

**WAC 308-124E-110 Administration of funds held in trust—Real estate and business opportunity transactions.** The procedures in this section are applicable to funds received by the firm in connection with real estate sales, business opportunity transactions or options. These procedures are in addition to the requirements of the general trust account procedures contained in WAC 308-124E-105.

(1) Bank accounts, deposit slips, checks and signature cards shall be designated as trust accounts in the firm or assumed name as licensed. Trust bank accounts for real estate sales or business opportunity transactions shall be interest bearing demand deposit accounts. These accounts shall be established as described in RCW 18.85.285 and this section.

(a) The firm shall maintain a pooled interest-bearing trust account identified as housing trust fund account for deposit of trust funds which are ten thousand dollars or less.

Interest income from this account will be paid to the department by the depository institution in accordance with RCW 18.85.285(8) after deduction of reasonable bank service charges and fees, which shall not include check printing fees or fees for bookkeeping systems.

(b) The licensee shall disclose in writing to the party depositing more than ten thousand dollars that the party has an option between (b)(i) and (ii) of this subsection:

(i) All trust funds not required to be deposited in the account specified in (a) of this subsection shall be deposited in a separate interest-bearing trust account for the particular party or party's matter on which the interest will be paid to the party(ies); or

(ii) In the pooled interest-bearing account specified in (a) of this subsection if the parties to the transaction agree in writing.

(c)(i) For accounts established as specified in (a) of this subsection, the designated broker will maintain an additional ledger with the heading identified as "Housing trust account interest." As the monthly bank statements are received, indicating interest credited, the designated broker will post the amount to the pooled interest ledger. When the bank statement indicates that the interest was paid to the state or bank fees were charged, the designated broker will debit the ledger accordingly.

(ii) For accounts established as specified in (b)(i) of this subsection, the interest earned or bank fees charged will be posted to the individual ledger.

(d) When the bank charges/fees exceed the interest earned, causing the balance to be less than trust account liability, the designated broker shall within one banking day after receipt of such notice, deposit funds from the firm's business account or other nontrust account to bring the trust account into balance with outstanding liability. The designated broker may be reimbursed by the party depositing the funds for these charges for accounts established as specified in (b)(i) of this subsection if the reimbursement is authorized in writing by the party depositing the funds. For accounts established under (a) of this subsection, the designated broker will absorb the excess bank charges/fees as a business expense.

(2) A separate check shall be drawn on the real estate trust bank account, payable to the firm as licensed, for each commission earned, after the final closing of the real estate or business opportunity transaction. Each commission check shall be identified to the transaction to which it applies.

(3) No disbursements from the real estate trust bank account shall be made in advance of closing of a real estate or business opportunity transaction or before the happening of a condition set forth in the purchase and sale agreement, to any person or for any reason, without a written release from both the purchaser and seller; except that:

(a) If the agreement terminates according to its own terms prior to closing, disbursement of funds shall be made as provided by the agreement without a written release; and

(b) Funds may be disbursed to the escrow agent designated in writing by the purchaser and seller to close the transaction, reasonably prior to the date of closing in order to permit checks to clear.

(4) When a transaction provides for the earnest money deposit/note or other instrument to be held by a party other than the firm, a licensee shall deliver the earnest money deposit to the party designated by the terms of the purchase and sale agreement to hold the funds. The licensee shall obtain a dated receipt from the party holding the earnest money funds. The licensee shall deliver the receipt to the designated broker or responsible managing broker. The dated receipt shall be placed in and retained in all participating firm's transaction files. The designated broker has the ultimate responsibility for delivery of the funds.

[Statutory Authority: RCW 18.85.041. WSR 13-14-077, § 308-124E-110, filed 7/1/13, effective 8/1/13. Statutory Authority: RCW 18.85.040 and 18.85.041. WSR 10-06-078, § 308-124E-110, filed 3/1/10, effective 7/1/10.]