

REAL ESTATE TRUST ACCOUNT GUIDELINES

Suggested Guidelines for the North Dakota Real Estate Broker



Provided by the
NORTH DAKOTA REAL ESTATE COMMISSION

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PREFACE

This publication has been prepared under the auspices of the North Dakota Real Estate Commission, consisting of JEROME YOUNGBERG, JERRY SCHLOSSER, ROGER CYMBALUK, DIANE LOUSER and KRIS SHERIDAN.

One of the most common violations of the real estate laws of this Nation is that of the improper establishment and maintenance of a real estate trust account. It is thought that many of these violations result from a lack of understanding as to the purpose of the trust account and a lack of specific instructions on how to establish and maintain a proper trust account.

The North Dakota Real Estate Commission has directed the Executive Director to publish guidelines for the purpose of assisting the North Dakota Real Estate Broker in understanding and complying with the requirements imposed by law for properly establishing and maintaining the different types of Real Estate Trust Accounts.

This publication is strictly a suggested guideline and is meant to be supplemental to the basic fundamentals of bookkeeping necessary for a sound accounting of the real estate business. The information contained herein is intended only as a means of assistance and information to the North Dakota Real Estate Broker. Brokers are urged to examine their own practices to ensure that they are complying with the intent of the Real Estate Trust Account Laws and Requirements.

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I. INTRODUCTION

The primary reason for the establishment of a trust account is to separate trust funds from the personal funds and/or other funds of the broker. By depositing trust funds in a trust account and keeping accurate records that identify each depositor, the funds are protected from being “frozen” (attached) should the broker become involved in some type of legal action, become incapacitated, or die. In addition, the Federal Deposit Insurance Corporation will insure each depositor up to \$100,000.00 rather than \$100,000.00 for the entire account.

The term “trust funds” may be defined as those funds received by a real estate broker or salesperson while acting as an agent in a real estate transaction. The most common examples of trust funds are: earnest money deposits, down payments, additional down payments, options, tenant security deposits¹, rents¹, money received from final settlements, and money advanced by buyer or seller for the payment of expenses in connection with the closing of a real estate transaction.

Perhaps equally important to the broker is a clear understanding of what funds are **not** “trust funds.” Personal funds of the broker, funds which are received in non-real estate transactions, and funds which are received in transactions in which the broker is not acting as an agent for another person(s) are common examples. Brokers should not deposit these “non-trust funds” in their trust account because to do so constitutes a commingling or mixing of trust funds with non-trust funds. This is not only a very serious violation of North Dakota Real Estate License Law, but could also raise doubt as to whether the account is, in fact, a true trust account; and thus could deprive the depositors of the protections afforded by trust accounts.

II. REAL ESTATE TRUST ACCOUNT REQUIREMENTS

A. *The Preliminaries*

When opening a Real Estate Trust Account a broker must be aware that certain requirements must be met.

First, the trust account must be opened and maintained in a federally insured financial institution in North Dakota. This includes banks, trust companies, savings and loan associations, and credit unions. The name of the account must be identified by the words “Trust Account” or “Escrow Account” for example, “John Jones Realty Trust Account.” Furthermore, the bank account deposit slips, bank statements, and trust account checks must be properly identified by the words “Trust Account.”

Most trust accounts ordinarily do not incur standard bank service charges. You should be aware that there are certain banks that are assessing service charges against trust accounts. Even if your bank does not normally assess service charges against your trust account, there will be occasions when it will make automatic deductions from your trust account: i.e., deductions for

¹ NOTE: The North Dakota Real Estate Commission has taken the position that rental moneys and tenant security deposits **not** be placed in the broker’s real estate trust account. Instead, these trust funds should be placed into separate trust accounts: rental moneys should be placed into a “Rental Management Trust Account” and tenant security deposits should be placed into a “Security Deposit Trust Account.”

printed deposit slips or checks, bad check charges, and overdraft charges. At the time that the trust account is opened the broker should decide how all of these future charges and deductions will be handled in the trust account. Typically, the broker has the following alternatives:

1. Real Estate License Law permits a broker to deposit a sum not to exceed five hundred dollars in the trust account from the broker's personal funds to cover bank service charges relating to the trust account.
2. The other alternative and one which more and more brokers are adopting is to make an arrangement with your bank to have all of your trust account service charges automatically deducted from the broker's business operating account.

