

R162-2f-403a. Trust Accounts - General Provisions.

- (1) A principal broker shall:
 - (a)
 - (i) if engaged in listing or selling real estate, maintain at least one real estate trust account in a bank or credit union located within the state of Utah; and
 - (ii) if engaged in property management, refer to Subsection R162-2f-403b(3);
 - (b) at the time a trust account is established, notify the division in writing of:
 - (i) the account number;
 - (ii) the address of the bank or credit union where the account is located; and
 - (iii) the type of activity for which the account is used.
- (2) A trust account maintained by a principal broker shall be non-interest-bearing, unless:
 - (a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account;
 - (b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale;
 - (c) the person designated under this Subsection (2)(b):
 - (i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and
 - (ii) operates exclusively to provide grants to affordable housing programs in Utah; and
 - (d) the affordable housing program that is the recipient of the grant under this Subsection (2)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.
- (3) A principal broker may not deposit into the principal broker's real estate trust account funds received in connection with rental of tourist accommodations where the rental period is less than 30 consecutive days.
- (4) Records of deposits to a trust account shall include:
 - (a) transaction number or unique client identifier, as applicable pursuant to Subsection R162-2f-401c(1)(k);
 - (b) identification of payee and payor;
 - (c) amount of deposit;
 - (d) location of property subject to the transaction; and
 - (e) date and place of deposit.
- (5) Any instrument by which funds are disbursed from a real estate or property management trust account shall include:
 - (a) the business name of the registered entity;
 - (b) the address of the registered entity;
 - (c) clear identification of the trust account from which the disbursement is made, including:
 - (i) account name; and
 - (ii) account number;
 - (iii) transaction number or unique client identification, as applicable, pursuant to Subsection R162-2f-401c(1)(k);
 - (iv) date of disbursement;
 - (v) clear identification of payee and payor;
 - (vi) amount disbursed;
 - (vii) notation identifying the purpose for disbursement; and

(viii) check number, wire transfer number, or equivalent bank or credit union instrument identification.

(6) Any instrument of conveyance that is voided shall be clearly marked with the term "void" and the original instrument retained pursuant to Subsection R162-2f-401k.

(7) If both parties to a contract make a written claim to money held in a principal broker's trust fund and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:

- (a) interplead the funds into court and thereafter disburse:
 - (i) upon written authorization of the party who will not receive the funds; or
 - (ii) pursuant to the order of a court of competent jurisdiction; or
- (b) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:
 - (i) no party has filed a civil suit arising out of the transaction; and
 - (ii) the parties have contractually agreed to submit disputes arising out of their contract to mediation.

(8) If a principal broker is unable to disburse trust funds within five years after the failure of a transaction, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a et seq.

(9) Trust account reconciliation. For each real estate or property management trust account operated by a registered entity, the principal broker of the entity shall:

- (a) maintain a date-sequential record of all deposits to and disbursements from the account, including or cross-referenced to the information specified in Subsections R162-2f-401c(1)(k);
- (b) maintain a current, running total of the balance contained in the trust account;
- (c)
 - (i) maintain records sufficient to detail the final disposition of all funds associated with each transaction; and
 - (ii) ensure that each closed transaction balances to zero;
- (d) reconcile the brokerage trust account records with the bank or credit union records at least monthly; and
- (e) upon request, make all trust account records available to the division for auditing or investigation.

(10) The principal broker shall notify the division within 30 days if:

- (a) the principal broker receives, from a bank or credit union in which the principal broker maintains a real estate or property management trust account, documentation to evidence that the trust account is out of balance; and
- (b) the imbalance cannot be cured within the 30-day notification period.

R162-2f-403b. Real Estate Trust Accounts.

(1) A real estate trust account shall be used for the purpose of securing client funds:

- (a) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f et seq.;
- (b) if the principal broker is also a builder or developer, deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling; and
- (c) collected in the performance of property management duties, pursuant to this Subsection (3).

- (2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into the real estate trust account more than \$500 of the principal broker's own funds.
- (3)
 - (a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish at least one property management trust account that is:
 - (i) separate from the real estate trust account; and
 - (ii) operated in accordance with Subsection R162-2f-403c.
 - (b) A principal broker who collects rents or otherwise manages property for no more than six individual units at any given time may use the real estate trust account to secure funds received in connection with the principal broker's property management activities.
- (4) Unless otherwise agreed pursuant to this Subsection (5)(b), a principal broker may not pay a commission from the real estate trust account without first:
 - (a) obtaining written authorization from the buyer and seller, through contract or otherwise;
 - (b) closing or otherwise terminating the transaction;
 - (c) delivering the settlement statement to the buyer and seller;
 - (d) ensuring that the buyer or seller whom the principal broker represents has been paid the amount due as determined by the settlement statement;
 - (e) making a record of each disbursement; and
 - (f) depositing funds withdrawn as the principal broker's commission into the principal broker's operating account prior to further disbursing the money.
- (5) A principal broker may disburse funds from a real estate trust account only in accordance with:
 - (a) specific language in the Real Estate Purchase Contract authorizing disbursement;
 - (b) other proper written authorization of the parties having an interest in the funds; or
 - (c) court order.
- (6) A principal broker may not release for construction purposes those funds held as deposit money under an agreement that provides for the construction of a dwelling unless the purchaser authorizes such disbursement in writing.
- (7) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:
 - (a) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or
 - (b) the parties execute a separate signed agreement containing instructions and authorization for disbursement.

R162-2f-403c. Property Management Trust Accounts.

- (1) As of January 1, 2014, a trust account that is used exclusively for property management purposes shall be used to secure the following:
 - (a) tenant security deposits;
 - (b) rents; and
 - (c) money tendered by a property owner as a reserve fund or for payment of unexpected expenses.
- (2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into a property management trust account any funds belonging to the principal broker without:
 - (a) maintaining records to clearly identify the total amount belonging to the principal broker; or
 - (b) performing a monthly line-item reconciliation of all deposits and withdrawals of funds belonging to the principal broker.

- (3) A principal broker may disburse funds from a property management trust account only in accordance with:
- (a) specific language in the property management contract or tenant lease agreement, as applicable, authorizing disbursement;
 - (b) other proper written authorization of the parties having an interest in the funds; or
 - (c) court order.
- (4) A principal broker who transfers funds from a property management trust account for any purpose shall maintain records to clearly evidence that:
- (a) prior to making the transfer, the principal broker verified the money as belonging to the property owner for whose benefit, or on whose instruction, the funds are transferred;
 - (b) any money transferred into an operating account as the principal broker's property management fee is earned according to the terms of the principal broker's contract with the property owner;
 - (c) any transfer for maintenance, repair, or similar purpose is:
 - (i) authorized according to the terms of the applicable property management contract, tenant lease agreement, or other instruction of the property owner; and
 - (ii) used strictly for the purpose for which the transfer is authorized, with any excess returned to the trust account.