

**IREC/IAR®**  
**Property Management Work Group**

Meeting Notes  
Tuesday, May 20, 2013; 1:00 p.m.

- ✓ Andy Enrico, Chair
  - ✓ Marc Banner
  - ✓ Craig Boyack, IREC
  - ✓ Pam Bullock, Idaho Affordable Housing Assn.
  - ✓ Trish Callies (by phone)
  - ✓ Steve Cannariato (CCIM)
  - ✓ Jake Durtschi, Eastern Idaho Property Assn. (by phone)
  - ✓ John Eaton, IAR®
  - ✓ Matt Engel
  - ✓ Steve Fender, IREM
  - ✓ Senator Russ Fulcher
  - ✓ Brad Golphenee
  - ✓ James Holtzclaw
  - ✓ LeAnn Hume
  - ✓ Jeanne Jackson-Heim, IREC
  - ✓ Mike Larsen, DOF
  - ✓ Miguel Legaretta, ACAR®
  - ✓ Paul Lorenzen
  - ✓ Jim Reimer, NARPM
  - ✓ Tayson Rockefeller
  - ✓ Brian Shaffer, NARPM
  - ✓ Geoff Wardle, BOMA
  - ✓ Amy Wernsing, Governor's Office (by phone)
- Idaho Real Estate Commission  
575 E. Parkcenter Blvd., Suite 180  
Boise, Idaho 83706

I. Chair Andy Enrico called the meeting to order at 1:00 p.m. Attendees are noted with a check mark above. Also present were Commission attorney Kim Coster and Marc Lebowitz.

II. Recap of Discussions to Date – Chair Enrico summarized the discussions from the previous work group meetings.

III. Discussion of Draft – Trust Accounting and Property Management Agreements

Chair Enrico presented draft legislation pertaining to trust accounting procedures and property management agreements (an annotated copy reflecting the meeting discussions is attached).

There was lengthy discussion regarding industry practices in property management accounting, which differ from those in real estate brokerage transactions. Specifically, there are varied practices for handling security deposits – some managers hold them and others convey

them directly to the owners. Some keep each property's deposits in separate accounts, and others keep all deposits in one account but maintain an account ledger for the deposits. There was consensus that the law should not specify how security deposits are to be handled, as long as they are maintained in accordance with a written agreement with the property owner.

There was further discussion regarding the required timing to deposit funds into the bank and provide final accountings to the owners. Because of the nature of property management, an immediate deposit of funds may not be as critical as it is with a real estate transaction. It is important to allow sufficient time at the termination of a management agreement to receive and pay final utility bills and other expenses.

There was also discussion about commingling of funds and owner accounts. It was pointed out that the greatest number of complaints pertains to mishandling of owner rent monies; thus it will be important to ensure that one owner's money is not used to fund another owner's expenses and that rental income is properly accounted for and transmitted to the owner. Steve Fender volunteered to rewrite the accounting section of the draft legislation and circulate it for review and comment.

Commercial property management differs from residential management in some respects. There was also discussion about what the proposed legislation would mean to the commercial managers.

Chair Enrico reviewed the required elements for property management agreements contained in the draft legislation. There was consensus that most of the items were appropriate and commonly used in the industry. A few items were considered too detailed and will be removed from the draft.

Concerns were raised regarding the proposal that a real estate licensee would automatically be licensed to perform property management functions. There was strong feeling on the part of some attendees that the property management license should be completely separate, and a real estate licensee who manages properties for others should be required to obtain the property management license in addition to the real estate license. This is seen as a fairness issue for those property managers who have been in business for many years. They could be perceived as brand new in the business due to having a brand new license, compared to real estate agents who could truthfully say they have been licensed for longer periods of time, which could put them at a disadvantage in the industry.

There was additional discussion regarding property manager representation on the Commission should a property management licensing requirement become law. There was broad agreement that it would be desirable and important to have a property manager licensee on the Commission.

