

## **ESTABLISHING REAL ESTATE TRUST ACCOUNTS**

This guideline has been prepared in response to concerns arising from routine audits, inspections, and office visits in the field that continue to indicate confusion concerning the requirements of establishing and managing a real estate trust account. It also instructs on the law's requirement that "entrusted funds" be deposited into a real estate trust account.

### **Establishing and Managing a Real Estate Trust Account.**

In order to establish a real estate trust account, the account must be in the licensed business name of the broker; it must be identified as a "real estate trust account"; and the FUNDS MUST BE SUBJECT TO WITHDRAWAL ON DEMAND BY THE BROKER. The broker may authorize others to sign trust account checks and withdraw funds, but the broker is held strictly responsible and accountable for the funds on deposit. Each real estate trust account must have a separate and complete set of records consisting of monthly accounting, deposits, and charges. See section 54-2042, Idaho Code.

If a broker establishes a real estate trust account with a title company, attorney, or other third party that is an approved depository, the same principles apply. The trust account must be established in the licensed business name of the broker and funds must be subject to withdrawal on demand by the broker, without restriction or condition of the title company or other third party. The broker is responsible to see that the title company or other approved depository provides the required account records.

Regardless of where the broker establishes a real estate trust account, the broker is required to notify the Commission on a form entitled "Trust Account Notification" and includes the "Agreement & Authorization to Inspect." This form must be signed by the broker and by an officer of the trust account depository.

In the event of a cooperative transaction, the funds may be placed in the listing or selling broker's trust account if the purchase and sale agreement specifies that the listing or selling broker is to be responsible for holding the funds. (Section 54-2048, Idaho Code)

### **Broker's Duty to Deposit "Entrusted" Funds into a Real Estate Trust Account**

A broker is required to deposit any and all "entrusted" funds it receives into a real estate trust account maintained by the broker, and the broker is responsible for those funds. **Any and all funds received by the broker are considered "entrusted" UNLESS:**

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- (1) the parties have directed the broker, in writing, to transfer those funds to a third party, such as a title, escrow or trust company; *and*
- (2) neither the broker nor his licensees have any right to exercise control over the safekeeping or disposition of the funds.

### **Broker's Duty regarding Funds that are NOT "Entrusted"**

Whenever a broker receives funds with the parties' written direction to transfer them to a third party, the broker's duty is to transfer the funds as directed and maintain a ledger record of the time and date of the transfer; he must also obtain a receipt. Because such funds are not considered "entrusted," the broker has no duty to deposit them into a real estate trust account.

The pertinent sections of the Idaho Real Estate License Law are the following:

1. **54-2041. Trust Account and Entrusted Property.**
2. **54-2042. Creation of Noninterest-Bearing Trust Accounts – Requirements.**
3. **54-2043. Interest-Bearing Trust Accounts.**
4. **54-2045. Trust Account Deposits and Receipt of Consideration.**

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## **IDAHO REAL ESTATE LICENSE LAW**

### **54-2041. Trust Account and Entrusted Property.**

(1) A licensed Idaho real estate broker shall be responsible for all moneys or property entrusted to that broker or to any licensee representing the broker. For purposes of this section, moneys or property shall not be considered entrusted to the broker or to any licensee representing the broker when the parties to the transaction have instructed the broker or its licensees, in writing, to transfer such moneys or property to a third party, including, but not limited to, a title, an escrow or a trust company if upon transfer, the broker or its licensees have no right to exercise control over the safekeeping or disposition of said moneys or property.

(2) Unless otherwise instructed by the parties in writing to deposit entrusted moneys on a later day, immediately upon receipt, the broker shall deposit entrusted moneys in a neutral, qualified trust fund account pursuant to section 54-2042, Idaho Code, and shall properly care for any entrusted property.

(3) Only moneys relating to a regulated real estate transaction may be deposited in the broker's real estate trust fund account. Entrusted moneys shall not be commingled with the moneys of the broker, firm or agent, except for that minimum amount that may be required to open and maintain the trust account or as otherwise allowed by section 54-2042, Idaho Code.

(4) A licensed real estate broker shall not be responsible for depositing moneys into the broker's real estate trust account, nor responsible for creating a real estate trust account with an approved depository as set forth in section 54-2042, Idaho Code, when the parties to the transaction have instructed the broker or its licensees, in writing, to transfer such moneys to a third party, including, but not limited to, a title, an escrow or a trust company. Provided however, a broker shall be responsible for maintaining a record of the time and date that said moneys or property was transferred from the broker to a third party.

