

I. General Information

G. Records Relating to Funds That Bypass the Broker Trust Account

Brokers (including the broker, their affiliated licensees, and administrative employees) often come into possession of client or customer funds which bypass the broker trust account. Examples of such funds would include earnest money deposits that bypass the broker trust account, or checks, or other monies, except cash, payable to a third party, such as a contractor or other service provider. Possession of such funds should be recorded in writing as described in more detail below:

Possession of client or customer funds which bypass the broker trust account should be recorded in writing with such record containing the date the funds come into the licensee's possession, the amount, and to whom the funds are payable according to the terms of the check or money order or the terms of the contract. Likewise, a record of when and to whom the possession of such funds is transferred to should also be recorded.

Such records may be incorporated into an existing contract or other transaction document such as a purchase agreement, or acknowledged by separate receipt. If the third party providing or receiving the funds is unable to or unwilling to provide or sign such record, the broker shall make a note with the information required relating to the possession and transfer of funds in the transaction file.

Under no circumstances should any cash received or checks made payable to the brokerage bypass the broker trust account. Such funds must be deposited into the broker trust account and a check issued from the account to the appropriate party.

II. SALES ACCOUNTS

B. Trust Account Records

The Nebraska Real Estate License Act and Rules require each broker to maintain a bookkeeping system which clearly and accurately accounts for all trust funds received and how those trust funds are disbursed. Section G of the Sales Accounts Chapter of this Manual provides the licensee with illustrated examples of trust account bookkeeping for a sales account.

Chapter 3-001 of the Commission Rules states, "It shall be the duty of each broker to preserve for five years following its consummation records relating to any real estate transaction." Records which must be maintained by the broker include, but are not limited to:

1. Listing agreements and any extensions thereto
2. Agency agreements and disclosures
3. Seller Property Condition Disclosure statements, when applicable
4. Estimated closing cost disclosures, when applicable
5. Purchase agreements and any addenda thereto
6. Closing statements - buyer and seller*
7. Checkbooks and checkbook registers
8. Checks - canceled, voided, and unused
9. Financial institution statements and reconciliations
10. Deposit slips - originals and/or duplicates
11. Bookkeeping system - general ledger and sub-ledger
12. Supporting vendor invoices, if applicable
13. Records of funds coming into the broker's possession which bypass the trust account.
134. Any other documents pertinent to the transaction.

*Provided—it shall not be considered a compliance issue if the closing statement for a party to the transaction who the broker does not represent as a client is absent from the file because the

financial institution, closing agent or other party with access to the records will not provide such statements due to privacy concerns.

III. PROPERTY MANAGEMENT ACCOUNTS

B. Trust Account Records

The Nebraska Real Estate License Act and Rules require each broker to maintain a bookkeeping system which will clearly and accurately account for all trust funds received, and how those trust funds are disbursed. Section F of the Property Management Chapter of this Manual provides the licensee with illustrated examples of trust account bookkeeping for a property management account.

Chapter 3-001 of the Commission Rules states, "It shall be the duty of each broker to preserve for five years following its consummation records relating to any real estate transaction." Records which must be maintained by the broker include, but are not limited to:

1. Management agreements
2. Lease agreements
3. Checkbooks and checkbook registers
4. Checks - canceled, voided, and unused
5. Financial institution statements and reconciliations
6. Deposit slips - originals and/or duplicates
7. Bookkeeping system - general ledger and sub-ledger
8. Property owner financial reports
9. Supporting vendor invoices.
10. Records of funds coming into the broker's possession which bypass the trust account.