

**“OPENING A REAL ESTATE BROKER TRUST ACCOUNT”**



**The Law:**

When read in combination, Business and Professions Code Section 10145(a)(1) and Commissioner’s Regulation 2832(a) require a real estate broker who accepts *funds belonging to others* to deposit those funds into one of three places, within three business days following receipt of the funds by the broker or by the broker’s salesperson:

- 1) Into a neutral escrow depository,
- 2) Into the hands of the owner of the funds, or
- 3) Into a trust fund account maintained by the broker 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. The account must be in a bank or recognized depository in California.

**Why do real estate brokers sometimes have difficulty establishing trust accounts at some banks or depositories?**

A trust account is an account managed by a person on behalf of a beneficiary. The person who manages the trust is known as the trustee. A trust account is set up as a means to separate trust funds (monies belonging to persons other than the broker – *e.g.*, principals and clients) from non-trust funds (monies belonging to the broker). In the real estate transactional and agency world, the broker managing the account in trust is a fiduciary to the beneficiaries of the account. A fiduciary relationship between the licensee and client exists, regardless of whether a formal trust agreement has been established.

Explaining the absence of a “formal trust agreement” is often where real estate brokers have difficulties with depositories. It is common today for individuals and families to create formal, written trusts that will distribute assets upon an individual’s death. These may be done to reduce estate tax liability, to protect property in the estate, or to avoid probate. These written trust agreements are usually prepared by an attorney. It is this formal trust agreement that a bank may ask for if a real estate broker simply requests to “open a trust account.”

**Requesting that a Broker Trust Account Be Opened -- What To Tell The Bank/Depository:**

A real estate broker should take the following steps when requesting that a trust account be opened:

- 1) Ask to open a business checking account.
- 2) Verify or confirm that the account has federal insurance coverage (FDIC, NCUSIF, etc.).
- 3) Ask to have the account opened and captioned/titled as a “trust” account in your name, registered fictitious name or corporate broker name, with the broker designated “as trustee” in the title or on the broker/designated officer signature line.
- 4) No separate or special trust agreement is required. The depository will ask for additional documentation to verify your identity, business certificates, Articles of Incorporation, etc.

The requesting broker might need to tell the banker/depository representative that the account to be opened is similar to an attorney trust account, or a “beneficiary” account, in that there is no trust agreement.

If doing the above still does not work, consider using another bank or depository.

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