**Section 1450.750 Special Accounts**

a) Escrow Moneys Defined

1) "Escrow moneys" means all moneys, promissory notes or any other type or manner of legal tender or financial consideration deposited with any person for the mutual benefit of the parties to the transaction. A transaction exists once an agreement has been reached and an accepted real estate contract is signed, or a lease is agreed to by the parties. Escrow moneys include without limitation earnest moneys and security deposits, except those security deposits in which the person holding the security deposit is also the sole owner of the property being leased or sold and for which the security deposit is being held.

2) As set forth in the terms of a written agreement between a licensee and a client, such as a property management agreement, rent moneys paid to a licensee for transmittal to the licensee's client (e.g., the owner) shall not be considered to be "escrow moneys". In addition, other moneys held in a custodial account by a licensee for transmittal to a licensee's client, as set forth in the terms of a written agreement, such as a contract for deed, shall not be subject to this Section. For purposes of this Section, "in writing" or "written" can mean by physical or electronic means.

3) Earnest money constitutes escrow moneys whether in the form of personal checks, cashier's checks, money orders, cash or any other forms of legal tender, including legally recognized cryptocurrencies.

b) Escrow Accounts. As set forth in Section 20-20(a)(17) of the Act, sponsoring brokers who accept escrow moneys shall maintain and deposit in a special account (hereinafter referred to as an escrow account), separate and apart from personal or other business accounts, all escrow moneys entrusted to the sponsoring broker while acting as a licensee, escrow agents or temporary custodians of the funds of others.

1) The escrow accounts shall be non-interest bearing, unless the character of the deposit is such that payment of interest on the escrow account is otherwise required by law or unless the principals to the transaction specifically require, in writing, that the deposit be placed in an interest bearing account.

2) If an interest bearing account is required, the recipient of the interest shall be specified, in writing, by the principals of the transaction.

3) A sponsoring broker may maintain more than one escrow account.

4) Every escrow account, whether interest bearing or non-interest bearing, shall be maintained at a federally insured depository.

5) Commingling Prohibited. Each sponsoring broker shall deposit only escrow moneys received in connection with real estate transactions in an escrow account. The sponsoring broker shall not deposit personal funds in an escrow account, except the sponsoring broker may deposit from the sponsoring broker's own personal funds, and keep in any escrow account, an amount sufficient to avoid incurring service charges relating to the escrow account. The sum shall be specifically documented as being for service charges and the sponsoring broker shall have proof available that the amount of the sponsoring broker's own funds in the escrow account does not exceed the minimum amount required by the depository to maintain the account without incurring service charges. Transfer of funds as set forth in subsection (i)(4) shall not constitute commingling.

c) The sponsoring broker shall provide a receipt to the payor of any cash constituting escrow funds and shall retain a physical or electronic copy of the receipt.

d) Time of Deposit of Escrow Moneys

1) All escrow moneys accepted by a sponsoring broker shall be placed in the sponsoring broker's escrow account no later than the next business day:

A) Following the transaction, as defined in Section 1450.100; or

B) After receipt of the escrow money, per the terms of the contract.

2) If the funds are received on a day prior to a bank holiday, or any other day on which the bank is closed, the funds shall then be deposited on the next business day the depository is open.

e) A sponsoring broker serving as escrow agent shall notify all principals in writing if:

1) A principal fails to tender escrow moneys;

2) A principal's payment of escrow moneys is dishonored by the financial institution on which it was drawn; or

3) It appears from the signed contract that the amount of escrow moneys deposited is deficient.

f) Maintenance of Escrow Moneys on Deposit in Escrow Account. The sponsoring broker shall keep all escrow moneys on deposit in an escrow account until a transaction is consummated or terminated, except to the extent that such escrow moneys, or any part of the escrow moneys, shall be disbursed according to the provisions set forth in subsection (g).

g) Disbursement of Escrow Moneys. Once the payor's depository has honored the deposit of escrow funds, the sponsoring broker shall disburse escrow moneys according to the following requirements, as set forth in Section 20-20(a)(17) of the Act:

1) The sponsoring broker must disburse escrow moneys upon consummation or termination of the transaction. The actual terms of the contract regarding the release of the escrow moneys shall be adhered to by the sponsoring broker holding these escrow moneys. The disbursement must be according to the terms of the contract and must be:

A) Made not later than the next business day following the sponsoring broker's receipt of notice of the consummation or termination of the transaction or

B) Otherwise disbursed in accordance with the written direction of all principals to the transaction or their duly authorized agents.

