California Department of Real Estate Disclaimer Statement:

This course is approved for Continuing Education credit by the California Department of Real Estate. However, this approval does not constitute an endorsement of the views or opinions which are expressed by the course sponsor, instructor, authors or lecturers.

This course is designed to minimize your risk of being audited by the Department of Real Estate. Also, for those brokers who are audited, the concepts presented in this course should help you to come through with a clean bill of "trust fund compliance health." The overall concept of trust fund accountability is covered in this course. Also discussed are prudent business practices which you, as a real estate licensee, must follow in order to avoid the possibility of harsh results stemming from an audit by the DRE. The major requirements concerning the receipt, handling, and disbursement of trust funds are discussed.

After studying this course, you should be able to:

- Identify DRE requirements for handling trust funds
- Comply with trust fund bank account regulations
- Maintain and reconcile trust fund accounting records
- List the documentation required for various real estate transactions
- Prepare for an audit by the DRE
- Record transactions on the columnar record forms
- Recognize the consequences of violating the law as it relates to trust fund handling

The following are key terms and concepts addressed in this course:

- Advance fees
- Columnar records
- "Control account" records
- Commingling
- Non-trust funds
- Reconciliation
- Trust fund
• Trust fund account
• Trust fund conversion
• Trust fund depositories

As you read, think about:

• the importance of satisfying the DRE's requirements for receiving, controlling, and disbursing trust funds
• the necessity of knowing how to properly maintain trust fund records

The subject of real estate trust fund accounting is a matter of great concern to the Department of Real Estate ("DRE"). Ever since California enacted the nation's first real estate licensing law in 1917, the DRE has been involved in regulating funds which are received by a real estate licensee acting under his or her license. This course presents and discusses the standards and requirements for receiving, controlling, and disbursing trust funds in real estate transactions as set forth in the California Business and Professions Code ("B & P Code") and the Regulations of the Real Estate Commissioner ("DRE Regulations"). Both the Code and the DRE Regulations are available online at the DRE website at http://www.dre.ca.gov/relaw.htm. The DRE website contains additional information regarding trust funds at http://www.dre.ca.gov/brkonline.htm. Furthermore, the DRE publishes the Real Estate Reference Book which contains information about trust funds. It is available online at http://www.dre.ca.gov/pdf_docs/ref23.pdf.

This course details the requisites for maintaining a trust fund bank account and the precautions a licensee must take to ensure the integrity of the account. In addition, this course explains and illustrates C.A.R. trust fund forms that are designed to meet the "columnar" trust fund record-keeping requirements under the Code and the DRE Regulations. In order to avoid disciplinary action, licensees should know how to use the columnar records and the information required to be included on the trust fund accounting records.

**Note:** The discussions and examples in this course involve real property sales and property management trust fund transactions applied to the columnar records type of accounting method only. The second type of acceptable accounting method found in generally accepted accounting practices should be set up only with the advice of a certified public accountant.

As you read, think about:

• the importance of identifying the owner of trust funds;
• what is a trust fund

**Identifying the Owner(s) of the Funds**

Real estate brokers and salespersons receive funds from other people during the day-to-day operations of real estate business. Many times these funds do not belong to the salesperson or the broker. Instead, the funds may have been given to the licensee for the purpose of a buyer's compliance with the deposit requirement as called for in
the real estate purchase contract and receipt for deposit. Another example would arise when the licensee receives funds from tenants within a rental unit being managed by the licensee. These funds, or any portion of them, do not necessarily belong to the licensee upon their mere receipt. Instead, these funds belong to the owner of the rental unit until and unless the licensee fulfills his or her duties under the property management agreement.

Thus these funds are the rental owner's until expenses, costs, and commissions are accounted for as detailed within the property management agreement. Since the licensee is handling, controlling, and disbursing the funds belonging to another person, such activity creates a special and highly regulated relationship with the owner of the funds.

Even though the licensee has access to and control over these funds, as limited by the true owner's instructions, it must be borne in mind always that these funds are received on behalf of the owner. These funds are called trust funds. The managing of funds on behalf of another person creates a high level of fiduciary responsibility of the licensee to the owner of the funds.

Brokers and salespersons must handle, control, and account for these funds according to established standards. These standards arise from the Code and the DRE Regulations. In addition, ethical standards and the California Penal Code also present standards for the licensee receiving funds on behalf of others. Noncompliance with these standards may result in unfavorable business and tax consequences. Of greater consequence, improper handling of trust funds can be cause for suspension or revocation of a real estate license. In addition, a licensee may be held financially liable for damages incurred by clients and criminally prosecuted for embezzlement.

What is a Real Estate Trust Fund?

Generally speaking, the elements of a trust fund consist of money or property which is set aside as a trust for the benefit of another person and is held in the name of a trustee. (In most situations, the broker would be the designated trustee.) Thus, things of value, which are specifically identified and held for another's financial well-being by an identified person in a position of confidence and trust, form and create the overall concept of a trust fund.

Trust funds may consist of cash or non-cash items, such as a personal note made payable to the seller; a personal note made payable to the broker for the benefit of the seller, buyer, or escrow; or a purchase deposit check, whether made payable to the broker or to an escrow or title company. Even a pink slip to a car that is given to the broker as a deposit for a purchase or lease would be trust fund property.

What is a Non-Trust Fund?

On the other hand, non-trust funds would include such cash or non-cash items as real estate commissions, rents, deposits, and disbursements relating to broker-owned real estate and general operating funds needed to continue the brokerage business. If these funds are not commingled with trust funds, the Code and DRE Regulations generally do not apply. However, under certain
circumstances the DRE does have the jurisdiction to investigate transactions involving non-trust funds.

As you read, think about:

- where to deposit trust funds
- the requirements of Business & Professions Code ("B&P Code") § 10145
- how to comply with the DRE Regulations concerning trust funds

Upon receipt of trust funds, the broker should first determine which funds should go into the trust fund account and which, if any, should go directly into escrow or to the owner of the funds. Generally, this is based on directions provided by the owner of the funds. The broker should provide options of trust fund depositories to the owner of the funds such as:

- a neutral escrow depository, or
- the hands of the broker’s principal, or
- a trust account maintained by the broker in a bank or recognized depository in this state.

