

481—2013.1(543B) Trust account. All earnest payments, all rents collected, property management funds, and other trust funds received by the broker in such capacity or broker associate or salesperson on behalf of the broker's client are deposited in a trust account maintained by the broker in an identified trust account, with the word "trust" in the name of the account, in a federally insured depository institution and, for the purposes of this rule, may be referred to as the "depository."

2013.1(1) All money belonging to others received by the broker, broker associate or salesperson on the sale, rental, purchase, or exchange of real property located in Iowa are trust funds and are deposited in a trust account as directed by the principals to a transaction constituting dealing in real estate. This includes, but is not limited to, receipts from property management contracts; rental or lease contracts; advance fee contracts; escrow contracts; collection contracts; earnest money contracts; or money received by a broker for future investment or other purpose, except a nonrefundable retainer need not be placed in an escrow account if specifically provided for in the written agreement between the broker and the broker's principal.

a. All trust funds are deposited into the trust account no later than five banking days after the date indicated on the document that the last signature of acceptance of the offer to purchase, rent, lease, exchange, or option is obtained unless otherwise specified in the contract.

b. Money belonging to others cannot be invested in any type of fixed-term maturity account, security or certificate without the written consent of the party or parties to whom the money belongs.

c. A broker cannot commingle personal funds in a trust account unless authorized by Iowa Code section 543B.46(4).

The broker ensures that personal funds are deposited to cover bank service charges as specified in Iowa Code section 543B.46 and that at no time are trust moneys used to cover any charges. Upon notification that the broker's personal funds are not sufficient to cover service charges initiated by the bank that are above the normal maintenance charges, the broker deposits personal funds to correct the deficiency within 15 calendar days of the closing date of that bank statement.

d. Money held in the trust account, which becomes due and payable to the broker, is promptly withdrawn by the broker.

e. The broker cannot use the trust account as a business operating account or for personal use. Commissions, salaries, related items and normal business expenses are not disbursed directly from the trust account.

2013.1(2) As authorized by Iowa Code section 543B.46(1), all interest earned on the trust account is transferred on a calendar quarter basis to the state. The amount to be remitted to the state will be the amount of interest earned less any service charges directly attributable to the criteria of maintaining an interest-bearing account and of remitting the interest to the state. The broker may have the depository remit the interest directly or the broker may remit the interest but, in either case, it is the responsibility of the broker to see that the interest is remitted.

a. If the interest is remitted by the broker, the broker should use the commission-approved Real Estate Interest Remittance Form and include a copy of the applicable bank statement(s) showing the interest paid and the service charges attributable to maintaining the account.

b. If the interest is remitted by the broker, the broker mails the interest remittance check and mandatory documentation to:

The State of Iowa
c/o Bankers Trust Company
P.O. Box 4686
Des Moines, Iowa 50306

c. The depository should use the name "Iowa Finance Authority" and the federal tax identification number (TIN) 52-1699886 on the 1099 reporting form when reporting interest to the IRS.

d. The depository should send the 1099 reporting form to:

Iowa Finance Authority
2015 Grand Avenue
Des Moines, Iowa 50312

e. If the property management or rental account is interest-bearing, the interest is transferred on a calendar quarter basis to the state unless there is a written agreement paying the interest to the property owner.

f. A broker enters into a written agreement to pay interest to a buyer or seller in a transaction, or to a third party if requested by the parties to the contract and agreed to by the broker, if the client's trust funds can earn net interest. In determining whether a client can earn net interest on funds placed in trust, the broker takes into consideration all relevant factors including the following:

(1) The amount of interest that the funds would earn during the period in which they are reasonably expected to be deposited;

(2) The cost of establishing and administering an individual interest-bearing trust account in which the interest would be transmitted to the client, including any needed tax forms; and

(3) The capability of the financial institution to calculate and pay interest to individual clients through subaccounting or otherwise.

2013.1(3) With disclosure to and the written agreement of all parties, a trust account may bear interest to be disbursed to (1) the buyer or seller involved in a real estate purchase, sale or exchange transaction, or (2) the property owner, if the property management or rental contract contains this specific provision, or (3) as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2), or (4) a third party if requested by the parties to the contract and agreed to by the broker. Disbursements of interest on trust funds are subject to all provisions of law that obligate a broker to safeguard and account for the handling of funds of others.

2013.1(4) Receipts from property management and rental account transactions may be deposited in a trust account separate from real estate transaction funds. If separately maintained, this account does not need to be an interest-bearing account.

a. The broker provides to the broker's client a complete accounting of all moneys received and disbursed from the trust account(s) not less often than annually.

b. A broker may only utilize a separate property management or rents trust account for those moneys received by a broker pursuant to a written property management or rental agreement.

2013.1(5) A broker is needed to open and maintain one or more trust accounts if the broker is in the practice of depositing funds in a trust account. For each separate trust account opened, the broker files with the commission a written Consent to Examine and Audit Trust Account form, which irrevocably authorizes the commission to examine and audit the trust account. The form of consent is prescribed by and available from the commission and includes the account names and number and the name and address of the depository.

a. If the broker is not in the practice of depositing trust funds in a trust account, the broker files an affidavit with the commission on a form prescribed by and available from the commission.

b. If trust funds are received by the broker after filing an affidavit, the broker immediately opens a trust account and files the appropriate Consent to Examine and Audit Trust Account form with the commission.

c. As provided by Iowa Code section 543B.46(3), a consent to examine is not necessary for a separate farm business operating account or a separate property management account.

2013.1(6) Each broker obligated to maintain a trust account maintains at all times a record of each account, as mandated by these rules, in the place of business, consisting of at least the following:

a. A record called a journal which records in chronological order all receipts and disbursements of moneys in the trust account.

