

Chapter REEB 18

TRUST ACCOUNTS

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Note: Chapter REB 9 as it existed on February 28, 1983 was renumbered to be chapter RL 18, effective March 1, 1983. Chapter RL 18 was renumbered chapter REEB 18 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

REEB 18.01 Authority. The following rules are adopted pursuant to ss. 227.11, 452.07 and 452.13, Stats.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.01 and am. Register, February, 1983, No. 326, eff. 3-1-83; CR 13-072: am. (title) Register May 2014 No. 701, eff. 7-1-14.

REEB 18.02 Definitions. In this chapter:

Note: See also definitions in s. REEB 11.02.

(1) “Business day” means any day excluding Saturdays, Sundays, any legal public holiday under Wisconsin or Federal law, and any other day designated by the President of the United States such that the U.S. postal service does not receive registered mail or make regular deliveries on that day.

(1e) “Client funds” has that meaning given in s. 452.13 (1) (a), Stats.

Note: Section 452.13 (1) (a), Stats., reads: “Client funds” means all downpayments, 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 of the broker’s, salesperson’s or time-share salesperson’s principal or any other person. “Client funds” does not include promissory notes.”

(4) “Depository institution” has that meaning given in s. 452.13 (1) (b), Stats.

Note: Section 452.13 (1) (b), Stats., reads: “Depository institution” means a bank, savings bank, savings and loan association or credit union that is authorized by federal or state law to do business in this state and that is insured by the federal deposit insurance corporation or by the national credit union share insurance fund.”

(5) “Real estate trust account” means an account for real estate trust funds maintained at a depository institution from which withdrawals or transfers can be made without delay, subject to any notice period that the depository institution is required to observe by law, and includes all of the following:

(a) Interest-bearing common trust accounts established for client funds.

(b) Non-interest bearing real estate trust accounts maintained for real estate trust funds other than client funds.

(c) Interest-bearing real estate trust accounts maintained for real estate trust funds other than client funds.

(6) “Real estate trust funds” means any cash, checks, share drafts, drafts, or notes received by a firm or licensee on behalf of a principal or any other person including any of the following:

(a) Payments on land contracts, mortgage payments and any other receipts pertaining to mortgages.

(b) Tax and insurance payments held in escrow.

(c) Advance fees and finder’s fees, unless non-refundable.

(d) Rental application deposits and rents, but only when received while acting as an agent for another.

(e) Payments received for subsequent repayment to a third party.

(f) Security deposits on rental property, except as provided in s. REEB 18.031 (4).

(g) Initial and additional earnest money downpayments and other funds received in connection with offers to purchase, options, and exchanges, even if the broker or salesperson receives the downpayments or funds when negotiating the sale of real estate or a business opportunity which the broker or salesperson owns in whole or in part, or when negotiating the purchase of real estate or a business opportunity for ownership in whole or in part by the broker or salesperson.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; r. and recr. (3), Register, April, 1982, No. 316, eff. 5-1-82; renum. from REB 9.02 and am. (1), Register, February, 1983, No. 326, eff. 3-1-83; cr. (2m), am. (3) (a) (intro.), renum. (3) (c) and (d) to be (3) (a) 4. and 5. and am. 5., Register, June, 1984, No. 342, eff. 7-1-84; r. and recr. Register, August, 1994, No. 464, eff. 9-1-94; r. (3), am. (5) (intro.), Register, July, 1998, No. 511, eff. 8-1-98; correction in (6) (f) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 13-072: renum. (1) to (1e), cr. (1), am. (5) (intro.) to (b), (6) Register May 2014 No. 701, eff. 7-1-14; EmR1620: emerg. r. (2), am. (6) (intro.), (g), eff. 7-1-16; CR 16-042: r. (2), am. (6) (intro.), (g) Register February 2017 No. 734, eff. 3-1-17.

REEB 18.031 Deposits and types of accounts. (1) TIME OF DEPOSIT. A firm shall deposit all real estate trust funds received by the firm or licensees associated with the firm in a real estate trust account within 48 hours of receipt of the trust funds. If funds are received on a day prior to a holiday or other day when the depository institution is closed, the firm shall deposit the funds within the next 2 business days. If a firm receives funds which cannot be deposited by the firm, the firm shall, no later than one business day after receipt, either:

(a) Forward the funds to the payee, if someone other than the firm.

