

REB 9

CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
REAL ESTATE EXAMINING BOARD )

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REVISOR J. J. ...  
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Cletus J. Hansen, director of the Bureau of Real Estate, and custodian of the official records of the Real Estate Examining Board do hereby certify that the annexed rules relating to real estate trust accounts, were duly approved and adopted by this board on February 11, 1981.

I further certify that said copy has been compared by me with the original on file in this board and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the board at 1400 East Washington Avenue, Madison, Wisconsin, this 16th day of February, A.D. 1981.

  
Cletus J. Hansen, Director  
Bureau of Real Estate

pc6469

5-1-81



STATE OF WISCONSIN  
BEFORE THE  
REAL ESTATE EXAMINING BOARD

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IN THE MATTER OF RULEMAKING : ORDER OF THE REAL ESTATE  
PROCEEDINGS BEFORE THE : EXAMINING BOARD REPEALING,  
REAL ESTATE EXAMINING BOARD : AMENDING OR ADOPTING RULES  
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Relating to rules concerning real estate trust accounts.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

The proposed rule, interpreting s. 452.09, Wis. Stats., contains all requirements relating to the deposit and disbursement of money held by real estate licensees in their capacity as agents for buyers and sellers of real estate, landlords and others. The proposed rule gives the Real Estate Examining Board or its authorized representatives authority to examine and audit trust account records in a broker's office or in a bank.

Current rules on trust account records are revised to provide definitions of real estate terms and a specific list of licensees' requirements and responsibilities.

The primary changes or additions included in the proposal are: (1) Brokers no longer need a real estate trust account as a condition of licensure. Brokers are required to open and maintain a trust account only when real estate trust funds are in their possession. (2) Brokers must specify "trust account" in the name of all real estate trust accounts they maintain. (3) A provision relating to authorization of others to sign a broker's trust account checks has been simplified. (4) Requirements relating to receipts for earnest money paid by a buyer; escrow agreements where earnest money is held by a third person; closing escrow accounts; transferring earnest money from selling to listing brokers; and, disbursement of earnest money. (5) A broker is prohibited from holding down payments which cannot be deposited, with the exception of promissory notes.

ORDER

Now therefore it is ordered that pursuant to authority vested in the Real Estate Examining Board in ss. 15.08(5), 227.014 and Chapter 452, Wis. Stats., the Real Estate Examining Board hereby repeals and recreates and adopts rules, interpreting s. 452.09, Wis. Stats., as follows:

Chapter REB 9 of the Wisconsin administrative code is repealed and recreated to read:

## CHAPTER REB 9

### TRUST ACCOUNTS

REB 9.01 AUTHORIZATION. The following rules are adopted pursuant to ss. 15.08(5), 227.014, and 452.09, Stats.

REB 9.02 DEFINITIONS. As used in this chapter, unless the context otherwise specifically requires:

(1) "Board" means real estate examining board.

(2) "Co-brokerage" means an agreement between a broker with whom a seller has signed a listing contract and another broker who has found a buyer for the property to cooperate in the sale of the property and split the commission at any agreed percentage or on some other basis.

(3) "Real estate trust funds" means cash, checks or notes received by a broker or a broker's salesperson on behalf of a principal or any other person while performing duties as a licensed real estate broker or salesperson, as set forth in s. 452.01, Stats. "Trust funds" include, but are not limited to:

(a) Initial and additional earnest money downpayments and other monies received in connection with offers to purchase, options, and exchanges.

(b) Rental earnest money, deposits, security deposits, and rents.

(c) Payments on land contracts, and mortgage payments.

(d) Tax and insurance payments held in escrow.

(e) Advance fees and finder's fees.

Note: Cash, checks or notes received by a licensee who is engaged wholly or in part in the business of selling real estate owned by the licensee are real estate trust funds. However, such monies received by a licensee in an occasional sale of a licensee's own property, such as a personal residence, are not real estate trust funds.

REB 9.03 GENERAL REQUIREMENTS. (1) Trust account deposits. (a) A broker shall deposit all real estate trust funds received by the broker or the broker's salespersons in a non-interest bearing demand deposit account in one or more banks located in and authorized to do business in Wisconsin.

(b) A broker shall deposit all real estate trust funds received by the broker or the broker's salespersons in a real estate trust account within 24 hours of receipt of such trust funds. If funds are received on a day prior to a holiday or other day when the bank is closed, the broker shall deposit the funds on the next business day of the bank. A broker may satisfy this requirement by depositing trust funds received by the broker in the mail, postage pre-paid and addressed to the bank where the broker's account is maintained.

(2) Number of real estate trust accounts. A broker may maintain more than one real estate trust account, if the broker notifies the board of these accounts, as required in sub. (5) of this section.

(3) Time when real estate trust account shall be opened or may be closed.

(a) A broker shall be required to open one or more real estate trust accounts only when real estate trust funds come into the broker's possession.

(b) A broker may close any real estate trust accounts when no real estate trust funds remain in the broker's possession.

(4) Account designation. (a) A broker shall include the words "trust account" in the name of all real estate trust accounts maintained by the broker.