(1) For receipts, the journal for each trust account includes the date, name of depositor, the check number and the amount deposited, and the name of principal or identify the property.

(2) For disbursements, the journal for each trust account includes the date, name of payee, name of principal or identify the property, the check number and the amount disbursed.

(3) The journal provides a means for monthly reconciliation on a written worksheet of the general ledger balance with the bank balance and with the individual ledger accounts to ensure agreement.

b. Real estate sales transactions additionally need an individual ledger account identified by the property or the principal, which records all receipts and disbursements of the transaction and clearly

separates the transaction from all others. The individual ledger account includes the date, check number, amount, name of payee or depositor or explanation of activity with a running balance.

c. Property management trust account records additionally include an individual ledger account for each tenant, identifying the tenant's rental unit and security deposit and including all receipts and disbursements together with check number and date. The journal for each account is maintained as an owner's ledger account for all properties owned by each owner showing receipts and disbursements applicable to each property managed.

(1) All disbursements are documented by bids, contracts, invoices or other appropriate written documentation.

(2) The running balance may be determined at the time of monthly reconciliation.

d. Trust account supporting documents include, but are not limited to, the following:

(1) Bank statements;

(2) Canceled checks;

(3) Copies of contracts, listing, sales, rental and leasing;

(4) Closing statements;

(5) Pertinent correspondence; and

(6) Any additional items necessary to verify or explain an entry.

2013.1(7) Funds, including interest on trust funds, are only disbursed from the trust account as provided in Iowa Code section 543B.46(1) and by the terms and conditions of the contract or escrow agreement. No funds are disbursed from the trust account prior to the closing, or other than as provided by the terms of the escrow agreement, without the informed written consent of all the parties. In the event of a dispute over the return or forfeiture of an earnest money deposit or the disbursement of an escrow deposit held by a broker, the broker continues to hold the deposit in the trust account until one of the following conditions is met:

a. The broker is in receipt of a written release from all parties to the transaction consenting to the disposition of the deposit or escrow funds; or

b. The broker is in receipt of a final judgment of the court directing the disposition of the deposit or escrow funds; or

c. There is a final decision of a binding alternative dispute resolution process, or mediation directing the disposition of the deposit or escrow funds; or

d. A civil court action is filed by one or more of the parties to determine the disposition of the deposit or escrow funds, at which time the broker may seek court authorization to pay the deposit or escrow funds into court.

2013.1(8) No funds are disbursed from the trust account prior to the closing without the informed written consent of all the parties to the transaction as provided in subrule 2013.1(7), except in accordance with this rule. Nothing in this rule obligates a broker to remove money from the broker's trust account when the disposition of such money is disputed by the parties to the transaction. The commission will not take disciplinary action against a broker who in good faith disburses trust account moneys pursuant to this rule.

a. In the absence of a pending civil court action or written agreement, it is not grounds for disciplinary action when, upon passage of 30 days from the date of the dispute, a broker disburses the earnest money deposit to a buyer, renter, or lessee in a transaction based upon a good faith decision that a contingency has not been met, but disbursement is made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known addresses, setting forth the broker's proposed action and the grounds for the decision.

b. In the absence of a pending civil action or written agreement, it is not grounds for disciplinary action when, upon passage of six months from the date of the dispute, a broker disburses the earnest money deposit to a seller or landlord in a transaction based upon a good faith decision that the buyer, renter, or lessee has failed to perform as agreed, but disbursement is made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known addresses, setting forth the broker's proposed action and grounds for the decision.

c. If a buyer or seller, or a landlord or lessee, or a renter demands the return of the earnest money deposit, the broker consults with the other party who may agree or disagree with the return.

2013.1(9) Under no circumstances is the broker entitled to withhold any portion of the earnest money when a transaction fails to consummate even if a commission is earned. The earnest money is disposed of as provided in subrule 2013.1(7), 2013.1(8), or 2013.1(10), and the broker pursues any claim for commission or compensation against the broker's client.

2013.1(10) Interpleader. Anytime the broker in good faith believes that the parties disputing the return of the deposit will not agree on the disposition of the deposit or file a civil court action to determine the disposition of the deposit, then the broker may elect to file an interpleader action with the appropriate court pursuant to Iowa Rules of Civil Procedure and pay the deposit into court. The broker may, in filing such an interpleader court action:

a. Attempt to claim a part of the deposit pursuant to the listing contract with the seller, if the seller is successful in the suit.

b. Disclaim any part of the deposit and request the court to restrain the buyer and the seller from naming the broker in the civil suit and order them to litigate their claims to the deposit.

2013.1(11) A trust account may bear interest to be disbursed to the buyers or sellers or to a third party if requested by the parties to the contract and agreed to by the broker with the written approval of all parties to the contract or to the owner if the trust account is for a property management account and the management contract so specifies, or as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2). The account is a separate account from the account(s) which is to accrue interest to the state. Interest is disbursed to the owner or owners of the funds at the time of settlement of the transaction or as agreed to in the management contract and is properly accounted for on closing statements. A broker does not disburse interest on trust funds except as provided in subrules 2013.1(3) and 2013.1(7). Service charges for the account are a business expense of the broker and are not deducted from the proceeds.

2013.1(12) Property management account funds may be withdrawn at any time for the purpose of returning the funds to the payee in accordance with the terms of the contract or receipt.

2013.1(13) Property management funds may be withdrawn when and if the broker reasonably believes, from evidence available, that the tenant has obtained a rental or lease through information supplied by or on behalf of the broker.

2013.1(14) Trust funds that are not traceable to any individual for disbursement from the trust account are unclaimed property. In accordance with Iowa Code chapter 556, after three years, unclaimed trust funds are reported and remitted to the Treasurer, State of Iowa, Unclaimed Property Division.

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