(b) Return the funds to the payer.

(2) **DUTY OF LICENSEES.** A licensee who receives real estate trust funds shall promptly submit the funds to the firm of the licensee.

(3) **INTEREST-BEARING ACCOUNTS.** (a) Client funds shall be deposited in an interest-bearing common trust account and the department of administration shall be the beneficial owner of the interest accruing to the account, minus any service charges. At no time may the firm remove or use the interest earned on such accounts.

(b) Real estate trust funds, other than client funds, may be deposited in an interest-bearing account if the firm obtains from the persons for whom the funds are being held written authorization to deposit the funds in an interest-bearing account and if the authorization specifies how and to whom the interest will be disbursed. None of the interest earned on the funds deposited into an interest-bearing account may inure to the benefit of the firm.

(4) SECURITY DEPOSITS. 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 a lease for security deposits to be held in an account maintained in the name of the owner or owners.

(5) RENTAL OWNER'S ACCOUNT. (a) In this subsection, "owner's account" means an account maintained by an owner of rental property for depositing and disbursing any funds payable to or by the owner.

(b) A firm may directly deposit into an owner's account rental application deposits, rents and security deposits which may have been made payable to one or more owners. The firm or licensee associated with the firm may be designated as a signatory on the owner's account and may make disbursements from that account to the extent authorized by the owner in writing.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; correction made in (title) under s. 13.92 (4) (b) 2., Stats., Register November 2011 No. 671; CR 13-072: am. (1) Register May 2014 No. 701, eff. 7-1-14; EmR1620: emerg. am., (1) (intro.), (a), (2), (3), (5) (b), eff. 7-1-16; CR 16-042: am. (1) (intro.), (a), (2), (3), (5) (b) Register February 2017 No. 734, eff. 3-1-17.

REEB 18.032 Number of real estate trust accounts.

A firm may maintain more than one real estate trust account, including more than one interest-bearing common trust account for client funds, if the firm notifies the department of these accounts, as required in s. REEB 18.035.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; EmR1620: emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.

REEB 18.033 Opening and closing real estate trust accounts. (1) OPENING AN ACCOUNT. A firm shall open a real estate trust account if the firm receives real estate trust funds.

(2) CLOSING AN ACCOUNT. A firm may close a real estate trust account if no real estate trust funds remain in the account or for reasons specified in s. REEB 18.035.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; CR 13-072: am. (title), (2) Register May 2014 No. 701, eff. 7-1-14; EmR1620: emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.

REEB 18.034 Account designation. (1) NAME ON TRUST ACCOUNT. A firm shall name the firm's real estate trust account with the name appearing on the broker's license or with a trade name submitted to the department under s. REEB 23.03 and shall include the words "trust account" in the name of the account.

(2) NAME ON CHECKS. A firm shall imprint the name of the real estate trust account on real estate trust account checks, share drafts or drafts.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 13-072: cr. (1) (title) Register May 2014 No. 701, eff. 7-1-14; EmR1620: emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.

REEB 18.035 Duty to notify the department. (1) OPENING AN ACCOUNT. No later than 10 days after opening any real estate trust account a firm shall provide the department with the name and number of the account, with the name of the depository institution in which the firm 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 s. REEB 18.037.

(2) CHANGING OR CLOSING AN ACCOUNT. A firm shall notify the department no later than 10 days after a firm 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 s. REEB 18.037. When closing a real estate trust account, a firm may inform the board by letter.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 13-072: am. (2) Register May 2014 No. 701, eff. 7-1-14; EmR1620: emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.

REEB 18.036 Authorization to examine real estate trust accounts and records. (1) FIRM'S AUTHORIZATION.

No later than 10 days after opening a real estate trust account a firm shall furnish the department authorization for the department to examine and audit all of the firm's real estate trust account records and authorization for the department of administration to examine all of the firm's interest-bearing common trust accounts maintained for client funds. The authorization shall be provided on a form, as required in s. REEB 18.037.

