



## Trust Accountability

This Issue of the Bulletin Devoted Exclusively to the Handling and Accounting of Trust Funds

### WHY A TRUST ACCOUNT?

For the broker who would like "one good reason why he should deposit his clients' funds in a separate account", here are four good reasons:

1. Funds on deposit in a broker's regular business account or personal account may be "frozen" should the broker become involved in legal action or should he become incapacitated or die;
2. Only by depositing client funds in a separate trust or escrow account can each depositor receive the \$40,000 maximum insurance protection of the Federal Deposit Insurance Corporation (brokers must also be able to identify each depositor);
3. By depositing trust funds in a separate account and maintaining a separate accounting journal for such account, brokers will be less likely to confuse trust monies with non-trust monies; and
4. Failure to deposit such funds in a trust/escrow account is a serious violation of the Real Estate Licensing Law and could likely result in the suspension or revocation of the broker's real estate license.

Protect your clients. Protect yourself. Deposit in your trust account within 72 hours of receipt any earnest monies, rents, rental security deposits, and all other funds received by you **while acting as a real estate broker**. Do not deposit in your trust account any monies re-

(Continued on Page 2)

### Questions And Answers On Trust Accounts

- Q. I recently received my broker's license, but I do not plan to enter the real estate business at the present time. Must I open an escrow account even though I am not using my license?
- A. **No. An escrow or trust account, however, must be established prior to receipt of any trust funds in your capacity as a real estate broker.**
- Q. A service charge is levied by my bank when I fail to maintain a certain minimum balance in my escrow account, and the account is automatically closed when a zero balance occurs. May I deposit personal funds in my escrow account to avoid these penalties?
- A. **Yes. You may deposit a maximum of \$100.00 of your personal funds in your escrow or trust account to avoid minimum balance service charges or to prevent cancellation of your account. Care should be taken, however, to properly enter and identify this deposit in your trust account records.**
- Q. I maintain only one bank account for my real estate business, but I write the words "trust account" on all earnest money checks, checks for rental payments, etc. Is this permissible?
- A. **No. The purpose of the trust account is to separate trust funds from the other funds of the broker. There must be a separate trust account in addition to a broker's regular business account.**
- Q. May trust funds be deposited in an interest bearing account?
- A. **Yes, if the principals authorize such deposits in writing and if the writing provides for the disbursement of the interest (G.S. 93A-6(a) (12)). Brokers are advised to be sure that each written agreement clearly states to whom the interest belongs and to whom it will be disbursed. It is the Board's belief that the vast majority of brokers do not and should not deposit their trust funds in an interest bearing account unless the deposits are for large amounts of money which will be held for extended periods of time.**
- Q. What monies should I as a real estate broker place in my escrow account?
- A. **All money received in a real estate transaction when acting as a real estate broker, escrow agent, or the temporary custodian of the funds of others (G.S. 93A-6(a) (12)). For example, earnest money deposits, rental payments and damage deposits.**
- Q. When managing rental properties for others, must I deposit rental collections in an escrow or trust account?
- A. **Yes. All rents collected by a broker or salesman on behalf of his/her principal must be deposited in an escrow or trust account. The Board further recommends that a separate trust account designated by the bank as a "Rental Escrow Account" or "Rental Trust Account" be**

(Continued on Page 2)

# REAL ESTATE BULLETIN

Published quarterly as a service to real estate licensees to promote a better understanding of the Real Estate Licensing Law, Rules and Regulations, and proficiency in ethical real estate practice.

## NORTH CAROLINA REAL ESTATE LICENSING BOARD

115 Hillsborough St.  
Raleigh, North Carolina 27602

James B. Hunt, Jr., Governor

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### Why A Trust Account?

(Continued From Page 1)

ceived by you while acting for yourself (as seller, lessor, etc.), and promptly transfer (within 30 days) all earned commissions from your trust account to your business account. Finally, should a dispute arise between parties as to the proper disposition of trust funds, do not disburse the funds until the dispute has been settled or until you have been advised by legal counsel or instructed by a court of competent jurisdiction.

### BROKERS REQUIRED TO MAINTAIN TRUST FUND RECORDS

The Real Estate Licensing Law, section 93A-6(c), provides that:

"Records relative to the deposit, maintenance, and withdrawal of the money or other property of his principals shall be properly maintained by a broker and made available to the Board or its authorized representative when the Board determines such records are pertinent to the conduct of the investigation of any specific complaint against a licensee."

## Questions And Answers On Trust Accounts

(Continued from Page 1)

opened by brokers who are reasonably active in the areas of property management or leasing for others.

