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Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

Inside This Issue

Trust Account Basics

Trust accounts can sometimes be tricky, for new brokers and seasoned brokers alike. New brokers may be concerned with the basics of properly setting up one or more trust accounts, filing the appropriate paperwork, and establishing required bookkeeping records and procedures. Seasoned brokers may occasionally encounter questions about setting up an escrow for a transaction or disbursing earnest money when the parties don't agree about who should receive the money. Many of these answers can be found in the trust account rules in Wis. Admin. Code Chapter RL 18.

The Chapter RL 18 trust account rules provide a good deal of guidance to brokers as far as the management and supervision of real estate trust accounts. The rules have been designed to make trust account practice easier and more realistic in areas such as property management, trust account deposits, trust account signatories, transferring earnest money between brokers and in other areas. The rules also provide for computerized trust account bookkeeping, keeping apace with modern technology

This *Legal Update* examines the real estate trust account procedures by reviewing the Chapter RL 18 rules. These rules regulate interest-bearing common trust accounts, also referred to as interest-bearing real estate trust accounts (IBRETA), the receipt and disbursement of earnest money, property management, and computerized trust account records. The discussion of the trust account rules is supplemented with pertinent Legal Hotline questions and answers.

For a comprehensive, step-by-step description of how to set up your trust account bookkeeping records on computer, complete with computer screen examples, see Chapter 11 of Real Estate Trust Accounts in Wisconsin – A Broker's Guide to Complying with State Regulations, written by Scott Minter for the UW Law School and available from the WRA (http://www.wra.org/realtors/products/misc/trust.htm).

The Trust Account Rules

The following discussion examines each of the rules in Chapter RL 18. For a complete copy of the trust account rules, go to the following Web address: http://www.legis.state.wi.us/rsb/code/rl/rl017.pdf.

Definitions (§ RL 18.02)

§ RL 18.02 defines the following terms:

Real Estate Trust Account.

A "real estate trust account" means an account for real estate trust funds maintained at a depository institution where withdrawals and transfers may be made without delay, subject to any notice period required by law. Real estate trust accounts include: (a) interest-bearing common trust accounts established for client funds (IBRETA); (b) non-interest bearing real estate trust accounts for non-client funds (rental transactions); and (c) interest-bearing real estate trust

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accounts for non-client funds (rental transactions).

Client Funds.

The definition of "client funds" is the same as it is in the interest-bearing common trust account statutes: "All down payments, earnest money deposits or other money related to a conveyance of real estate that is received by a broker, salesperson or time-share salesperson on behalf on the broker's, salesperson's or time-share salesperson's principal or any other person." Whether funds received for long term lease transactions are "client funds" remains in question.

The intent of the legislation's use of the word "conveyance" was to include funds relating to sales and exclude funds relating to leases. Wis. Stat. § 706.01, however, defines a conveyance to include leases with a term in excess of one year. Thus funds relating to leases longer than one year may arguably be considered "client funds" which must be put in interest-bearing common trust accounts. See page 4 of this *Update* for further consideration of this issue.

Depository Institution.

"Depository institution" is defined as a bank, savings bank, savings and loan association or credit union licensed to do business in Wisconsin and insured by the FDIC or the national credit union share insurance fund.

Real Estate Trust Funds.

"Real estate trust funds" include cash, checks, and drafts and notes received by a broker or by a broker's salespersons or time-share salespersons on behalf of a principal or any other person. Such funds include land contract payments, mortgage payments, tax and insurance payments held in escrow, refundable advance fees and finder's fees, rental application deposits and rent received when acting as agent for the owner, rental security deposits except as provided in § RL 18.031(4) (see page 4), and payments received for subsequent repayment to another party.

Real estate trust funds also include all initial and additional earnest money downpayments and all other monies received in connection with offers to purchase, options, and exchanges. This is true regardless if such sums are received when the broker or salesperson receiving the money is acting as an agent for a principal, or is acting with respect to properties which the broker or salesperson owns or is purchasing, in whole or part. In other words, all earnest money and other sums paid or received with respect to a licensee's personal transactions are considered to be real estate trust funds, and as such, must go in a real estate trust account, regardless of whether the property is listed with the licensee's company. If the property is not listed but funds pertaining to the transaction are held in the trust account, the broker should keep a copy of the offer to purchase and other relevant documents in the files so that proper disbursements of the funds may be made.

These critical definitions are employed throughout the Chapter RL 18 trust account rules.

Time of Deposit § RL 18.031(1)

§ RL 18.031 provides that a broker must deposit all real estate trust funds received by the broker, or his or her salespeople, in a real estate trust account within 48 hours of receipt of the funds. Note that these 48 hours are measured from the time that the licensee receives the check, not from the date of the check. The deposit must be made within the next two business days if the funds are received on a day prior to a holiday or some other day when the banks are closed.

An earnest money check for a rejected offer does not need to be deposited in the listing broker's trust

… If the selling broker receives an earnest money check made payable to the listing broker, the selling broker must forward the check directly to the listing broker.

account as long as the earnest money check is returned to the buyer within 48 hours of the listing agent's receipt of the check. If the offer is rejected and the earnest money check can be returned to the buyer before the 48 hours (or two business days) has lapsed, the agent has not violated § RL 18.031. The agent may be well-advised to make a photocopy of the earnest money check for the office files before returning it to the buyer, and to obtain a receipt from the buyer when the check is returned.

When a broker receives funds that cannot be deposited by the broker, the broker must forward the funds to the payee (if not the broker) or return the funds to the payor within one business day of receipt. For example, if the selling broker receives an earnest money check made payable to the listing broker, the selling broker must forward the check directly to the listing broker.

A broker received an earnest money check with an offer and the offer was not accepted. Can the broker just give the check back to the buyer rather than deposit it and wait until it clears?

Generally, a broker must deposit earnest money in a real estate trust account within 48 hours of receipt. However, if the seller quickly rejects the buyer's offer, a licensee may have the opportunity to return the check without depositing it first. DRL auditors have indicated that the broker may return the check if this is done prior to the expiration of the 48-hour deadline for the check deposit. A copy of the check should be kept in the broker's file along with a record explaining that the earnest money check was returned to the buyer upon rejection of the offer by the seller. In this instance, because there is not an accepted offer, a cancellation agreement and mutual release is not necessary.