IV. Chair Enrico adjourned the meeting at 2:50 p.m.

**For Discussion Purposes Only – Trust Accounting and Property Management Agreements**

Section 54-2044A. Property Management Trust Account Record Keeping. Each principal property manager engaging in property management shall create and maintain the following records regarding any property management trust account, and shall reconcile and balance the trust account with all ledger records, check register and the bank statement at least once each month. Any electronic recordkeeping system shall have a generally accepted and adequate backup system at all times.

(1) Account Maintenance ledger record. The principal property manager shall initiate and maintain an account maintenance ledger record identified as "property management trust account maintenance fund" in accordance with section 54-2044(1), Idaho Code.

(2) Individual ledgers. An individual trust ledger shall be immediately created whenever a principal property manager, or any licensed or unlicensed person acting for the principal property manager, receives funds in consideration of any property management transaction, even if the consideration will be deposited with, held by, paid directly to, transferred or delivered to another approved depository, or any other person, as directed in writing, and signed by both parties to the transaction. Receipt of consideration, for purposes of this chapter, occurs when the principal property manager or any person acting for the property manager, takes physical possession of the consideration or assumes the responsibility to deliver or deposit it.

(3) Additional requirements for creating an individual trust ledger record. Individual trust ledger record must each be assigned an account number associated with each managed property. In addition, each individual trust account ledger record created must contain:

- (a) The name or names of the owner of the managed property;
- (b) The address or legal description of the property;
- (c) Identification of tenant to which the account transaction relates, if applicable;
- (d) The date of each deposit and disbursement;
- (e) The name of the payor or payee;
- (f) The amount and check number of each disbursement;
- (g) The amount and nature of the deposit;
- (h) The current balance; and

**Comment [J1]:** Steve Fender is going to revise the entire trust accounting section and circulated a new draft.

**Comment [J2]:** "Maintenance" means something very different in property management than it does in the real estate trust accounting law – needs to be clarified that it is funds to cover check charges, etc. and not property maintenance.

**Comment [J3]:** May not be possible in property management.

(i) Within ~~thirty~~ninety (930) days after the property management agreement is terminated for a managed property, the individual ledger record for the property must show the final disposition of the transaction and funds.

A property manager's trust account ledger records must be maintained with one (1) file, electronic or hard copy, for terminated managed property accounts and one (1) file for active property management accounts. Ledger records shall be kept in alphabetical order or by transaction number. Ledger posting must be kept current at all times.

(4) Trust account checks. The property manager shall maintain consecutively numbered checks for each trust account, which checks must:

(a) Contain the property manager's licensed business name and current business address; and

(b) Be imprinted with the words "property management trust account" or "property management security deposit trust account"

(6) Check register or journal. A check register or journal must be posted properly, maintained and kept current by the property manager at all times even if funds are held at another other approved depository. The register must itemize deposits and disbursements in consecutive order, and must also clearly show:

(a) The date of the deposit or disbursement;

(b) The payee or payor;

(c) The amount and purpose of any deposits or disbursements;

(d) The check number;

(e) The management property account number; and

(f) The current cash balance remaining in that trust account.

(7) Duplicate bank deposit record. The broker shall maintain, in hard copy, a duplicate bank deposit record, which shall be imprinted with the broker's business name and the words, "property management trust account." Each deposit record shall state:

(a) The name of the person or firm placing the money with the broker's office;

(b) The date of the deposit; and

(c) The transaction number. The duplicate deposit record shall be retained in the bank deposit records in proper chronological sequence and shall be date stamped by the bank

or the bank deposit receipt shall be attached to the duplicate deposit record in the deposit records.

(d) An indication whether any portion of the funds are cash and if so, proof that a receipt was provided to the cash payor.

(8) Property management trust account checks. For each trust account, the broker shall maintain a set of consecutively numbered checks, which shall be imprinted with the broker's business name and address and the words "property management trust account" or "property management security deposit trust account." Any check drawn on such a trust account shall identify the managed property associated with the check on the face of the check. Any voided trust account check shall be marked "VOID" and retained in numerical sequence with the other checks for the banking month.

(9) Additional records. The principal property manager shall maintain copies of all invoices and receipts associated with the trust account disbursements.

