

Questions and Answers Regarding Trust Fund Requirements and Record Keeping

- Q. Are security deposits on rental units the property of the owner or should they be held in trust by the broker for the tenant?
- A. *They are trust funds. As such, control and disbursement of the security deposits are at the instruction of the property owner.*
- Q. Am I permitted to wait until checks deposited to my trust account have cleared before I issue a trust check to fund a customer's check?
- A. *Although the Real Estate Law is silent on this, good business practice dictates that you wait until a customer's check deposited to your trust account has cleared prior to the issuing of your trust check as a refund.*
- Q. How should I handle an earnest money check which is to be deposited into escrow upon acceptance of the offer?
- A. *Such a check may be held until the offer is accepted and then placed in escrow but only when directed to do so by the buyer, provided you disclose to the seller the fact the check is being held in uncashed form. In such cases, it is good practice to include such a provision in the deposit receipt. You must keep a columnar record of the receipt of the check, the name of the escrow company and the date the check was forwarded to the escrow.*
- Q. As a broker-owner of rentals, do I have to put security deposits in a trust account?
- A. *Money you receive on your own property is received as a principal, not as an agent. As such, these are not trust funds and should not be placed in the trust account.*
- Q. Must I keep a deposit receipt signed only by the buyer and rejected by the seller?
- A. *Yes. Such a record must be maintained for three years.*
- Q. May I maintain one trust fund account for both collections from my property management business and deposits on real estate sales transactions?
- A. *Since property management funds usually involve multiple receipt of funds and several monthly disbursements, it is suggested that separate trust fund accounts be maintained for property management funds and earnest money deposits. However, all trust funds can be placed in the same trust fund account as long as separate records for each trust fund deposit and disbursement are maintained properly and the account is not an interest-bearing account.*
- Q. If the buyer and seller decide to go directly to escrow and the buyer makes out a check to the escrow company and hands it directly to the escrow clerk, do I have to maintain any records of this check?
- A. *No. You must maintain records only of trust funds which pass through your hands for the benefit of a third party.*
- Q. How long must I keep deposit receipts?
- A. *Deposit receipts must be maintained for three years.*

SUMMARY

We might say this publication presents the three R's of trust funds: **R**esponsibility, **R**equirements, and **R**ecords.

It is a real estate broker's responsibility to protect clients' funds at all times and keep clients fully informed of the nature and disposition of all trust funds.

To aid brokers in carrying out this responsibility, the Real Estate Commissioner's Regulations include requirements concerning trust funds. A real estate broker also needs to meet other requirements from a practical business point of view. To protect clients' funds adequately and in the business-like fashion expected, the broker must keep accurate records.