A listing agent received a faxed copy of an earnest money check. The check is dated several days ago and the listing broker still does not have the check. Should the selling agent get a new check with the current date so the listing broker may deposit it within 48 hours of the date of the check, or can the listing broker just deposit it whenever it is received?

If the check does not come in the mail, the listing agent can call the selling broker and ask the buyer to void the original check (lost in mail) and issue a new check. The listing agent should also advise the seller what has happened. Note that the 48 hours for depositing a check is measured from the time that the licensee receives the check, not from the date of the check. Thus a new check may be needed if the check is lost. If the check is received, a new check is not needed – the date on the check does not affect the 48-hour deposit deadline.

Interest-Bearing Common Trust Accounts (§ RL 18.031(3))

Wisconsin trust account statutes require all real estate brokers who hold client funds from sales transactions to establish an interest-bearing common trust account or IBRETA. The interest from these accounts is calculated by the depository institution and annually remitted to the Department of Administration (DOA) for use in homeless assistance programs. At no time may the broker or any party remove or use the interest earned on interest-bearing common trust accounts.

The Wisconsin Bankers Association (WBA) has determined that these interest-bearing common trust accounts (IBRETAs) should be established as NOW accounts. A NOW account is an interest-paying savings account that pays interest to the account holder and against which checks can be written. "NOW" stands for "negotiable order of withdrawal." The Federal Reserve and the FDIC have advised the WBA that IBRETA accounts may be set up as NOW accounts because the DOA is the beneficial owner of the interest earned. The banks may not legally pay interest in a NOW account to a corporation or business entity, but they may pay interest to an individual or a governmental entity such as the DOA.

All interest-bearing common trust accounts will be assigned the DOA's tax identification number (TIN) because the DOA is the recipient of the interest accruing on these accounts. The DOA's TIN is #39-6028867. The banks will not be required to file any 1099's in connection with the interest paid to the DOA.

There should be no interest reported on a broker's bank statement for his or her interest-bearing common trust account. If interest is credited to the broker, the broker should first write the bank to advise them that this interest belongs to the Department of Administration (DOA) for the benefit of the homeless and that it should not appear on a broker's monthly bank statement.

Until such time as the bank is able to correct its procedures and computer programming, the REB advises that brokers should set up temporary ledger accounts for "interest for the homeless," if necessary, to balance their books. Brokers may wish to include further explanation in their books that this is temporary, that the interest belongs to the DOA and not to them, etc. Brokers may also wish to keep a copy of their letter to the bank with their books. If the bank shows the interest being credited and debited all within the month, the REB says the broker can ignore it and need not make any accounting

entries. Again, the bank must be advised this is not appropriate.

Property Management and Rental Accounts (§ RL 18.031 (4) & (5))

Non-client funds, such as funds from rental and property management activities, may generally be deposited in one of three different types of accounts: (1) a traditional non-interest bearing trust account, (2) an interest-bearing trust account for non-client funds, or (3) a rental owner's account. Rental application deposits, security deposits and rent may be deposited into one of these types of accounts regardless of whether the owner is a third party owner or a real estate licensee. A broker who holds property management funds in a trust account must disburse any earned property management fees on a regular monthly basis unless it is otherwise agreed in a written property management agreement.

(1) Traditional non-interest bearing trust account. Non-client funds such as security deposits and rent may be deposited in a traditional non-interest bearing trust account.

(2) Interest-bearing trust account for non-client funds. Non-client real estate trust funds from rental transactions may also be deposited in an interest bearing trust account provided the broker obtains the written authorization of the parties for whom the funds are being held. The authorization must specify how and to whom the interest will be paid. Typically, the interest from these accounts is payable to one or both parties – no interest may be paid to or applied for the benefit of the broker. This type of interest-bearing account will be needed for brokers in those communities that require that interest be paid to tenants on their security deposits.

(3) Rental owner's account. Non-client funds from property management and leasing activities may also be deposited into the rental owner's account. An "owner's account" is an account maintained by the rental property owner for the deposit and disbursement of the owner's funds. A broker may deposit rental application deposits, security deposits and rent into the owner's account provided these checks are payable to the owner(s) or to the owner's account. The application form, lease, and other tenant paperwork should direct the tenant to make his payments payable to the owner to make sure they are not mistakenly made payable to the broker. If that should happen, the funds must go into a trust account. The broker may be designated as a signatory on the owner's account and make disbursements to the extent authorized by the owner in writing.

The rules, however, do not affirmatively authorize brokers to place non-client funds in an interest-bearing common trust account (IBRETA). The WBA is concerned that such deposits may put the banks in technical violation of federal banking law. The rules, on the other hand, do not forbid the deposit of non-client funds into interest-bearing common trust accounts (IBRETA). Since it is not entirely clear what the effects of such a practice might actually be, it may be most prudent to avoid this practice whenever possible and use one of the other available alternatives.

Is it necessary for a real estate broker to keep security deposits in a trust account if they are for properties that the broker owns?

No. § RL 18.031(4) provides that a licensee having an ownership interest in a rental property shall either place security deposits related to that property in a real estate trust account or shall provide in the lease for security deposits to be held in an account maintained in the name of the owner(s).

Number of Trust Accounts (§ RL 18.032)

The broker may have as many trust accounts as he or she feels is necessary for the operation of his or her real estate business. These trust accounts may be IBRETA accounts, interest-bearing accounts for non-client funds, or non-interest bearing accounts. The broker may want to open a trust account for each type of real estate activity that the broker engages in, such as sales and property management.

Time When Real Estate Trust Account Shall Be Opened or May Be Closed (§ RL 18.033)

§ RL 18.033(2) provides that the broker is required to open a trust account only when real estate trust funds payable to the broker come into the broker's possession. For brokers who do not regularly engage in sales transactions, this means that they may not need to open a trust account at all for their sporadic transactions if they modify any offers to purchase to provide that someone else will hold the earnest money. For instance, the offer may be modified to provide that another broker, an attorney, a bank, the title company, or even one of the parties will hold the money. The broker should help ensure, however, that the proper parties prepare any escrow agreements required by § RL 18.06. The requirements for these escrow agreements are discussed on page 6 of this *Update*.

Any trust account may be closed whenever no real estate trust funds remain in the account.

Account Designation (§ RL 18.034)

Trust account checks, drafts, and share drafts should be imprinted with the broker's name or trade name and an indication that it is a trust account, such as "XYZ Real Estate Trust Account"; "J.S. SMITH PROPERTY

Trust account checks, drafts, and share drafts should be imprinted with the broker's name or trade name and an indication that it is a trust account, such as "XYZ Real Estate Trust Account"; "J.S. SMITH PROPERTY MANAGEMENT Trust Account."

