

Title 299 - NEBRASKA REAL ESTATE COMMISSION

**Chapter 3 - RECORDS; TRUST ACCOUNTS; REQUIREMENTS;
DISPOSITION OF EARNEST DEPOSITS.**

001 It shall be the duty of every broker to preserve for five years, following its consummation, records relating to any real estate transaction.

002 Every broker shall maintain a bookkeeping system which will accurately and clearly disclose full compliance with the law relating to the maintaining of trust accounts.

003 Funds referred to in Subsection (1) Section 81-885.21 of the Nebraska Real Estate License Act shall include but not be limited to earnest money deposits, money received upon final settlements, rents, security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions and money advanced by a broker's principal for expenditures on behalf of such principal.

004 Funds deposited in the trust account will necessarily include monies which will ultimately belong to the broker but such monies shall be separately identified in his or her trust account records and shall be paid to the broker by check drawn on the trust account after the same are due the broker. The fact that a trust account contains money belonging to the broker does not constitute "commingling the money or other property of his or her principals with his or her own," as prohibited by Subsection (4) Section 81-885.24 of the Nebraska Real Estate License Act.

005 Earnest money deposits and other deposits relating to the sale of real estate shall be kept in a separately identified trust account and all other trust funds may be deposited in another separately identified trust account.

006 In the case of cooperative sales between brokers, the selling broker, unless all parties to the transaction with an interest in the funds have agreed otherwise in writing, shall deposit the earnest money payment in his or her real estate trust account within 72 hours or before the end of the next banking day, after an offer is accepted, in writing, and then forthwith transfer such earnest money deposit to the listing broker by issuing a check drawn on the selling broker's trust

account.

006.01 If for any reason the earnest money check tendered to the selling broker is returned by the financial institution unpaid, the selling broker shall forthwith notify the listing broker, who shall immediately refund from his or her trust account the earnest money deposit which has been tendered by the selling broker.

007 In the event of a dispute over the return or forfeiture of any earnest deposit held by a broker, the broker shall continue to hold said deposit in his or her trust account until he or she has a written release from all parties consenting to its disposition or until a civil action is filed to determine its disposition at which time the broker may pay it into court.

007.01 In the absence of a pending civil action, it shall not be grounds for disciplinary action where a broker returns an earnest money deposit to a purchaser, where the return of such deposit is based upon a good faith decision that a contingency in the purchase agreement has not been met, notwithstanding the failure of the seller to agree to said return.

007.02 In the absence of a pending civil action and upon the passage of one-year's time from the date of an accepted offer to purchase, it shall not be considered grounds for disciplinary action for a broker to pay out an earnest money deposit to a seller when the payment of such earnest money deposit has been based on a good faith decision that the buyer has abandoned any claim to such earnest money deposit.

Laws 1973, LB 68, §10; RS 1943, §81-885.07 (5) R. S.
Supp., 1974. Effective date September 2, 1973.