NEBRASKA REAL ESTATE COMMISSION

REAL ESTATE TRUST ACCOUNT MANUAL UPDATE

Enclosed are new pages to be used to update your copy of the **Nebraska Real Estate Trust Account Manual**. You may discard the pages replaced.

Remove Old Pages:	Insert New Pages:	Changes Included:
GEN B-1 dated 8/06	GEN B-1 dated 7/11	Updated information regarding Interest Bearing Trust Accounts
SALES D-1 dated 8/06	SALES D-1 dated 7/11	Updated information regarding Earnest Money Deposits
SALES D-2 and D-3 dated 8/06	SALES D-2 and D-3 dated 7/11	Updated information regarding Interest Bearing Trust Accounts
MGMT D-1, D-2 and D-3 dated 8/06	MGMT D-1, D-2 and D-3 dated 7/11	Updated information regarding Interest Bearing Trust Accounts

If you have any questions regarding this update, please call the Commission Office at 402-471-2004. Thank you for your cooperation.

NRECTAM Update 8/11

I. GENERAL INFORMATION

B. Establishing a Trust Account

The Nebraska Real Estate License Act and Rules of the Commission require each broker to maintain a trust account under the name in which the broker is doing business. Although it is not mandatory, it is suggested that each broker involved in the management of real estate establish a separate trust account for all property management activities, in addition to the trust account established for real estate brokerage activities.

To establish a trust account, the following requirements must be followed:

1. An insured Nebraska bank, savings bank, building and loan association, or savings and loan association must be utilized;

2. The account must be non-interest-bearing, or may generate interest which must accrue to a non-profit organization and may not be retained by the broker;

3. The name of the account must be established in the name under which the broker is doing business, as recorded in the Commission Office;

4. The title of the account must include the heading "Trust Account." (See the "Identification of Trust Account" Sections in the Sales and Property Management Chapters.)

5. Each trust account must be registered with the Real Estate Commission by completing a "Consent to Examine Trust Account" form;

6. Interest Bearing Accounts must be designated as such on the "Consent to Examine Trust Account" form;

7. Duplicate deposit slips and pre-numbered checks must bear the same name as the name of the trust account.

8. Any broker establishing an interest bearing trust account must first establish

Note: Brokers who operate under any name other than their own must register that name as a "Trade Name" with the Secretary of State. For example, "Tom Jones - Broker" does not need to be registered, but "Jones Real Estate Co." does.

Brokers are reminded that, if the trust account is opened with a $-0- balance and there are no deposits or disbursements on the account, the financial institution might close the account because of the $-0- balance and lack of activity, or charge the account for various charges which will result in negative balances, without the consent of or notice to the broker.

II. SALES ACCOUNTS

D. Handling Trust Funds - Receipts

The Nebraska Real Estate License Act and Rules require that all funds coming into the possession of the broker, while acting in the capacity of a broker, be deposited into an account designated as a "Trust Account." This would include those transactions covered under Title 299, Chapter 2-013, in which the broker is participating as an independent closing agent or as an agent in the transaction.

"Trust funds," as defined by the License Act and Rules, may include, but not be limited to, downpayments, earnest money deposits, money received upon final settlement, rents, security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of a real estate transaction, and money advanced by a broker's principal for the payment of expenses on behalf of that principal.

When depositing funds into the trust account, the deposit slip must identify the funds deposited to a specific real estate transaction. The dollar amount should be identified to a specific buyer and seller, or the address of the property being sold. Some financial institutions do not return the original deposit slip with the financial institution statement. It is recommended, in these situations, that the duplicate deposit slip be maintained, unremoved from the deposit book, and that the duplicate be date-stamped by the financial institution's teller at the time of deposit, or that a receipt of deposit be obtained at the time of deposit and attached to the unremoved, duplicate deposit slip.

The License Act Rules and Regulations Require the earnest money deposit be deposited within 72 hours or before the end of the next banking day after the offer is accepted in writing, unless all parties to the transaction having an interest in the funds (i.e., all buyers and sellers) have specifically agreed otherwise in writing.

In cooperative transactions between brokers the License Act Rules and Regulations require the selling broker, unless all parties having an interest in the funds (i.e., all buyers and sellers), have specifically agreed otherwise in writing, to deposit the earnest money into his or her trust account within 72 hours or before the end of the next banking day after the offer is accepted in writing, and without delay transfer the earnest money to the listing broker by issuing a check drawn on the selling broker's account and made payable to the listing broker.