(5) The real estate broker shall remain fully responsible and accountable for all entrusted moneys and property until a full accounting has been given to the parties involved.

**54-2042. Creation of Non-Interest-bearing Trust Accounts – Requirements.**

A broker may establish one (1) or more real estate trust accounts but each account must meet all requirements of this chapter, including the following:

(1) Each trust account must be established at an approved depository, and must be noninterest-bearing, except as allowed in section 54-2043, Idaho Code, or as otherwise may be provided by law. Approved depositories are state or federally chartered banks and trust companies, state or federally chartered savings and loan associations, properly licensed title insurance companies, or an actively licensed attorney at law.

(2) Each account must be identified by the term "real estate trust account," on checks, deposit slips, and with the depository.

(3) Each trust account must be established and maintained under the licensed business name of the broker, and shall be under the full control of the broker.

(4) Each broker trust account must have a separate and complete set of records, which must consist of a monthly accounting, deposits, charges, and withdrawals or checks, even if the moneys are on deposit with a title company, attorney or other approved depository. The broker is responsible for ensuring that these separate account records are provided by the depository.

(5) Funds deposited in a real estate trust account must be subject to withdrawal on demand at the order or direction of the broker at all times, even if deposited with a title company or other approved depository.(6) A Commission-approved form giving notice of opening a trust account and giving authorization for the Commission to inspect the account must be completed for each trust account, signed by the broker and an officer of the bank or depository and returned to the Commission.

(7) No deposits to the trust account shall be made of funds that belong to the broker or real estate firm, except that the broker may deposit broker or firm funds for the purpose of opening and maintaining the account and for the payment of anticipated bank service charges for the trust account. In no event shall the balance of broker or firm funds in the account exceed three hundred dollars (\$300). Maintenance funds shall not be disbursed for any purpose other than to cover bank charges charged directly to the trust account by the bank.

(8) An entity not specified as an approved escrow depository in this section, may be accepted and approved by the Commission as an escrow depository upon disclosure of the following:

- (a) The details of the entity's financial structure;
- (b) The amount and terms of Errors and Omissions insurance and any bonding;
- (c) A copy of the entity's last audit and financial statement;
- (d) A copy of any license or certificate issued to the entity; and
- (e) Any other information which will help the Commission make its determination.

**54-2043. Interest-bearing Trust Accounts.**

The broker may deposit funds in a separate, interest-bearing trust account for a single transaction if directed in writing by both parties to the transaction, and only if the following additional requirements are met:

(1) The interest-bearing trust account must be established in accordance with all requirements in section 54-2042, Idaho Code. However, the interest-bearing trust account shall be created at an approved depository.

(2) The deposit shall be made in the name of the broker, as described above, and each such account shall contain only the funds relating to one (1) transaction.

(3) The interest-bearing trust account, when created for this purpose, must allow for withdrawal of the funds upon the broker's demand, unless all parties direct the broker in writing to do otherwise.

(4) There must be a written agreement signed by both the buyer and the seller stating who is to receive the interest accrued from the deposit. This agreement is to be retained by the responsible broker in the transaction file with a copy given to the buyer and the seller.

**54-2045. Trust Account Deposits and Receipt of Consideration.**

Except as otherwise provided in this section, all entrusted funds received by a broker in connection with a regulated real estate transaction, including, but not limited to, earnest money, shall be deposited into a real estate trust account maintained by the broker at an approved depository. In addition, all earnest money, option money, promissory notes, tangible personal property and any other consideration received by a broker, regardless of form, must be accounted for upon receipt and in the following manner:

(1) Time of deposit. All moneys received by a broker for another in a real estate transaction are to be deposited on or before the banking day immediately following the receipt day of such funds, unless written instructions signed by the party or parties having an interest in the funds direct the broker to do otherwise.

(2) Checks held in uncashed form. A ledger record must also be created when the broker or associate receives a check to be held for later deposit. However, such a check must be accompanied by written instructions in the purchase and sale agreement or offer to withhold deposit until a time certain, such as acceptance of the offer by the seller.

(3) Consideration returned before deposit. A ledger record must also be created even if the consideration received by a broker or salesperson is to be returned before it has been deposited or otherwise transferred. A written and dated notation must be placed on both the purchase and sale agreement, offer or other document dealing with the consideration, and on the ledger record. No consideration is to be returned without the knowledge and consent of the broker.

(4) Consideration received by sales associate. All consideration, including cash, checks held in uncashed form and promissory notes, received by a sales associate in connection with a real estate transaction shall be immediately delivered to the broker or the broker's office.