

### **10.8 Trust funds; trust accounts.**

(a) "Trust funds" means and includes money or other things of value not belonging to the principal broker but which are received by the principal broker or any of the principal broker's licensees in connection with a real estate transaction or real estate activity, including, without limitation, clients' moneys, earnest moneys, rents, advance fees, deposits, etc. For purposes of the Arkansas Real Estate License Law and Commission regulations, any funds deposited in a broker's trust account are presumed to be trust funds.

(b) Except as provided in Regulation 10.8(d), a principal broker shall not commingle trust funds with personal funds or other non-trust funds and shall not deposit or maintain trust funds in a personal account or any kind of business account except a specifically designated trust account.

(c) A principal broker who receives trust funds shall either maintain a separate trust account or shall have an escrow agent for all such trust funds. The principal broker of the firm shall be solely responsible and accountable for all trust funds received by the firm and all deposits to or disbursements from the trust account. The principal broker shall also be responsible and accountable for any funds delivered to an escrow agent selected by the principal broker, but shall not be responsible for funds delivered to an escrow agent selected by the parties. Except as authorized by Regulations 10.8(i) and 12.2, the trust account shall be non-interest bearing. The name on the account shall include either "trust" or "escrow" and must be located in an institution insured by either the FDIC or some other insuring agency of the federal government.

(d) A principal broker may maintain the broker's own funds in a designated trust account only when they are clearly identified as the broker's deposit and only for the following purposes:

(1) If the bank 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 bank in which the account is maintained requires a service charge to be paid for the account, the broker may maintain a reasonable amount to cover that service charge in the account in the broker's name, provided, however, that such amount shall not exceed the total of six (6) months service charges.

(e) With regard to each separate trust account, the principal broker shall submit to the Commission in writing the following:

(1) Name and number of the account.

(2) Name and address of the bank.

(3) Date the account was opened.

The principal broker shall keep the Commission informed at all times of the foregoing details of each separate trust account.

(f) In addition to the requirements of Regulation 10.8(e), the principal broker shall submit the same information in writing immediately upon any of the following events or occurrences:

(1) Commission approval of real estate firm name.

(2) Change of real estate firm name.

(3) Designation of new principal broker.

(4) The account is changed in any respect or closed.

(g) (1) No later than three (3) days following the execution of a real estate contract by both seller and buyer, all trust funds delivered to the principal broker, shall be either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. All other funds delivered to the broker pending performance of any act shall be, no later than three (3) days, either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. Should the third (3rd) day be a Saturday, Sunday, or legal

holiday, then the third (3rd) day is extended to the next day which is not a Saturday, Sunday, or legal holiday. The broker shall maintain an accounting of all funds delivered to the broker and shall keep a signed receipt for any funds the broker delivers to an escrow agent. The broker remains responsible for the funds if the broker selected the escrow agent, but not if the parties selected the escrow agent. A broker shall at all times keep detailed records of all funds coming into the broker's possession and all disbursements made by the broker.

(2) All trust account bank statements shall be reconciled in writing at least monthly and balanced to the total amount of trust funds deposited in the account which have not been disbursed. Copies of such reconciliations shall be kept by the broker for at least three (3) years or for such time as may be required by law, whichever is greater.

(3) All trust fund records, including bank reconciliations, shall be open to inspection by and made available to the investigative staff of the Commission at the firm's office or other location designated by the Commission.

(h) (1) All security deposits made under a rental or lease agreement shall be deposited in the principal broker's trust account, including those deposits made on property owned by any licensee licensed under the principal broker unless the licensee who owns the property has a written agreement with the tenant providing that the licensee may keep the security deposit in the licensee's separate account. A copy of any such agreement shall be furnished to the principal broker by the licensee.

(2) Provided, however, that a principal broker shall not be responsible for the failure of those licensed under such principal broker to comply with Regulation 10.8(h)(1) as long as the principal broker is in compliance with Regulation 10.4.

(i) Nothing in this Regulation 10.8 shall be deemed to prohibit a broker from maintaining certain funds or deposits in particular transactions in an interest-bearing account when required to do so by law or valid regulation of any governmental agency, nor shall it prohibit a broker from maintaining an interest-bearing

account while participating in the Interest on Real Estate Brokers' Trust Account program authorized by Section 24 of Act 690 of 1993 [A.C.A. §17-42-601 et seq.] and Regulations 12.1 and 12.2.