

Title 299 - NEBRASKA REAL ESTATE COMMISSION

Chapter 3 - RECORDS; TRUST ACCOUNTS; REQUIREMENTS; DISPOSITION OF EARNEST DEPOSITS.

001 A designated broker shall maintain a trust account as provided in §81-885.21 unless a waiver of the trust account requirement has been approved by the Director. When reviewing a waiver application the Director may consider the volume of transactions the broker completes as well whether audit reports on the broker indicate the required use of a trust account. A designated broker who obtains a trust account waiver shall be required to maintain complete and accurate record of all client funds they may receive or distribute.

002 A broker trust account will accurately and clearly disclose full compliance with the law relating to the maintaining of such accounts including but not limited to, the Nebraska Real Estate License Act and the Nebraska Real Estate Commission Trust Account Manual, which is incorporated by reference into these regulations.

003 Every designated broker shall maintain and preserve records subject to audit as identified in the Nebraska Real Estate Commission Trust Account Manual, Section II, B, Sales Accounts, and Section III, B, Property Management Accounts under the broker's supervision as provided below:

003.01 In instances where there is a real estate transaction which is consummated, records relating to the transaction shall be preserved for five years following its consummation.

0043.02 In instances where a written listing or other agency agreement, is entered into, but no real estate transaction is consummated, records relating to such listing or agency shall be maintained for five years after the agency agreement is terminated or expires.

003.03 In instances where a fully executed real estate purchase contract, lease, or other agreement creating or transferring title or an interest in real estate is entered into, but such contract or agreement is not consummated, records relating to the contract or agreement shall be maintained for five years after the agreement is terminated, expires, or ends through breach or default.

003.04 In instances where a broker's price opinion or comparative market analysis is performed for compensation other than a real estate commission or brokerage fee charged or paid for brokerage services rendered in connection with the sale of real estate, records related to such opinion or analysis shall be maintained for five years after such opinion or analysis is completed.

003.05 Records of team members and team leaders as required by Neb. Rev. Stat. §81-885.24(32) shall be maintained for five years after such team dissolves or cease to engage in or hold itself out as engaging in real estate activity.

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004 Funds referred to in Subsection (1) Section 81-885.21 of the Nebraska Real Estate License Act shall include but not be limited to earnest money deposits, money received upon final settlements, rents, security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions and money advanced by a broker's principal for expenditures on behalf of such principal.

005 Funds deposited in the trust account will necessarily include monies which will ultimately belong to the broker but such monies shall be separately identified in his or her trust account records and shall be paid to the broker by check drawn on the trust account after the same are due the broker. The fact that a trust account contains money belonging to the broker does not constitute "commingling the money or other property of his or her principals with his or her own," as prohibited by Subsection (4) Section 81-885.24 of the Nebraska Real Estate License Act.

006 Earnest money deposits and other deposits relating to the sale of real estate shall be kept in a separately identified trust account and all other trust funds may be deposited in another separately identified trust account.

007 In the case of cooperative sales between brokers, the selling broker, unless all parties to the transaction with an interest in the funds have agreed otherwise in writing, shall deposit the earnest money payment in his or her real estate trust account within 72 hours or before the end of the next banking day, after an offer is accepted, in writing, and then forthwith transfer such earnest money deposit to the listing broker by issuing a check drawn on the selling broker's trust account.

007.01 If for any reason the earnest money check tendered to the selling broker is returned by the financial institution unpaid, the selling broker shall forthwith notify the listing broker, who shall immediately refund from his or her trust account the earnest money deposit which has been tendered by the selling broker.

008 In the event of a dispute over the return or forfeiture of any earnest deposit held by a broker, the broker shall continue to hold said deposit in his or her trust account until he or she has a written release from all parties consenting to its disposition or until a civil action is filed to determine its disposition at which time the broker may pay it into court.

008.01 In the absence of a pending civil action, it shall not be grounds for disciplinary action where a broker returns an earnest money deposit to a purchaser, where the return of such deposit is based upon a good faith decision that a contingency in the purchase agreement has not been met, notwithstanding the failure of the seller to agree to said return.

008.02 In the absence of a pending civil action and upon the passage of one-year's time from the date of an accepted offer to purchase, it shall not be considered grounds for disciplinary action for a broker to pay out an earnest money deposit to a seller when the payment of such earnest money deposit has been based on a good faith decision that the buyer has abandoned any claim to such earnest money deposit.

Laws 2017, LB 16 §4; RS 1943, §81-885.21 (7) R. S. Cum. Supp., 208. Effective date March 29, 2017

Laws 1973, LB 68, §7; RS 1943, §81-885.07 (5) R. S. Supp., 1974. Effective date September 2, 1973.