MANAGEMENT Trust Account." The checks, drafts, and share drafts, as well as the stubs, should be consecutively numbered. Spoiled or voided checks, drafts, and share drafts should not be thrown away but instead filed with the cancelled checks, drafts, and share drafts.

Bank changed account numbers and sent the broker new checks. It does not say "trust account" on the checks – it says "Dept. of Administration" and then the name of the broker's company. Is this permissible?

No. § RL 18.034 provides that a broker shall name the broker's real estate trust account with the broker's name as it appears on the broker's license or with a trade name the broker has submitted to the DRL, and the words "trust account" must appear in the name of the account. The name of the real estate trust account must appear on all real estate trust account checks, share drafts or drafts.

Duty to Notify Department (Open, Close or Change) (§ RL 18.035)

Brokers must report to the DRL when opening or closing interest-bearing common trust accounts (IBRETA) as well as their other real estate trust accounts.

The bank where the broker has his trust account has been bought out. The account number will change because of the buy-out. Does the broker need to make some kind of formal notification to the DRL about this change?

Yes. § RL 18.035 states: (1) OPENING AN ACCOUNT. No later than 10 days after opening any real estate trust account a broker shall provide the department with the name and number of the account, with the name of the depository institution in which the broker holds the account and with information concerning whether the account is for client funds or for real estate trust funds other than client funds. The information shall be provided on a form, as required in § RL 18.037.

(2) CHANGING OR CLOSING AN ACCOUNT. A broker shall notify the department no later than 10 days after a broker changes a real estate trust account name or number, changes the real estate trust account from one depository institution to another, closes a real estate trust account or changes a real estate trust account to or from an interest-bearing common trust account established for client's funds. The notification shall be provided on a form, as required in § RL 18.037.

Authorization to Examine Real Estate Trust Accounts (§ RL 18.036)

No later than 10 days after opening a real estate trust account, a broker shall furnish the DRL with authorization for the DRL to examine and audit all of the broker's real estate trust account records. This authorization will apply to the DOA with respect to all of the broker's interest-bearing common trust accounts maintained for client funds (IBRETA). Within these 10 days, the broker also shall obtain and file the certification of every depository institution in which the 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 the DRL or, in the case of interest-bearing common trust accounts maintained for client funds (IBRETA), the DOA. The authorization and certification shall be provided on the Consent to Examine and Audit Trust Account form required by the DRL

Form for Notification and Authorization (§ RL 18.037)

The DRL form needed to notify the DRL upon opening a trust account and to authorize the audit of the trust account is called "consent to examine and audit trust account." Forms may be obtained from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708: 608/266-5511. However, when closing a real estate trust account, a broker may inform the DRL by letter only.

Authorization to Sign Trust Account Checks (§ RL 18.04)

The only requirement for a trust account signatory is that a signatory be at least 18 years of age.

Re: Who can sign checks from trust account? Originally the broker and his father were 50% owners in a corporation. The broker's father has since passed away and the broker and his wife now are 50% owners in the corporation. Because of a recent family tragedy in another business, the broker has learned that it is very important to have a signature card at the bank allowing more than one person to sign checks. The broker has recently changed his general account to add his wife as a signatory. The broker's wife is not licensed. May the broker's wife also be a signatory on the broker's trust account?

Yes. § RL 18.04 provides that a broker may authorize any person to sign real estate trust account checks provided the person is at least 18 years of age. The Administrative Code does not require the signatory to hold a real estate license.

Receipt for Earnest Money Received by Broker (§ RL 18.05)

A receipt should be issued for any money received by the broker. § RL 18.05 provides that a licensee must sign the receipt on the offer to purchase if the licensee has received earnest money at the time the offer is drafted. If the earnest money is received at a later time, for example, as additional earnest money paid following acceptance, the licensee should not sign the receipt on the offer to purchase. Instead, the broker should maintain a receipt book and give a separate receipt to the payor. The original receipt may be given to the payor, and the duplicate can remain in the broker's receipt book. If a three-part receipt book is used, the third copy can be put in the transaction file. Under no circumstances should the broker issue a receipt for anything that was not actually received.

The earnest money receipt on line 327 of the offer to purchase lists the firm name and the name of the agent who took the earnest money. Should the name of the firm be the listing broker or can it be the cooperating agent?

The selling agent, as subagent of the listing broker, may sign and should forward earnest money received directly to the listing broker with the offer. The person who signs should be the agent who receives the money from the buyer.

Escrow Agreements for Earnest Money (§ RL 18.06)

If the parties to a real estate transaction want their funds to be held in an interest-bearing account where one or both of the parties will receive the interest earned, a broker may not set this up as a trust account. Brokers must deposit all client funds they receive from sales transactions, such as earnest money and downpayments, in an interest-bearing common trust account (IBRETA) for the benefit of

If the parties to a real estate transaction want their funds to be held in an interest-bearing account where one or both of the parties will receive the interest earned, a broker may not set this up as a trust account.

the Wisconsin Department of Administration and the homeless. The parties, however, may have these funds held by a third party. For example, a title company can act as escrow agent (for a fee) or a bank can hold the party's funds in a joint account for the buyer and seller.

§ RL 18.06 provides that if the parties wish to designate an escrow agent other than the broker, the broker may not draft the escrow agreement. The escrow agreement shall be drafted by the parties or an attorney. The broker may not hold the funds in the broker's real estate trust account, nor may the broker act in any way as custodian of the funds for the parties. Some other party, such as a bank, a savings and loan association, a credit union or an attorney, shall hold the funds, pursuant to the escrow agreement.

Can a broker transfer earnest money deposits to a title company trust account without a separate agreement or without modifying the standard offer language?

The buyer and seller must amend the offer to purchase to delete the broker earnest money provisions and to provide for the transfer of the funds to the title company.

A broker had a lot listed for a builder who then entered into a new construction contract with a buyer. In the new construction contract it said there was a $12,000 down payment (not earnest money) to be paid directly to the builder before construction begins. Can this go directly to the builder if it is stated this way in the construction contract?

The parties can contract for the direct payment of an agreed amount to the builder. This would not be considered trust funds and thus would not be held in the broker's trust account.