(2) DEPOSITORY INSTITUTION'S CERTIFICATION. No later than 10 days after opening a real estate trust account a firm shall obtain the certification of every depository institution in which the firm maintains a real estate trust account attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the department or, in the case of interest-bearing common trust accounts maintained for client funds, the department of administration. The certification shall be provided to the department on a form, as required in s. REEB 18.037.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; EmR1620: emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.

REEB 18.037 Form for notification and authorization. A firm shall provide the information and authorization as specified in ss. REEB 18.035 and 18.036 on a form provided by the department. This form shall be designated "consent to examine and audit trust account."

Note: A copy of this form may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935 or downloading from the department's webpage: <http://dsps.wi.gov>.

History: Cr. Register, August, 1994, No. 464, eff. 9-1-94; correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 13-072: am. Register May 2014 No. 701, eff. 7-1-14; EmR1620: emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.

REEB 18.04 Authorization to sign trust account checks. A firm may authorize other persons to sign real estate trust account checks, share drafts or drafts drawn on the firm's real estate trust account if the person is at least 18 years of age.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.04 and am. (1), (2), (4) and (5), Register, February, 1983, No. 326, eff. 3-1-83; am. (1), (2), (3) (intro.) and (4), Register, June, 1984, No. 342, eff. 7-1-84; am. (1), r. (2) (a), renum. (2) (b) to be (2) (a) and am., Register, June, 1988, No. 390, eff. 7-1-88; am. (1), r. (2) to (5), Register, August, 1994, No. 464, eff. 9-1-94; EmR1620: emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.

REEB 18.05 Receipt for earnest money received by the licensee. A licensee shall indicate on the offer to purchase the receipt of earnest money received from a buyer at the time the offer is drafted.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.05, Register, February, 1983, No. 326, eff. 3-1-83; am. Register, August, 1994, No. 464, eff. 9-1-94; EmR1620: emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.

REEB 18.06 Escrow agreement for earnest money not held by the firm. If the parties to a transaction do not desire that the firm hold the earnest money in the firm's real estate trust account, and wish to designate an escrow agent other than the firm, the licensee may not draft the escrow agreement. The escrow agreement shall be drafted by the parties or an attorney. The firm may not hold the funds in the firm's real estate trust account, nor may the firm act in any way as custodian of the funds

for the parties. The funds, pursuant to the escrow agreement, shall be held by a party other than the firm, such as: a bank, a savings and loan association, a credit union, or an attorney.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.06, Register, February, 1983, No. 326, eff. 3-1-83; am. Register, June, 1984, No. 342, eff. 7-1-84; am. Register, August, 1994, No. 464, eff. 9-1-94; CR 13-072: am. Register May 2014 No. 701, eff. 7-1-14; EmR1620: emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.

REEB 18.07 After closing escrow agreements. (1) BY SEPARATE AGREEMENT. If the parties to a contract wish, or are required, to place funds in escrow which are to be held after closing by the firm in the firm'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 firm holds these funds, the firm shall place them in the firm's real estate trust account. The licensee may draft the escrow agreement if a firm for this purpose has been approved by the board for use by licensees pursuant to s. REEB 16.03.

(2) ON CLOSING STATEMENT. A firm may hold in the firm'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 firm is holding the funds.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; am., Register, April, 1982, No. 316, eff. 5-1-82; renum. from REB 9.07, Register, February, 1983, No. 326, eff. 3-1-83; renum. to be (1) and am., cr. (2), Register, June, 1984, No. 342, eff. 7-1-84; am. Register, August, 1994, No. 464, eff. 9-1-94; correction in (1) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671; EmR1620: emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.

REEB 18.09 Disbursement of trust funds. (1) PROPER DISBURSEMENT. A firm who disburses trust funds from the firm's real estate trust account under any of the following circumstances shall not be deemed to have violated s. 452.14 (3) (i), Stats.:

(a) To the payer upon the rejection, expiration or withdrawal prior to binding acceptance of an offer to purchase, lease, exchange agreement or option on real estate or a business opportunity.