Note Exception! In limited instances, trust fund depositories are tightly restricted. For instance, a broker who is in the business of buying and selling notes secured by liens on real property, as defined in the Code § 10131.1, must place all purchase funds received in a neutral escrow depository. In this instance, only a neutral escrow depository may be used for trust funds to be in compliance with the B&P Code § 10145(b).

Another limited instance arises when a licensee acts as a sales agent in a subdivision. Here the impound requirements and depository mandates of the subdivision law prevail. Depending on whether or not the subdivision is subject to a blanket encumbrance, Section 11013.2 or 11013.4 of the B&P Code will control. On the other hand, the general real estate brokerage is governed by the legal provisions of the B&P Code §§10145, 10146 and 10148 and DRE Regulations 2830.1 through 2836.

Deposit of Funds Belonging to Others - Business and Professions Code § 10145

Business and Professions Code § 10145 (reprinted below in its entirety) is probably the most important section of the B&P Code with which every licensee should be completely familiar before handling the funds of another person.

Business and Professions Code §10145 - Deposit of Funds Belonging to Others (Trust fund account; neutral escrow depository; interest-bearing account; record of receipt and disposition; authorization for examination of financial records; neutral escrow defined):
(a) (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

[(Note: Subdivision (a)(2) provides an exception which allows deposit into an out-of-state depository institution.)]

(2) Notwithstanding the provisions of paragraph (1), a real estate broker collecting payments or performing services for investors or note owners in connection with loans secured by a first lien on real property may deposit funds received in trust in an out-of-state depository institution insured by the Federal Deposit Insurance Corporation, if the investor or note owner is any one of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the United States Department of Veterans Affairs.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, or insurance company doing business under the authority of, and in accordance with, the laws of this state, another state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit sharing, or welfare fund, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) A licensed real estate broker selling all or part of the loan, note, or contract to a lender or purchaser specified in subparagraphs (A) to (G), inclusive.
(3) A real estate broker who deposits funds held in trust in an out-of-state depository institution in accordance with paragraph (2) shall make available, in this state, the books, records, and files pertaining to the trust accounts to the commissioner or the commissioner’s representatives or pay the reasonable expenses for travel and lodging incurred by the commissioner or the commissioner’s representatives in order to conduct an examination at an out-of-state location.

(b) A real estate broker acting as a principal pursuant to Section 10131.1 [Note: A real estate broker within the meaning of 10131.1 is a person who engages as a principal in the business of buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property, or who makes agreements with the public for the collection of payments or for the performance of services in connection with real property sales contracts or promissory notes secured directly or collaterally by liens on real property] shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker’s principal or a neutral escrow depository or shall deposit the funds into the broker’s trust fund account.

(d) If not otherwise expressly prohibited by this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company, the accounts of which are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:

(1) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.

(2) All of the funds in the account are covered by insurance provided by an agency of the United States.

(3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.

(4) The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to the broker at the time of establishing the account, the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.
(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

(f) Nothing in subdivision (d) shall preclude the commissioner from prescribing, by regulation, circumstances in which, and conditions under which, a real estate broker is authorized to deposit funds received in trust into an interest-bearing trust fund account.

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(i) As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in paragraph (1) or (3) of subdivision (a) of Section 17006 of that code [escrows licensed by the Department of Corporations].

**Trust Fund Handling - Timing Issue - DRE Regulation 2832**

Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository, or into a trust fund account not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

The only exception is as follows (DRE Regulation 2832(c)):
A check received from the offeror may be held uncashed by the broker until acceptance of the offer if

1. the check by its terms is not negotiable by the broker [e.g., it is made out to another payee such as the escrow company] or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and
2. the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.

Under these circumstances, if the offeror's check was held by the broker until acceptance of the offer, the check must be placed into a neutral escrow depository, the trust fund account, or into the hands of the offeree, if the offeror and offeree provide so in writing, **not later than three business days following acceptance of the offer**. The only exception is if the broker receives written authorization from the offeree to continue to hold the check. **Note that the "offeror" is the buyer and that the "offeree" is the seller.**

**Trust Fund Handling for Multiple Beneficiaries - DRE Regulation 2832.1**

A real estate broker may keep a single trust fund account for multiple clients. However, the real estate broker may not disburse trust funds from a trust fund account without the prior written consent of every client who is an owner of the funds in the account if the disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds. Written consent shall be obtained prior to each such disbursement.

**Advance Fees: Collecting Money Before Performance of Services - Business & Professions Code § 10146**

Real estate brokers, such as mortgage loan brokers, may wish to collect money from their clients in advance to cover the cost of services to be performed. Such fees are called **advance fees**. An advance fee may only be collected if the real estate broker has an agreement that has been pre-approved by the DRE. DRE Regulation 2970 sets forth the basic contents of an advance fee agreement. See the Appendix of this course.

**Note:** A nonrefundable application screening fee of not more than $30 (adjusted annually after 1998 commensurate with The Consumer Price Index) charged to prospective tenants by landlords or property managers is not considered an advance fee. (Cal. Civ. Code § 1950.6(j).)

Real estate brokers who contract for or collect an advance fee from any other person, must deposit any such amount or amounts, when collected, in a trust account with a bank or other recognized depository. Such funds are trust funds and not the funds of the broker. Amounts may be withdrawn for the benefit of the agent **only when actually expended for the benefit of the principal, or five days after a verified account (pursuant to DRE Regulation 2972) has been mailed to the principal.**

Any real estate broker who collects an advance fee from a principal must also give quarterly accountings to the principal. See the Appendix of this course for DRE Regulation 2972 that lists the accounting content. There is no need to prove actual misappropriation of the advance fee. A mere failure to provide a quarterly accounting...
of the fee is sufficient to entitle the principal to damages. (*Burch v.Argus* (1979).)
The DRE must be furnished a verified copy of any account or all accounts upon demand.