Post-Closing Escrow Agreements (§ RL 18.07)

§ RL 18.07 provides that when funds are to be held in escrow after closing by the broker or by another escrow agent until some future occurrence, the parties or an attorney shall prepare an escrow agreement.

A licensee is both the listing and selling broker in a transaction and is doing the closing. Both parties have asked the broker to escrow the money for the property survey and pay out the money for the survey when it is completed, with the buyer signing to release the funds. Is the broker allowed to do this? Wouldn't it be better for the bank to hold the money?

Yes, the broker may be authorized to do this. § RL 18.07 provides that "If the parties to a contract wish, or are required, to place funds in escrow which are to be held after closing by the broker in the broker's trust account or by another person until some future occurrence, 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. The broker may draft the escrow agreement if a form for this purpose has been approved by the department for use by licensees (no DRL form has been developed for this purpose). … A broker may hold in the broker's 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."

Funds were escrowed at closing for some landscaping that was to be done, but it is not done. How to proceed?

The broker should disburse upon the written authorization of the parties or a court order as no escrow agreement was drafted. An appropriate escrow agreement should have been established prior to, or at closing, as required by § RL 18.07.

Transfer of Real Estate Trust Funds Between Brokers (§ RL 18.08)

§ 18.08 requires cooperating brokers to transfer the earnest money or other applicable deposit to the listing broker within 24 hours of the transfer deadline stated in the offer, option, exchange agreement or lease. This rule, however, has little relevance because the earnest money payment provisions in the DRL-approved offer to purchase and other forms now provide for the buyer to make the earnest money payable directly to the listing broker.

How does a selling agent give a receipt for an earnest money deposit when the offer says that the check should be written to the listing broker, not the selling broker?

The earnest money provisions in the 1999 WB-11 Residential Offer to Purchase provide for earnest money checks to be paid to, and held in, the trust account of the listing broker. Upon receipt of an earnest money check payable to the listing broker, the cooperating agent may deliver the check with the offer. If the offer is being faxed, the cooperating agent may make a photocopy of the earnest money check to forward with the offer and follow up by mailing the check or otherwise promptly delivering the check to the listing broker.

Upon receipt of an earnest money check (payable to the listing broker) with the offer, a cooperating agent may acknowledge receipt of the earnest money check on the offer to purchase, line 327. While this may seem odd at first, the selling agent is acknowledging receipt of the check itself, not the actual funds. This was also true under the old offer procedure because receipt was noted whether or not the check was ever deposited or collected.

If the check was made payable to the cooperating broker and the buyer is not available to rewrite the check, the cooperating agent may make a photocopy of the earnest money check and send the photocopy to the listing broker. The cooperating agent may also send a note with the check advising the listing broker that the check has been deposited into the cooperating broker's account and that the cooperating broker will forward a check to the listing broker when the earnest money check clears the bank. While this may be a technical breach of contract on the buyer's part, the cooperating broker has done what can be done to keep the parties informed and the transaction moving forward.

Upon delivery to the listing broker, the cooperating agent or buyer agent may ask for a receipt from the listing broker acknowledging the listing broker's receipt of the earnest money.

What should a cooperating agent do if a buyer delivers an offer and earnest money check to the agent's office and the earnest money is made payable to the selling agent rather than the listing broker, as required by the offer? After trying to reach the buyer, the cooperating agent has reason to believe the buyer will not be available to rewrite the earnest money check in time to have the new check submitted with the offer.

The cooperating agent should promptly deliver the offer to the listing broker as required by § RL 24.13. While failure to make the earnest money payable to the listing broker is arguably a breach of the buyer's duties under the offer, it is questionable whether this is a material breach — this is a question for the seller (and perhaps for seller's counsel) to consider.

The cooperating broker has two options for dealing with the earnest money check in this situation. The first option is to deposit the earnest money check into the cooperating broker's trust account and forward the earnest money to the listing broker once the check has cleared the bank. The cooperating broker should make a photocopy of the check and note the date of receipt, the fact that the buyer was unavailable to rewrite the check and that the cooperating agent will be depositing and forwarding the check on the photocopy. The photocopy can then be delivered to the listing broker along with the offer.

The other option may be a bit riskier. The cooperating agent (if allowed by company policy) could endorse the check over to the listing broker. IT IS EXTREMELY IMPORTANT TO NOTE THAT IN ORDER TO LIMIT PERSONAL LIABILITY SHOULD THE EARNEST MONEY CHECK BOUNCE, THE COOPERATING BROKER SHOULD ENDORSE THE CHECK AS FOLLOWS: Pay to the Order of (Listing Broker's Name) Endorsed Without Recourse (Cooperating Broker's Signature)

Wis. Stat. § 403.415(1) & (2) provide that if an instrument such as a check is dishonored (not paid), an endorser is obliged to pay the amount due on the check according to the terms of the check at the time that it was endorsed. However, if an endorsement states that it is made "without recourse" or otherwise disclaims liability of the endorser, the endorser is not liable to pay the check if dishonored.

It is important for all brokers to establish a company policy on this issue after consulting with private counsel regarding the risks of endorsing earnest money checks. The cooperating broker will likely be responsible for the check if the check bounces and the check was not endorsed "without recourse." The Wisconsin

REALTORS® Association, however, does not represent that there is zero risk of responsibility if the check is endorsed without recourse. Brokers who are considering the "without recourse" form of endorsement should verify with private legal counsel what risks an endorsing broker may assume.

Trust Fund Disbursements (§ RL 18.09)

Although the trust disbursement rules apply to any disbursement by the broker from the trust account, they are most often discussed with respect to earnest money disbursements. The rules in § RL 18.09(1) & (2) correspond with the earnest money disbursement provisions in the DRL-approved offer to purchase forms. The provisions for handling the earnest money disbursement in cases where the transaction does not close are found in lines 247-271 of the residential offer. Similar provisions appear in other DRL-approved offer forms.

Written Disbursement Agreement

In the offer to purchase provisions, the parties may produce and sign a written disbursement agreement directing how the earnest money is to be disbursed. This written disbursement agreement may be a WB-45 Cancellation Agreement and Mutual Release. It may also be some other sort of written instruction to the broker, produced by the parties or their attorneys for this purpose, and signed by both parties.

When a transaction has failed to close and the parties do not agree as to the earnest money disbursement, brokers often wonder what they should do about the earnest money. The initial answer is to do nothing, at least for 60 days after the scheduled closing date. The listing broker may wish to write a letter or memorandum to the buyer and seller and any attorneys involved on behalf of one of the parties, pointing out that it is up to the parties to work out their differences by negotiation or by going to small claims court.

