

CR 83-133

CERTIFICATE

RECEIVED

MAY 7 1984

W. J. Smith
Revisor of Statutes
Bureau

STATE OF WISCONSIN)
) ss
DEPARTMENT OF REGULATION & LICENSING)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Barbara Nichols, Secretary of the Department of Regulation & Licensing, and custodian of the official records of the Department of Regulation & Licensing do hereby certify that the annexed rules relating to real estate trust accounts, were duly approved and adopted by this department on May 5th, 1984.

I further certify that said copy has been compared by me with the original on file in this department 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 department at 1400 East Washington Avenue, Madison, Wisconsin, this 5th day of May, A.D. 1984.

Barbara Nichols

Barbara Nichols, Secretary
Department of Regulation & Licensing

BN:cls
pc6704

7-1-84

RECEIVED

MAY 7 1984

STATE OF WISCONSIN
BEFORE THE
DEPARTMENT OF REGULATION AND LICENSING

Revisor of Statutes
Bureau

IN THE MATTER OF RULEMAKING : ORDER OF THE DEPARTMENT OF
PROCEEDINGS BEFORE THE DEPARTMENT : REGULATION AND LICENSING REPEALING,
OF REGULATION AND LICENSING : AMENDING OR ADOPTING RULES

ORDER

Pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.014 and 452.07, Stats., the Department of Regulation and Licensing hereby repeals, renumbers, renames and amends, amends and creates rules interpreting ss. 452.13 and 452.14(3), Stats., as follows:

SECTION 1. RL 18.02(2m) is created to read:

RL 18.02(2m) "Depository institution" means a bank, savings and loan association or credit union.

SECTION 2. RL 18.02(3)(a) is amended to read:

RL 18.02(3)(a) Cash, checks, share drafts, drafts or notes received by a broker or a broker's salesperson on behalf of a principal or any other person while performing as a licensed real estate broker or salesperson, including:

SECTION 3. RL 18.02(3)(c) is renumbered RL 18.02(3)(a)4.

SECTION 4. RL 18.02(3)(d) is renumbered RL 18.02(3)(a)5 and amended to read:

RL 18.02(3)(a)5 Security deposits on rental property, ~~unless the real estate is wholly owned by a licensee.~~

SECTION 5. RL 18.03(1)(a) is amended to read:

RL 18.03(1)(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~~ one or more accounts with a maturity of no more than 31 days in one or more ~~banks~~ depository institutions located in and authorized to do business in Wisconsin. An account with a savings and loan association does not have a maturity of more than 31 days solely because the account is subject to s. 215.17(4) to (6), Stats., or 12 USC 1464 (b)(1)(c) and (d).

SECTION 6. RL 18.03(1)(am) is created to read:

RL 18.03(1)(am) Real estate trust funds may be deposited in an interest-bearing account if the broker obtains from the persons for whom the funds are held written authorization to deposit the funds in an interest-bearing

account and if the authorization specifies how and to whom the interest will be disbursed. None of the interest earned on funds deposited into an interest-bearing account by a real estate broker may inure to the benefit of the broker, except that a mortgage banker which requires an escrow to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow of not less than 5.25% per year and may retain for its own account any additional interest earned, unless the escrow funds are held by a third party in a non interest-bearing account.

SECTION 7. RL 18.03(1)(b) is amended to read:

RL 18.03(1)(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 depository institution is closed, the broker shall deposit the funds on the next business day of the bank depository institution. A broker may satisfy this requirement by depositing trust funds received by the broker in the mail, postage prepaid and addressed to the bank depository institution where the broker's account is maintained.

SECTION 8. RL 18.03(1)(c) and (d) are created to read:

RL 18.03(1)(c) A salesperson who receives real estate trust funds shall promptly submit the funds to the salesperson's employer-broker.

RL 18.03(1)(d) A licensee having an ownership interest or any other kind of interest in a rental property shall either place security deposits related to that property in a real estate trust account or shall provide in a lease for security deposits to be held in an account maintained in the name of the owner or owners.

SECTION 9. RL 18.03(4)(b) and (c) are amended to read:

RL 18.03(4)(b) A broker shall imprint the name of the real estate trust account on real estate trust account checks, share drafts or drafts.

RL 18.03(4)(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~~ appearing on the broker's license or with a trade name submitted to the department under s. RL 23.03.

SECTION 10. RL 18.03(4)(d) is repealed.

SECTION 11. RL 18.03(5)(a) and (b) are amended to read:

RL 18.03(5)(a) A broker shall provide the department with the name and number of every real estate trust account maintained by the broker and the name of the bank depository institution in which the broker holds each real estate trust account.

RL 18.03(5)(b) A broker shall notify the department whenever a broker changes a real estate trust account name or number, changes the ~~business name or~~ method of doing business as required in s. RL 23.02, changes the real estate trust account from one bank depository institution to another or closes a real estate trust account.