This latter choice avoids a lot of book work and removes the necessity of keeping close watch of the broker's personal funds to make sure that they do not fall below a zero balance or exceed the five hundred dollar maximum limit. This latter alternative should not be adopted by inactive brokers with trust accounts because some banks will routinely close inactive accounts if there is a zero balance in them. For this reason, brokers with inactive accounts are advised to keep a few dollars in the account, but no more than five hundred dollars, in order to keep the account open.

At the time that the trust account is opened, it is important that the broker understand, and that his or her bank be informed, that this regular real estate trust account must be **interest bearing** unless a waiver is obtained from the Real Estate Trust Account Committee.

At the time a broker opens a trust account, the broker must file with the North Dakota Real Estate Commission a *Consent to Examine Trust Account* form. The form identifies the name and address of the financial institution in which the trust account(s) are maintained and requires the signature of a bank officer attesting to the information contained therein. By completing and signing the form the broker gives consent to the examination and audit of the account by a duly authorized representative of the North Dakota Real Estate Commission. The *Consent to Examine Trust Account* can be obtained by contacting the Commission or on the website.

New forms shall be filed with the Commission each time a broker changes the real estate trust account in any manner whatsoever, including but not limited to, change of broker, change of depository, change of account number, or change of business name.

B. Responsibility in Handling Trust Funds

The authority and responsibility for the proper handling of the trust account ultimately rests with the broker. However, it should be pointed out that North Dakota License Law permits brokers to delegate their authority regarding the handling and deposit of trust funds, maintenance of the trust account records, and even the authority to sign checks withdrawing funds.

It is important to note that regardless of whether some authority was delegated or not, the bottom line is that the broker is still responsible for whatever may happen regarding the handling of the trust account. In other words, the broker is not only responsible for his own actions, but is also responsible for the actions of his people who have contact with trust funds or the trust account; this includes but is not limited to his sales people and clerical staff.

The Commission urges brokers not to delegate authority to sign checks withdrawing funds from the broker's trust account except when the situation absolutely warrants it.

Brokers should initiate strict trust account procedures and should closely and diligently supervise the acts of all persons associated with the handling of trust funds and trust accounts.

Brokers and their associates are reminded that violations regarding the handling of their trust account can result in civil suits, criminal prosecution, and disciplinary action by the North Dakota Real Estate Commission which can result in possible suspension or revocation of their real estate license.

In those offices where there are one or more brokers in the employ of another broker, the responsibility for the maintenance of the trust account(s) shall be the responsibility of the employing broker.

C. Handling of Funds

1. Receipts and Deposits

North Dakota Real Estate License Law requires that all moneys belonging to others and accepted by the broker while acting in the capacity as a broker, shall be deposited in a federally insured financial institution in North Dakota in an account separate from money belonging to the broker. The name of this separate account shall be identified by the words "Trust Account" or "Escrow Account."

Client's funds shall be retained in the trust account until the transaction is either consummated or terminated at which time the broker shall account for the full amounts received.

All earnest moneys and other trust funds received are to be deposited timely. *Timely means that deposits are to be made according to the specific instructions included in the Earnest Money Agreement or per the time of deposit specified by North Dakota Real Estate License Law.* In the absence of other instructions on the Earnest Money Agreement, North Dakota Real Estate License Law requires that each broker shall deposit all real estate trust money received by the broker in the trust account within twenty-four hours of receipt of the money. In the event the trust money is received on a day prior to a holiday or other day the depository is closed, the money shall then be deposited on the next business day of the depository.

One of the most common violations found during audits of Real Estate Trust Accounts, and one of the most serious violations, is that earnest money deposits are not made timely. The unfortunate thing about most of these violations is that they could have been avoided had the Earnest Money Agreement been properly filled out when the offer was made. If it is agreed that the earnest money will be deposited at a time other than within the next twenty-four hours or the next banking day, then this instruction must be in writing, and must be included either in the Earnest Money Agreement or attached as an addendum to the agreement. So to reiterate, if the earnest money is to be deposited upon seller acceptance, or within twenty-four hours of seller acceptance, or per some other instruction, this is permissible providing that special instructions are included in the Earnest Money Agreement². In those cases where the earnest money is to be deposited upon seller acceptance of the offer, it is required that the acceptance date be clearly identified on the agreement.