A buyer does not want the earnest money returned because he is getting a variance to go into vacant land that is 95 acres. The seller owns 99 acres. The seller is sending registered letters to the broker demanding that she return the earnest money. The broker has had no success communicating to the seller that she cannot return the money until the buyer signs an earnest money release and the buyer won't sign unless he fails to get the variance.

A broker is unable to disburse the earnest money based upon the direction of one party only. Pursuant to lines 247-271, a broker is to do nothing with the earnest money for 60 days, after the scheduled closing date unless the parties reach a written agreement for the disbursement of the earnest money. The broker may wish to write a memorandum or letter to the buyer and seller and their respective attorneys, if any, pointing out lines 247-271 and explaining that this is how the earnest money disbursement must be handled. It is then up to the parties to work out their differences by negotiation or by going to small claims court. After the 60 days has past, the listing broker may choose to initiate a small claims action or seek an impartial attorney's written opinion as to who should receive the earnest money. The broker may deduct up to $250 from the earnest money for the legal fees involved in either of these alternatives. The broker also may continue to do nothing and allow the parties to find a way to resolve the earnest money dispute themselves or through their attorneys.

See Wis. Admin. Code § RL 18.09(1)(b), which requires a written earnest money disbursement agreement signed by all parties, not just by the seller.

Party's Court Action

A broker may disburse the earnest money as directed by the order of a court hearing the parties' earnest money dispute. This will typically happen when the parties have instituted a small claims court action to decide entitlement to the earnest money. Under the § RL 18.09(1)(d) disbursement rule, the parties may go to court at any time and the broker is allowed to disburse pursuant to the order of the small claims court whenever so ordered. For the court to have proper jurisdiction to order the broker to disburse, the broker will be made a party to the lawsuit as a defendant.

Disbursement By Law

The offer also provides that the earnest money may be disbursed pursuant to law. This refers to the requirement in statutes such as the condominium law or the seller disclosure law for the return of the buyer's earnest money. Wis. Stat. § 703.33(4) provides that if a condominium unit purchaser rescinds his or her purchase within five days of receiving the condominium disclosure materials, the purchaser is entitled to the return of any earnest money deposits. Similarly, Wis. Stat. § 709.05 provides that if a buyer rescinds the offer based upon the real estate condition report or the seller's failure to provide the report within ten days of acceptance, the buyer is entitled to the return of any earnest money deposits.

In the case of a disbursement made as required by law, the broker must give the parties a 30-day prior written notice by certified mail of the broker's intent to disburse if the broker has knowledge that either party disagrees with the disbursement.

Specific Contract Provision

If the parties have included a specific provision in the contract or an addendum, which specifically directs the broker to make a disbursement at a

certain point or under particular conditions, the broker may disburse provided that the broker's authority is clear. The broker must first give the parties a 30-day prior written notice by certified mail of the broker's intent to disburse if the broker has knowledge that either party disagrees with the disbursement.

The seller is asking the listing broker to put in a counter offer: "If buyer fails to close transaction by default, this offer shall be null and void. Seller's actual damages/relocation charges shall be disbursed from earnest money and to be paid to seller. Buyer to receive any remaining funds." The seller is moving out of the state. The seller wants to make sure she doesn't move, rent an apartment and incur expenses and then come back and discover that the buyer has backed out. The other agent has countered back and advised listing broker to refer to § RL 18.09 guidelines.

§ RL 18.09(2)(f) permits the disbursement of earnest money pursuant to an authorization granted in the contract – that's what this would be. There may be concern, however, that the process needs to be described in further detail (verification of amounts, time periods, etc.) and may place the listing broker in an awkward position.

Attorney Opinion

Once the 60-day point is reached, brokers have other options that may be pursued to facilitate the earnest money disbursement. The broker, however, is not obligated to take any steps to promote the disbursement and may continue to hold the funds and wait for the parties to find a way to resolve their dispute. The broker's disbursement options after the 60-day mark include obtaining an attorney opinion directing the broker's disbursement or starting an interpleader action in court.

The broker may obtain an opinion from an attorney directing the broker to whom the earnest money should be disbursed. The attorney cannot represent any of the parties to the contract, and preferably will give his or her opinion in writing. The broker also must give the parties a 30-day prior written notice by certified mail of the broker's intent to disburse if the broker has knowledge that either party disagrees with the disbursement. A copy of the attorney's written opinion can be sent with this notice.

For a disbursement pursuant to an attorney's opinion, the broker should not return the earnest money to a party until after the 60 days have passed unless specifically ordered by the court to do so at an earlier time. The broker may, however, prepare for these measures by securing an attorney's disbursement opinion before the 60 days has passed. The 30-day prior notice by certified mail may be given before the 60 days have elapsed.

Interpleader

Another option is to seek the assistance of a neutral attorney in initiating an interpleader action. An interpleader action is a lawsuit brought by the custodian of money or property when he or she is not certain who is rightfully entitled to the funds or property. In the earnest money situation, the suit is filed by the broker who is not qualified to render the legal judgment regarding who is entitled to the earnest money. The interpleader action names the competing parties (usually the seller and the buyer) and forces them to litigate their respective claims. The broker normally participates in the action only to the extent of starting the action and paying the earnest money into the court or as the court directs.

An interpleader action is a lawsuit brought by the custodian of money or property when he or she is not certain who is rightfully entitled to the funds or property.

The broker should not initiate an interpleader action until after the 60 days have passed unless specifically ordered by the court to do so at an earlier time. The broker may, however, consult with his or her attorney and prepare the paperwork necessary for an interpleader action before the 60 days has passed.

Both the attorney opinion and the interpleader require the broker to take the affirmative action of seeking the assistance of legal counsel. These actions also involve the expenditure of time and money on the part of the broker. Accordingly, the broker may deduct up to $250 of the earnest money to offset the broker's legal costs. Whether or not a broker actually elects to withhold this $250, the possibility alone should give the parties added incentive to resolve the earnest money dispute on their own in a timely manner.

Directing Funds to the Appropriate Party

When a broker is about to cut a check from the trust account, it may at times be unclear exactly to whom the check should be made payable. In the case of an unaccepted offer, both § RL 18.09(1)(a) and the language in the offer dictate that the funds should be returned to the payor, the person who paid it. In other cases, this determination may be based upon who the broker's client is.

