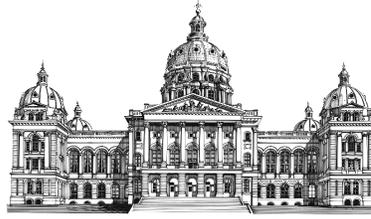


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# Iowa Legislative Fiscal Bureau

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## Real Estate Broker Trust Accounts

### ISSUE

A review of the change in procedure for auditing real estate broker trust accounts.

### AFFECTED AGENCIES

Department of Commerce - Professional Licensing Division

Iowa Finance Authority (IFA)

### CODE AUTHORITY

Section 543B.46, Code of Iowa

### BACKGROUND

Real estate broker trust accounts are bank accounts used by real estate brokers to deposit funds in trust for real estate transactions. Typically deposits consist of earnest money, down payments, and fees paid by clients when an offer to purchase real estate is made. Certain expenditures involved in real estate transactions may be paid from the trust accounts, such as abstracting, property taxes, revenue stamps, etc., but an accounting must be made of each client's balance. Per Section 543B.46(1), Code of Iowa, interest earned on real estate broker trust accounts must be deposited in the Iowa Title Guaranty Fund unless a written agreement exists between the buyer and seller to the contrary. Property management accounts are not required to be interest bearing. The Title Guaranty Fund is used for by IFA to implement the Title Guaranty Program. Funds in excess of the operational needs of IFA for the Title Guaranty Program are deposited in the Housing Program Fund and are used to facilitate and ensure equal access across the State to funds for programs for first-time home buyers.

Until FY 1993, the Department of Inspections and Appeals (DIA) was responsible for auditing real estate broker trust accounts and investigating complaints about real estate brokers and agents. Because of budget reductions in FY 1992, DIA did not have sufficient staff to audit the real estate broker trust accounts. During the 1992 Legislative Session, the Governor proposed that compliance audits of real estate broker trust accounts be completed by a certified public accountant (CPA) and paid for by each broker, in effect privatizing the auditing process. The certified audits or special reports were to be provided to the Real Estate Commission and were required as a condition of real estate broker license renewal. The Governor's proposed amendment to the Code of Iowa was incorporated in HF 2455 (Regulation Appropriations Bill) passed during the 1992 Legislative Session.

During FY 1993, no auditing of real estate broker trust accounts was done because the Professional Licensing Division was in the process of obtaining approval for administrative rules to implement the new procedure.

During the 1993 Legislative Session, the Iowa Association of Realtors lobbied to change the auditing procedure because the estimated cost of paying for a certified audit by a CPA for each broker trust account was prohibitive. The Association stated that the rules outlining the information to be contained in the audit reports was not specific enough and most CPAs were interpreting the rules as requiring a certified audit as defined

in accounting standards.

As a result of the Association's complaints, SF 266 (Regulation Appropriations Bill), passed during the 1993 Legislative Session, amended the Code of Iowa to require audits be made by a staff member of the Professional Licensing Division of the Department of Commerce. Rules being promulgated by the Division will allow either submission of certified audits performed by a CPA or audits by Division staff to satisfy the auditing requirement.

Senate File 266 removed the requirement that real estate broker trust accounts be audited annually as a condition of broker license renewal. However, the Division intends to audit the trust accounts on a 3-year cycle which is the same as the broker license renewal period. The Division estimates there are approximately 5,100 real estate broker trust accounts as of June 1993.

### **CURRENT SITUATION**

The Professional Licensing Division is developing rules for implementing the auditing procedure as required by SF 266. The Division is also working with the Department of Personnel in establishing the job description and other criteria for the auditing position. The auditing position is expected to be filled by December 1993.

### **ALTERNATIVES**

Intent language in SF 266 allows the Real Estate Commission to raise real estate fees to cover half the cost of the auditor position. However, the General Assembly may want to require a fee that would require real estate brokers to offset the State cost of auditing broker trust accounts.

### **BUDGET IMPACT**

Senate File 266 provides \$25,000 of General Fund money and \$25,000 from the Title Guaranty Fund for 1.0 FTE auditor position. This will decrease the amount of funding available for programs administered by IFA in FY 1994 by \$25,000. However, auditing real estate broker trust accounts gives some assurance that all the interest on the accounts is being deposited in the Title Guaranty Fund as required.

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