Regardless of the situation, *all trust funds must be deposited in accordance with the terms of the contract.* Even if the broker anticipates rejection of the prospective buyer's offer, the funds must be deposited as a matter of proper procedure as required by law. If the offer is actually

² NOTE: A deposit of trust money into your trust account many days after the date of the purchase agreement, without proper explanation and documentation, arouses suspicion on the part of the auditor for the Real Estate Commission.

rejected, then the broker can refund the money by way of a check. In this way the broker will have adequate records showing that the trust funds were properly handled.

It is good practice to have trust fund checks made directly payable to the broker's trust account. This will prevent erroneous deposits in his business operating account.

Common types of trust funds generally consist of such things as:

1. Cash
2. Personal Checks
3. Cashier's Checks
4. Money Orders
5. Bank Drafts

If the purchase agreement does not specify otherwise, your seller has the right to assume that any deposit or earnest money listed in the purchase agreement has been paid to you in CASH and you may be held personally liable if this is not true. Obviously, there should be little or no problem in depositing the above items into the trust account. But, what about promissory notes, post-dated checks, and other non-depositable items?

It is expected that there will be occasions when the broker will find it necessary to accept one or more of these types of non-depositable items. The Commission recommends that you avoid the use of promissory notes and post-dated checks whenever possible; but when it becomes absolutely necessary to accept these items as well as other non-depositable items the broker must do the following:

1. The broker must obtain proper authorization from the parties to hold these items in his real estate office.
2. The broker must specify in the Earnest Money Agreement the nature and disposition of the items received, whether note, post-dated check, securities, personal property, etc.

2. Withdrawals

As has been previously stated, trust funds should be withdrawn from the trust account only when the transaction is consummated or terminated. Early termination of the transaction usually results in either a refund to the buyer or a default of the earnest money to the seller. The default provisions in the Earnest Money Agreement should specify under what conditions the earnest money will become the property of the seller if the contract is breached by the purchaser. Breach of contract by the purchaser is normally the only situation in which the earnest money becomes the property of the seller, before the actual closing. If any of the following situations occur, the offer is terminated by operation of law:

1. Death or insanity of the buyer or the seller before acceptance.
2. Destruction of the subject matter.
3. Change of law making the object of the offer illegal.

The typical situations for refunding the earnest money to the buyer are as follows:

1. The seller and buyer mutually agree to cancel the contract.
2. The seller cannot deliver good title or cannot go through with the transaction.

3. The accepted offer is terminated according to the terms of the contract because the contract contains certain contingencies (obtaining stipulated financing, selling a house, etc.) which are unable to be met by the buyer.
4. The seller makes a counteroffer not acceptable to the buyer.
5. The buyer retracts the offer prior to the seller's acceptance.
6. The seller rejects the offer.
7. The seller has not accepted the offer and the offer has expired.

In clear cut cases, the buyer's money should be refunded in short order. In all refund cases, it is advisable to get a release in writing, with both parties authorizing the refund. Usually, the broker must return the deposit to the buyer when demanded on the basis of one of the above conditions even though the broker may have a right to sue the seller for his commission.

In the event of a dispute over the return or forfeiture of any deposit held by a broker, the broker is advised to seek a lawyer for advice. It is further advisable that the broker retain said deposit in his trust or escrow account until he has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction.

3. Closing Process

When a transaction is consummated, that means the transaction is completed. Usually in this case, some type of formal closing is conducted.

The closing is conducted upon the successful conclusion of the real estate transaction. Any funds pertaining to the transaction which are on deposit in the broker's trust account, will normally be paid to and subsequently disbursed by the person designated to close the transaction.

Disbursement of funds from the trust account must be made according to the terms stated in the Earnest Money Agreement. Typically, earnest money is intended as a down payment to go toward the purchase price.

Withdrawals may be made from the trust account to take care of closing costs, providing this is stated in the purchase agreement or if all parties are in agreement. It is important that every withdrawal from the trust account be identified to a specific expense. If the broker handles the closing, he must maintain receipts to document the payment of expenses that were paid with trust funds.

A closing may be made by the broker, or it may be made by somebody else. Examples of others that may handle a closing are a lending institution, an attorney, a closing company, or another real estate office. In cases where someone else handles the closing, the broker must deliver to the closing agent a check for **all** trust funds in the broker's trust account that relate to the particular transaction. The closing agent then disburses all funds and gives the broker a check for the earned commission.