2) Commissions and/or fees earned by a sponsoring broker in any transaction shall be disbursed by that sponsoring broker from the funds deposited in an escrow account no earlier than the day the transaction is consummated or terminated and not later than the next business day after the transaction is consummated or terminated or otherwise in accordance with the written direction of all principals to the transaction or their duly authorized agents.

3) Authorized disbursements are those that are made on behalf of, and at the written direction of, all principals to the transaction or their duly authorized agents.

4) A sponsoring broker shall not withhold, for any period of time, an authorized disbursement of escrow moneys due to any claim for a commission or compensation to any licensee.

5) Transfer of escrow moneys to the closing agent for the transaction may be made up to 2 business days prior to the scheduled closing.

6) As set forth in Section 20-20(a)(17)(A)(i) of the Act, if, prior to the consummation or termination of the transaction, the sponsoring broker receives written direction from all of the principals to the transaction or their duly authorized agents agreeing to a disbursement of the escrow moneys, that sponsoring broker must disburse the escrow moneys according to the written directions. The disbursement must be made not later than the next business day following the sponsoring broker's receipt of the last required written direction.

7) The sponsoring broker may release escrow moneys as set forth in Section 20-20(a)(17)(A)(ii) of the Act that allows a sponsoring broker to disburse escrow moneys prior to the consummation or termination of the transaction in accordance with directions providing for the release, payment or distribution of escrow moneys contained in any written contract signed by the principals to the transaction or their duly authorized agents. The actual terms of the contract regarding the release of the escrow moneys shall be adhered to by the sponsoring broker holding these escrow moneys. For example, parties to a transaction sign a contract to purchase that includes language allowing the earnest money to be disbursed by the sponsoring broker if the transaction does not close as provided for in the contract if the sponsoring broker:

A) Provides written notice to the parties as required by the contract at least 14 days prior to the intended disbursement of the earnest moneys;

B) Indicates how the sponsoring broker intends to disburse the earnest money; and

C) Indicates the date that the sponsoring broker must receive the parties' written objections to the proposed disbursement.

8) As set forth in Section 20-20(a)(17)(A)(iii) of the Act and notwithstanding any other requirements or responsibilities in this Part, if the sponsoring broker receives an order from a court of competent jurisdiction providing for the disbursement of the escrow moneys, that sponsoring broker must disburse the escrow moneys according to the terms of the court order.

9) For the purposes of this Section, "duly authorized agent" shall mean an attorney-in-fact, attorney-at-law who represents one of the principals to the transaction, or any other person the licensee can demonstrate was authorized to act on behalf of a principal to the transaction.

h) Disputes Regarding Escrow Moneys

1) In the event of a dispute in writing over the return or forfeiture of any escrow moneys held by the sponsoring broker or if a sponsoring broker has actual knowledge that any party to a transaction contests or disagrees with an anticipated disbursement of escrow moneys held by that sponsoring broker, the sponsoring broker shall continue to hold the deposit in the sponsoring broker's escrow account until:

A) The sponsoring broker has a written release from all parties or their duly authorized agents consenting to the disposition, in which case the escrow moneys must be disbursed according to the terms of the written direction no later than the next business day after the sponsoring broker's receipt of the last required written release;

B) A civil action is filed, by either the sponsoring broker or one of the parties to the transaction, to determine its disposition, at which time the escrow money may be deposited with the court;

C) The funds are turned over to the State Treasurer or such other appropriate State agency or officer designated under the Act or the Revised Uniform Unclaimed Property Act [765 ILCS 1026], because of inactivity of the account, inability to locate the parties, or inability of the parties to reach a resolution.

