

Rule 520-1-.08. Managing Trust Accounts and Trust Funds

(1) The Designated Trust or Escrow Account.

- (a) Brokers may maintain more than one designated trust or escrow account. Brokers shall notify the Commission of the name of the financial institution in which each account is maintained and each account's name or number within one month of opening each account.
- (b) A licensee shall place all cash, checks, or other items of value received by the licensee in a brokerage capacity into the custody of the broker holding the licensee's license as soon after receipt as is practicably possible.
- (c) A licensee shall place all cash, checks, or other items of value received by the licensee when the licensee is acting in the capacity of principal in the sale of interests in real estate owned by such licensee and all security deposits received on property owned by the licensee into the custody of the broker holding the licensee's license or in a trust account approved by that broker as soon after receipt as is practicably possible.
- (d) Unless otherwise agreed to in writing by the party or parties at interest, the broker holding such cash or checks shall promptly deposit said funds in a federally insured account designated by the financial institution as a trust account and registered with the Commission and shall make appropriate arrangement for the safekeeping of any items of value received other than cash or checks. If the broker elects to deposit any funds into an interest-bearing trust account, the broker shall obtain the written agreement of the parties indicating to whom the broker shall pay any interest earned on trust funds deposited into that interest-bearing account prior to depositing those funds into such an account.

See also O.C.G.A. §§ [43-40-2](#), [43-40-20](#), [43-40-21](#), & 43-40-25.

- (e) A broker may maintain the broker's own funds in a designated trust or escrow account only when they are clearly identified as the broker's deposit and only for the following purposes:
1. If the financial institution in which the account is maintained designates a specific minimum balance that must be maintained in order to keep the account open, the broker may maintain that amount in the account designated as the broker's funds.
 2. If the financial institution in which the account is maintained requires a service charge be paid for the account, the broker may maintain in the account in the broker's name a reasonable amount to cover that service charge. The broker may also maintain in the account in the broker's name a reasonable amount sufficient to cover other occasional financial institution charges and costs of maintaining the account including but not limited to charges for blank checks and deposit slips and fees for return of deposited checks which fail to clear.
 3. A broker may allow commissions due the broker that are being paid from funds of others held in the broker's designated trust or escrow account to remain in the account provided that:
 - (i) the broker's accounting system for trust or escrow accounts designates those commissions as the broker's funds and properly accounts for them and
 - (ii) each month the broker removes from the account any of the broker's funds that

exceed the minimum necessary to comply with subparagraph (a) or (b) above.

4. Only checks made payable to the broker may be used to withdraw monies designated as the broker's funds from the designated trust or escrow account.

(2) Accounting Requirements.

- (a) Every broker required by O.C.G.A. Section [43-40-22](#) to maintain a trust or escrow account shall maintain an accounting system in which each trust or escrow deposit is detailed in the following manner:
 1. Names of buyer and seller or tenant and landlord or member and community association or broker.
 2. Amount and date of deposit.
 3. Identification of property involved.
 4. The amount, payee and date of each check drawn on the escrow account in connection with that deposit.
- (b) Licensees may meet the accounting requirements of this or any other Commission rule with either manual or electronic accounting systems as the efficiency of the firm's business operations dictate. However, whether a manual or electronic, the accounting system must:
 1. include all the components required by law and sound business practices,
 2. be readily accessible,

3. be in a readily understandable format, and
4. be reasonably available to any authorized representative of the Commission.

(3) Disbursements.

- (a) A broker who disburses trust funds from the broker's designated trust or escrow account contrary to the terms of a contract for the sale or rental of real estate, or other contract creating the escrow, or who fails to disburse trust funds according to the terms of any contract creating the escrow, will be considered by the Commission to have demonstrated incompetence to act as a real estate broker in such manner as to safeguard the interest of the public.
- (b) A broker who disburses trust funds from a designated trust account under the following circumstances shall be deemed by the Commission to have fulfilled properly the broker's duty to account for and remit money which the broker is required to maintain and deposit in a designated trust account:
 1. upon the rejection of an offer to buy, sell, rent, lease, exchange, or option real estate;
 2. upon the withdrawal of an offer not yet accepted to buy, sell, rent, lease, exchange, or option real estate;
 3. at the closing of the transaction;
 4. upon securing a written agreement which is signed by all parties having an interest in the trust funds and is separate from the contract which directs the broker to hold the funds;
 5. upon the filing of an interpleader action in a court of competent jurisdiction;

