

R162-2f-403. Trust Accounts.

- (1) A principal broker shall:
 - (a) maintain a trust account in a bank or credit union located within the state of Utah;
 - (b) notify the division in writing of:
 - (i) the account number; and
 - (ii) the address of the bank or credit union where the account is located; and
 - (c) use the account for the purpose of securing clients funds:
 - (i) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f et seq.;
 - (ii) 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
 - (iii) collected in the performance of property management duties as specified in this Subsection (4)(b).
- (2) A principal broker who deposits in any trust account more than \$500 of the principal broker's own funds violates Subsection 61-2f-401(4)(b).
- (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)
 - (a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish a property management trust account separate from the real estate trust account.
 - (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.
- (5) 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 (5)(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 (5)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.
- (6) Disbursement of funds held in trust.
 - (a) A principal broker may disburse funds only in accordance with:
 - (i) specific language in the Real Estate Purchase Contract authorizing disbursement;

- (ii) other proper written authorization of the parties having an interest in the funds; or
 - (iii) court order.
- (b) 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.
- (c) A principal broker may not withdraw any portion of the principal broker's sales commission:
 - (i) without written authorization from the seller and buyer; or
 - (ii) (A) until after the settlement statements have been delivered to the buyer and seller; and
(B) the buyer or seller has been paid for the amount due as determined by the settlement statement.
- (d) Unless otherwise agreed pursuant to this Subsection (6)(a), a principal broker may not pay a commission from the real estate trust account without first:
 - (i) closing or otherwise terminating the transaction;
 - (ii) making a record of each disbursement; and
 - (iii) depositing the withdrawn funds into the principal broker's operating account.
- (e) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:
 - (i) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or
 - (ii) the parties execute a separate signed agreement containing instructions and authorization for disbursement.
- (f) If both parties to a contract make a written claim to the earnest money or other trust funds and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:
 - (i) interplead the funds into court and thereafter disburse:
 - (A) upon written authorization of the party who will not receive the funds; or
 - (B) pursuant to the order of a court of competent jurisdiction; or
 - (ii) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:
 - (A) no party has filed a civil suit arising out of the transaction; and
 - (B) the parties have contractually agreed to submit disputes arising out of their contract to mediation.
- (g) 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.