SECTION 12. RL 18.03(6)(b) is amended to read:

RL 18.03(6)(b) A broker shall obtain the certification of every bank depository institution 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 department.

SECTION 13. RL 18.04(1), (2), (3) (intro.) and (4) are amended to read:

RL 18.04(1) APPLICATION FOR AUTHORIZATION. A broker may authorize other persons to sign real estate trust account checks, share drafts or drafts drawn on the broker's real estate trust account, provided the broker has filed an application for this authority with the department and the department approves the application in writing.

RL 18.04(2)(a) Licensed officers of a corporation and licensed partners in a partnership shall not be required to submit an application to the department and obtain department approval to sign real estate trust account checks, share drafts or drafts drawn on their corporate or partnership trust account.

RL 18.04(2)(b) The department shall not authorize an inactive partner or an unlicensed officer of a corporation to sign corporate or partnership real estate trust account checks, share drafts or drafts unless the partner owns less than a controlling interest in the partnership or the officer is a minority stockholder in the corporation.

RL 18.04(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, share drafts or drafts are the following:

RL 18.04(4) AUTHORIZATION OF BROKER'S ATTORNEY OR ACCOUNTANT. The department may authorize an attorney licensed to practice law in Wisconsin or a certified public accountant to sign checks, share drafts or drafts drawn on a broker's real estate trust account, if the attorney or accountant is retained by the broker.

SECTION 14. RL 18.06 is amended to read:

RL 18.06 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 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, a credit union or an attorney.

SECTION 15. RL 18.07 is renumbered RL 18.07(1) and amended to read:

RL 18.07(1) ~~if~~ Except as provided in sub. (2), 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. If the broker holds these funds, the broker shall place them in the broker's real estate trust account.

SECTION 16. RL 18.07(2) is created to read:

RL 18.07(2) A broker may hold in a trust account without a separate escrow agreement occupancy or possession escrows, escrows for final proration of taxes, and escrows for charges incurred by a seller but not yet billed provided that the closing statement shows that the broker is holding the funds.

SECTION 17. RL 18.08(2) is amended to read:

RL 18.08(2) DOWNPAYMENTS BY CHECK, SHARE DRAFT OR DRAFT. The selling broker shall transfer to the listing broker the earnest money payment received in the form of a personal check, share draft or draft within 24 hours of acceptance of the offer to purchase, except that the selling broker may withhold transfer of the payment pending clearance from the payor's ~~bank depository institution~~. If the check, share draft or draft clears, the broker shall transfer the earnest money to the listing broker within 24 hours of receiving evidence of clearance.

SECTION 18. RL 18.09(2) is amended to read:

RL 18.09(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~~ on real estate or a business opportunity.

SECTION 19. RL 18.09(3)(a) and (b) are amended to read:

RL 18.09(3)(a) Upon the rejection of an offer to purchase, lease, exchange, or option on real estate or a business opportunity;

RL 18.09(3)(b) Upon the withdrawal prior to acceptance of an offer to purchase, a lease, an exchange or an option on real estate or a business opportunity;

SECTION 20. RL 18.09(4) and RL 18.10 are amended to read:

RL 18.09(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 sub. (3)(b), (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 ~~disbursed~~ disbursement will be made. The disbursement in disputed cases may not occur until 30 days after the date of the notice to the parties.

RL 18.10 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.

SECTION 21. RL 18.13 (intro.) is amended to read:

RL 18.13 BOOKKEEPING SYSTEM. Each broker shall maintain and be responsible for a bookkeeping system in the broker's office consisting of at least the following:

SECTION 22. RL 18.13(1)(b) is amended to read:

RL 18.13(1)(b) For disbursements, the journal shall include the date, the payee, the number of the check, share draft or draft number and the amount. The journal shall identify each transaction by including the name of the principal, an identification number or other means of identification.

SECTION 23. RL 18.13(2), (3), (4) and (5) are amended to read:

RL 18.13(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 name of both parties to a transaction, the dates and the amounts received. The ledger entry shall include the date, payee, number of the check, share draft or draft 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.

RL 18.13(3) ACCOUNT 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~~ account statement balance, the date and amount of the deposits in transit, the number of the check, share draft or draft number and amount of checks, share drafts or drafts written but not paid by the ~~bank~~ depository institution as of the

ending date shown on the bank account statement to be reconciled, and the reconciled bank account statement ending balance.

RL 18.13(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 account 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.

RL 18.13(5) VALIDATION. The broker or a person designated by the broker shall review the reconciled bank account 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 account statement has been reconciled.

SECTION 24. RL 18.14 is amended to read:

RL 18.14 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. 452.14(3), Stats.

The rules repealed, renumbered, renumbered and amended, amended, created and adopted 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, Stats.

Dated this 5th day of May, 1984.

By Barbara Nichols
Barbara Nichols, Secretary
Department of Regulation and Licensing

BN:MK:az
WILMA-K