(10) Within ~~ninety~~ (96) days of the termination of a management agreement, the principal property manager shall send the owner a final accounting. The final accounting shall contain transactions that occurred after the last monthly accounting.

(11) All records required in this section must be kept by the principal property manager for three (3) calendar years after the year in which the event occurred, the property management agreement terminated, all funds were disbursed, or the agreement and any written extension expired.

**54-2045. Trust account deposits and receipt of consideration.** Except as otherwise provided in this section, all entrusted funds received by a broker or - principal property manager in connection with a regulated real estate transaction, including, but not limited to, earnest money, rent and security deposits, shall be deposited into a real estate trust account maintained by the broker or property manager at an approved depository. In addition, all earnest money, option money, promissory notes, tangible personal property and any other consideration received by a broker, regardless of form, must be accounted for upon receipt and in the following manner:

(1) Time of deposit. All moneys received by a broker for another in a real estate transaction are to be deposited on or before the banking day immediately following the receipt day of such funds, unless written instructions signed by the party or parties having an interest in the funds direct the broker to do otherwise.

(2) Checks held in uncashed form. A ledger record must also be created when the broker or associate receives a check to be held for later deposit. However, such a check must be

accompanied by written instructions in the purchase and sale agreement or offer to withhold deposit until a time certain, such as acceptance of the offer by the seller.

(3) Consideration returned before deposit. A ledger record must also be created even if the consideration received by a broker or salesperson is to be returned before it has been deposited or otherwise transferred. A written and dated notation must be placed on both the purchase and sale agreement, offer or other document dealing with the consideration, and on the ledger record. No consideration is to be returned without the knowledge and consent of the broker.

(4) Consideration received by sales associate. All consideration, including cash, checks held in uncashed form and promissory notes, received by a sales associate in connection with a real estate transaction shall be immediately delivered to the broker or the broker's office.

**54-2046. Trust account disbursements.** The broker or principal property manager who holds entrusted funds or like payments in lieu of cash received in a regulated real estate transaction is fully responsible for all such funds until a full accounting has been made to the parties involved. All cash or like payments in lieu of cash must be disbursed from the real estate trust or property management account only in accordance with this section. Failure to comply with this section is a violation of license law and will subject the broker or property manager to discipline.

(1) Written authorization required. No disbursements shall be made without a written, signed authorization by the parties to the transaction or an order of the court. Written and signed instructions from parties to the transaction may be in the purchase and sale agreement, lease agreement, property management agreement or in a separate document.

(2) Disbursements in advance of closing. No disbursements shall be made in advance of closing or before the happening of a condition set forth in the purchase and sale agreement or other agreement in a regulated real estate transaction to the seller, closing agent or any other person without the required written and signed authorization.

(3) Disbursements to escrow agent. When set forth in the purchase and sale agreement or other agreement that funds are to be disbursed to the person or company named as the escrow closing agent or agency, such disbursement shall be made to the person, company, agent or agency on or before the day of closing, and a receipt for such disbursement shall be retained in the broker's transaction file.

(4) Withdrawal of broker's or property manager's commission. No disbursement of any portion of the broker's property manager's commission shall take place without prior written, signed authorization from the buyer and seller or until copies of the closing statements, signed by the buyer and seller, have been delivered to the broker and until the buyer or seller has been paid the amount due as determined by the closing statement.

(5) Provision for forfeited earnest money. The purchase and sale agreement must include a provision for division of moneys taken as earnest money when the transaction is not closed and such moneys are retained by any person as forfeited payment.

(6) Withdrawal of property management fee. A property manager shall disburse earned management fees from the property management trust account at least once each month unless a different schedule of disbursement is specified in the property management agreement.

(7) Disbursement or transfer by principal property manager. A property manager shall not disburse funds from a property management trust account or security deposit account unless there are sufficient funds in the ledger account against which the disbursement is made.

(8) A property manager may only transfer funds from an owner's ledger account to one or more different owners' ledger accounts if:

(a) Each of the affected owners authorizing the transfer have signed and dated an agreement authorizing such transfer that is separate from any property management agreements;

(b) at the time of transfer, the property manager enters the transfer information on each affected owner's ledger account, including but not limited to the amount of the transfer, date of transfer and source or destination of transferred funds, as appropriate.; and

(c) The property manager gives each owner a separate monthly accounting on the transfer or includes the accounting of the transfer activity in the regular monthly report to the owner.