If the earnest money is paid directly to a title company, bypassing both the listing broker's and the selling broker's trust account, as agreed to in writing by all parties (i.e., all buyers and sellers), the listing broker and selling broker must both receive and maintain a written receipt from the title company, and maintain a sub-ledger accounting ledger or a separate log on the transaction, reflecting the earnest money was paid directly to the title company.

When accepting other than cash or an immediately cashable check as earnest money, the licensee must communicate this fact to the seller prior to his or her acceptance of the offer, and such fact must be shown in the earnest money receipt section of the offer to purchase.

In a cooperative real estate transaction between brokers, if the buyer offers a promissory note as an earnest money deposit, the note should be made payable to the listing broker or should

be endorsed without recourse by the selling broker to the listing broker. In all situations, the promissory note must be delivered to the listing broker with the offer to purchase.

Since both offer and acceptance create a contract, acceptance is normally when the seller signs the offer to purchase and that information has been transmitted to the offering party. For the purpose of depositing earnest money into the trust account, the trust account examiner will use the date of acceptance as indicated by the last party to sign the offer to purchase. The acceptance of the offer to purchase is not when the licensee receives an accepted offer to purchase in the mail from an out-of-town seller or when the buyer and/or seller receipt for a copy of the offer to purchase. In the case of a counter-offer, the acceptance would take place when both parties to the contract have a written understanding and are in total agreement as to the terms and conditions of the contract. In instances where either the seller or buyer is out-of-town and contracts are mailed, the Commission recommends the retention of the envelope so that verification of postmark can be determined. Any changes made to the original offer to purchase should be initialed and dated by both buyer and seller. This would provide for proper determination as to when final acceptance took place, and give evidence of the date of acceptance to be used in determining if the deposit was made in a timely manner. It should be noted that in any situation, the broker may deposit the earnest money into the trust account prior to acceptance, and refund the earnest money if final acceptance of the offer never takes place. In instances where the acceptance of an offer is by facsimile or telegram, the earnest money must be deposited into the trust account within 72 hours or before the end of the next banking day after the facsimile or telegram is received.

Once the trust funds have been received by the listing broker and have been deposited into the trust account, the License Act and Rules require the trust funds remain in the trust account until the transaction is closed or otherwise terminated, unless all parties having an interest in the funds have agreed otherwise in writing. To clarify this requirement of the License Act and Rules, the trust funds must be deposited into the broker's trust account and then, if all parties have agreed in writing, the funds may be transferred to the place designated in the written agreement of the parties.

If the parties want their funds handled through an interest-bearing account(s) (other than an interest bearing account where the interest is designated to go to a non profit entity) written authorization from all parties having a claim to the funds is required. The written authorization must either be included in the written agreement between the parties or be a separate written authorization, and should include the following: 1) a statement specifying who will earn the interest on the funds; 2) authorization from all parties involved to transfer the funds from the trust account to the interest-bearing account; 3) dated signatures from all parties involved; and 4) the following notice: "Interest-bearing accounts are not examined by the Nebraska Real Estate Commission. It is understood by all parties concerned that placement of funds in such account removes them from the provisions pertaining to trust accounts in the Nebraska Real Estate License Act and the Rules and Regulations of the Nebraska Real Estate Commission."

When opening an interest-bearing account (other than an interest bearing account where the interest is designated to go to a non profit entity), brokers should check with the financial institution as to how the account should be titled. The interest-bearing account may be titled as a "Trust Account," but should not be registered with the Nebraska Real Estate Commission as a real estate trust account. The interest-bearing account will not be examined by the Nebraska Real Estate Commission, and all records relating to the interest-bearing account should be maintained separately. The Social Security Number or the Federal Identification Number of the

interest recipient should be provided to the financial institution for taxation purposes. Brokers should also acquire a "No Right of Offset" letter from the financial institution. This letter is an agreement between the broker and the financial institution in which the financial institution agrees not to offset any personal obligations of the broker with the funds deposited to this account. It is recommended that the broker be the only signatory on the interest-bearing account, so that the broker is the only person who can access the funds.

