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## **REAL ESTATE COMMISSION**

**BROKER BULLETIN**  
October 2007

Dear Designated Broker:

The Commission gets quite a few inquiries about title companies maintaining broker trust accounts, and we wanted to give you some additional information about this practice from the Commission's perspective.

When a licensee receives earnest money, or other consideration, from a consumer they are required to surrender the consideration to their designated broker immediately. This is a simple matter, and all licensees seem to understand this concept. The designated broker has several options as to what they do with the consideration.

If the contract requires it, the broker can forward the funds to the seller. This is usually only required in new construction when the builder requires the funds. The brokerage needs to obtain a receipt for handing the funds off.

Other funds must be placed in the brokers' real estate trust account. This account can be opened in a variety of places. Trust accounts can be opened with federally chartered banks and trust companies, state or federally chartered savings and loan associations, properly licensed title insurance companies, or with an actively licensed attorney at law.

State law requires certain balancing and accounting practices from the broker for the funds they are responsible for. These rules apply even if funds are placed at a title company or with an attorney. Most of the problems the Commission sees in this area are involve funds placed at a title insurance company. This article will focus on placing of funds at a title insurance company.

The designated broker must file a "Notice of Opening a Trust Account", available at [www.irec.idaho.gov](http://www.irec.idaho.gov), with the Commission for all depositories where they place entrusted funds. This applies to not only the normal trust account, but a title insurance company as well. Failure to file the "Notice of Opening a Trust Account" with the Commission is a violation of license law.

The designated broker is required to balance all of their trust accounts monthly. This requires the preparation and delivery of a monthly statement by the depository. In this instance if the title company will not provide a monthly statement for all funds they hold, the brokerage cannot use the title company as a depository.

State law requires the designated broker to be in complete control of all entrusted funds. This rule effectively eliminates most title insurance companies from holding entrusted funds. Let's use the example of a transaction that fails, and the title company requires instructions signed by the buyer and seller before releasing funds. In this instance the title company is in complete control, and the designated broker is in violation of the license law.

An additional concern exists over entrusted funds placed with title companies. The Idaho Department of Insurance will not let title insurance companies hold entrusted funds without signed escrow instructions in place. If they do, the title company is in violation of their own state licensing laws. Because most escrow instructions are signed at the closing table these days, there could be an accountability problem because of this. The Idaho Real Estate Commission has seen cases where the title company will hold a check uncashed, because they do not have signed escrow instructions. The designated broker could have a real problem if these funds were not honored when the title company got around to depositing the check.

While it is possible to place entrusted funds into other locations than a regular real estate trust account, in many cases it takes more effort than maintaining a trust account at a bank. To summarize the requirements:

- All depositories must be declared at the Idaho Real Estate Commission, by filing of a "Notice of Opening a Trust Account".
- The broker is required to balance and account for entrusted funds monthly, and to retain proof of having balanced the entrusted funds.
- The broker is required to be in complete control of all entrusted funds at all times. Any requirement by someone else to allow the release of funds, places the broker in violation of the license law.

We hope you have found this information helpful. If you have any questions or require further information, please contact Craig Boyack, Chief Investigator, at (208) 334-3285 ext. 114 or [craig.boyack@irec.idaho.gov](mailto:craig.boyack@irec.idaho.gov).

Sincerely,

A handwritten signature in black ink that reads "Steve Kohntopp". The signature is written in a cursive, flowing style.

Steve Kohntopp, Chair  
Idaho Real Estate Commission