

APA-1

TRANSMITTAL SHEET FOR NOTICE
OF INTENDED ACTION

Control: 790

Department or Agency: Alabama Real Estate Commission

Rule No.: 790-X-3-.03

Rule Title: Deposit Of Funds

Intended Action Amend

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? No

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? NA

Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

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Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

.....

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer

Vaughn T Poe
Vaughn T Poe

Date

Thursday, September 12, 2024

REC'D & FILED
SEP 12, 2024
LEGISLATIVE SVC AGENCY

ALABAMA REAL ESTATE COMMISSION

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Real Estate Commission

RULE NO. & TITLE: 790-X-3-.03 Deposit Of Funds

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION:

This amendment clarifies that a mutual release agreement pertaining to earnest money can only be entered after the transaction fails.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:

Comments can be presented at the public hearing scheduled at 9:00 a.m. on October 24, during the regularly scheduled Commission Meeting to be held at the The Research and Innovation Center, 540 Devall Drive, Auburn, Alabama 36849. Additionally, written comments may be addressed to Vaughn T. Poe, Executive Director, Alabama Real Estate Commission, 1201 Carmichael Way, Montgomery, Alabama 36106. Written comments must be received in the Commission office no later than 4:30 p.m. on November 4, 2024.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Monday, November 4, 2024

CONTACT PERSON AT AGENCY:

Zack Burr, Alabama Real Estate
Commission, 1201 Carmichael Way,
Montgomery, Alabama 36106
(334) 242-5544

Vaughn T Poe

Vaughn T Poe

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

790-X-3-.03**Deposit Of Funds.**

(1) The deposit and accounting for at all times of all funds belonging to or being held for others in a separate federally insured account or accounts in a financial institution located in Alabama shall require that the qualifying broker be a customer of the financial institution holding all such accounts and the qualifying broker shall be one of the persons with authority to deposit and withdraw funds and to write or make checks as necessary on all such accounts.

(2) Each real estate salesperson or associate broker shall pay over to his or her qualifying broker all funds coming into his or her possession in trust for other parties immediately upon receipt of same.

(3) Each qualifying broker is responsible for deposit of all funds belonging to others coming into his or her possession or of a salesperson or associate broker licensed under him or her where such funds are to be held in trust, unless the qualifying broker is expressly relieved of such responsibility in writing. In cases where the funds are U. S. currency, i.e. cash as opposed to a check or note, these funds shall be deposited immediately. In cases where a check is received as earnest money and the contract form states that the check is to be held for a specific length of time or until the occurrence of a specific event, then the check shall be deposited when the contract form states, or if no time for deposit is specified in the contract form, then the check shall be deposited when the offer becomes a contract.

(4) Funds to be held in trust under a contract for sale involving more than one qualifying broker shall be held and deposited by any of the qualifying brokers involved in the sale. All funds to be held in trust, whether by contract for sale, or by lease or property management agreement, shall be held and deposited by the qualifying broker who is providing these services to the owner. In cases where a successor qualifying broker is to provide these services, the first broker shall provide a complete accounting of the funds and shall transfer the funds to the successor broker. The qualifying broker who is currently providing services to the owner shall be responsible to the public and to the commission for all funds. Upon request by the Commission or its authorized representative, each qualifying broker shall promptly account for any trust funds being held by that qualifying broker.

(5) Disbursement of funds held in trust: Unless otherwise stated in this rule, each qualifying broker shall promptly disburse to the appropriate party or parties any trust funds within 7 business days of the consummation of the transaction for which the funds were deposited. If for any reason the transaction is not consummated, or if for any reason there is a disagreement involving to whom trust funds should be disbursed, the

qualifying broker shall not disburse any trust funds except pursuant to a written agreement entered after the transaction fails and signed by all parties or pursuant to a court order.

(6) Disbursement of security deposits held in trust under a lease agreement:

(a) Residential leases security deposits: Refer to Alabama Code Section 35-9A-201 Security Deposits; Prepaid Rent, and 35-9A-205 Limitation of Liability. Alabama Code~~Code of Ala. 1975, Section 35-9A-201 Security Deposits; Prepaid Rent, and 35-9A-205 Limitation of Liability. Code of Ala. 1975,~~ Sections 35-9A-201 and 35-9A-205 have priority and qualifying brokers shall comply with their instruction.

(b) Commercial leases security deposits:

1. Upon termination of the tenancy, money held for the landlord by a qualifying broker as security may be applied to the payment of accrued rent and the amount of damages that the landlord has suffered by reason of the tenant's noncompliance of the lease all as itemized by the qualifying broker in a written notice delivered to the tenant together with the amount due within 60 calendar days after termination of the tenancy and delivery of possession.

2. If the qualifying broker does not refund the entire deposit, the qualifying broker, within the 60-calendar-day period, shall provide the tenant an itemized list of amounts withheld.

3. Upon vacating the premises, the tenant may provide to the qualifying broker a valid forwarding address, in writing, to which the deposit or itemized accounting, or both, may be mailed. If the tenant fails to provide a valid forwarding address, the qualifying broker shall mail, by first class mail, the deposit or itemized accounting or both, to the tenant at the address of the property. Any deposit unclaimed by the tenant as well as any check outstanding shall be forfeited by the tenant after a period of 90 calendar days.

4. The qualifying broker's mailing, by first class mail, to the address provided in writing by the tenant, within 60 calendar days of the refund or itemized accounting, or both, is sufficient compliance with this chapter.

(c) Security deposits and trust funds subject to a management termination by a landlord or the qualifying broker: If a landlord and/or qualifying broker terminates a management agreement for leased properties, the qualifying broker shall provide an accounting of all security deposits, prepaid rents and other related escrows, and provide such accounting to the landlord or new manager of the property, within seven (7) business days of the management termination effective date, along with payment of funds. A qualifying broker, who is the manager of leased properties, whose leases include security deposits, is relieved of liability under the lease agreements

and this chapter as to events occurring after written notice to the tenant of the termination of management and name of the new management.

(d) Security deposits subject to a sale of the property: If a landlord conveys property subject to a rental agreement in a good faith sale to a bona fide purchaser, the qualifying broker shall provide an accounting of all security deposits, prepaid rents and other related escrows, and provide such accounting to the purchaser of the property, within seven (7) business days of the closing of the sale, along with ~~the~~ payment of funds, if such funds are not already transferred via sale closing documents. Upon the date of accounting and payment, the qualifying broker is relieved of trust funds liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the sale and name of the new management.

(7) This Rule shall not prohibit a broker from depositing with the appropriate court any trust funds which are the subject of disagreement among or between parties under the rules of interpleader or other lawful procedure.

Author: Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, §§34-27-8, 34-27-36(a).

History: Filed September 30, 1982. **Amended:** Filed November 21, 1983; August 15, 1985; August 15, 1988. **Amended:** Filed November 17, 1995 effective December 22, 1995. **Amended:** Filed January 25, 1996; effective February 29, 1996. **Amended:** Filed August 25, 2006; effective September 28, 2006. **Amended:** Filed November 4, 2016; effective December 19, 2016. **Amended:**
Published ; effective.