A listing broker has a closing coming up next week. The deed to the property is only in the seller/husband's name. The listing broker knows that the seller is divorced, and that the seller and his wife had a marital property agreement that gives the wife 30% of the sale proceeds less $10,000. However, there is no mention of this agreement in the title work. It is not homestead property. The seller/husband says that he wants the proceeds check made payable to him alone. The broker

told title company about the divorce and they say as long as it has not shown up on the title policy, the broker can put the check in the husband's name. What is the broker's responsibility?

The husband is the client. Absent anything to the contrary on title, the broker should make out the proceeds check as the husband directs. The broker is not responsible to the husband's ex-wife. The husband will be responsible for fulfilling any obligation he may have with respect to his ex-wife.

A broker received earnest money with the offer but the offer was never accepted. The broker is returning the earnest money. The earnest money check was written from a joint checking account and the parties are in the process of a divorce. Should the check be made out to the buyer and soon-to-be ex-wife, or should it be made out to just the buyer?

Per lines 253-254 of the offer, an earnest money refund should be made payable to the person(s) who paid it.

A cashier's check is made payable to buyer. Is it appropriate for the buyer to endorse the check to the listing broker's trust account?

Yes, so the broker may deposit it as required by the offer.

NSF Checks

If a check that the broker has deposited in his or her trust account is returned based upon insufficient funds (NSF), the broker should immediately notify the client. Unless otherwise directed by the client, the broker may attempt to collect the funds by resubmitting the check to the bank. If these efforts are unsuccessful, the client should be notified so that he or she can decide what action should be taken with respect to the contract, for example, give the other party an extension, give the other party written notice of a default, etc. The client may also decide whether to hold the other party for the payment of the check.

An earnest money check deposited in a trust account came back NSF. Whose responsibility is it to collect that check to distribute those funds?

The seller can go to small claims court and sue the buyer for payment on the check if the seller so desires. The broker is functioning simply as a conduit to hold the funds of the parties, and is not responsible for obtaining payment. The broker, however, must notify the seller if the check has bounced.

Unclaimed Funds

The other option that the broker has, absent any court orders or legal requirements for disbursement, is to do nothing. The broker may hold the earnest money indefinitely – at least for five years until the earnest money becomes abandoned property under Chapter 177 of the Wisconsin Statutes.

Checks were drawn upon the trust account and sent out to the parties, but they were not cashed. This money has been in the trust account for over five years. The DRL auditor said to give the money to the state. How to proceed?

Under Wis. Stat. Chapter 177, the funds are considered to be abandoned. The broker must make "reasonable" attempts to locate the buyer - this generally means more than one try - and document these attempts in the transaction file. After five years, the funds are deemed abandoned and the broker would provide notice to the State Treasurer, who publishes a notice of abandoned property. After publication, assuming the party entitled to the funds has not appeared, the funds are paid to the State Treasurer, who will eventually apply them to the school fund.

Stop Payment Orders

Brokers often become frustrated when they send out checks that are never cashed or when parties call to say that a check has been lost and they want to have it reissued. Stop payment orders are costly and only last for six months. Specifically, Wis. Stat. § 404.403 provides that a stop payment order is effective for six months, and may be renewed by giving the bank written notice before the prior six-month period has lapsed. Brokers should be aware of what specific procedures, forms, and rules their bank may have regarding stop payment orders.

One way to try to avoid giving stop payment orders is to print on all checks that the check is void if not cashed within 90 days of the date of the check. This may help a bit, but the banks are not obligated to honor this. In addition, Wis. Stat. § 404.404 provides that the bank is not obligated to pay a check (except a certified check) that is presented for payment more than six months after its date, but the bank can deduct the funds from the account if the bank pays the check after six months in good faith. In other words, there is no airtight guarantee that a bank will or will not honor a check after the deadline stated on the check or after six months. Prudent brokers may wish to discuss these issues with their bank to see what policies the bank may have.

Commission Disbursement

After a transaction is consummated or terminated, the broker has 24 hours in which to remove the earned commission or fees per § RL 18.09(3)(a). Any other funds remaining in the trust account after a transaction remain trust funds and may be disbursed only as directed on the closing statement or in any other written authorization signed by the parties. They cannot be disbursed to the broker's business account — if this were done, the broker would be commingling trust account funds and business funds.

Additional Disbursement Questions and Answers

A cancellation agreement and mutual release has been drafted for a transaction. On the cancellation agreement and mutual release form where it says, "the parties hereby authorize and direct the broker …," the selling company is named instead of the listing company. Is this all right or must the form be amended?

Per the offer to purchase, the earnest money shall be disbursed according to a written disbursement agreement signed by all the parties to the offer. By naming the wrong company, there arguably is no authorization for the listing company to release the funds. Therefore, to assure a proper disbursement, the listing company should be named on the cancellation agreement and mutual release.

The buyer and the seller could not come to an agreement about the earnest money. The listing broker had a third party attorney make a recommendation as to the disbursement of the earnest money. The attorney has determined that the buyer has the right to the money. Must the listing broker send a certified letter to the buyer and seller 30 days prior to disbursement informing them of the attorney's decision? Also, the attorney's bill is $120. Can the broker deduct this fee from the earnest money?

§ RL 18.09(2) states that prior to making a disbursement of trust funds in an unaccepted contract situation where the broker has knowledge that not all parties agree that the rejection or withdrawal occurred prior to binding acceptance, and prior to making a disbursement based upon an attorney opinion, a specific contract provision, or law where the broker has knowledge that either party disagrees with the disbursement, 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 disbursement will be made. The disbursement may not occur until 30 days after the date on which the notice is sent.

The offer to purchase authorizes the broker to deduct up to $250 from the earnest money to cover the broker's expense in obtaining an attorney's earnest money disbursement opinion.

An offer was written first with the parents, but was later rewritten in the daughter's name because of financing considerations, and the earnest money was transferred over from the parents to the daughter. The financing fell through. The daughter signed a CAMR and the seller received the earnest money less the title expenses. Should the buyers have gotten the earnest money instead?

Because the offer was rewritten, either the seller or the daughter would receive the earnest money – the original buyers were not parties to this contract.

