

Failure to Account for Money and Property of Others

Idaho Code 54-2060 (3) cites, as a license law violation, the *failure to account for or remit, any property, real or personal, or moneys coming into the persons possession which belong to another*. There have been instances where licensees are improperly handling money, real property, and personal property of others. This Guideline will cover both the correct and incorrect ways to handle these items.

A. Money

Every licensee knows that mishandling entrusted funds, usually an earnest money deposit of a buyer, is a serious license law violation. Although it is very rare for a licensee to steal client funds, there are a few other ways to improperly handle entrusted funds.

1. **Delivering earnest money to your broker late.** Idaho Code 54-2045 (4) states *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. (emphasis added)* Once entrusted funds are delivered to the broker, the broker must properly handle those funds by following the written instructions of the parties. Often the written contract states the funds will be deposited in the broker's trust account or a title company upon acceptance or shortly thereafter. If that is the case, the funds are still to be delivered to the broker immediately and the broker safeguards those funds and follows the written instructions.
2. **Holding the funds personally.** Some licensees have erroneously thought they are to handle the client funds during contract negotiations and deliver them to their broker or a title company later. This is always wrong. Never personally hold a client's earnest money deposit, or other entrusted funds, waiting for a future occurrence like offer acceptance, contingency removal, or other date in the future. Remember to always deliver all entrusted funds immediately to your broker along with the written instructions on how to handle the funds.
3. **Improper delivery of funds to a title company.** Many contracts call for a third-party title company to hold the entrusted funds during escrow. If a contract calls for this, licensees are still required to properly handle those funds while in their possession. If the buyer hands a sales associate the deposit funds and contract stipulates the funds are to be delivered to the title company right away, the sales associate, under their broker's direction, may personally deliver those funds to the title company. If the contract calls for the funds to be delivered and deposited at the title company at a later date, like upon acceptance, then the sales associate must immediately deliver the funds to their broker or broker's office. From there, the broker will safeguard and deliver the funds timely to the title company.

This guideline is not a new law but is an agency interpretation of existing law.

For more information on this guideline, please contact:

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B. Real Property

Many licensees are surprised to learn the statute includes rules to properly handle the real property of others in a real estate transaction. There are certain instances in which licensees unknowingly violate this portion of license law.

1. **Allowing unaccompanied access to property.** A licensee may not orchestrate a way for someone to enter listed property without a licensee present. Leaving a door unlocked, hiding a key, giving a garage door or gate access code to anyone for the purpose of letting themselves in without you is a violation. This prohibition extends not only to buyers, but also includes home inspectors, appraisers, subcontractors, or anyone else. Providing unaccompanied access for others into listed property is a failure to account for the property of others. It is even impermissible to let a home inspector, or other service provider into listed property and then leave them there unaccompanied as they perform their inspection.
2. **Allowing buyers to move in before closing.** A closing is defined as the moment the deed is recorded into the buyer's name and the sales proceeds are available to the seller. Contracts typically call for the buyer's possession rights to begin at closing. Closing is not the same as signing the documents at a title company. There have been instances when a licensee allowed a buyer to move items into a property before closing. This is also failure to account for the real property of others.

C. Personal Property

Idaho code for real estate licensees requires that we account for the personal property of others as well. A good example is the keys or garage door remote for listed property. It also includes the personal property on the premises of property listed for sale and/or in escrow awaiting closing. Here is a list of some of the personal property items that would fall on a list of items to account for:

1. Keys
2. Garage door remotes
3. Personal effects
4. Furniture
5. Electronics
6. Vehicles/ATVs/Implements
7. Trade fixtures in businesses
8. Landscaping tools and equipment
9. Pool equipment
10. Contract paperwork that belongs to the broker

These personal property items are to be secured and left alone by licensees and other parties accompanying licensees when on the premises of others. Personal property items included in the sale that will be transferred to the buyer at closing must be properly handled and secured until closing.

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D. Seller Permission

Any of the above circumstances may occur with the direct permission of the seller. A buyer may move in before closing, an inspector may be left in the property alone during the inspection, buyers may be given the garage door code to let themselves in, with seller permission. Permission from the Listing Agent is deemed to be permission from the seller, as the Commission presumes the Listing Agent has gained approval from the seller. And as usual, it is advisable to put those permissions in writing.

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