

Rule 790-X-3-.03. Deposit Of Funds

(1) The deposit and accounting for at all times of all funds belonging to or being held for others in a separate federally insured account or accounts in a financial institution located in Alabama shall require that the qualifying broker be a customer of the financial institution holding all such accounts and the qualifying broker shall be one of the persons with authority to deposit and withdraw funds and to write or make checks as necessary on all such accounts.

(2) Each real estate salesperson or associate broker shall pay over to his or her qualifying broker all funds coming into his or her possession in trust for other parties immediately upon receipt of same.

(3) Each qualifying broker is responsible for deposit of all funds belonging to others coming into his or her possession or of a salesperson or associate broker licensed under him or her where such funds are to be held in trust, unless the qualifying broker is expressly relieved of such responsibility in writing. In cases where the funds are U. S. currency, i.e. cash as opposed to a check or note, these funds shall be deposited immediately. In cases where a check is received as earnest money and the contract form states that the check is to be held for a specific length of time or until the occurrence of a specific event, then the check shall be deposited when the contract form states, or if no time for deposit is specified in the contract form, then the check shall be deposited when the offer becomes a contract.

(4) Funds to be held in trust under a contract for sale involving more than one qualifying broker shall be held and deposited by any of the qualifying brokers involved in the sale. All funds to be held in trust, whether by contract for sale, or by lease or property management agreement, shall be held and deposited by the qualifying broker who is providing these services to the owner. In cases where a successor qualifying broker is to provide these services, the first broker shall provide a complete accounting of the funds and shall transfer the funds to the successor broker. The qualifying broker who is currently providing services to the owner shall be responsible to the public and to the commission for all funds. Upon request by the Commission or its authorized representative, each

qualifying broker shall promptly account for any trust funds being held by that qualifying broker.

(5) Disbursement of funds held in trust:

(a) Unless otherwise stated in this rule, each qualifying broker shall promptly disburse to the appropriate party or parties any trust funds within 7 business days of the consummation of the transaction for which the funds were deposited. If for any reason the transaction terminates without consummation, or if there is a disagreement regarding the disbursement of trust funds, the qualifying broker shall not disburse any trust funds except pursuant to a written agreement signed by all parties after or upon termination, or pursuant to a court order.

(b)

1. Notwithstanding Paragraph (5) (a) of this Rule, if the trust funds being held by a licensed company are earnest money submitted by a buyer who is an individual, as opposed to a business entity, and if the purchase agreement was executed after the effective date of this Amendment to this Rule, then the qualifying broker of the company holding the earnest money shall disburse to the buyer the earnest money for a transaction that terminates without consummation after the expiration of 90 days of the date the transaction was required to close by the purchase agreement unless: (1) the parties enter a written agreement concerning the earnest money that states otherwise and is signed by all the parties after the termination of the transaction, (2) a court order states otherwise, or (3) the seller notifies the qualifying broker in writing of having filed a civil action pertaining to the earnest money.

2. The purchase agreement of any transaction subject to paragraph 5(b)1 of this Rule must include the following disclaimer: "If this transaction fails to close, then the qualifying broker holding the earnest money will be required by state law to return the earnest money to the Buyer unless the parties enter into a written mutual agreement or the qualifying broker is notified in writing of a legal action having been filed in court concerning the earnest money within 90 days of the date that closing is required by this agreement."

3. Notwithstanding paragraph (5) (a) of this Rule, if the trust funds being held by a licensed company are earnest money submitted by a buyer who is an individual, as opposed to a

business entity, and if the purchase agreement was executed prior to the effective date of this Amendment to this Rule, then the qualifying broker of the company holding the earnest money shall disburse to the buyer the earnest money for a transaction that terminates without consummation after the expiration of 1 year of the date the transaction was required to close by the purchase agreement unless: (1) the parties enter a written agreement concerning the earnest money that states otherwise and is signed by all the parties after the termination of the transaction, (2) a court order states otherwise, or (3) the seller notifies the qualifying broker in writing of having filed a civil action pertaining to the earnest money.

4. Once the requirements under this Rule are met for the qualifying broker to return the earnest money to the Buyer, the qualifying broker must do so within 7 days.

5. Paragraph (5) of this Rule does not affect the statute of limitations on any civil action between the buyer and seller.

(6) Disbursement of security deposits held in trust under a lease agreement:

(a) Residential leases security deposits: Refer to Alabama Code Section 35-9A-201 Security Deposits; Prepaid Rent, and 35-9A-205 Limitation of Liability. Alabama Code Sections 35-9A-201 and 35-9A-205 have priority and qualifying brokers shall comply with their instruction.

(b) Commercial leases security deposits:

1. Upon termination of the tenancy, money held for the landlord by a qualifying broker as security may be applied to the payment of accrued rent and the amount of damages that the landlord has suffered by reason of the tenant's noncompliance of the lease all as itemized by the qualifying broker in a written notice delivered to the tenant together with the amount due within 60 calendar days after termination of the tenancy and delivery of possession.

2. If the qualifying broker does not refund the entire deposit, the qualifying broker, within the 60-calendar-day period, shall provide the tenant an itemized list of amounts withheld.

3. Upon vacating the premises, the tenant may provide to the qualifying broker a valid forwarding address, in writing, to

which the deposit or itemized accounting, or both, may be mailed. If the tenant fails to provide a valid forwarding address, the qualifying broker shall mail, by first class mail, the deposit or itemized accounting or both, to the tenant at the address of the property. Any deposit unclaimed by the tenant as well as any check outstanding shall be forfeited by the tenant after a period of 90 calendar days.

4. The qualifying broker's mailing, by first class mail, to the address provided in writing by the tenant, within 60 calendar days of the refund or itemized accounting, or both, is sufficient compliance with this chapter.

(c) Security deposits and trust funds subject to a management termination by a landlord or the qualifying broker: If a landlord and/or qualifying broker terminates a management agreement for leased properties, the qualifying broker shall provide an accounting of all security deposits, prepaid rents and other related escrows, and provide such accounting to the landlord or new manager of the property, within seven (7) business days of the management termination effective date, along with payment of funds. A qualifying broker, who is the manager of leased properties, whose leases include security deposits, is relieved of liability under the lease agreements and this chapter as to events occurring after written notice to the tenant of the termination of management and name of the new management.

(d) Security deposits subject to a sale of the property: If a landlord conveys property subject to a rental agreement in a good faith sale to a bona fide purchaser, the qualifying broker shall provide an accounting of all security deposits, prepaid rents and other related escrows, and provide such accounting to the purchaser of the property, within seven (7) business days of the closing of the sale, along with payment of funds, if such funds are not already transferred via sale closing documents. Upon the date of accounting and payment, the qualifying broker is relieved of trust funds liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the sale and name of the new management.

(7) This Rule shall not prohibit a broker from depositing with the appropriate court any trust funds which are the subject of disagreement among or between parties under the rules of interpleader or other lawful procedure.