



**Alabama Real Estate Commission**  
Empowering | Connecting | Educating  
Phone: 334.242.5544 | Fax: 334.270.9118  
1201 Carmichael Way Montgomery, AL 36106  
[@arecalabamagov](mailto:@arecalabamagov) | [arec.alabama.gov](http://arec.alabama.gov)

## **BRIEFLY LEGAL AND COMMISSION NOTE**

### **Trust Funds and Original (Permanent) Salespersons**

December 7, 2018

#### **TODAY'S QUESTION**

In a failed transaction, what does the qualifying broker do with the trust funds (aka earnest money) when the potential buyer and seller cannot agree as to its disposition?

#### **THE ANSWER**

According to Rule 790-X-3-.03(5), in a failed transaction, the qualifying broker shall not disburse any earnest money except pursuant to a written agreement signed by all parties or pursuant to a court order. Licensees ARE NOT permitted to make a determination as to whom earnest money belongs. Only a judge or the two parties (buyer and seller) can make this determination.

Please remember that an earnest money disbursement does not have to be all or nothing; the two parties can divide the earnest money any way they see fit.

If the two parties cannot agree as to the disposition of the earnest money, a court can decide. This can be done by the buyer or seller suing the other or by the qualifying broker interpleading the funds with the court. However, the broker cannot pay the court costs out of the earnest money unless that is agreed to in the contract. Otherwise, the broker must continue to hold the funds until such time as the parties agree. There is no limit on how long brokers can hold these funds.

We are often asked if disputed earnest money can be sent to the State Treasurer's Office/Unclaimed Property Division. The answer is "no" because you cannot definitively say to whom it belongs.

If you have questions concerning this or other topics, please do not hesitate to contact us.

#### **COMMISSION NOTE**

Did you know that Original Salesperson applicants can now apply online? Since all documents required for licensure were submitted at the time of application for a temporary salesperson's license, the application for the Original Salespersons license can be submitted online after completing the post license and the fees can be paid online. This will save applicants a lot of time as well as mailing costs.

Stay tuned for next month's Briefly Legal and Commission Note scheduled for the first week of January. Happy Holidays everyone!