(b) As directed in a written earnest money disbursement agreement signed by all parties having an interest in the trust funds. For the purposes of this subsection, a closing statement is a written earnest money disbursement agreement.

(c) To a court having jurisdiction over a civil action involving all parties having an interest in the trust funds.

(d) As directed by order of a court.

(e) Upon a good faith decision based upon advice of an attorney not representing any party to the contract.

(f) Upon authorization granted within the contract.

(g) As otherwise provided by law.

(2) NOTIFICATION OF DISBURSEMENT. Prior to making a disbursement of trust funds under sub. (1) (a) where the firm has knowledge that not all parties agree that the rejection or withdrawal occurred prior to binding acceptance, and prior to making a disbursement under sub. (1) (e), (f), and (g) where the firm has knowledge that either party disagrees with the disbursement, the firm 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.

(3) WITHDRAWAL OF COMMISSIONS. (a) A firm shall withdraw commissions or fees earned by the firm from real estate trust accounts maintained by the firm within 24 hours after trans-

actions are consummated or terminated, or after the commissions or fees are earned in accordance with the contract involved.

(b) A firm providing property management services shall disburse the fee earned for providing property management services as a regular monthly basis unless otherwise agreed in a written property management agreement signed by the parties to that agreement.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.09 and am. (3) (intro.), Register, February, 1983, No. 326, eff. 3-1-83; am. (2), (3) (a) and (b) and (4), Register, June, 1984, No. 342, eff. 7-1-84; r. and recr., Register, July, 1993, No. 451, eff. 8-1-93; renum. (3) to be (3) (a), cr. (3) (b), Register, August, 1994, No. 464, eff. 9-1-94; CR 13-072: am. (1) (intro.), (a) to (f) Register May 2014 No. 701, eff. 7-1-14; EmR1620: emerg. am. (1) (intro.), (2), (3), eff. 7-1-16; CR 16-042: am. (1) (intro.), (2), (3) Register February 2017 No. 734, eff. 3-1-17.

REEB 18.10 Comingling funds prohibited. (1) DEPOSITABLE FUNDS. A firm shall deposit only real estate trust funds in the firm's real estate trust account.

(a) Except for sub. (b), a firm shall not commingle personal funds or other funds in the real estate trust account.

(b) A firm may deposit and maintain a sum not to exceed \$300.00 from personal funds in any real estate trust account. Such sum shall be specifically identified and deposited to cover service charges relating to the real estate trust account.

(2) ADDITIONAL FUNDS. A firm shall deposit additional personal funds in sums consistent with sub. (1) (b) in the firm's real estate trust account within 10 business days following receipt of a statement or other notification from a depository institution that a service charge has been made against the account for which insufficient personal funds are available in the real estate account.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.10, Register, February, 1983, No. 326, eff. 3-1-83; am. Register, July, 1984, No. 342, eff. 7-1-84; am. Register, January, 1992, No. 433, eff. 2-1-92; am. Register, August, 1994, No. 464, eff. 9-1-94; CR 13-072: r. and recr. Register May 2014 No. 701, eff. 7-1-14; EmR1620: emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.

REEB 18.11 Non-depositable items. A firm shall not hold any instrument, equity or thing of value which is not depositable in a real estate trust account. Non-depositable items shall be held by one of the parties to a transaction or some other party, subject to an escrow agreement prepared by the parties or an attorney.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.11, Register, February, 1983, No. 326, eff. 3-1-83; am. Register, August, 1994, No. 464, eff. 9-1-94; correction in (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 13-072: (1) renum. REEB 18.11, r. (2) Register May 2014 No. 701, eff. 7-1-14; EmR1620: Emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.

REEB 18.13 Bookkeeping system. Each firm shall maintain and be responsible for a bookkeeping system in the firm's office consisting of at least the following:

(1) CASH JOURNAL. A firm shall maintain a record, called a journal showing the chronological sequence in which real estate trust funds are received and disbursed as follows:

(a) For funds received, the journal shall include at least the date, the name of the party providing the money, and the amount.