Finally, where advance fees actually paid by or on behalf of any principal are not handled as required by law, it will be presumed that the agent has violated Sections 506 and 506a of the Penal Code.

**Commingling Prohibited - B&P Code § 10176(e) and DRE Regulation 2835**

*Commingling* is strictly prohibited by the Real Estate Law. It is grounds for the revocation or suspension of a real estate license pursuant to Business and Professions Code § 10176 (e).

Commingling occurs when:

- Personal or company funds are deposited into the trust fund bank account. This is a violation of the law even if separate records are kept.
- Trust funds are deposited into the licensee's general or personal bank account rather than into the trust fund account. In this case the violation is not only commingling, but also handling trust funds contrary to B&P Code § 10145. It is also grounds for suspension or revocation of a license under B&P Code § 10177(d).
- Commissions, fees, or other income earned by the broker and collectible from the trust account are left in the trust account for more than twenty five days from the date they were earned. They may only be left for up to 25 days when it is not reasonably practicable to separate such funds earlier.
- Another common example of commingling is depositing rents and security deposits on *broker-owned* properties into the trust account. As these funds relate to the broker's own properties, they are not trust funds and, therefore, may not be deposited into the trust fund bank account. Likewise, mortgage payments and other payments on broker-owned properties may not be made from the trust account even if the broker reimburses the account for such payments. Conducting personal business through the trust account is strictly prohibited and is a violation of the Real Estate Law.

Regulation 2835 defines what commingling is **not**. The following do **not** constitute commingling:

- Depositing into a trust account up to $200 of the real estate broker's personal funds to pay service charges or fees levied or assessed against the account by the financial institution where the account is maintained.
- Depositing funds belonging in part to the principal and in part to the broker into a properly maintained trust account when it is not practicable to separate the funds. However, the part of the funds belonging to the broker must be disbursed no later than twenty-five days after their deposit. Also, there can be no dispute between the broker and the broker's principal as to the broker's portion of the funds. When there is such a dispute, the disputed portion shall not be withdrawn until the dispute is finally settled.
Note: A real estate broker dealing with transactions involving a series of notes or a sale of interest in a single note must comply with DRE Regulations on commingling as well. The following do not constitute "commingling".

- Depositing into a properly maintained trust account broker-owned funds in connection with activities pursuant to either subdivision (d) or (e) of B&P § 10131 (e.g., arranging loans secured by real property or business opportunities or brokering the sale or exchange of notes and real property sales contracts secured by real property or business opportunities) if:
  1. the broker meets the criteria of § 10232 of the B&P Code (the broker is a "threshold broker");
  2. all funds in the account which are owned by the broker are identified at all times in a separate record, distinct from any separate record maintained for a beneficiary; and
  3. all broker-owned funds deposited into the account are disbursed from the account not later than 25 days after their deposit.

Trust Account Withdrawals - DRE Regulation 2834

Under Regulation 2834, withdrawals from a trust fund account of an individual broker may only be made upon the signature of the broker or one or more of the following persons if authorized in writing by the broker:

- a salesperson licensed to the broker;
- a licensed broker who has entered into a written broker-salesman agreement with the broker; or
- an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

Withdrawals may be made from the trust fund account of a corporate broker upon the signature of an officer through whom the corporation is licensed pursuant to §§ 10158 or 10211 of the B&P Code. In addition, the officer through whom the corporation acts may give written authorization to make withdrawals to one of the persons indicated above and must be an authorized signatory on the account.

An arrangement under which a person is authorized to make withdrawals from a trust fund account of a broker does not relieve an individual broker (nor the broker-officer of a corporate broker licensee) from responsibility or liability as provided by law in handling trust funds in the broker's custody.
Interest-Bearing Trust Accounts

Real estate brokers involved in property management or real estate sales may also set up interest-bearing accounts for their clients according to B&P §10145(d):

(d) If not otherwise expressly prohibited by this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company, the accounts of which are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:

(1) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.

(2) All of the funds in the account are covered by insurance provided by an agency of the United States.

(3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.

(4) The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to the broker at the time of establishing the account, the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.

(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

Note: A real estate broker must maintain separate bank trust accounts for each client who wishes to earn interest.

Interest-Bearing Trust Account for Agents of Financial Institutions - DRE Regulation 2830.1

The regulation reads as follows:

A real estate broker, when acting as agent for a financial institution as beneficiary of a loan, may deposit and maintain funds from or for the account of an obligor for the future payment of property taxes, assessments or insurance relating to real property.
containing only a one-to-four family residence, in an interest-bearing trust account in a bank or savings and loan association in order to pay interest to the obligor in accordance with Section 2954.8 of the Civil Code if the following requirements are met:

(a) The account is in the name of the broker as trustee.

(b) All of the funds in the account are covered by insurance provided by an agency of the federal government.

(c) All of the funds in the account are funds held in trust by the broker for others.

(d) The broker discloses to the obligor how interest will be calculated and paid.

(e) No interest earned on the funds shall inure directly or indirectly to the benefit of the broker nor to any person licensed to the broker.

As you read, think about:

- why a broker should establish a trust fund bank account
- how to set up trust fund bank accounts
- ways to reduce trust fund liability

Reasons for Establishing a Trust Fund Bank Account

There are many reasons for establishing a trust fund bank account. Some of the most important are as follows:

- To provide the owner of the funds a full, detailed accountability of his or her funds.
- To survive an audit of the broker's trust fund accounting records and thereby avoid disciplinary or harsher action by the DRE or civil or criminal courts.
- To provide a method to distinguish and separate trust funds from non-trust funds. The separation of the client's funds from those of the broker's own funds provides a better, and legally required, physical and accounting control over the funding belonging to the client.
- To provide legal protection to the client's funds held in trust by the broker. For example, in situations where legal action is taken against the broker or if the broker becomes mentally incapacitated or dies, the client still has access to his or her funds. Trust funds held in a true trust account cannot be "frozen" pending litigation against the salesperson, the broker or the brokerage, or during probate of either the salesperson or broker.
- To provide insurance protection to the client's funds held in trust by the broker. If deposited into a true trust account, the client's trust funds have substantially better protection under the Federal Deposit Insurance Corporation (FDIC).

