

# *- Quick Notes -*

## *Trust Account Guidelines*

1. Trust monies: Monies belonging to others that come into possession of a Real Estate Licensee acting as agent for another for compensation.
2. Trust monies include but are not limited to: earnest money, tenant security deposit, time share down payment, rent and property owner association funds collected by licensee.
3. Commingling: To mix funds held in trust for others with your personal or business funds.
4. Commingling also includes situations in which the Broker does not take earned commissions out of the trust account within 30 days of closing. Often called Reverse-Commingling.
5. Trust accounts are often referred to as escrow accounts.
6. Trust accounts must be a separate custodial account that allows withdrawals on demand.
7. The FDIC insures each depositor within the trust account up to \$100,000 against losses.
8. Trust accounts must be opened and maintained in an insured (State or Federal) bank or savings and loan (not a credit union) in N.C. Trust accounts must be in the state the property is in not the office.
9. A practicing Broker licensee is not required to open a trust account until such time as one is needed.
10. Only one trust account is required although more than one is allowed and may be preferable for handling various types of trust monies.
11. A property owner's association's trust funds may not be in the same trust account as another property owner association's funds.
12. Brokers who sell or lease their own property must not commingle these funds in the same trust account that is being used to hold funds for another.
13. Brokers who sell or lease their own property, in their own name, can place trust monies on these properties in their corporation's trust account since the corporation is a separate legal entity.

# *- Quick Notes -*

## *Trust Account Guidelines (cont'd)*

14. A trust account must be designated as a trust or escrow account and all bank statements, deposit tickets and checks drawn on the account must say Trust or Escrow Account.
15. A Broker may deposit and maintain up to \$100 of his/her personal funds in the trust account (or such other amount as may be required by the bank).
16. Trust accounts are typically non-interest bearing.
17. Trust accounts may be interest bearing if:
  1. The Broker has written consent of the parties
  2. The written authorization states who gets the interest
  3. If the written consent is contained within another document, this portion must be distinguished from the other portions of the agreement (i.e. bold, underlined, etc.)
18. Trust monies may be maintained in a Certificate of Deposit only if the CD is insured and allows withdrawal upon demand without penalty.
19. Custom and tradition has the trust monies being held by the listing firm.
20. All trust monies received by a Provisional Broker licensee must be delivered immediately to the Provisional Broker's supervising Broker.
21. A Provisional Broker licensee does not have any number of days in which to deposit trust monies. (i.e. they must be given to the Broker or Bookkeeper)
22. The Broker will be held responsible for all trust monies even if handled by another clerical employee (i.e. Bookkeeper).
23. Periodic audits and bonding of such staff is recommended but not required.
24. Earnest Money and Tenant Security Deposits must be deposited in a Trust account no later than three banking days following acceptance of the contract (Remember, Salesperson does not deposit.) The rule is not how early it can be deposited but rather how late.

## *- Quick Notes - Trust Account Guidelines (cont'd)*

25. Banking Days: Students should use only Monday-Friday as banking days (Hint: For computation purposes act like you got the money at night.)
26. All other forms of trust monies (and including all cash deposits even if for earnest money or tenant security deposits) must be deposited no later than three banking days from receipt.
27. Brokers may only disburse trust monies for the purpose for which they were obtained.
28. Trust monies may be disbursed upon rejection or revocation of an offer assuming no dispute between the Buyer, not Broker, and Seller.
29. Brokers should not disburse until the check has cleared.
30. Trust monies may be disbursed upon termination of the contract assuming no dispute between Buyer, not Broker, and Seller.
31. In the event of a dispute, or likelihood of a dispute, between the buyer and seller, the Broker must obtain written release from the buyer and seller or await court order.
32. Remember that the dispute rule is strictly between the buyer and seller and not the Broker and seller.
33. Trust monies can be disbursed upon closing.
34. Earnest Money deposits can be paid to the closing person (i.e. Attorney) up to ten days of the projected closing date.
35. Trust monies should be disbursed directly from the trust account not the general operating account.
36. Brokers should not withdraw any portion of their earned commissions prior to closing without the written consent of all parties.
37. A rental Property Manager may not disburse any funds that exceed the amount of rent being held for a particular owner although it may exceed the amount held for a particular property.

## *- Quick Notes - Trust Account Guidelines (cont'd)*

38. A Property Manager cannot pay out of the amount being held for tenant security deposit to pay routine maintenance for a property owner.
39. Brokers should be aware that security deposits remain the property of the tenant, not the landlord, during the tenancy.
40. Brokers must maintain complete records of all trust accounts and should reconcile these accounts on a monthly basis.
41. A multi-office firm can maintain a trust account for all of the offices in one central account.
42. Trust account records should follow typical general journal entry bookkeeping and are subject to “spot checks” by Real Estate Commission Auditors without notice.
43. Original canceled checks, or digitally imaged checks must be retained as part of the record.
44. All trust account records must be maintained for at least three years from the last conclusion of the trust monies. (i.e. closing, resolution of a dispute, etc.)
45. In the event of a dispute, trust records may have to be maintained well beyond three years.
46. Brokers must account to the principal for all trust monies which they receive or disburse.
47. Rental Management Reports are typically provided at the end of the rental period (i.e. month) and also at the end of the year.
48. The Broker/Rental Manager must make a full accounting to the tenant within 30 days of termination of the tenancy.
49. The Broker is responsible for seeing that the buyer and seller get a detailed accurate closing statement at the closing or no later than 5 days from the closing.
50. The Broker will be accountable for the accuracy of the closing statement regardless of who actually prepared it. (i.e. Attorney, Lending Officer, Salesperson, etc.)