(b) For disbursements, the journal shall include at least the date, the payee, the number of the check, share draft, or draft, and the amount.

(c) The journal shall identify each transaction by including at least the name of the principal, an identification number or other means of identification linking the journal to the transactions and the ledger described in sub. (2).

(d) The journal shall include a running balance for each day on which receipts or disbursements are entered.

(2) LEDGER. A firm shall maintain a record including the receipts and the disbursements as they affect each particular trans-

action, including transactions between buyer and seller, landlord and tenant, etc. The ledger entry shall include the names of all parties to a transaction, the dates and the amounts received and the name of the party or parties providing the money if different from the buyer. Ledger entries shall include at least the date, payee, number of the check, share draft or draft and amount when funds are disbursed. The ledger shall include a running balance and segregate each transaction. The firm shall maintain a separate ledger or separate section of the ledger for each of the various kinds of real estate transactions, including sales, rental collections, or mortgage and land contract collections.

(3) ACCOUNT RECONCILIATION. The firm or a person designated by the firm shall reconcile the real estate trust account or accounts in writing each month except in the case where there has been no activity during the month. The written reconciliation shall include at least the ending account statement balance, the date and amounts of the deposits in transit, the number of the check, share draft, or draft, and amount of checks, share drafts, or drafts written but not paid by the depository institution as of the ending date shown on the account statement to be reconciled, and the reconciled account statement ending balance.

(4) TRIAL BALANCE. The firm shall prepare or have prepared, in conjunction with sub. (3), a written listing of all open items in the real estate trust account. The written listing shall be referred to as the “trial balance”. The listing shall include at least the names of all parties to the transaction and the amount held in trust for the parties at the time corresponding to the account reconciliation. The firm may in lieu of the names of the parties to the transaction substitute the ledger page number or other means of identification from the ledger to label the funds in the trial balance.

(5) VALIDATION. The firm or a person designated by the firm 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.

(6) USE OF COMPUTERS. A computerized system may be used to maintain the firm’s bookkeeping system if:

(a) The system complies fully with subs. (1) to (5).

(b) All bookkeeping entries required by this chapter are made in the computerized system, even if other records are being simultaneously maintained.

(c) A backup copy of the bookkeeping records required under subs. (1) to (2) is made on any day on which entries are made in the computerized bookkeeping system. The backup copy shall be made on a disk or other medium which is separate and distinct from that on which the source documents reside.

(d) After complying with subs. (3) to (5), the document which records the account reconciliation, trial balance and validation is immediately copied to a backup medium and maintained by the broker.

(e) All records shall be made available for inspection and copying by the department and exact and completed copies promptly sent to the department upon the request of the department without charge to the department or board for the purposes of an audit or investigation.

(f) All computerized trust account records are retained pursuant to s. REEB 15.04.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.13, Register, February, 1983, No. 326, eff. 3-1-83; am. (intro.), (1) (b), (2) to (5), Register, June, 1984, No. 342, eff. 7-1-84; am. (1) (intro.), (a) and (b), (2) and (4), renum. (1) (c) to be (1) (d), cr. (1) (c) and (6), Register, August, 1994, No. 464, eff. 9-1-94; correction in (6) (f) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 13-072: am. (1) to (4), (6) (e) Register May 2014 No. 701, eff. 7-1-14; EmR1620: emerg. am. (intro.), (1) (intro.), (2) to (5), (6) (intro.), (e), eff. 7-1-16; CR 16-042: am. (intro.), (1) (intro.), (2) to (5), (6) (intro.), (e) Register February 2017 No. 734, eff. 3-1-17.

REEB 18.14 Violation of rules. A firm who fails to comply with the rules in this chapter shall be considered to have demonstrated incompetency to act as a licensed individual broker or a licensed broker business entity in a manner as to safeguard the interests of the public, as specified in s. 452.14 (3), Stats.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.14 and am. Register, February, 1983, No. 326, eff. 3-1-83; am. Register, June, 1984, No. 342, eff. 7-1-84; EmR1620: emerg. am., eff. 7-1-16; CR 16-042: am. Register February 2017 No. 734, eff. 3-1-17.