In an opinion in 1965, the general counsel of the FDIC held that a true trust account is protected by insurance as if each client had an account in his or her own name, as opposed to being one of many indistinguishable owners of the total trust funds. In other words, the funds of various owners which are placed into a true trust account
in a FDIC insured bank will be recognized for insurance purposes in the same amount as if the true owners' names and interest in the account are individually disclosed on the records of the bank. However, this protection is provided to the funds of clients only if the trust fund is specifically designated as a trust account and the name and interest of each owner of funds in the account is disclosed on the depositor’s records.

As long as the regulatory requirements of the FDIC are met, each client with funds deposited in a true trust account maintained with a federally insured bank is insured by the FDIC up to $100,000. Where a trust fund is not a true trust fund account, merely $100,000 of insurance would be given to the entire account. Thus, for example, if the broker's trust fund was not a true trust fund account, any amount exceeding $100,000 would be lost in the case of a bank failure. This would be the case whether the funds belonged to one or dozens of clients.

**How to Set Up a Trust Fund Account Name**

If a real estate broker holds an individual broker's license, the trust account should be set up in his or her name or in the name of a fictitious business name if the broker is the holder of a license using the fictitious business name. The fictitious business name must be registered with the DRE. For example:

- Jane Doe Trust Account
- John Doe Realty Trust Account (note John Doe is the actual name of the licensee, but John Doe Realty is a dba)
- 25th Century Realty Trust Account (assuming 25th Century Realty is a dba of a licensed broker).

If a real estate broker is a corporate broker licensee, the account should be set up in the corporation's name or in the name of a fictitious business name if the corporate broker is the holder of a fictitious business license under that name. The fictitious business name has been registered with the DRE. For example:

- XYZ, Inc. Trust Account
- ABC Realty Trust Account (assuming the corporate broker has a registered dba of ABC Realty)

**How to Reduce or Eliminate Trust Fund Liability**

1. **The Real Estate Broker Has Ultimate Fiduciary Duty to Clients.**

The real estate broker and salesperson both have liability for handling, controlling and disbursing the funds held in trust for the client. This fiduciary responsibility in the final analysis rests with the supervising or designated broker of the firm. In particular, DRE Regulation 2725 provides that the supervisory duty always remains with the broker. Even though a broker may delegate his or her
authority and partial responsibility of supervision, the overall or ultimate responsibility will remain with the broker.

2. Avoid Both Overages and Shortages.

In order to reduce or eliminate trust fund liability, the best rule to keep in mind is that the balance amount of the trust fund at all times should equal exactly the trust fund liabilities amount. This means that neither a shortage nor an overage of the trust fund amount can be tolerated. A shortage would occur when the liabilities to a client exceed the actual amount of funds in the trust fund account. An overage would occur when funds are placed in the trust fund account which in fact do not belong in that account.

The most likely reason for an overage is that non-appropriate funds have been "commingled" with the trust fund account. Both situations, trust fund account overages and shortages, violate the Business and Professions Code and the Regulations of the Real Estate Commissioner. Note that in the case of multiple beneficiaries of trust funds, the aggregate trust fund liability at any one time must equal the total positive balances due to all beneficiaries of the account at that time. Also note that beneficiary accounts with negative balances (shortages) are not deducted from other accounts when calculating the aggregate trust fund liability.

To ensure that the balance of the trust fund account at all times equals the trust fund liabilities, a broker must take the following precautionary measures:

- Deposit intact and in a timely manner into the trust fund account all funds that are not forwarded to escrow or to the funds' true owner(s) or, which are not held uncashed as authorized. A licensee is accountable for all trust funds whether or not they are deposited into a trust fund account. This practice should become the usual method of office-wide operation in order to lessen the risk of trust funds being misplaced, lost, stolen, or otherwise not deposited to the trust fund account. This practice is required under the DRE Regulation 2832. This regulation also requires that such deposit is to be no later than three business days following receipt of the funds by the broker or the salesperson.
- Maintain adequate supporting documents for any deposit into the trust fund account and accurately record in a timely manner each deposit. Any unidentified deposit will cause an overage to the trust fund account.
- Maintain adequate supporting documents for any disbursements from the trust fund account and accurately record in a timely manner each disbursement. Any unidentified disbursement will cause a shortage to the trust fund account.
- Disburse funds against each beneficiary's trust fund account only when the disbursement will not result in a negative or deficit balance to that particular account. Since trust fund accounts usually contain funds for a number of beneficiaries, any disbursement over the amount held in trust for any particular beneficiary would cause a shortage to the trust fund account as a whole. In effect, the over-disbursements are paid out of funds belonging to other positive balances. At the moment of single account over-disbursement, a shortage occurs because the net balance of the total trust fund account is less than the broker's total liability to all other beneficiaries.
Always ensure that a check or other negotiable instrument deposited to the trust fund account has cleared the appropriate financial institution before disbursing funds against that instrument. For example, this principle applies when a broker has to return an earnest money deposit amount to the buyer when the seller rejects the offer shortly after the buyer's check is deposited. A trust fund shortage will result if the broker issues the buyer a trust fund account check but the buyer's deposit check failed to clear the financial institution. If the buyer has insufficient funds in his/her account or has issued a stop payment on the deposit check, the broker risks a shortage to the trust fund account.

Maintain complete, current and accurate records of the trust fund account as well as corresponding beneficiary accounts for each beneficiary. These records are essential to ensure that all deposits and all disbursements concerning both the trust fund account and individual beneficiary records are completely correct.

At least on a monthly basis, reconcile the trust fund account records with the bank statement and with the Trust Bank Account Record for Each Beneficiary (TAB).