- Q. Although I am a licensed real estate broker, I sometimes sell property which I personally own. Should I deposit into my trust account earnest money received from the sale of property which I personally own?
- A. No. To do so would constitute "commingling" since you would be combining your own money with that of your principals, and such commingling could result in suspension or revocation of your real estate license.
- Q. Is there a maximum time period within which trust funds must be deposited in my trust account?
- A. Yes. "All monies received by a real estate broker acting in his fiduciary capacity shall be deposited in a trust or escrow account within 72 hours of receipt . . ." (North Carolina Real Estate Licensing Board Rule .0107(a)) UNLESS some other provision is written into the purchase agreement.
- Q. May I wait until an Offer to Purchase is accepted before depositing offeror's earnest money in my escrow account?
- A. No. Money received by a real estate broker acting in his fiduciary capacity must be deposited in an escrow account within 72 hours of receipt (Rule .0107 Rules and Regulations). There are sound reasons behind a rule which requires the deposit of earnest money in an escrow account prior to acceptance of an offer. The earnest money accompanying an offer is usually paid with a check from the buyer. If a broker fails, within a reasonable time, to deposit the check and, consequently, the check is later returned unpaid, then the broker has not represented the best interests of his principal, the seller. Furthermore, earnest money is, by definition, an indication of good faith. The seller should be told if the buyer's check is worthless in order to decide whether he wants to deal with such a person. The seller could authorize the broker to hold a check until acceptance of an offer, but such authority should be placed in writing for the broker's own protection.
- Q. As a real estate broker, what should I do when a dispute arises between parties concerning trust funds?
- A. You should KEEP THE MONEY IN YOUR TRUST ACCOUNT until the dispute is resolved to the satisfaction of all parties or until ordered by a court of competent jurisdiction to disburse the funds.
- Q. As a broker, I realize that I must not disburse trust funds which are being claimed by different parties to the transaction. My question is simply, how can I determine if such a dispute exists?
- A. If you are in doubt as to whether a dispute exists regarding the disposition of trust funds, the Board suggests that you notify all parties who have an interest in such funds advising them that you intend to disburse the funds on a given date unless an objection is filed with you prior to that date. The notice should be sent registered mail return receipt requested and should contain the date on which the funds will be disbursed (allow sufficient time for parties to respond), and the name(s) of the person(s) to whom the money will be disbursed. Should one of the parties object to your intended disbursement, you should inform the other party of the objection and declare to all parties that you will retain the funds in your trust account until disbursement is ordered by a court of competent jurisdiction or until the matter is satisfactorily settled by the parties.
- Q. Must I retain trust records for a minimum period of time?
- A. Yes. Brokers must retain trust records and earnest money receipts for a period of 3 years (North Carolina Real Estate Licensing Board Rule .0108), and such records must be made available to the Licensing Board or its authorized representative when the Board determines such records are pertinent to the conduct of an investigation of any specific complaint against a licensee (G.S. 93A-6(c)).



# Trust Account Record Keeping

"Records relative to the deposit, maintenance, and withdrawal of the money or other property of his principals shall be properly maintained by a broker . . ." (G.S. 93A-6(c)).

Do you rely on your trust account checkbook stubs and cancelled checks alone to keep up with funds in your trust account? If so, rest assured that **you are** joined by many other brokers presently engaging in this questionable business practice. Reports from our field representatives indicate that an ever-increasing number of brokers throughout the state are using their escrow or trust account checkbooks as their only source of information regarding funds placed in their trust.

You may argue that your checkbook provides all data sufficient to carry out your fiduciary responsibilities. You may argue that your lim-

ited accounting and bookkeeping skills prevent you from instituting a more detailed system of trust account record keeping. Nevertheless, the Licensing Board feels that a **COMPLETE, YET UNCOMPLICATED METHOD OF TRUST ACCOUNT RECORD KEEPING IN THE FORM OF A GENERAL JOURNAL SHOULD BE ADOPTED BY EACH AND EVERY BROKER** charged with the serious responsibilities of trusteeship.

Although your accountant can likely devise a Journal system tailored to fit your particular real estate operation, the Licensing Board offers the following model for your consideration which is designed to provide a thorough but uncluttered description of trust account receipts and disbursements. Note that in addition to giving the amounts received and paid out, the parties to the transaction, the subject property, and

essential dates, this model also provides a convenient daily balance which can be checked at a glance.

While this model should meet the needs of most general real estate brokerage agencies, many agencies maintain, in addition, a separate ledger for each property sold or managed, showing receipts and disbursements affecting that particular property. Furthermore all such escrow records must be retained for 3 years in accordance with the Licensing Board's recently adopted Rule .0108.

Remember, as the guardian of funds which have been entrusted to your care, your principals rightfully demand and expect to receive your faithful and impartial vigilance and your competent, professional service. Accurate trust account records are essential in fulfilling this responsibility.