While it is natural to want to help the side that "deserves" it, the disbursement of trust funds, including earnest money, from a real estate trust account is controlled by rules that do not concern themselves with who is right or wrong but establish a procedure that gives everyone a fair chance to make a claim on them. The rules are found in Wisconsin Administrative Code section RL 18.09 (1) and (2). Section 18.09 (1) sets up the bases upon which a broker may disburse the funds. These include agreement of the parties either in the form of cancellation and mutual release (WB-45) or the provisions dealing with earnest money in an accepted offer. Section 18.09 (2) establishes procedures for notice before disbursement if the matter is in dispute. The rules are fairly mechanical and do not give the broker the right to decide who deserves to receive funds. In part, this is based on the need for the broker to avoid being caught in the middle of a dispute. Also, it is based on the fact that disbursement of the funds, unless accompanied by a mutual release, does not affect the rights of the parties against one another under the offer. By learning and using the rules, a broker can avoid liability for disbursing earnest money when a deal falls apart.

If the daughter signed a CAMR giving the money back to the seller, that authorization generally is conclusive as far as which party should receive the funds. As far as the reimbursement of the title work expense to the listing broker, that payment is authorized in the listing contract. Lines 99-102 of the WB-1 residential listing contract provide that if a transaction fails to close and the earnest money is disbursed to the seller, the earnest money shall first be paid to reimburse the listing broker for any cash advances made by the listing broker on behalf of the seller. These cash advances may include items like title work, surveys costs, permit fees, etc.

Personal Funds in Trust Accounts to Cover Service Charges (§ RL 18.10)

A broker may deposit personal funds up to $300 in the broker's trust account to cover service charges. The broker must deposit additional personal funds in the trust account within 10 days of receipt of a notice from the depository institution that a service charge has been made against the account for which insufficient personal funds are currently available in the account. This "10 days to pay" concept was included in the rules to avoid any affirmative duty on the part of the broker to fund the account with an amount sufficient to ensure that service charges never exceed the personal funds in the account.

A broker is opening a trust account. What is the amount of personal funds that can be kept in the trust account?

A total of $300 in personal funds can be kept in the trust account.

Non-Depositable Items such as Promissory Notes (§ RL 18.11(2))

This section has been amended to clarify the conditions under which a broker may receive and hold promissory notes as earnest money. The broker, the parties or an attorney must modify the earnest money provisions in the applicable offer or other DRL-approved form to show the broker's receipt of a promissory note, to grant the broker the authority to hold the note, and to provide appropriate disbursement directions for the broker.

Branch Office Trust Account (§ RL 18.12)

If a branch office maintains its own trust account, separate from the trust account in the main office, the branch office must have its own separate bookkeeping system for that trust account.

Bookkeeping System (§ RL 18.13)

The real estate transaction is usually evidenced by documents such as an offer to purchase, lease, an option, a receipt for earnest money or additional down payments, invoices, closing statement, deposit slips, and checks. These documents serve as the basis of the accounting records. The bank records are supplemented by the broker's bookkeeping system that accounts for details such as when the funds were received, how much was received, when the funds were deposited, to whom the funds belonged, when they were disbursed, to whom were they disbursed, and how much was disbursed. § RL 18.13 requires each broker to maintain a bookkeeping system in his or her office to record the receipt, deposit, and disbursement of real estate trust funds.

An instrumental part of the broker's bookkeeping system is made up of the forms and records used with the broker's bank account. The bank or other depository where the broker maintains the trust account will normally send out a monthly statement showing deposits received and disbursements made. This is critical for the broker when reconciling his or her trust account records. Another important part of the banking records used by the broker is the deposit slip. Deposit slips are imprinted with the broker's trust account number and are turned over to the bank along with the funds being deposited.

The trust account bookkeeping cycle consists of four different components: (1) Daily entries in the journal, (2) posting journal entries to the ledgers, (3) preparing a monthly trial balance and account reconciliation, and (4) broker review of the reconciliation and other records.

Journal (§ RL 18.13(1))

§ RL 18.13(1) provides that the broker must maintain a journal record showing the receipt and disbursement of real estate trust funds in chronological order. The journal is a cumulative record of all funds moving in and out of the trust account, combining entries from different transactions, clients, and customers into one master chronological log. For funds received, the journal must include the date, the name of the party who is giving the money, and the amount. For disbursements, the journal must include the date, the payee, the check number, and the amount. The journal also must identify each transaction by including the name of the principal, an identification number, or some other means of identification that will link the journal entries to the broker's transactions and the accounting ledger. A running balance should be shown for each receipt or disbursement entry.

> § RL 18.13(1) provides that the broker must maintain a journal record showing the receipt and disbursement of real estate trust funds in chronological order.

Keeping the journal is like keeping a personal checkbook — all cash receipts and disbursements are entered in the cash journal chronologically as they occur. An entry is made only when there has been a receipt or disbursement of cash. Each entry must be accurate, precise and complete because these are permanent records and comprise the foundation for the broker's other accounting records.

Ledger (§ RL 18.13(2))

The broker must post the journal entries onto the individual ledger pages. The ledger separately shows the receipts and the disbursements for each particular transaction. Each entry from the journal is recorded on the ledger page representing the specific transaction to which the entry pertains. In other words, the chronological entries from the journal are sorted out and recorded by transaction. There will be a separate page in the ledger for each different sale, rental, or other type of real estate transaction that shows all of the receipts and disbursements made pertaining to that transaction. There is also a separate ledger page showing the personal funds the broker has deposited into the trust account to cover trust account service charges (see § RL 18.10 which limits this amount to $300 at any given time).

Each ledger page shall state the names of both parties to the transaction and typically the property address and the date of any closing. A ledger entry for a receipt must include the date of the receipt, the amount received, and the name of the party giving the money if it is not the buyer. A ledger entry for a dis-

bursement shall include the date, the payee (person or company the money is being paid to), the check number, and the amount. A running balance should be shown for each receipt or disbursement entry. The broker shall maintain a separate ledger or separate section of the ledger for each of the different types of real estate transactions engaged in by the broker, for instance, a separate sales ledger and a separate rental ledger.

If the broker should receive a promissory note, the broker does not make a journal entry for the note — instead the promissory note is posted directly into the appropriate ledger page.

Re: Entry into trust account ledger where it states "name of payee." When a broker receives a check, does the broker put the payee's name as the broker's company or the person who is actually sending the broker the earnest money?

Per § RL 18.13(2), the ledger should state the name of the payee (the person to whom the payment is being made) for disbursements and the name of the payor (the person making the payment) for deposits if the payor is not the buyer.