As you read, think about:

- what trust fund records a broker must keep
- how to record transactions on C.A.R's columnar records for trust funds received and disbursed

**Trust Fund Records to Be Maintained - DRE Regulation 2831**

A broker must keep a record of all trust funds received, including uncashed checks held pursuant to the instructions of his or her principal. All such records, including records maintained under an automated data processing system, must set forth in chronological sequence the following information in columnar form:

1. Date trust funds are received.
2. From whom trust funds are received.
3. Amount received.
4. With respect to funds deposited in an account, date of deposit of funds into the trust account.
5. With respect to trust funds previously deposited to an account, check number and date of related disbursement.
6. With respect to trust funds not deposited in an account, the identity of other depository and date funds were forwarded.
7. Daily balance of the trust account.

A separate record of all trust funds received and disbursed shall be maintained for each trust fund account.
Note: If journals of account cash receipts, and disbursements, or similar records, or automated data processing systems are maintained in accordance with generally accepted accounting principles, the broker will be in compliance with DRE Regulation 2831.

Note Exception! A real estate broker is not required to keep records of checks written by a principal, given to the broker but made payable to third parties such as checks made out to escrow offices, credit and appraisal services, when the total amount of a check for any transaction for that principal does not exceed $1000. However, the DRE may require an accounting for the receipt and distribution of such checks within three years of the transaction, so it is probably best to keep track of these checks as well. (DRE Regulation 2831(e))

Separate Record for Each Beneficiary or Transaction - Regulation 2831.1

A broker must keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker’s trust bank account, and interest (if any) earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth, in chronological sequence, the following information in columnar form:

1. Date of deposit.
2. Amount of deposit.
3. Date of each related disbursement.
4. Check number of each related disbursement.
5. Amount of each related disbursement.
6. If applicable, dates and amounts of interest earned and credited to the account.
7. Balance after posting transactions on any date.

Note: Again, the maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, in accordance with generally accepted accounting principles constitute compliance with Regulation 2831.1.

Columnar Records Required

The columnar records required will depend on whether the trust funds received are actually deposited to the trust account or merely forwarded to an escrow depository or to the owner of the funds. C.A.R. has designed standard form columnar records to comply with these requirements. These standard forms are:

- Trust Bank Account Record for All Trust Funds Deposited and Withdrawn (TAA)
- Trust Funds Received and Released (Not Placed in Trust Bank Account) (TF)
- Trust Bank Account Record for Each Property Managed (TAP)
• **Trust Bank Account Record for Each Beneficiary (TAB)**

C.A.R. Standard Forms TAP, TAA and TAB satisfy the DRE's accounting requirements when trust funds are received and deposited, or to be deposited to the trust fund bank account. When the trust fund account involves funds received from rental properties managed by the broker, TAP may be used in lieu of TAB. Form TF is required when trust funds received are not deposited to the bank account but are forwarded directly to escrow or to the owner of the funds.

**Record Contents**

In order to be in compliance with the Real Estate DRE Regulations, these records must generally show the following:

- All trust fund receipts and disbursements with pertinent details presented in chronological sequence;
- The balance of each trust fund account calculated based on recorded transactions;
- All receipts and disbursements exclusively affecting each beneficiary's account presented in chronological sequence; and
- The balance owing to each beneficiary or for each transaction, such balance calculated based on recorded transactions.

**The Recording Process**

Two types of "control account" records must be maintained under the Real Estate DRE Regulations noted above. Standard Forms TAA and TF serve as control account records. A control account is used to show all trust funds received and disbursed and to provide the balance amount of the trust fund account.

Following are C.A.R. standard forms suggested for trust fund accounting and record-keeping purposes and the specific information required to be shown in each form. The C.A.R. standard forms comply with all requirements set forth by the Real Estate DRE Regulations for keeping columnar trust fund records. Sample forms are in the Appendix of this course.

1. **C.A.R. Form TAA**: Trust Bank Account Record for All Trust Funds Deposited and Withdrawn is used to journalize all trust funds deposited to and disbursed from the trust fund bank account. The recording of deposits and disbursements in columnar form must show in chronological sequence the following information:
   a. amount and date of funds received;
   b. name of payee or payor;
   c. date of deposit to trust account;
   d. amount, check number and date of disbursement; and
   e. daily balance of trust fund bank account.

2. **C.A.R. Form TF**: Trust Funds Received and Released - (Not Placed in Trust Bank Account) is used to account for all funds received but not deposited to a
trust fund bank account. The recording of deposits and disbursements in columnar form must show in chronological sequence the following information:

a. amount and date of funds received;
b. form of receipt (cash, note, etc.);
c. from whom funds received;
d. description or identity of property; and
e. date and person to whom funds forwarded.

3. C.A.R. Form TAP: Trust Bank Account Record for Each Property Managed is similar to and effectively serves the same purpose as Form TAB, Trust Bank Account Record for Each Beneficiary. This record is useful when the broker wants to show detailed information about a specific property being managed. However, it does not have to be maintained if TAB is already used for a property owner's account.

The responsibility for trust fund records is placed on the property management broker. Here, also, the broker should consider the possibility of bonding all licensed personnel so that the client's funds are fully protected. As noted earlier, unlicensed personnel are required to be covered by a fidelity bond.

The recording of deposits and disbursements in columnar form must show in chronological sequence the following information:

a. amount, check number and date of funds received;
b. date funds deposited to trust fund;
c. name of payee or payor;
d. amount disbursed;
e. description of the transaction;
f. tenant's deposit and rental charges; and
g. commissions collected and reasons.

In addition, the record needs to sufficiently identify the property address, owner's address, the tenant, and the tenant's unit.

4. C.A.R. Form TAB: Trust Bank Account Record for Each Beneficiary must show how much of the total trust funds each beneficiary or each transaction is owed. The recording of deposits and disbursements in columnar form must show in chronological sequence the following information:

a. amount and date of deposit;
b. name of payee or payor;
c. amount, check number, and date of disbursement;
d. if applicable, amount and date of interest earned and credited to the account; and
e. balance of individual account after posting transactions on any date.