(b) A broker shall imprint the name of the real estate trust account on real estate trust account checks.

(c) A broker shall name the broker's initial real estate trust account with the exact name as licensed by the board to do business in Wisconsin.

(d) Where a broker has a trust account which does not comply with the requirements of this subsection on the effective date of this chapter, the broker shall comply no later than 6 months after May 1, 1981.

(5) Duty to notify the board. (a) A broker shall provide the board with the name and number of every real estate trust account maintained by the broker and the name of the bank in which the broker holds each real estate trust account.

(b) A broker shall notify the board whenever a broker changes a real estate trust account name or number, changes the business name or method of doing business, changes the real estate trust account from one bank to another or closes a real estate trust account.

(6) Authorization to examine real estate trust accounts and records.

(a) A broker shall authorize representatives of the board to examine and audit all the broker's real estate trust account records.

(b) A broker shall obtain the certification of every bank in which a broker maintains a real estate trust account attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the board.

(7) Time and form for notification and authorization. (a) A broker shall provide information and authorization in subs. (5) and (6) no later than 10 days after opening or closing any real estate trust account or no later than 10 days after any change as required in sub. (5)(b), and at the time of each renewal of license.

(b) A broker shall provide the information and authorization in subs. (5) and (6) on a form provided by the board. This form shall be designated form 5, consent to examine and audit trust account. However, when closing a real estate trust account a broker may inform the board by letter only.

Note: A free copy of form 5 may be obtained from the Department of Regulation and Licensing, Real Estate Bureau, 1400 East Washington Avenue, Madison, Wisconsin 53702.

REB 9.04 AUTHORIZATION TO SIGN TRUST ACCOUNT CHECKS. (1) Application for authorization. A broker may authorize other persons to sign real estate trust account checks drawn on the broker's real estate trust account, provided the broker has filed an application for this authority with the board and the board approves the application in writing.

Note: A free copy of this authorization form may be obtained from the Department of Regulation and Licensing, Real Estate Bureau, 1400 East Washington Avenue, Madison, Wisconsin 53702.

(2) Authorization of officers and partners. (a) Licensed officers of a corporation and licensed partners in a partnership shall not be required to submit an application to the board and obtain board approval to sign real estate trust account checks drawn on their corporate or partnership trust account.

(b) The board shall not authorize an inactive partner or an unlicensed officer of a corporation to sign corporate or partnership real estate trust account checks, unless the partner owns less than a controlling interest in the partnership or the officer is a minority stockholder in the corporation.

(3) Minimum qualifications. Minimum qualifications for persons other than licensed officers and licensed partners to be authorized to sign a broker's real estate trust account checks are the following: (a) The person shall be an employee of the broker and working in the broker's office, except as provided in sub. (4).

(b) The person shall be a resident of the state of Wisconsin and currently reside in the state of Wisconsin.

(c) The person shall be at least 18 years of age.

(4) Authorization of broker's attorney or accountant. The board may authorize an attorney licensed to practice law in Wisconsin or a certified public accountant to sign checks drawn on a broker's real estate trust account, if the attorney or accountant is retained by the broker.

(5) Waiver of requirements. With the exception of sub. (3)(b), the board may, upon written request and evidence of extenuating circumstances, waive portions of this section.

REB 9.05 RECEIPT FOR EARNEST MONEY RECEIVED. A broker and a broker's licensed salespersons shall indicate on the offer to purchase the receipt of initial earnest money received by them from a buyer.

REB 9.06 ESCROW AGREEMENT FOR EARNEST MONEY. If the parties to a transaction do not desire that the broker hold the earnest money in the broker's real estate trust account, and wish to agree to some type of escrow arrangement other than that provided for in the offer to purchase with respect to earnest money deposits, the escrow agreement shall not be drafted by the broker. The escrow agreement shall be drafted by the parties or an attorney. The broker shall not hold the funds in the broker's real estate trust account, nor shall the broker act in any way as custodian of the funds for the parties. The funds, pursuant to the escrow agreement, shall be held by some other party, such as a bank, a savings and loan association or an attorney.

REB 9.07 AFTER CLOSING ESCROW AGREEMENTS. If the parties to a contract wish, or are required, to place funds in escrow other than occupancy or possession escrows until some future occurrence, and they request that the broker hold these funds, an agreement to that effect shall be prepared by the parties or an attorney.

REB 9.08 DOWNPAYMENTS AND CO-BROKERAGE. (1) Cash downpayments. If an offer to purchase is the result of co-brokerage, the selling broker shall transfer the earnest money payment received in the form of cash from the buyer to the listing broker within 24 hours of acceptance by the selling broker.

(2) Downpayments by check. The broker may withhold transfer of the earnest money payment received in the form of a check, pending clearance from the payor's bank. If the check clears, the broker shall transfer the earnest money to the listing broker within 24 hours of receiving evidence of clearance.

REB 9.09 DISBURSEMENT OF TRUST FUNDS. (1) Withdrawal of commissions. A broker shall withdraw commissions or fees earned by the broker from real estate trust accounts maintained by the broker within 24 hours after transactions are consummated or terminated, or after the commissions or fees are earned in accordance with the contract involved.