Record of All Trust Funds Received and Paid Out Trust Fund Bank Account											
RECEIVED						PAID OUT					
19 Date Received	From Whom Received	Description	Amount Received	Date of Deposit	XX	To Whom Paid	Description	Amount Paid Out	Check Number	Date Paid Out	Balance
2-22-76	John A. Doe	Earnest Money on Allan Property	\$500.00	2-23-76							\$500.00
(1) 2-23-76	William Manning	Rental Payment on Snipes Property	150.00	2-23-76							650.00
(2)											
(3)						Acme Repair	Plumbing Repair on Snipes Property	30.00	105	2-24-76	620.00
(4)						George Snipes	Net Rent Share on Snipes Property	105.00	106	2-25-76	515.00
(5)						Broker	Rental Commission on Snipes Property	15.00	107	2-25-76	500.00
(6) 3-1-76	James Warren	Earnest Money on Griffin Property	1,000.00	3-26-76							1,500.00
(7)						Edward O. Allan	Proceeds of Sale Allan Property	500.00	108	3-5-76	1,000.00
(8) 3-7-76	David Martin	Rental Damage Deposit Jenkins Property	50.00	3-8-76							1,050.00
(9)						James Warren	Refund Earnest Money Griffin Property	1,000.00	109	3-7-76	50.00

1. Feb. 22 — Broker received \$500.00 in earnest money from John Doe as purchase deposit on property owned by Edward Allan.
2. Feb. 23 — Broker received \$150.00 rent from William Manning on property owned by George Snipes.
3. Feb. 24 — Broker paid \$30.00 to Acme Repair for plumbing repair on Snipes property.
4. Feb. 25 — Broker paid \$105.00 to George Snipes for his share of rent.
5. Feb. 25 — Broker received \$15.00 rental commission on Snipes property.
6. March 1 — Broker received \$1,000.00 in earnest money from James Warren as purchase deposit on Griffin property.
7. March 5 — Broker paid \$500.00 to Edward Allan on closed transaction for property sold to John Doe.
8. March 7 — Broker received \$50.00 rental damage deposit from David Martin on property owned by Jenkins.
9. March 7 — Broker refunded \$1,000.00 earnest money to James Warren due to Griffin's rejection of offer.

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## Disciplinary Action

**DONALD L. FOSS** — Fayetteville — Broker's License No. 21534 — Suspended for ninety (90) days for violation of G.S. 93A-6(a) (2), (8) and (14) — promised mortgage payments would be made when in fact they were not paid as promised, and failed to deliver closing statement to buyers.

**JAMES T. MANNING, JR.** — Rocky Mount — Broker's License No. 27884 and **THE ALLMAN CORPORATION** — Rocky Mount — Broker's License No. C-1728 — Revoked for violation of G.S. 93A-6(a) (7), (8) and (12) — failed within a reasonable time to account for and remit \$900.00 belonging to buyers, and failed to maintain an escrow account and proper records.

**RUSSELL KINNEY** — Charlotte — Broker's License No. 2911 — suspended for thirty (30) days for violation of G.S. 93A-6(a) (12) and Board Rule .0107(a) — held an earnest money check until closing and did not place the money in his escrow account.

**LLOYD L. HILL** — Murfreesboro — Broker's License No. 38249 — reprimanded for violation of G.S. 93A-6(a) (15) and Board Rule .0106 — failed to deliver a completed copy of sales contract to seller within time required.

**BERTHA G. BRIGMAN** — Asheville — Broker's License No. 17557 — revoked for violation of G.S. 93A-6(a) (7) and (10) — larceny of \$10,000 involved in a real estate transaction.

## WHO HOLDS EARNEST MONEY — LISTING BROKER OR SELLING BROKER?

The basic concept of earnest money, is to make a deposit with "a third disinterested party" to hold, to assure the completion of the contract by the buyer. Originally all earnest money was placed with a trusted banker or other party that was agreeable to the buyer and seller. In modern practice the broker asking for the earnest money usually has taken the initiative and asked that the earnest money be deposited with him.

Since a large number of real estate transactions today involve the MLS and therefore two brokers, the obvious question arises as to who will hold the earnest money. Minnesota in Minn. Reg. SDiv. 1505 (a)(1) says: "Unless otherwise agreed upon in writing by the parties, the broker with whom trust funds are to be deposited in satisfaction of Section 8, shall be the listing broker."

In the absence of a special statute, the common law would also agree that the listing broker is the proper party to hold the escrow funds, as between the brokers. The cooperating broker has little rights in the transactions, except as they flow through the listing broker. His only right to show the property, write a contract, accept earnest

money, or participate in the commissions, flows through the listing broker's contract with the Owner. It is not uncommon for the listing contract between listing broker and Owner to specifically state that the listing broker only shall hold the earnest money.

What happens if the selling broker, in spite of the above, asks the buyer to make the check payable to him? The brokers are paid to negotiate all matters in controversy between the buyer and seller, such as price, terms, possession and who holds the earnest money. The matter should fall back on the selling broker to advise the buyer that the seller would prefer another trustee. The listing broker should never be so anxious to sell, that he ignores the right of his principal to have the trust funds placed as he desires.

**CAVEAT:** The common law and some state statutes or regulations provide that the listing broker shall have prior right to hold the trust funds, as between the brokers. The buyer and seller have the final say, by agreeing who shall be the holder of the trust funds.

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## Help Us Help You

When contacting our office  
Give Us Your Real Estate License Number

### EXAM RESULTS

Examination — November, 1977

	Passed	Failed
Brokers	415	329
Salesmen	54	33

Examination — January, 1978

	Passed	Failed
Brokers	485	886
Salesmen	90	36

Examination — February, 1978

	Passed	Failed
Brokers	272	371
Salesmen	28	13

NORTH CAROLINA  
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