As you read, think about:

- the importance of reconciling trust fund accounting records
General Requirements - DRE Regulation 2831.2

The balance of all separate beneficiary or transaction records must be reconciled with the record of all trust funds received and disbursed at least once a month. The only exception is in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the following:

- bank account name and number,
- the date of the reconciliation,
- the account number or name of the principals or beneficiaries or transactions, and
- the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

Reconciliation of Accounting Records

The trust fund bank account record, the separate beneficiary or transaction record, and the bank statement are all interrelated. Any entry made on the bank account record must have a corresponding entry on a separate beneficiary record. By the same token, any entry or transaction shown on the bank statement must be reflected on the bank account record. This applies to columnar as well as to other types of records.

The accuracy of the records can be verified by reconciling them at least once a month. **Reconciliation is the process of comparing two or more sets of records to determine whether their balances agree.** It will disclose whether the records are completed accurately.

For trust fund record-keeping purposes, two reconciliations must be made at the end of each month:

1. Reconciliation of the bank account record with the separate beneficiary or transaction records; and
2. Reconciliation of the bank account record with the bank statement.

Suggestions for Reconciling Records

The detailed procedures on how to perform the reconciliations will **not** be discussed here. Following, however, are a few general pointers:

1. Before performing the reconciliations, record all transactions up to the cut-off date in both the bank account record and the separate beneficiary or transaction records.
2. Use balances as of the same cut-off date for the two records and the bank statement.
3. For the bank account reconciliation, calculate the adjusted bank balance both from the bank statement and from the bank account record. (Trust account audits made by the Department of Real Estate have revealed that licensees
commonly err by calculating the adjusted bank balance based solely on the bank statement but not on the bank account record. While they may know the correct account balances, they may not realize their records are incomplete or erroneous.)

4. Keep a record of the two reconciliations performed at the end of each month along with the supporting schedules.

5. Locate any difference between the three sets of accounting records in a timely manner. A difference can be caused by any of the following: not recording a transaction, recording an incorrect figure, erroneous calculations of entries used to arrive at account balances, missing beneficiary records, and bank errors.

As you read, think about:

- the documents that must be maintained in connection with the receipt or disbursement of trust funds

In addition to accounting records, the Department of Real Estate also requires that the broker maintain all documents prepared or obtained in connection with any real estate transaction handled.

**Transactions Normally Handled by Brokers and the Corresponding Documents Necessary**

1. **Receiving trust funds in the form of purchase deposits from buyers; rental & lease payments**

Most brokers use a standard form listing agreement and purchase contract. In addition to the copies given to those who sign, the broker must keep a copy on file for at least three years. The copy will show the date, the amount, from whom, and for what reason transaction money is received or dispersed and to whom it is given.

All moneys received from a real estate sale, or which have been collected as a result of a real estate transaction, must be recorded in the collection receipt book. This includes all initial down payments (earnest money) and any subsequent down payments given to the real estate broker. Explanations on receipts must be in sufficient detail as to completely identify the item. All receipts are to be used in numerical order and accounted for. The receipt book is to be used only for the receipt of moneys pertaining to real estate transactions.

An additional control can be included by indicating on all receipts that the checks must be made payable to the broker's trust fund and not to the salesperson.

The importance of the use of collection receipt books by a brokerage engaging in the collection of rentals and the collection of payments on trust deeds cannot be overemphasized. A duplicate or triplicate pre-numbered receipt book should be used for this purpose.
2. Depositing trust funds

Bank deposit slips are furnished by the bank. Ideally, bank deposit slips should be filled out in duplicate and one copy retained by the broker. The teller will normally stamp the carbon copy, if presented with the original deposit slip and deposit. If separate deposit slips or other deposit records are furnished by the bank, as in the case of mail deposits, they should be stapled to the carbon copies to which they apply.

The bank deposit slip provides a convenient record to indicate the content of deposits to the trust account. The date of deposit of trust funds can then be entered in the cash receipts register or transaction record. On the left or detail side, the bank number and the purpose of the receipt can be shown on the deposit slip. If more space is needed, the back of the slip may be used. It is desirable that the deposit slip include the numbers of the collection receipts or identify the transactions which are included in the deposit.

3. Forwarding buyer's check to escrow

If the customer's deposit is placed in escrow, a receipt should be obtained from the escrow or title company and kept on file.

4. Returning buyer's checks

By the use of a description space on the trust account check, a brief accounting can be given to the principal. However, the use of a description column is limited and it may be necessary to forward a separate accounting statement with the check. When withdrawing commissions from a trust account, the description space on the check should be used to show what the commission relates to and the manner in which it was calculated.

Some deposits (earnest money) received by brokers are placed in trust accounts. After these funds have cleared, the brokers then can write checks to forward the money to an escrow or title company. These checks should also describe the transaction. All trust account checks should be pre-numbered and all voided checks retained.

5. Disbursing trust funds

Documentation: Checks issued; supporting papers for the checks, such as invoices, escrow statements, billings, receipts, etc.

6. Receiving offers and counter-offers and disclosure forms from buyers and sellers

Documentation: Real estate purchase contract and receipt for deposit; counter-offer forms; agency disclosure statement; transfer disclosure statement; natural hazards disclosure statement; etc.
7. Collecting management fees from the trust fund bank account

Documentation: Canceled checks.

Note: If only one trust fund check is issued for management fees charged to various property owners, there should be a schedule or listing on file showing each property and amount charged, and the total amount, which should agree with the check amount.

8. Reconciling bank account record with separate beneficiary records

Documentation: Record of reconciliation.

As you read, think about:

- how to prepare for a trust fund audit

The importance of following the correct procedures to receive, handle, control, and disburse funds held in trust for others cannot be over-emphasized. The Real Estate Commissioner has an ongoing state-wide program of examining and auditing trust fund records of the broker. If necessary, licensees audited will be made aware of trust fund handling and record-keeping requirements. However, the best course of action for licensees is to completely preclude this possibility as well as possible disciplinary action. Most likely, disciplinary action will be initiated if during the course of an examination or audit, actual trust fund account imbalances are discovered or if handling procedures pose a possible monetary loss situation. This is true even if an actual monetary loss has not yet occurred.

Record Retention and Costs of an Audit

California Business and Professions Code § 10148 specifies the requirements of a licensed real estate broker concerning the retention time of records, examinations, and audits of those records. The Real Estate Commissioner may charge the broker the cost of an audit.

