

21 NCAC 58A .0116 HANDLING OF TRUST MONEY

(a) Except as provided in Paragraph (b) of this Rule, all monies received by a broker acting in his or her fiduciary capacity (hereinafter "trust money") shall be deposited in a trust or escrow account as defined in Rule .0117(b) of this Section no later than three banking days following the broker's receipt of such monies.

(b) Exceptions to the requirements of Paragraph (a):

- (1) All monies received by a provisional broker shall be delivered upon receipt to the broker with whom he or she is affiliated.
- (2) All monies received by a non-resident commercial broker shall be delivered as required by Rule .1808 of this Subchapter.
- (3) Earnest money or tenant security deposits paid by means other than currency and received by a broker in connection with a pending offer to purchase or lease shall be deposited in a trust or escrow account no later than three days following acceptance of the offer to purchase or lease; the date of acceptance of the offer or lease shall be set forth in the purchase or lease agreement.
- (4) A broker may accept custody of a check or other negotiable instrument made payable to the seller of real property as payment for an option or due diligence fee, or to the designated escrow agent in a sales transaction, but only for the purpose of delivering the instrument to the seller or designated escrow agent. While the instrument is in the custody of the broker, the broker shall, according to the instructions of the buyer, either deliver it to the named payee or return it to the buyer. The broker shall safeguard the instrument and be responsible to the parties on the instrument for its safe delivery as required by this Rule. A broker shall not retain an instrument for more than three business days after the acceptance of the option or other sales contract.

(c) Prior to depositing trust money into a trust or escrow account that bears interest, the broker having custody over the money shall first secure written authorization from all parties having an interest in the money. Such authorization shall specify and set forth in a conspicuous manner how and to whom the interest shall be disbursed.

(d) In the event of a dispute between buyer and seller or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by the broker, the broker shall retain the deposit in a trust or escrow account until the broker has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, the broker may deposit the disputed monies with the appropriate Clerk of Superior Court in accordance with the provisions of G.S. 93A-12. If it appears that one of the parties has abandoned his or her claim to the funds, the broker may disburse the money to the other claimant according to the written agreement. Before doing so, however, the broker must first make a reasonable effort to notify the absent party and provide that party with an opportunity to renew his or her claim to the funds. Tenant security deposits shall be disposed of in accordance with G.S. 42-50 through 56 and G.S. 42A-18.

(e) A broker may transfer an earnest money deposit from his or her trust or escrow account to the closing attorney or other settlement agent no more than 10 days prior to the anticipated settlement date. A broker shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(f) A broker shall not disburse trust money to or on behalf of a client in an amount exceeding the balance of trust money belonging to the client and held in the trust account.

(g) Every broker shall safeguard any money or property of others that comes into the broker's possession in a manner consistent with the Real Estate License Law and Commission rules. A broker shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that it was intended for, or permit or assist any other person in the conversion or misapplication of such money or property.

History Note: Authority G.S. 93A-3(c); 93A-6;

Eff. April 1, 2013;

Amended Eff. July 1, 2015;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.