In the past, our auditors have discovered that this type of situation was not always handled properly. In the case where someone else was handling the closing some brokers were not transferring the full amount of trust funds on deposit in their trust account that related to the transaction to the closing agent. Instead, these brokers were leaving a part of the trust funds in their trust account to cover their earned commission and were transferring only the excess amount to the closing agent. This practice is improper and should not be followed. Earnest money is not intended as a guaranteed payment of the broker's sales commission.

When a transaction is going to be consummated, brokers should be aware that generally no disbursements of trust funds are to be made prior to closing. When charges for such items as

credit reports and appraisals are required to be paid prior to a closing, the broker has several options. **A WORD OF CAUTION IS IN ORDER AT THIS POINT TO REMIND THE BROKER THAT HE CANNOT USE THE EARNEST MONEY DEPOSIT TO PAY THESE EXPENSES.** The contract usually specifies that the earnest money is to apply to the purchase price. The broker may advance his own personal funds or he may receive specific funds from the buyer or seller with the agreement that they are to be used to pay for such items. A separate receipt should be issued for these funds, and a written explanation and authorization should be obtained and kept by the broker. The funds should then be deposited into the broker's trust account to be disbursed when the broker receives the billing. Another way to handle these payments is have the buyer or seller make the check payable to the lending institution where the loan application is being made. In the rare instance where permission is obtained from buyer and seller to use a portion of the earnest money to pay an expense prior to closing, then this authorization must be received in written form and retained by the broker.

When the transaction has progressed to the closing date, the broker is required to disburse the funds held in the trust account. Any funds received by the broker, at or before closing, are trust funds and must be deposited into and disbursed from the broker's trust account.

Brokers are reminded that all expenses to be paid from trust funds must be made on trust account checks and issued from the trust account. Previous audits have found some brokers in violation of this procedure. It was discovered, that on the date of closing, brokers were withdrawing the earnest money and final settlement money from the trust account and depositing the funds into their business operating account. They then issued all of the closing disbursements from their operating account. This procedure is in violation of Real Estate License Law and should not be followed.

Earned commissions and other money due and payable to the broker should be withdrawn promptly on the closing date of the transaction. A broker shall not be entitled to any part of the earnest money or other moneys 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.

Generally speaking, all trust funds pertaining to a particular transaction should be disbursed on the date of closing. Oftentimes, situations arise, especially with new construction, whereby the transaction is consummated except for an escrow left in the trust account for painting, concrete, or some other similar reason which cannot be completed at the time of closing. This procedure is entirely permissible. Payment of these expenses is then made as the work is completed and the bills are presented to the broker. In these situations, the broker should remove his commission from the trust account on the date of the closing as the commission has been earned and the transaction essentially completed.

At the time a transaction is consummated, the broker is required by law to deliver a detailed closing statement to the party or parties represented. However, the broker is not required to personally prepare the closing statements. If the closing is handled by somebody else (such as an attorney or a lending institution) the broker may elect to adopt the closing statements prepared by the closing agent. The broker is still liable for the correctness of these statements. *In either case, it is the responsibility of the broker involved to see that the party or parties represented by the broker receive a complete, detailed closing statement showing all of the receipts and disbursements handled in the transaction.* The broker is further required to retain a true copy of such statements in his files. This copy should contain the signature(s) of the buyer and/or seller represented by the broker as proof of delivery.

Commission splits with either sales associates or other real estate companies should be handled at the time of closing. If the broker is handling the closing, the full commission should be transferred from the trust account to the broker's business operating account. Any commission splits should then be issued from the operating account.

Brokers need to be very careful that they do not commingle their personal funds (in excess of the five hundred dollar limit to cover service charges) and other non-trust funds in the trust account. The broker is also cautioned that no payments of personal indebtedness of the broker may be made from the trust account.