(9) A property manager may only transfer funds between two or more owner's ledger accounts for the same owner if the owner has given prior written approval and property manager enters the transfer information in each of the affected ledger accounts.

**54-2047. Disputed earnest money or security deposit.** (1) Any time more than one (1) party to a transaction makes demand on funds or other consideration for which the broker or principal property manager is responsible, such as, but not limited to, earnest money deposits, or security deposits the broker shall:

(a) Notify each party, in writing, of the demand of the other party; and

(b) Keep all parties to the transaction informed of any actions by the broker or property manager regarding the disputed funds or other consideration, including retention of the funds by the broker or property manager until the dispute is properly resolved.

(2) The broker may reasonably rely on the terms of the purchase and sale agreement, lease agreement, property management agreement or other written documents signed by both parties to determine how to disburse the disputed money and may, at the ~~broker's own~~ discretion or the broker or property manager, make such disbursement. Discretionary disbursement by the broker or property manager based on a reasonable review of the known facts is not a violation of license law, but may subject the broker or property manager to civil liability.

(3) If the broker or property manager does not believe it is reasonably possible to disburse the disputed funds, the broker may hold the funds until ordered by a court of proper jurisdiction to make a disbursement. The broker or property manager shall give all parties written notice of any decision to hold the funds pending a court order for disbursement.

**NEW SECTION**

**54-2052AXX. Property management agreement required.** (1) A principal property manager and its associated property managers shall not engage in property management without a written property management agreement with the owner.

(2) A property management agreement required by this section shall contain:

(a) The licensed business name and address of the property management company or brokerage managing the property;

(b) The name and address of the owner of the managed property;

(c) Instructions for depositing rents & other consideration received.

(d) The address or legal description of the property being managed and the number of units;

(e) The duties and responsibilities of the property manager and the owner;

(f) The authorities and powers given by the owner to the property manager;

(eg) The date when the property management agreement begins and ends, and a provision stating whether the owner agrees or not to automatic annual renewal of the property management agreement;

(fh) A provision stating the method for early termination of the property management agreement;

(i) The management fees, application fees, screening fees, any other fees to be collected or received by the property manager;

~~(jg) The amount of, or the method for computing the amount, of compensation to ~~the~~ be paid for licensee managing the property;~~

~~(kh) The amount of ~~or the method of determining~~ the minimum security deposit to be collected from tenants for each unit managed;~~

~~(l) The name and address of the depository where the licensee's property management trust account is kept and where the security deposit will be held together with the account number. This information shall also be contained in the lease;~~

Comment [J4]: This section may not be needed in the owner's agreement.

~~(m) A provision setting forth the procedures governing returning or retaining of any security deposit. This provision shall also be contained in the lease;~~

Comment [J5]: Does this sentence need to be included in this section?

~~(n) A provision setting forth the conditions under which the property manager is authorized to pay expenses related to the real estate being managed;~~

Comment [J6]: Not needed.

~~(o) A description of the monthly statements of accounting the property manager will provide the owner;~~

Comment [J7]: May be redundant?

~~(p) A copy of the form of the lease document which the licensee shall have the tenant sign shall be attached to the agreement;~~

~~(q) A provision whereby the owner certifies that he has received a duplicate copy of the agreement and the attached lease form;~~

Comment [J8]: Not needed.

and

~~(r) The signature and date of signature of the owner and the licensee.~~

~~(7) ~~Within~~ No later than ~~sixty~~ninety (960) days ~~after~~of the termination of a management agreement, a licensee shall send the owner a final accounting. The final accounting shall contain transactions that occurred after the last monthly accounting.~~

~~(8) A licensee who owns the real estate being managed shall:~~

~~(a) Comply with the accounting requirements relating to receipt, deposit and adjustment of tenant security deposits; and~~

~~(b) Be exempt from the other accounting requirements specified in this administrative section.~~