In order to establish a paper trail for examination purposes, the broker must deposit the funds into the trust account, then transfer the funds to the interest-bearing account via a check drawn on the trust account.

When the transaction has reached the day of closing, the broker should transfer the funds from the interest-bearing account to the trust account and disburse the funds, along with other trust funds received as part of the final settlement, from the trust account.

If a broker designates that the trust account shall be interest bearing for the benefit of a non-profit organization, the trust account shall be examined and managed as provided in this manual, except that interest accruing to the account must be distributed to a nonprofit entity which is exempt from paying federal income tax, and all such interest shall be distributed to the non-profit entity at least once per calendar quarter. Evidence of such deposit shall be provided by the bank statement or a written receipt from the not for profit entity, trust account examiners shall verify that all such deposits match or exceed interest that has accrued, except any accrued interest not yet transferred for the current calendar quarter shall not be included in the reconciliation.

In the event the real estate transaction does not close and there is a dispute over the return of the earnest money, the broker is required to maintain the funds in the trust account until a written release is received from the buyer and seller directing the broker how to disburse the funds, or until civil action is filed, at which time the broker may pay the funds into the court or retain the funds until directed by the court as to the disposition of the funds.

In the case of a dispute and in the absence of a pending civil action, the broker will not be subject to disciplinary action by the Nebraska Real Estate Commission if the earnest money deposit is returned to the buyer, based on a good faith decision by the broker that a contingency in the purchase agreement has not been met. Also, it will not be grounds for disciplinary action by the Nebraska Real Estate Commission if, in the case of a dispute and in the absence of a pending civil action and after one year has elapsed from the date of acceptance, the broker pays the earnest money deposit to the seller, based on a good faith decision by the broker that the buyer has abandoned any claim to the funds. Although these provisions of the Rules prohibit disciplinary action against the broker if the Rule is followed, it does not eliminate the possibility of civil action being taken against the broker.

Brokers are required to post all receipts and disbursements in chronological order to the general ledger and the applicable sub-ledger(s) as the activity occurs.

III. PROPERTY MANAGEMENT ACCOUNTS

D. Handling Trust Funds - Receipts

The Nebraska Real Estate License Act and Rules require all funds coming into the possession of the broker, while acting in the capacity of a broker, be deposited into an account designated as a "Trust Account."

"Trust funds," as defined by the License Act and Rules, may include, but not be limited to, downpayments, earnest money deposits, money received upon final settlement, rents, security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of a real estate transaction, and money advanced by a broker's principal for the payment of expenses on behalf of that principal.

Once the property manager has collected any rents, security deposits, or any other trust funds which might be considered the property of the owner, these funds must be deposited into the trust account in a timely fashion. Once the trust funds, which belong to the owner, have been received by the broker and have been deposited into the trust account, the License Act and Rules require that the trust funds remain in the trust account unless the owner has agreed otherwise in writing. In this case, the written management agreement between the broker and owner should dictate how the owner's trust funds are to be handled. Rent monies may be deposited directly into the broker's trust account by a lessee, provided that the financial institution immediately sends a receipt to the broker which identifies the remitter's name and the amount received, to establish a paper trail for examination purposes.

Other fees which are charged to the tenant, such as late rent payment fees or insufficient fund check charges, are always considered as income for the owner, unless the written management agreement clearly authorizes the broker to earn such fees in addition to the management fee.

When depositing funds into the trust account, the deposit slip must itemize the funds to clearly identify each dollar amount to a specific tenant and rental property address. Some financial institutions do not return the original deposit slip with the financial institution statement. In this situation, it is recommended that the duplicate deposit slip be maintained, unremoved from the deposit book, and that the duplicate be date-stamped by the teller at the time of deposit, or that a receipt of deposit be obtained at the time of deposit, and attached to the unremoved, duplicate deposit slip.

Cash payments of any kind, i.e. rent, security deposits, etc., **must** go through the trust account.

Once a security deposit has been deposited into the trust account, the security deposit must remain in the trust account unless the tenant and the owner have agreed otherwise, in writing, as to the disposition of the security deposit. Written authorization will normally occur in the management and lease agreement. In the absence of written authorization from all parties having an interest in the funds, i.e. the tenant and the owner, the security deposit must be maintained by the broker in the trust account. Security deposits held in the same trust account with owner's funds should be separately identified in the accounting system. This can be done by establishing separate sub-ledgers for the security deposits and for the owner's other funds, thereby eliminating the possibility of using a portion of the security deposits to pay the operating expenses of the owner.