Other don'ts regarding trust accounts are:

1. Don't pay your renewal fees, branch office fee, or change of address fee from the trust account.
2. Don't pay salesperson's commission from the trust account.
3. Don't pay a cooperating broker's commission from the trust account. His commission is your expense and should be paid from your operating account.
4. Don't leave your commission in the trust account after the closing.
5. Don't close out the account unless you turn in your broker's license or obtain a Trust Account Waiver.
6. Don't use one client's trust funds to pay the bills of another. At the same time, don't pay bills in anticipation of deposits.
7. Don't have more than \$500.00 of your personal funds in the trust account.
8. Don't use the trust account as a depository for non real estate funds. The account is solely for funds collected in connection with real estate transactions and not for the safekeeping of such items as social security and income tax payments, lodge funds, fraternal dues, bowling league dues, and the like.

D. Trust Account Records

Regulations require that each broker maintain a bookkeeping system to record the receipt, deposit, and disbursement of real estate trust funds. The term "bookkeeping system" implies that it be a separate record maintained in an original fashion.

The broker may be tempted to incorporate all of this information on the stubs of a checkbook. It should be emphasized that however meticulously kept, the checkbook alone does not meet the bookkeeping requirements of the law. **THERE MUST BE SEPARATE BOOKS OF ENTRY IN ADDITION TO THE CHECKBOOK.**

The broker is required by law to maintain the following trust account records:

1. **Duplicate Bank Deposit Slips.** The broker is required to maintain duplicate deposit slips of all deposits. These deposit slips must be maintained at the broker's place of business. (If your bank keeps the original deposit slip, then you must have a copy of the original and must keep the deposit receipt given to you by the bank.) Bank deposit slips must show the date of the deposit, the amount, adequate description of the source of the money, and where deposited. It is recommended that the bank deposit receipt be stapled to the duplicate deposit slip.
2. **Bank Statements.** The complete monthly bank statement is to be retained and kept on file.

3. **Trust Account Checks**³. Trust account checks should be numbered and all the voided checks retained. The checks should denote the broker's business name and address.
4. **Journal**. A permanent record book called a Journal must be maintained which shows the **chronological** sequence in which funds are received and disbursed. An entry is made only when there has been a receipt or disbursement of cash. A detailed checkbook register or a computer check register with memos will be sufficient.
 - a. For funds received, the Journal must include the date, the name of the party who is giving the money, the name of the principal, and the amount. It is also advisable to include the actual date of deposit, and a description of what the money was received for.
 - b. For disbursement, the Journal must include the date, the payee, the check number, and the amount. It is also advisable to include a description of what the disbursement was made for.
 - c. A running balance must be shown after each individual entry (receipt and disbursement).
5. **Ledger**. This record book will show the receipts and disbursements that affect a single, particular transaction between buyer and seller. The purpose of the Individual Transaction Ledger Sheet is to segregate the entries of one transaction from another transaction. Each individual transaction ledger sheet will only show the deposits and disbursements that affected the eventual termination or closing of a particular transaction. Keeping an accurate, up-to-date ledger sheet, will ensure that no withdrawals will be made for greater amounts than are on deposit for a particular client property.
 - a. The individual transaction ledgers should include a descriptive heading identifying the names of both parties to the transaction as well as the location of the property involved.
 1. For funds received, the ledger sheet must include the date and amount of the deposit, as well as a description of from whom the money was received and what it was received for.
 2. For disbursements, the ledger sheet must include the date, the payee, check number, and the amount.
 3. A running balance must be shown after each individual entry (receipt and disbursement).
 - b. Entries to the ledger sheets from the journal should be posted daily.
 - c. **Broker's Funds Ledger Sheet**. If a broker maintains any personal funds in the trust account to cover bank service charges affecting the account, then the broker's records must specifically identify these amounts. This requires that the broker set up a separate ledger sheet, called a Broker's Funds Ledger Sheet. Individual deposits of broker's funds and eventual disbursements to pay for bank charges must be

³ NOTE: All three of the above records must meet the following additional requirement. Bank account deposit slips, bank statements, and trust account checks must be properly identified by the words "Trust Account" or "Escrow Account" for example, "John Jones Realty Trust Account."

