funds received;
- ii. From whom funds received;
- iii. Amount received;
- iv. Date of deposit;
- v. Check number and date of related disbursement; and
- vi. Daily balance of trust bank account.

Reference: Real Estate Law Book, Regulation 2831

4. Are the separate transaction records complete and accurate?

Correct Procedure:

Brokers must maintain a Separate Record for Each Beneficiary or Transaction (for example, DRE Form RE 4523). This record accounts for the funds received from, or for the account of, each beneficiary or each transaction and deposited to the trust fund bank account. These records are necessary for the broker to ascertain the total owed to each of the beneficiaries. The record should show in chronological sequence the following:

- a) Date of deposit;
- b) Amount of deposit;
- c) Date of each related disbursement;
- d) Check number of each related disbursement;
- e) Amount of each related disbursement;

- f) If applicable, dates and amounts of interest earned and credited to the account; and
- g) Balance after posting transactions on any date.

Reference: Real Estate Law Book, Regulation 2831.1

5. Is monthly reconciliation of the control records and separate records performed and documented?

Correct Procedure:

The balance of all separate beneficiary or transaction records (for example, DRE Form RE 4523) must be reconciled with the record of all trust funds received and disbursed (for example, DRE Form RE 4522) at least once a month. A record of reconciliation must be maintained and it must identify the following:

- a) Bank account name;
- b) Account number;
- c) Date of reconciliation;
- d) Name of beneficiary; and
- e) Trust fund liabilities of the broker to each beneficiary.

For example:

ABC Realty, Inc. Trust Account
 0339-000011
 5/31/2019

Balances per Separate Beneficiary Records:	
Jones	\$500.00
Smith	\$250.00
Thompson	<u>\$100.00</u>
Total of Separate Records:	<u>\$850.00</u>
Balance per Record of All Trust Funds Received:	<u>\$850.00</u>
Difference (if any, should be fully explained):	<u>\$0.00</u>

Reference: Real Estate Law Book, Regulation 2831.2

6. Are trust funds deposited in a timely manner?

Correct Procedure:

Unless otherwise specified in writing by the beneficiary of the funds, a broker is required to do one of the following three things with trust funds no later than three business days following receipt of the funds by the broker or the broker's salesperson or broker associate:

- a) Deposit the funds into a neutral escrow depository;
- b) Place funds accepted on behalf of the owner into the hands of the owner of the funds; or
- c) Deposit the funds into a trust fund bank account maintained by the broker.

A real estate broker who is not licensed under the Escrow Law (Section 17000 et seq. of the Financial Code), when acting in the capacity of an escrow holder in a real estate transaction in which the broker is performing acts for which a real estate license is required, must place all funds accepted on behalf of another into one of the three places listed above **not later than the next business day** following receipt of the funds by the broker or the broker's salesperson or broker associate.

Reference: Real Estate Law Book, Regulation 2832

7. Are authorized signatories either licensed to the broker or unlicensed but bonded/insured?

Correct Procedure:

Withdrawals may be made from the trust account only upon the signature of the broker or one or more of the following persons with written authorization from the broker:

- a) A salesperson licensed to the broker.
- b) A person licensed as a broker who has entered into a written agreement with the responsible broker.
- c) An unlicensed employee of the broker with fidelity bond or insurance coverage at least equal to the maximum amount of trust funds to which the employee would have access.

Withdrawals may be made from the trust account of a corporate broker only upon the signature of an officer through whom the corporation is licensed or one of the persons detailed above. The designated officer of the corporate broker should always be a signatory on the trust account.

Concerning an unlicensed employee with fidelity bond coverage or insurance, it is recommended that the fidelity bond/insurance specifically identify the trust account that is being covered. The fidelity bond can include a deductible clause; however, the deductible is limited to an amount of up to five percent of the coverage amount and the broker must have evidence of financial responsibility for the deductible. Evidence of financial responsibility can include the following:

- a) Separate bond or insurance coverage adequate to cover the amount of the deductible.
- b) A cash deposit held in a separate account, apart from other funds of the broker, the broker's employee, or the broker's principals adequate to cover

the amount of the deductible and held exclusively and solely for the purpose of paying the deductible.

Reference: Real Estate Law Book, Section 10145(a); Regulation 2834

8. Are broker's funds separated from trust funds?

Correct Procedure:

Funds belonging to a broker should not be commingled with trust funds. Common examples of commingling are:

- Personal or company funds deposited into the trust fund bank account.
- Trust funds deposited into the general or personal bank account;
- Funds collected on real property wholly owned by the broker handled through the trust account.

A broker, however, is allowed to maintain up to \$200 of personal funds in a trust account to cover checking account service fees and other bank charges.

Commissions, fees, other income earned by a broker, and funds belonging in part to the broker's principal and in part to the broker when it is not reasonably practicable to separate such funds, must be withdrawn from the trust account within 25 days from the date of deposit.

Reference: Real Estate Law Book, Section 10176(e); Regulation 2835