(2) Improper disbursement. A broker shall not disburse trust funds from his or her real estate trust account contrary to the terms of a contract for the sale, lease, exchange, or option of real estate.

(3) Proper disbursement. A broker who disburses trust funds from his or her real estate trust account under the following circumstances shall not be deemed to have violated s. 452.10(2)(i), Stats.:

(a) Upon the rejection of an offer to purchase, lease, exchange, or option real estate;

(b) Upon the withdrawal prior to acceptance of an offer to purchase, a lease, an exchange or an option on real estate;

- (c) Upon the closing of the transaction;
- (d) Upon authorization granted within the contract;
- (e) Upon securing a written agreement which is signed by all parties having an interest in the trust funds;
- (f) Upon depositing the trust funds into a court having jurisdiction over a civil action involving all parties having an interest in the trust funds;
- (g) Upon order of a court; or
- (h) Upon a good faith decision based on advice of an attorney not representing any party to the contract.

(4) Notification of disbursement. When a broker decides to make a disbursement of trust funds to which all parties to the contract do not expressly agree, as in subs. (3)(d) and (h), the broker shall attempt to notify all parties in writing of the intent to disburse. The notice shall be delivered by certified mail to the parties' last known addresses and shall state to whom and when the disbursal will be made. The disbursement in disputed cases may not occur until 30 days after the date of the notice to the parties.

REB 9.10 COMMINGLING PROHIBITED. A broker shall deposit only real estate trust funds in the broker's real estate trust account and shall not commingle the broker's personal funds or other funds in the trust account, except that a broker may deposit and keep a sum not to exceed \$100.00 from the broker's personal funds in any real estate trust account, which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account.

REB 9.11 DEPOSITS IN LIEU OF CASH. (1) Non-depositable downpayments. With the exception of promissory notes, a broker shall not hold as down payment from a buyer any instrument, equity or thing of value which is not depositable in a real estate trust account. Non-depositable items other than promissory notes shall be held by one of the parties to the transaction or some other party, subject to an escrow agreement prepared by the parties or an attorney.

(2) Promissory notes. A broker may accept promissory notes from buyers as downpayments, and hold these for the parties to the transaction, if the broker inserts language in the offer to purchase which expressly gives the broker authority to hold the note and if the broker modifies the earnest money clause and the earnest money receipt in the offer to purchase to show receipt of a promissory note.

REB 9.12 BRANCH OFFICE TRUST ACCOUNT. In the event a branch office, as defined in s. REB 10.01, Wis. Adm. Code, maintains one or more real estate trust accounts, separate from any trust account at the broker's main office, a separate bookkeeping system shall be maintained in that branch office.



REB 9.13 BOOKKEEPING SYSTEM. Each broker shall maintain a bookkeeping system in the broker's office consisting of at least the following:

(1) Cash journal. A broker shall maintain a permanent record book, called a journal, which shall show the chronological sequence in which real estate trust funds are received and disbursed:

(a) For funds received, the journal shall include the date, the name of the party who is giving the money, the name of the principal, and the amount.

(b) For disbursements, the journal shall include the date, the payee, the check number and the amount.

(c) The journal shall show a running balance for each day on which receipts or disbursements are entered.

(2) Ledger. A broker shall maintain a record book which shows the receipts and the disbursements as they affect each particular transaction e.g., transactions between buyer and seller, landlord and tenant, etc. The ledger entry shall include the names of both parties to a transaction, the dates and the amounts received. The ledger entry shall include the date, payee, check number and amount when funds are disbursed. The ledger shall show a running balance and segregate each transaction. The broker shall maintain a separate ledger or separate section of the ledger for each of the various kinds of real estate transactions, e.g., sales, rental collections or mortgage and land contract collections.

(3) Bank reconciliation. The broker or a person designated by the broker shall reconcile the real estate trust account in writing each month except in the case where there has been no activity during the month. The written reconciliation shall include the ending bank statement balance, the date and amounts of the deposits in transit, the check number and amount of checks written but not paid by the bank as of the ending date shown on the bank statement to be reconciled, and the reconciled bank statement ending balance.

(4) Open ledger account listing (Trial balance). The broker shall prepare or have prepared, in conjunction with sub. (3), a written listing, "trial balance", of all open items in the real estate trust account. The list must show the names of the parties to the transaction and the amount held in trust for the parties at the time corresponding to the bank reconciliation. The broker may in lieu of the names of the parties to the transaction substitute the ledger page number on which the funds appear.


(5) Validation. The broker or a person designated by the broker shall review the reconciled bank statement balance, the open ledger account listing, and the journal running balance to ensure that all of these records are valid and in agreement as of the date the bank statement has been reconciled.

REB 9.14 VIOLATION OF RULES. A broker who fails to comply with the rules as set forth in this chapter shall be considered to have demonstrated untrustworthiness or incompetency to act as a real estate broker in a manner as to safeguard the interests of the public, as specified in s. 452.10(2), Stats.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.026, Wis. Stats.

Dated this 12 day of February, 1981.

By:

  
Richard Ellison, Chairman  
Real Estate Examining Board

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