- chronologically** entered and detailed. An accurate running balance must be maintained after each entry, to ensure that the broker's funds do not drop below a zero balance or exceed the five hundred dollar maximum balance.
- d.* **Interest-RETA Ledger Sheet.** Interest income earned on the trust account should be recorded when earned and when paid to the Real Estate Trust Account Committee. Interest earned is required to be paid to the RETA Committee at least quarterly.
6. **Reconciliation.** The trust account must be reconciled monthly except in the case where there has been absolutely no activity during the month. A copy of this reconciliation must be retained by the broker.
- a.* The reconciliation should include a listing of the ledger sheets as proof that the liabilities reconcile to the trust account cash.
7. **Maintain Records.** The law requires that each real estate broker retain copies of all listings, deposit slips, cancelled checks, bank statements, earnest money agreements (both accepted and rejected), closing statements, trust records, and other documents received by and executed by the broker in connection with any transaction. These books, accounts, and records shall be maintained at the broker's place of business, and must be made available for examination and audit by authorized employees or representatives of the North Dakota Real Estate Commission.⁴

⁴ NOTE: Special forms for keeping the above records are not required. The broker is free to design or adopt whatever forms and bookkeeping systems he chooses; providing they meet the aforementioned state requirements. The North Dakota Real Estate Commission has included some sample forms at the back of this booklet that brokers can use if they so choose. These forms are especially adaptable to most brokerage offices, and fully comply with all trust account requirements. The use of these sample forms is illustrated in the next section.

III. TRUST ACCOUNT AUDIT PROGRAM

The North Dakota Real Estate Commission has a very active audit program. This program of examination and inspection of trust account records is primarily an educational program to acquaint licensees with the requirements for proper recordkeeping and other obligations in handling trust funds.

Most audits will only take a few hours. During the course of a routine audit, the auditor will generally only make a random inspection of entries and supporting documents, and will do a reconciliation of the trust account(s).

More extensive audits will usually be conducted in the following situations:

1. When the auditor finds evidence of serious violations.
2. During the investigation of complaints alleging the possible mishandling of trust funds.

All real estate brokers in the state can expect to have their trust account(s) audited periodically, on an irregular schedule. Such audits may be made unannounced, but usually the auditor will contact the broker ahead of time and will set up an appointment.

When the Real Estate Commission audits a broker's trust account(s), the broker may be asked to display the following trust account records for each of the prior two years:

1. Duplicate deposit slips.
2. Complete bank statements.
3. Cancelled checks, including all voided checks.
4. Checkbook and any completed check registers.
5. Trust account bookkeeping records:
 - a. Journals
 - b. Ledger
 - c. Reconciliations
6. Files containing Agency Disclosures, Listings, Purchase Agreements, Closing Statements, and other documents received by or executed by the broker in connection with any real estate transaction for which a real estate broker's license is required.

Brokers can make an audit easier for all parties concerned, if they have their files and other trust account records organized in a neat and orderly fashion. The auditor will not be examining the general business records of the licensee, such as Tax Records and the records relating to the Business Operating Account; as such, it is recommended that these records be stored separately from the trust account records.

IV. TRUST ACCOUNT QUESTIONS AND ANSWERS

Question:	Can I expect to have my trust account(s) audited by a representative of the Real Estate Commission?
Answer:	Yes. All brokers are subject to having their trust account(s) audited at any time that the Commission feels that it should be done. The Commission or its employees or authorized representatives, has the authority to make audits and spot checks of broker's trust accounts.
Question:	What happens if a broker is unable to account for all funds belonging in the trust account?
Answer:	In all probability, the Real Estate Commission will, upon its motion, cite the offender to a Hearing to explain the discrepancies and in a serious violation will probably suspend or revoke the individual's license.
Question:	May I have more than one trust account?
Answer:	Yes, but the Commission must be advised of each trust account. A Notification Card and a Consent to Examine and Audit Trust Account form must be filed for each account.
Question:	Is there anything improper about my borrowing a small sum of money from the trust account for my regular business expense as long as it is paid back before it is due my client?
Answer:	Yes. This would be commingling of funds, which is a clear violation of the regulations.
Question:	Suppose I sell a property without an earnest money deposit and collect all of the proceeds from the buyer by one check at the closing. Is it necessary to run this transaction through my trust account, in as much as I am collecting this money and paying out the net proceeds to the seller the same day?
Answer:	Yes. The length of time money is held by you is not the controlling factor. All money coming into your possession on a real estate transaction should be run through the trust account so that there will be a record of the transaction independent of your regular business records.
Question:	I am not very active in real estate. Must I maintain a real estate trust account?
Answer:	No. If you do not require the use of a trust account, you may obtain a Trust Account Waiver from the Commission. In the event you need a trust account, you may open an account and file a <i>Consent to Examine Trust Account Form</i> with the Commission.
Question:	If the buyer and seller decide to go directly to an attorney and the buyer makes out a check to the seller and hands it directly to the attorney or seller, do I have to maintain any records of this check?
Answer:	No. You must maintain records only of trust funds which pass through your hands for the benefit of a third party.