In pertinent part, B&P Code § 10148 reads as follows:

(a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.
(b) The commissioner shall charge a real estate broker for the cost of any audit, if
the commissioner has found, in a final desist and refrain order issued under Section
10086 or in a final decision following a disciplinary hearing held in accordance with
Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code, that the broker has violated Section 10145 or a regulation or rule
of the commissioner interpreting Section 10145.

Under certain circumstances, the Real Estate Commissioner is required to charge for
the cost of an audit of trust fund account records. Also, the Real Estate
Commissioner is allowed to maintain legal action to enforce recovery of such costs of
an audit. In determining the costs of an audit, the Real Estate Commissioner may
use the estimated average hourly cost for all persons performing audits of real estate
broker trust fund accounts and records.

**Records Needed for an Audit**

What records must the broker deal with in daily operation in order to prepare for an
audit?

The type of records to be audited varies, depending on the scope of the auditor's
request. The following are common examples of records needed for a trust fund
audit:

1. Bank statements for all trust fund and/or custodial accounts and all source
documents, including bank deposit slips, canceled and voided checks, bank
credit and debit memos, and signature cards.
2. Bank reconciliation records for each trust fund bank account.
3. Cash receipt records.
4. Cash disbursement records.
5. General ledger and trial balances.
6. Reconciliation records.

As you read, think about:

- what is trust fund conversion?
- what are the possible consequences of trust fund conversion?

**Trust Fund Conversion**

*Trust fund conversion* is not the same thing as commingling. Commingling occurs when a
broker mixes the funds of principals with his or her own money. *Conversion is
misappropriating and using principal's fund.* A broker, who upon receipt spends
a principal's deposit without the principal's authorization, has converted; this is a
serious offense.
Possible Consequences of Trust Fund Conversion

1. Loss of license.
2. Receivership.
3. Civil liability.
4. Tax liability.
5. Criminal Sanctions.

Related Penal Code Sections

1. Penal Code § 506 (Persons controlling or intrusted with property of another; misappropriations):

   Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, and any contractor who appropriates money paid to him for any use or purpose, other than for that which he received it, is guilty of embezzlement.

2. Penal Code § 506a (Collector of accounts or debts; definition; prosecution and punishment):

   Any person who, acting as collector, or acting in any capacity in or about a business conducted for the collection of accounts or debts owing by another person, and who violates Section 506 of the Penal Code, shall be deemed to be an agent or person as defined in Section 506, and subject for a violation of Section 506, to be prosecuted, tried, and punished in accordance therewith and with law; and "collector" means every such person who collects, or who has in his or her "possession" or under his or her control property or money for the use of any other person, whether in his or her own name and mixed with his or her own property or money, or otherwise, or whether he or she has any interest, direct or indirect, in or to such property or money, or any portion thereof, and who fraudulently appropriates to his or her own use, or the use of any person other than the true owner, or person entitled thereto, or secretes that property or money, or any portion thereof, or interest therein not his or her own, with a fraudulent intent to appropriate it to any use or purpose not in the due and lawful execution of his or her trust.
Downloadable Files

If you have Adobe Acrobat Reader installed, you can view and print these files offline. To view a file, click on its link, or SHIFT and right-click to save it to your computer. The file sizes are provided to allow you to gauge the download time for each file.

Course Content

- Trust Funds Management
  (file size: 249k)

Forms

- C.A.R. Form TAA
- C.A.R. Form TF
- C.A.R. Form TAP
- C.A.R. Form TAB


§ 10145. Deposit of funds belonging to others

(a) (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

(2) Notwithstanding the provisions of paragraph (1), a real estate broker collecting payments or performing services for investors or note owners in connection with loans secured by a first lien on real property may deposit funds received in trust in an out-of-state depository institution insured by the Federal Deposit Insurance Corporation, if the investor or note owner is any one of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the United States Department of Veterans Affairs.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, or insurance company doing business under the authority of, and in accordance with, the laws of this state, another state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.
(C) Trustees of a pension, profit sharing, or welfare fund, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) A licensed real estate broker selling all or part of the loan, note, or contract to a lender or purchaser specified in subparagraphs (A) to (G), inclusive.

(3) A real estate broker who deposits funds held in trust in an out-of-state depository institution in accordance with paragraph (2) shall make available, in this state, the books, records, and files pertaining to the trust accounts to the commissioner or the commissioner's representatives or pay the reasonable expenses for travel and lodging incurred by the commissioner or the commissioner's representatives in order to conduct an examination at an out-of-state location.

(b) A real estate broker acting as a principal pursuant to Section 10131.1 shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

(d) If not otherwise expressly prohibited by this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company, the accounts of which are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:

(1) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.

(2) All of the funds in the account are covered by insurance provided by an agency of the United States.
(3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.

(4) The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to the broker at the time of establishing the account, the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.

(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

(f) Nothing in subdivision (d) shall preclude the commissioner from prescribing, by regulation, circumstances in which, and conditions under which, a real estate broker is authorized to deposit funds received in trust into an interest-bearing trust fund account.

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(i) As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in paragraph (1) or (3) of subdivision (a) of Section 17006 of that code.

**DRE REGULATIONS INVOLVING TRUST FUNDS**

**10 CCR 2830.1 (2004)**

**§ 2830.1. Interest Bearing Trust Account**

A real estate broker, when acting as agent for a financial institution as beneficiary of a loan, may deposit and
maintain funds from or for the account of an obligor for the future payment of property taxes, assessments or insurance relating to real property containing only a one-to-four family residence, in an interest-bearing trust account in a bank or savings and loan association in order to pay interest to the obligor in accordance with Section 2954.8 of the Civil Code if the following requirements are met:

(a) The account is in the name of the broker as trustee.

(b) All of the funds in the account are covered by insurance provided by an agency of the federal government.

(c) All of the funds in the account are funds held in trust by the broker for others.

(d) The broker discloses to the obligor how interest will be calculated and paid.

(e) No interest earned on the funds shall inure directly or indirectly to the benefit of the broker nor to any person licensed to the broker.

