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Trust Accounts:

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Calendar

GREC Brokerage Course & Trust Accounts Class

Dates:

- April 27 & 28, 2011
Camden County Board
(912) 882-5806
<http://www.cccbtor.com>
- May 18 & 19, 2011
Greater Rome Board
(706) 295-1727
<http://grbor.com/>
- June 15 & 16, 2011
Athens Area Association
(706) 353-1126
www.realtorsathens.com

Common Violations Class

Dates:

- April 20, 2011
Hall County Board
- April 26, 2011
Valdosta Board
- April 27, 2011
Tift Area Board
- April 28, 2011
SE GA Board

Georgia Instructor Training Workshop Dates:

- May 5 & 6, 2011
GIT - Atlanta
<http://www.grec-git.com/>

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Georgia Real Estate Commission

Suite 1000
International Tower
229 Peachtree Street NE
Atlanta, GA 30303-1605
Phone 404-656-3916

Trust Accounts: Trials and Tribulations

The Basics:

1. **A licensee must place all cash, checks, or other items of value** (trust monies) 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.
2. Unless otherwise agreed to in writing by the party or parties at interest, **the Broker holding such trust deposits must deposit those funds** in a FDIC checking account designated by the bank as a Trust Account and registered with the Commission.
3. **A Broker who disburses trust funds contrary 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. [Rule 520-1-.08\(3\) \(a\)](#)

The Georgia License Law, Rules, and Regulations are very clear. Trust funds must go in a properly designated Trust Account that is registered with the Commission. Sounds direct enough, yet the most common type of violations usually involve the handling of trust funds. What is it that seems to cause the confusion? Here are a few observations based upon the review of actual cases acted upon by the Commission:

1. Lack of supervision by Brokers
2. Inadequate Policies and Procedures (P&P): poorly written policies and unclear procedures, or licensees are never given written P&P
3. Failing to understand that only the Broker is or can be responsible for the trust funds

4. Poor accounting practices on the part of the Broker
5. Not reconciling the Trust Account monthly
6. Poor documentation in tracking trust funds
7. Comingling personal funds in the Trust Account
8. Failing to notify the Commission of ANY changes in the Trust Account, such as a change in the bank name, or location.

It could be that agents don't know what to do with the money or they don't understand that there is no option to do anything other than give it to his/her Broker ASAP (or to the person designated by the Broker).

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Trust Accounts: Trials & Tribulations

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For example, a salesperson cannot decide to hold an earnest money check until the offer is accepted. It must be given to the Broker holding his/her license. If the signed contract states that the check is postdated and is to be held in the file, it still must be given to his/her Broker.

Brokers are REQUIRED to instruct licensees affiliated with the firm in the provisions of the Georgia License Laws, Rules, and Regulations. When a salesperson or associate broker does mishandle trust funds, the Broker may be at fault just as much as the agent. For the Broker not to be in violation, he/she would have to prove:

- 1) The Broker had reasonable procedures in place for supervising the licensee's actions;
- 2) The Broker did not participate in how it was improperly handled; **and**
- 3) The Broker did not ignore or ratify the situation.

Clearly, it is in the Broker's best interest to be sure that all trust deposits are handled properly. The Broker is responsible for all the trust/escrow funds held in the firms' Trust Accounts. If the deposit is other than cash or checks, then the Broker must make appropriate arrangements for safekeeping of those items as well.

Consider the following recent case. A routine office examination identified the following violations resulting in a Citation, fine, and education program for the Broker.

1. Failed to notify the Commission that the bank where the firm's trust account was located changed names
2. Failed to timely notify the Commission of the closing of a Trust Account and the opening of another
3. Failed to monitor and review Trust Account activities for properties owned by his affiliates
4. Failed to instruct licensees in the provisions of the License Law Rules and Regulations.

Quick Question: A salesperson has an offer written up with an earnest money check. Thirty minutes later on the way to the seller's to deliver the offer, the buyer rescinds the offer. Can the salesperson just give the check back to the buyer? **NO!!!!** The check should be given to his/her Broker first! Only the Broker can disburse trust funds.



Focus on Terminology: "Escrow"

The term "escrow" is often used to describe trust funds. If something is held in escrow, it is held in trust. The Georgia Real Estate License Law, Rules, and Regulations use both terms, trust and escrow, interchangeably when referring to other peoples' money. By general definition, "escrow means money (or a piece of property) delivered to a third person to be delivered by him to the grantee only upon the fulfillment of a condition," or "a fund or deposit designed to serve as an escrow." It can also mean "to place in escrow." Trust is defined as, "a property interest held by one person for the benefit of another." ¹

The concept of trust or escrow requires that the third party holding the thing of value must be neutral when determining its future. The most common example is earnest money. Quite often the Broker must make a reasonable interpretation to determine how to disburse earnest money or other trust deposits. Unfortunately the most common violations of the License Law, Rules, and Regulations involve trust funds, so it is a critical concept for the licensee to understand. The Broker must have good policies and procedures in place to provide for the safekeeping of all trust or escrow funds any of the licensees affiliated with him/her may come into possession.

¹ Quoted Source: Webster's Collegiate Dictionary