

58-3061. Trust accounts. (a) Unless exempt under subsection (f), each broker shall maintain, in the broker's name or the broker's firm name, a separate trust account in this state, or in an adjoining state with written permission of the commission, designated as such. All down payments, earnest money deposits, advance listing fees or other trust funds received in a real estate transaction by the broker or by the broker's associate brokers or salespersons on behalf of a principal or any other person shall be deposited or invested in such account unless all parties having an interest in the funds have agreed otherwise in writing. The account shall be with an insured bank or savings and loan association or credit union which is insured with an insurer or guarantee corporation as required under K.S.A. 17-2246, and amendments thereto. A broker shall not retain any interest accrued on moneys held in an interest-bearing trust account without the written consent of all parties to the transaction.

(b) Each broker shall notify the commission of the name of the bank, credit union or savings and loan association in which the trust account is maintained and of the account name by completing a consent to audit form obtained from the commission. A broker may maintain more than one trust account if the commission is advised of each such account as required by this subsection and authorized to examine all such accounts. If a separate trust account is maintained for a branch office, the branch broker shall maintain trust account records required by rules and regulations of the commission and all transaction files related to the branch office trust account.

(c) Each broker shall grant full access to all records pertaining to the broker's trust account to the commission and its duly authorized representatives. A trust account examination shall be made at such time as the commission directs.

(d) No payments shall be made from the broker's trust account other than a withdrawal of earned commissions payable to the broker or distributions made on behalf of the beneficiaries of the trust account. A broker shall not be entitled to 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 until the transaction has been consummated or terminated unless otherwise agreed in writing by all parties to the transaction.

(e) A broker shall make available, for inspection by the commission and its duly authorized representatives, all records relating to the broker's real estate business. Such records shall be kept in a form and for a term prescribed by the commission. An inspection shall be made at such time as the commission directs.

(f) The requirement of maintaining a trust account shall not apply to: (A) A broker whose license is on deactivated status; (B) a broker who acts as an associate broker; (C) a broker who is an officer, member, partner, shareholder or employee of an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation and who is not the supervising broker of an office of the association, corporation, limited liability company, limited liability partnership, partnership or professional corporation; or (D) a broker whose real estate activities, in the opinion of the commission, do not necessitate the holding of trust funds.

(g) Upon acceptance of an offer and deposit of earnest money in a broker's trust account, such deposit may be disbursed only:

- (1) Pursuant to written authorization of buyer and seller;
- (2) pursuant to a court order; or
- (3) when a transaction is closed according to the agreement of the parties.

(h) Nothing in this section shall prohibit the parties to a real estate contract from agreeing, in the sales contract, to the following procedure:

"Notwithstanding any other terms of this contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. Buyer and seller agree that failure by either to respond in writing to a certified letter from broker within seven days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit within 30 days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto."

(i) The commission may direct a broker to remit moneys from the broker's trust account to the commission for deposit into the real estate recovery revolving fund established within the state treasury by K.S.A. 58-3023, and amendments thereto, upon the following determinations having been made by the commission:

- (1) That the money has been in the broker's trust account for five or more years;
- (2) if the money was an earnest money deposit, that an earnest money dispute existed or the broker did not obtain written authorization of buyer and seller to disburse the funds; and
- (3) that the funds do not meet the criteria for payment to the state treasurer under the disposition of unclaimed property act.

History: L. 1980, ch. 164, § 28; L. 1983, ch. 76, § 7; L. 1986, ch. 209, § 13; L. 1991, ch. 163, § 4; L. 2010, ch. 104, § 9; July 1.