Question:	Can I store each individual transaction ledger sheet separately in the closed client file to which it pertains, or am I required to store all the ledger sheets together in a single record book?
Answer:	All ledger sheets must be stored together in one book. The ledger sheets should be assembled in yearly segments. It is recommended that the broker's funds ledger always be kept at the front of the book and the other ledgers assembled behind in some organized manner; such as chronologically, or alphabetically by either buyer or seller name. A copy of the completed ledger sheet can be placed in the closed client file if the broker wishes, but the original must always be stored in the ledger record book.
Question:	How should I handle an earnest money refund when the buyer's personal check has not yet cleared into my trust account?
Answer:	Good business practice dictates that you should wait until the buyer's check has cleared into your trust account before issuing a trust account check as a refund.
Question:	Is there anything improper about waiting until the end of the week or even the end of the month, to record entries in my trust account bookkeeping system?
Answer:	Yes. It is required that entries to the trust account bookkeeping system be entered and posted on a daily basis.
Question:	How do I handle long time outstanding checks and other funds that have remained in my trust account for a very long time?
Answer:	Most trust accounts will experience these situations from time to time. In the case of long time outstanding checks, repeated attempts should be made to contact the payee; and upon contact they should be asked to cash the checks. If they have lost or misplaced the checks, new checks should be issued. In the case of other funds remaining in the trust account, attempts should be made to properly disburse these funds if the payee can be identified or located. Trust funds in your account for which you have not had any contact with the buyer or seller may be remitted to the North Dakota Unclaimed Property Division.

V. ILLUSTRATION OF A REAL ESTATE TRUST ACCOUNT BOOKKEEPING SYSTEM

The following transactions and procedures illustrate the real estate trust account bookkeeping requirements for Your Realty Company, Inc.

June Transactions

- June 2 Broker opens a real estate trust account and deposits \$500.00 of his own funds to cover bank services charges. (Note that a “Broker’s Funds” ledger sheet is started for these funds.)
- June 11 Broker received a \$1,000.00 earnest money check from Clarence Jensen on Rudolph and Helen Engel property at 1241 Elm Street. (Broker deposited this check into his trust account on June 12.)
- June 17 Broker received an additional down payment of \$2,000.00 from Clarence Jensen on the Rudolph and Helen Engel property at 1241 Elm Street.
- June 26 Broker received loan proceeds of \$37,000.00 from First National Bank and closed the Jensen – Engel transaction. Broker made the following closing disbursements:

Check No.	Amount	Payee	Reason
101	\$40.00	Local Abstract Co.	Abstract Fee
102	\$125.00	Smith Law Office	Legal Fees
103	\$22,776.00	United Bank	Loan Pay Off
104	\$14,659.00	Rudolph & Helen Engel	Seller Proceeds
105	\$2,400.00	Your Realty Co., Inc.	Sales Commission

- June 30 Broker received a \$1,500.00 earnest money check from Jeff and Susan Chandler on Adam and Katie Binder property located at 711 Mockingbird Heights.
- June 30 Bank Service Charge of \$25.00 was deducted from the trust account for printed checks and deposit slips.
- June 30 Bank interest of \$1.25 was added to the trust account.

Trust Fund Bank Account

Date	Received From or Paid to	Description/Property	Reference: Check #	Amount Received	Amount Paid	Cleared	Daily Balance
6/2/06	Broker	Personal Funds		100.00			100.00
6/11/06	Clarence Jensen	Earnest Money	Engel Property	1,000.00			1,100.00
6/17/06	Clarence Jensen	Additional Down Payment	Engel Property	2,000.00			3,100.00
6/26/06	First National Bank	Loan Proceeds to Close	Engel Property	37,000.00			40,100.00
6/26/06	Local Abstract Co.	Abstract Fee	101		40.00		40,060.00
6/26/06	Smith Law Office	Legal Fees	102		125.00		39,935.00
6/26/06	United Bank	Loan Pay Off	103		22,776.00		17,159.00
6/26/06	Rudolph & Helen Engel	Seller Proceeds	104		14,659.00		2,500.00
6/26/06	Your Realty Co.	Sales Commission	105		2,400.00		100.00
6/30/06	Jeff & Susan Chandler	Earnest Money	Binder Property	1,500.00			1,600.00
6/30/06	Bank Service Charge	Checks & Deposit Slips			25.00		1,575.00
6/30/06	Interest Income	RETA		1.25			1,576.25
							1,576.25
							1,576.25
							1,576.25
							1,576.25

