

SECTION 2 - Trust Fund Handling

Does the broker collect appraisal or credit report fees?

Correct Procedure:

Typically, the broker will collect an appraisal and/or credit report fee from the prospective borrower up front. These must be treated as trust funds unless the broker is being reimbursed for advancing payment of the fees to the vendors. The following rules will apply:

1. Funds received by the broker are not trust funds if they are reimbursing the broker for fees that the broker advanced for an appraisal or credit report on behalf of the borrower. If the broker has not advanced the funds and is receiving a check from escrow on behalf of the borrower to pay an appraiser or a credit reporting agency, the funds must be deposited to a trust account for payment to the vendor.
2. There can be no markups of the fees. For example, if an appraisal costs \$250.00 and that is the amount advanced by the broker, a "reimbursement" for \$300.00 must be deposited to the trust account and the additional \$50.00 must be identified as an actual cost or expense of the loan.
3. The broker must keep clear general account records of the funds expended on behalf of the borrower and paid to the vendor, subject to Department examination, so that it may be clearly established if the broker advanced funds to an appraiser or credit reporting agency for a specific borrower.
4. There must be clear instructions from the beneficiary (borrower) to the broker authorizing the reimbursement to his general account. This may be contained in the escrow instructions signed by the borrower.

The following compliance questions apply to brokers who collect appraisal or credit report fees in advance where the funds are negotiable by the broker. No other fees may be collected in advance without an approved advance fee agreement. (See Section 6.)

1. Is the bank account used for trust fund handling in the name of the broker as trustee?
2. Are control records complete and accurate?
3. Are the separate transaction records complete and accurate?
4. Is monthly reconciliation of the control records and separate records performed and documented?
5. Are trust funds deposited in a timely manner?
6. Are authorized signatories either licensed to the broker or unlicensed employees who are bonded or insured?
7. Are broker's funds separate from trust funds?

Reference: Section 10145; Regulations 2831, 2831.1, 2831.2, 2832, 2832.1, 2834, 2835

SECTION 3 - Borrower Disclosures

A. Does the broker provide the required borrower disclosures in every transaction?

Correct Procedure:

1. In a transaction in which a broker is arranging a loan, a Mortgage Loan Disclosure Statement, Traditional (RE 882) or a Mortgage Loan Disclosure Statement (RE 883) must be provided within three days of receiving a completed, written loan application from prospective borrowers. A copy of the disclosure statement signed by the borrowers and the broker, or the broker's representative, must be retained by the broker for three years.
2. When a transaction involves a nontraditional loan product, a Mortgage Loan Disclosure Statement, Nontraditional Mortgage Loan Product - One to Four Residential Units (RE 885) must be provided according to the same rules as in #1. A nontraditional loan product is defined in Regulation 2842. See also Section 15 for additional compliance information on nontraditional loan products.
3. The disclosures must include the real estate broker's license number and NMLS unique identifier number.
4. The disclosures must contain the amount of all compensation to be earned by the broker including the amount of any yield/spread premium or other rebates from the lender. The disclosures must also contain the Department's