Authority cited: Section 10081, Business and Professions Code. Reference: Section 10145, Business and Professions Code; and Section 2954.8, Civil Code.

10 CCR 2831 (2004)

§ 2831. Trust Fund Records to Be Maintained

(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

(1) Date trust funds received.

(2) From whom trust funds received.

(3) Amount received.

(4) With respect to funds deposited in an account, date of said deposit.

(5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.

(6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.

(7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).
(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

(d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.

(e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed $1,000. Upon request of the Department or the maker of such checks, a broker shall account for the receipt and distribution of such checks. A broker shall retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks.


§ 2831.1. Separate Record for Each Beneficiary or Transaction

(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

(1) Date of deposit.

(2) Amount of deposit.

(3) Date of each related disbursement.

(4) Check number of each related disbursement.

(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.

(7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and
electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.


10 CCR 2831.2 (2004)

§ 2831.2. Trust Account Reconciliation

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.


10 CCR 2832 (2004)

§ 2832. Trust Fund Handling

(a) Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

(b) Except as expressly provided by subdivision (d) of Section 10145 of the Code or by a regulation in this article, the account into which the trust funds are deposited shall not be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds.

(c) A check received from the offeror may be held uncashed by the broker until acceptance of the offer if

(1) the check by its terms is not negotiable by the broker or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and
(2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.

(d) In these circumstances if the offeror's check was held by the broker in accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and offeree expressly so provide in writing, not later than three business days following acceptance of the offer unless the broker receives written authorization from the offeree to continue to hold the check.

(e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required shall place all funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson.


§ 2832.1. Trust Fund Handling for Multiple Beneficiaries

The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.


10 CCR 2834 (2004)

§ 2834. Trust Account Withdrawals

(a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

(1) a salesperson licensed to the broker.

(2) a person licensed as a broker who has entered into a written agreement pursuant to Section 2726 with the broker.
(3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

(b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:

(1) an officer through whom the corporation is licensed pursuant to Section 10158 or 10211 of the Code; or

(2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision (a) above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust fund account.

(c) An arrangement under which a person enumerated in paragraph (1), (2) or (3) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.


10 CCR 2835 (2004)

§ 2835. Commingling

"Commingling" as used in Section 10176(e) of the Code is prohibited except as specified in this section. For purposes of Section 10176(e), the following shall not constitute "commingling":

(a) The deposit into a trust account of reasonably sufficient funds, not to exceed $200, to pay service charges or fees levied or assessed against the account by the bank or financial institution where the account is maintained.

(b) The deposit into a trust account maintained in compliance with subdivision (d) of funds belonging in part to the broker's principal and in part to the broker when it is not reasonably practicable to separate such funds, provided the part of the funds belonging to the broker is disbursed not later than twenty-five days after their deposit and there is no dispute between the broker and the broker's principal as to the broker's portion of the funds. When the right of a broker to receive a portion of trust funds is disputed by the broker's principal, the disputed portion shall not be withdrawn until the dispute is finally settled.

(c) The deposit into a trust account of broker owned funds in connection with activities pursuant to either subdivision (d) or (e) of Section 10131 of the Code or when making, collecting payments or servicing a loan which is subject to the provisions of Section 10240 of the Code provided:

(1) The broker meets the criteria of Section 10232 of the Code.
(2) All funds in the account, which are owned by the broker are identified at all times in a separate record which is distinct from any separate record maintained for a beneficiary.

(3) All broker owned funds deposited into the account are disbursed from the account not later than 25 days after their deposit.

(4) The funds are deposited and maintained in compliance with subdivision (d).

(5) For the purpose of this section, a broker shall be deemed to be subject to the provisions of Section 10240 of the Code if the broker delivers the statement to the borrower required by Section 10240.

(d) The trust fund account into which the funds are deposited is maintained in accordance with the provisions of Section 10145 and the regulations of this article, and in accordance with the provisions of Title 10, California Code of Regulations, Section 260.105.30.


**DRE REGULATIONS ON ADVANCE FEES**

10 CCR 2970 (2004)

§ 2970. Advance Fee Materials

(a) A person who proposes to collect an advance fee as defined in Section 10026 in the Code shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use.

(b) Material used in advertising, promoting, soliciting and negotiating an advance fee agreement shall not be approved if it:

(1) Includes any representation which is false, misleading or deceptive.

(2) Does not set forth a specific, complete description of the services to be rendered for the advance fee.

(3) Does not set forth the total amount of the advance fee along with the date on which the fee shall become due and payable.

(4) Contains any provision which purports to relieve or exempt the person collecting the advance fee from an obligation to fulfill verbal commitments and representations made by employees and agents of the person contracting for the advance fee.

(5) Contains any provision which purports to give a guarantee that the real property or business opportunity in question will be purchased, leased or exchanged or that a
loan secured by real property will be obtained as a result of the services rendered by the person collecting the advance fee.

(6) Does not set forth a definite date for full performance of the services promised under the advance fee agreement.

(c) Not less than 10-point type shall be used in advance fee agreements.

10 CCR 2972 (2004)

§ 2972. Accounting Content

Each verified accounting to a principal or to the commissioner as required by Section 10146 of the Code shall include at least the following information:

(a) The name of the agent.

(b) The name of the principal.

(c) Description of the services rendered or to be rendered.

(d) Identification of the trust fund account into which the advance fee has been deposited.

(e) The amount of the advance fee collected.

(f) The amount allocated or disbursed from the advance fee for each of the following:

(1) In providing each of the services enumerated under (c) above.

(2) Commissions paid to field agents and representatives.

(3) Overhead costs and profit.

(g) In cases in which disbursements have been made for advertising, a copy of the advertisement, the name of the publication, the number of the advertisements actually published and the dates that they were carried.

(h) In the case of an advance fee for the arrangement of a loan secured by a real property or a business opportunity, a list of the names and addresses of the persons to whom information pertaining to the principal's loan requirements were submitted and the dates of the submittal.

You have now completed reviewing the contents of this course.