6. upon the order of a court of competent jurisdiction; or
 7. upon a reasonable interpretation of the contract which directed the broker to deposit the funds.
- (c) A broker shall not disburse funds from a designated trust account as provided in paragraph (b) until the broker has reasonable assurance that the financial institution has credited the funds to the broker's trust account. When a broker makes a disbursement to which all parties to the contract do not expressly agree, the broker must immediately notify all parties in writing of the disbursement.
- (d) A broker who claims any part of the earnest money or other money paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee shall be deemed by the Commission to have complied with O.C.G.A. Section [43-40-20\(e\)](#) if:
1. in a sales transaction, the transaction has closed or the date of closing specified in the sales agreement and any extensions of that date have passed;
 2. in a lease or rental transaction, possession has been delivered to the tenant;
 3. in a lease/purchase transaction, the sales transaction has closed or the date of closing specified in the sales agreement and any extensions thereof have passed; or 4. the broker has secured a written agreement, separate from the sales contract or lease agreement, signed by all parties having an interest in the transaction who have agreed that the broker is entitled to any commission.

See also O.C.G.A. §§ [43-40-2](#), [43-40-20](#), [43-40-](#)

[21](#), & 43-40-25.

- (e) All refunds of earnest money must be paid by check or credited at the closing of a transaction.
- (f) The total of all checks written against each deposit should reflect a zero balance in the designated escrow or trust account relating to the closing of each individual transaction except when a portion of the deposit is transferred to the broker's name for the purpose of satisfying a commission. When such a transfer is made, the total of that transfer and all checks written against that deposit should reflect a zero balance.
- (g) If a licensee who owns a designated trust account files a bankruptcy petition, such licensee shall immediately notify the Commission in writing of the filing of that petition. If a qualifying broker or the firm that a licensee serves as qualifying broker files a bankruptcy petition, such qualifying broker shall immediately notify the Commission in writing of the filing of that petition.

See also O.C.G.A. §§ [43-40-2](#), [43-40-7](#), & 43-40-25.

- (4) **Trust Accounts for Property Management or Association Management.** Brokers who manage real property or community associations may maintain designated rental or assessment trust or escrow accounts separate from their other trust or escrow accounts.
 - (a) In paying bills on behalf of an owner or an association from any designated rental or assessment escrow or trust account, there must be enough money credited and deposited to the owner's or the association's account to cover said bill.
 - (b) Security deposits, if kept in a designated rental trust or escrow account, must be clearly identified and

credited to the tenant and there must always be a balance in the account equal to the total of said security deposits.

- (c) A licensee who manages rental property which the licensee owns must maintain any security deposits collected in a designated trust account and may not post a bond in lieu of maintaining such security deposits in a designated trust account.

(5) **Examination of Trust Accounts by the Commission.**

O.C.G.A. Section [43-40-20](#) provides that each broker required to maintain a designated trust or escrow account shall authorize the Commission to have that designated trust or escrow account(s) examined by a duly authorized representative of the Commission during each renewal period or at such other time as the Commission may direct upon reasonable cause.

- (a) With regard to the members of the Commission who are required to maintain such designated trust accounts, this examination may be done either:
 1. by the Commission member's engaging and paying a Certified Public Accountant to examine the broker's designated trust account or accounts to determine that that account is maintained in accordance with this rule and any other applicable rules, regulations, or statutes; or
 2. by the Real Estate Commissioner's engaging the services of an independent accountant to examine a member's designated trust account or accounts to determine that the account is maintained in accordance with this rule and any other applicable rules, regulations, or statutes.
- (b) Upon being contacted by the Commission's staff for purposes of conducting an examination of a trust account or accounts, a broker may elect to provide the

Commission with a report on the broker's designated trust account(s) from a Certified Public Accountant in lieu of an examination by a duly authorized representative of the Commission. The Commission, in its discretion, may elect not to accept such a report and conduct its own examination. The report of the Certified Public Accountant must take the following form:

(Date)