Record of Individual Trust Funds

Buyer: Clarence Jensen

Seller: Rudolph & Helen Engel

Property: 1241 Elm Street, Your City, ND

Description	Funds Received		Funds Paid Out			Balance of Funds
	Date of Deposit	Amount	Date of Check	Check Number	Amount	
Earnest Money	6/12/06	1,000.00				1,000.00
Add'l Downpayment	6/17/06	2,000.00				3,000.00
Loan Proceeds-FNB	6/26/06	37,000.00				40,000.00
Local Abstract Co.			6/26/06	101	40.00	39,960.00
Smith Law Office			6/26/06	102	125.00	39,835.00
United Bank			6/26/06	103	22,776.00	17,059.00
Rudolph & Helen Engel			6/26/06	104	14,659.00	2,400.00
Your Realty Co.			6/26/06	105	2,400.00	0.00

Record of Individual Trust Funds

Buyer: Jeff & Susan Chandler

Seller: Adam & Katie Binder

Property: 711 Mockingbird Heights, Your City, ND

Description	Funds Received		Funds Paid Out			Balance of Funds
	Date of Deposit	Amount	Date of Check	Check Number	Amount	
Earnest Money	6/30/06	1,500.00				1,500.00

Record of Individual Trust Funds

Buyer: Broker Funds

Seller: _____

Property: _____

Description	Funds Received		Date of Check	Funds Paid Out		Balance of Funds
	Date of Deposit	Amount		Check Number	Amount	
<i>Initial Deposit</i>	6/2/06	100.00				100.00
<i>Check Order</i>	6/30/06			S/C	25.00	75.00

Record of Individual Trust Funds

Buyer: RETA Interest

Seller: _____

Property: _____

Description	Funds Received		Date of Check	Funds Paid Out		Balance of Funds
	Date of Deposit	Amount		Check Number	Amount	
<i>June Interest</i>	6/30/06	1.25				1.25

Monthly Bank Reconciliation

Balance per Bank Statement as of June 30, 2006 \$ 116.25

Add: Outstanding Deposits

Date	Amount	Date	Amount	Date	Amount
<u>6/30/06</u>	\$ <u>1,500.00</u>	\$ _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
					Total Outstanding Deposits
					\$ <u>1,500.00</u>

Subtract Outstanding Checks

Check #	Amount	Check #	Amount	Check #	Amount
<u>101</u>	\$ <u>40.00</u>	\$ _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
					Total Outstanding Checks
					\$ <u>40.00</u>
					Checkbook Balance
					\$ <u>1,576.25</u>

Trust Fund Liabilities:

Broker Funds: \$ 75.00

RETA Interest: \$ 1.25

Trust Funds by Buyer, Seller, or Property:

<u>Chandler - Binder</u>	\$ <u>1,500.00</u>	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
			Total Trust Funds
			\$ <u>1,500.00</u>
			Total Liabilities
			\$ <u>1,576.25</u>

Total Liabilities must equal Checkbook Balance.

APPENDIX
SAMPLE FORMS

Monthly Bank Reconciliation

Balance per Bank Statement as of _____ \$ _____

Add: Outstanding Deposits

Date	Amount	Date	Amount	Date	Amount
_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Total Outstanding Deposits					\$ _____

Subtract Outstanding Checks

Check #	Amount	Check #	Amount	Check #	Amount
_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Total Outstanding Checks					\$ _____
Checkbook Balance					\$ _____

Trust Fund Liabilities:

Broker Funds: \$ _____

RETA Interest: \$ _____

Trust Funds by Buyer, Seller, or Property:

_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
Total Trust Funds			\$ _____
Total Liabilities			\$ _____

Total Liabilities must equal Checkbook Balance.