In residential property management only, while the security deposit is maintained by the broker, it cannot be used to pay the operating expenses of the property owner unless both the tenant and the owner have given written authorization.

In commercial property management, the security deposit may be used to pay operating expenses of the owner, as long as the owner and tenant do not stipulate that the security deposit is to be held in the broker's trust account.

If both the lease agreement and the management agreement state that the security deposit is to be maintained by the owner, and if the tenant's check is made out to the broker, then the broker shall deposit the security deposit in the trust account and then remit the security deposit to the owner via a check drawn on the trust account. In this situation, it would be the owner's responsibility to return the deposit, not the broker's.

If both the lease agreement and the management agreement state that the security deposit is to be maintained by the owner, and if the tenant's check is made out to the owner, the check would not need to be deposited into the trust account prior to sending it to the owner, even if the check comes into the possession of the broker. In this situation, the broker would simply forward the check to the owner.

If both the lease agreement and the management agreement state that the security deposit is to be maintained by the owner, the owner may authorize the broker to use the security deposit to pay operating expenses. Any security deposit paid to the property owner must be authorized in both the management agreement **and** the lease agreement. The only time the management agreement does not have to state that the security deposit is to be maintained by the owner is when the lease agreement names the owner as the landlord, and each lease agreement is signed by the owner.

If the owner wants his or her funds (other than security deposits maintained by the broker) to be handled through an interest-bearing account(s) (other than an interest bearing account going to a designated non profit organization), written authorization from the owner is required. The written authorization must either be included in the written agreement between the parties or be a separate written authorization, and should include the following: a statement specifying who will earn the interest on the funds; authorization from the owner to transfer the funds from the trust account to the interest-bearing account; a dated signature from the owner; and the following notice: "Interest-bearing accounts are not examined by the Nebraska Real Estate Commission. It is understood by all parties concerned that placement of funds in such account removes them from the provisions pertaining to trust accounts in the Nebraska Real Estate License Act and the Rules and Regulations of the Nebraska Real Estate Commission." For security deposits, written authorizations from both the owner and the tenant are required.

When opening an interest-bearing account (other than an interest bearing account going to a designated non profit organization), brokers should check with the financial institution as to how the account should be titled. The interest-bearing account may be titled as a "Trust Account," but should not be registered with the Nebraska Real Estate Commission as a real estate trust account. The interest-bearing account will not be examined by the Nebraska Real Estate Commission, and all records relating to the interest-bearing account should be maintained separately. The Social Security Number or the Federal Identification Number of the interest recipient should be provided to the financial institution for taxation purposes. Brokers should also acquire a "No Right of Offset" letter from the financial institution. This letter is an agreement

between the broker and the financial institution in which the financial institution agrees not to offset any personal obligations of the broker with the funds deposited to this account. It is recommended that the broker be the only signatory on the interest-bearing account, so that the broker is the only person who can access the funds.

In order to establish a paper trail for examination purposes, the broker must deposit the funds into the trust account, then transfer the funds to the interest-bearing account via a check drawn on the trust account. The only exception is when the rent checks are made payable to the owner per the lease agreement, and the management agreement calls for the use of an interest-bearing account instead of a trust account. In that case, the rent checks may be deposited directly to the interest-bearing account even if they come into the possession of the broker.

If a satellite office, e.g. the rental office at an apartment complex, collects rent checks or cash rent payments, and the satellite office is at a location where the main depository for trust funds is not readily accessible, a trust account should be established near the satellite office so that the trust funds may be deposited in a timely fashion. The satellite office would prepare the itemized deposit slip, deposit the trust funds, and forward the duplicate deposit slip to the main office, where the rents could be posted to the bookkeeping system and expenses could be paid. Trust funds should be transferred directly from the satellite trust account to the main depository account. A general ledger and/or sub-ledger(s) would need to be maintained on the satellite trust account, following the same procedures as the main trust account. Obviously, when transferring funds to the main depository, the applicable ledgers would need to be posted accordingly to establish a paper trail for examination purposes.