I, _____, a Certified Public Accountant, have this date examined the real estate brokerage trust accounts of _____ for the time period of _____ to _____ and find the handling of funds in these accounts to be in compliance with O.C.G.A. Sections [43-40-20](#) and [43-40-25\(a\)\(3\), \(4\), \(5\), and \(23\)](#) and Rules [520-1-.26](#), [520-1-.30](#), and [520-1-.34](#) of the Georgia Real Estate Commission. (Attach a statement explaining items, if any, which do not appear to be in compliance.) Said firm maintains the following real estate brokerage trust accounts:

(list account numbers and financial institution names)

Certificate Number Signature of Certified Public Accountant

Affirmed by Broker

- (c) Copies of accounting system entries for trust or escrow accounts, financial institution deposits, financial institution statements, receipts and other documents related to designated trust or escrow accounts shall be made available to authorized agents of the Commission upon reasonable request and at a reasonable cost to the Commission.

- (6) **Monthly Reconciliation of Trust Accounts.** A broker required to maintain a trust or escrow account shall cause to be made, at least monthly, a written reconciliation statement comparing the broker's total trust liability with the reconciled financial institution balance(s) of the broker's trust account(s). The broker's trust liability is the sum total of all deposits received, required by contract to deposit, and being held by the broker at any point in time.
- (a) The minimum information to be included in the monthly reconciliation statement shall be the date the reconciliation was undertaken, the date used to reconcile the balances, the name of the financial institution(s), the name(s) of the account(s), the account number(s), the account balance(s) and date(s), any deposit(s) in transit, the amounts of any outstanding check(s) identified by date and check number, an itemization of the broker's outstanding trust liability showing the amount and source of funds received and not yet disbursed, and other items necessary to reconcile the financial institution account balance(s) with the balance in the broker's checkbook(s) and with the amount of the broker's trust liability. The broker shall review the monthly reconciliation statement and maintain copies in the broker's files for a period of three years.
 - (b) Whenever the trust liability and the financial institution balances do not agree, the reconciliation statement shall contain a description or explanation for the difference(s) and any corrective action(s) taken with reference to shortages or overages of funds in the account(s). Whenever a trust financial institution account record reflects a service charge or fee for a non-sufficient check being returned or whenever an account has a negative balance, the reconciliation statement shall disclose the cause(s) of the returned check or negative balance and the corrective action(s) taken.
- (7) **Renewal Trust Account Examination.** When renewing a broker's license, a broker shall submit, along with the renewal

application:

- (a) a summary of data on the broker's trust account(s) on a form prepared by or approved by the Commission or
- (b) a report on the broker's designated trust account(s) from a Certified Public Accountant. The report of the Certified Public Accountant must take the form provided for in paragraph (10) of this Rule.

(8) **Abandoned Funds in a Trust Account.** Whenever a real estate licensee believes that a person who placed trust funds in the licensee's care has abandoned those funds, the licensee may not disburse those funds from a trust account unless:

- (a) the licensee's written authorization to hold those funds requires a particular disbursal;
- (b) the licensee has complied with the requirements of the Disposition of Unclaimed Property Act, O.C.G.A. Section [44-12-191](#), et seq.; or
- (c) the licensee has complied with such other statutory or court ordered requirements as may be appropriate to the circumstances.

See also O.C.G.A. §§ 3-40-2, [43-40-20](#), [43-40-21](#), & 43-40-25.

(9) **Trust Account Requirements for Non-Broker Licensee Owned Property.** O.C.G.A. Section [43-40-20\(h\)](#) authorizes a non-broker licensee to open a trust account for the deposit of trust funds received on properties the non-broker licensee owns if the broker holding the non-broker licensee's license approves the opening of such an account and if the non-broker licensee provides the broker with regular reports accounting for the funds in such an account. The Commission shall deem a property "owned by a licensee" if the deed for such property reflects either (a) only the name of the licensee or (b) only the name of a business entity of which the licensee is the sole owner, member, or stockholder. Whenever a licensee (a) owns any interest in a property that is less than

one hundred percent and (b) receives any trust funds on such property, such licensee must deposit those trust funds into the trust account of a firm licensed under this chapter.

Authority: O.C.G.A. Secs. [43-40-2](#), [43-40-25](#).