Reconciliation (§ RL 18.13(3))

The broker must do a written account reconciliation each month as long as there are funds in the trust account other than the broker's personal funds used to cover service charges. The trust account reconciliation resembles the process used by an individual when he or she balances his or her personal checkbook each month.

Each month, the broker receives an account statement from the bank, credit union, or savings and loan where the broker has his or her trust account. At that time, the broker must reconcile the statement balance with his or her bookkeeping records. It is customary for banks, credit unions, or savings and loans to provide a form for the reconciliation of the account on the back of the monthly statement.

The broker must do a written account reconciliation each month as long as there are funds in the trust account other than the broker's personal funds used to cover service charges.

The written reconciliation shall include the ending account statement balance, the date and amounts of the deposits in transit, the check numbers and amounts of checks written but not paid by the bank or other depository institution as of the ending date shown on the account statement to be reconciled, and the reconciled account statement ending balance. The reconciliation will list all outstanding deposits and checks. The broker must reconcile the account statement with both the journal and the ledger.

Reconciliation is a function that should be performed by the broker. If someone else in the broker's office is doing the work, he or she should understand the law and the broker's responsibility for maintaining trust records. While the broker may delegate the authority to do the work, the DRL looks to the broker, and the broker cannot relieve himself or herself of that responsibility. The broker should make sure that any accountant performing bookkeeping functions for the broker thoroughly understands the legal requirements for trust account accounting. A prudent broker will also personally review the reconciliation to ensure its accuracy.

Is it permissible to use carbon checks for a broker's trust account or must the broker have all cancelled checks returned each month along with the monthly bank statement?

The trust account bookkeeping rules do not require that cancelled checks be returned each month.

Trial Balance (§ RL 18.13(4))

In conjunction with the account reconciliation, the broker shall prepare (or have prepared) a written "trial balance" listing all open items in the real estate trust account. An open item occurs, for example, when a deposit has been recorded in the records but the funds have not yet been cleared and deposited in the trust account, or when a check has been written but not yet cashed and deducted from the trust account. The list must state the names of the parties to the transaction and the amounts held in trust for the parties at the time corresponding to the account reconciliation. The broker may use the names of the parties to the transaction, the ledger page, or any other means of identification from the ledger to label the funds in the trial balance.

Validation (§ RL 18.13(5))

The broker, or a person designated by the broker, shall review the reconciled 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 account statement has been reconciled.

The broker may wish to give particular attention to the outstanding items remaining in the trust account. In the event any of the deposited items were inadvertently retained beyond the agreed-upon release date, they can be refunded or returned, providing the items can be legally released in accordance with the terms of the deposit agreements. This monthly review also affords the broker the opportunity to check the maturity dates of any notes that he or she is holding. The broker should also examine any outstanding checks and remind payees holding old checks (over six months old) to cash them. Most banks will not

honor a check over six months old. If any checks are lost, the broker may wish to stop payment and issue new checks to replace them. A monthly review of this type enables the broker to bring the trust account up-to-date and try to rectify any mistakes that might have been made.

A broker's secretary inadvertently deposited general account funds into the broker's trust account and the trust account funds into the general account. This occurred on three or four separate occasions during the last several days. What should the broker do now that she has discovered this error?

For recording purposes, the broker should document the misdirection of the funds, how the error was discovered and how the circumstances were rectified. The broker should make all appropriate journal and ledger entries to show that the funds have been redirected to the proper accounts. The broker may consider a review of office policy to assure future compliance.

Computer Bookkeeping (§ RL 18.13(6))

Any computer system used by a broker for his or her trust account bookkeeping and accounting must comply with all § RL 18.13 bookkeeping system rules. All bookkeeping entries required by the trust account rules must be made in the computerized system, even if other records are simultaneously maintained. A back-up copy of all journal and ledger records must be made on any day on which entries are made in the computerized bookkeeping system. The back-up copy may be made on a disk or other medium that is separate and distinct from the computer source document. After complying with the account reconciliation, trial balance, and validation rules, the records of these functions must immediately be copied to a back-up medium that is maintained by the broker.

All records not maintained as written paper records must be capable of being immediately converted to written paper records and made available without charge to the DRL for audit or investigation purposes.

All records not maintained as written paper records must be capable of being immediately converted to written paper records and made available without charge to the DRL for audit or investigation purposes.

For a comprehensive, step-by-step description of how to set up your trust account bookkeeping records on computer, complete with computer screen examples, see Chapter 11 of Real Estate Trust Accounts in Wisconsin – a Broker's Guide to Complying with State Regulations written by Scott Minter for the UW Law School and available from the WRA (http://www.wra.org/realtors/products/misc/trust.htm).

Violation of Rules (§ RL 18.14)

A broker who fails to comply with the trust account rules in this Chapter RL 18 shall be considered to have acted incompetently, having failed to safeguard the interests of the public, and will be subject to REB disciplinary action.

A buyer paid his earnest money six days ago and the selling broker forwarded the earnest money check to the listing broker. Now the buyer has submitted a cancellation agreement and mutual release for the seller's signature. The seller, however, has not signed the CAMR. The listing broker nonetheless returned the earnest money to the selling broker so that the selling broker could return it to the buyer. Is this proper procedure?

No, the listing broker should have deposited the earnest money check into his trust account a few days ago per § RL 18.031(1). If that had been done, then the listing broker could appropriately disburse the earnest money according to the earnest money disbursement provisions in the offer to purchase and § 18.09. This is not a situation where the selling broker could return the check to the buyer because the offer was rejected before the 48-hour deadline for the deposit of the check had not yet passed — the selling broker cannot return the check to the buyer when there is an accepted offer.

Unfortunately, this listing broker failed to follow the rules for the deposit and disbursement of earnest money, and is in violation of the above-cited rules. The selling broker would be in violation of § RL 24.17(3) if he/she participated in any violation of license law. § RL 24.17(3) provides that licensees shall not violate any provisions or terms or conditions of, or aid or abet the violation of ch. 452, Stats., chs. RL 11 to 26 or any disciplinary order of, the real estate board.

Conclusion

The Chapter RL 18 trust account rules provide a good deal of guidance to brokers as far as the management and supervision of real estate trust accounts. The rules have been designed to make trust account practice easier and more realistic in areas such as property management, trust account deposits, trust account signatories, transferring earnest money between brokers and in other areas. The rules also provide for computerized trust account bookkeeping, keeping apace with modern technology. Members with additional questions should contact their accountants or the DRL auditors.

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