43-40-20. Trust or escrow checking account for real estate business; when entitled to commission

(a) Each broker who accepts down payments, earnest money deposits, security deposits, rents, association fees, or other trust funds in a real estate brokerage transaction or whose affiliated licensees accept such trust funds shall maintain a separate, federally insured bank checking account in this state which shall be designated a trust or escrow account wherein all down payments, earnest money deposits, or other trust funds received by the broker or the broker's affiliated licensees, on behalf of a principal or any other person, shall be deposited. An account so designated and registered with the commission shall not be subject to attachment or garnishment. A broker who does not accept trust funds in real estate brokerage transactions is not required to maintain a designated trust or escrow account; provided, however, that if a broker does not maintain such a trust or escrow account and later receives trust funds in a real estate brokerage transaction, such broker must open the designated trust or escrow account required by this subsection within one business day of the receipt of such trust funds.

(b) Each broker who is required to maintain a trust or escrow account shall notify the commission of the name of the bank in which the trust account is maintained and also the number of the account or, if the bank does not use numbered accounts, the name of the account on forms provided therefor.

(c) Each broker who maintains a trust account shall authorize the commission to examine such trust account by a duly authorized representative of the commission. The commission may examine such account at any time upon reasonable cause. The commission shall examine each broker's trust account or accounts during each renewal period. In lieu of an examination of any such account or accounts by a duly authorized representative of the commission, the commission, in its discretion, may accept a written report from a certified public accountant that the broker's trust account or accounts are maintained in accordance with the provisions of this chapter and its attendant rules and regulations. In lieu of the renewal period examination by a duly authorized representative of the commission, the commission may accept with the broker's renewal application and fee a summary of data on the broker's trust account or accounts on a form prepared by or approved by the commission if that data appears complete and includes no indication of irregularities. The commission, after initiating an authorized investigation, may require that a broker supply to it written reports on the status of the broker's designated trust account or accounts.

(d) A broker may maintain more than one trust account if the commission is advised of such account, as specified in subsections (a), (b), and (c) of this Code section.

(e) A broker shall not be entitled to any part of the earnest money, security deposit, or other trust funds paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated.

(f) Any licensee, acting in the capacity of principal in the sale of interests in real estate owned by such licensee, shall deposit in a trust account in a state bank or trust company or any foreign bank which authorizes the commission to examine its records of such deposits those parts of all payments received on contracts which are necessary to meet any amounts concurrently due and payable on any existing mortgages, contracts for deed or other conveyancing instruments, reserves for taxes and insurance, or any other encumbrance on such receipts. Such deposits shall be maintained until disbursement is made under the terms of the encumbrance pertaining thereto and proper accounting on such property is made to the parties entitled thereto.

(g) The commission, in its discretion, may allow a nonresident broker who accepts any trust funds in a real estate brokerage transaction to maintain the trust account required in subsection (a) of this Code section in a bank of such nonresident broker's state of residence, provided that the commission is authorized to examine the account at such time or times as the commission may elect and that the licensee meets the requirements of any rules which the commission may establish regarding the maintenance of such accounts.

(h) Community association managers, salespersons, or associate brokers who receive security deposits or other trust funds on property they own or who receive payments as described in subsection (f) of this Code section must deposit those funds into a designated trust account maintained by the broker with whom their licenses are affiliated or in a designated trust account approved by that broker. If the broker approves the affiliated licensee's holding such trust funds in a designated trust account owned by the licensee, the broker shall assure that the bank in which the account is maintained designates the account as a trust account and the broker shall notify the commission of the name of the bank in which the account is maintained, the number of the account, and the name of the licensee who owns the account. The licensee who owns such account shall maintain such records on the account as are required by this chapter and the applicable rules and regulations for brokers in maintaining their trust accounts. The licensee who owns such account shall provide to such licensee's broker on at least a quarterly basis a written reconciliation statement comparing the licensee's total trust liability with the reconciled bank balance of the licensee's trust account.