2) If the sponsoring broker files an interpleader action and the real estate contract authorizes the sponsoring broker to withdraw from the escrow account amounts necessary to reimburse the sponsoring broker for costs and reasonable attorney's fees associated with the interpleader action, costs and attorney's fees associated with that sponsoring broker's attempt to collect a commission or fee are excluded.

i) Escrow Records. Each sponsoring broker who accepts escrow money shall maintain, in the sponsoring broker's office or place of business, a bookkeeping system in accordance with sound accounting principles, that shall consist of at least the following escrow records, whether physical or electronic:

1) Journal. A journal shall be maintained for each escrow account. The journal shall show the chronological sequence in which funds are received and disbursed by the sponsoring broker.

A) For funds received, the journal shall include the date the funds were received, the name of the person on whose behalf the funds are delivered to that sponsoring broker and the amount of the funds delivered.

B) For funds disbursed, the journal shall include the date of disbursement, the payee, the check number, if applicable, and the amount disbursed.

C) A running balance shall be shown after each entry for funds received or disbursed.

2) Ledger. A ledger shall be maintained for each transaction. The ledger shall show the receipt and the disbursement of funds affecting a single transaction, such as between buyer and seller or landlord and tenant, or among the respective parties. The ledger shall include the names of all parties to a transaction, the amount of funds received by the sponsoring broker and the date of receipt. The ledger shall show the date of any disbursement, the payee, the check number, if applicable, and the amount disbursed. The ledger shall segregate one transaction from another transaction. There shall be a separate ledger or separate section of each ledger, as the sponsoring broker elects, for each type of real estate transaction (e.g., lease). If the ledger and journal are computer generated from the same data entry, the sponsoring broker must maintain copies of the bank deposit slips, bank disbursement slips, other bank receipts, or electronic records to account for the data on the ledger.

3) Monthly Reconciliation Statement. Each sponsoring broker shall reconcile, within 10 days after receipt of the monthly bank statement, each escrow account maintained by the sponsoring broker, except when there has been no transactional activity during the previous month. Reconciliation shall include a written work sheet comparing the balances as shown on the bank statement, the journal and the ledger, respectively, in order to insure agreement between the escrow account, the journal and the ledger entries for the escrow account. Each reconciliation shall be kept for at least 5 years from the last day of the month covered by the reconciliation.

4) If escrow moneys are transferred from an escrow account to another account for disbursement, the sponsoring broker must maintain a physical or electronic copy of all records reflecting a disbursement from the other account.

5) Master Escrow Account Log. Each sponsoring broker shall maintain a Master Escrow Account Log identifying all escrow bank account numbers and the name and address of the bank where the escrow accounts are located. The Master Escrow Account Log must specifically include all bank account numbers opened for individual transactions, even if account numbers fall under another umbrella account number.

6) A sponsoring broker may employ a more sophisticated bookkeeping system based on sound accounting principles, including a system utilizing electronic data. Any system must contain or produce printed records containing the information required by this Section, although it need not be in the same format as provided for in this Section.

7) As set forth in Section 20-20(a)(18) of the Act, the sponsoring broker shall make available to the Division, within 24 hours after a request, all escrow records and related documents maintained in connection with the practice of real estate and located in the physical or virtual office as set forth in Section 1450.755.

8) Copies of all Escrow Money Instruments. Except as otherwise provided by law, the sponsoring broker shall retain copies of all escrow money instruments received from a principal as part of a transaction, including copies of all personal checks, cashier's checks, certified checks, money orders, promissory notes or other financial instruments. The sponsoring broker shall also retain copies and/or documentation of all funds disbursed from or transferred in or out of an escrow account.

9) If escrow records are lost, stolen or destroyed, the sponsoring broker must:

A) Report the loss to the Division's enforcement division within 48 hours; and

B) Immediately obtain copies of monthly bank statements, deposit and disbursement receipts, and any other available records to reconstruct the escrow records.

10) A sponsoring broker may delegate the bookkeeping duties under this Part to another qualified person, including a designated managing broker, bookkeeper, accountant, unlicensed assistant, licensed assistant or sponsored licensee. These duties must not be delegated to a new broker licensee who has not successfully completed the 45-hour post-license education. Compliance with bookkeeping duties remains the responsibility of the sponsoring broker. The sponsoring broker is ultimately responsible for the proper administration of the escrow account pursuant to this Part.

j) Sponsored Licensees. Sponsoring brokers shall institute a company policy to ensure that sponsored licensees tender escrow moneys received in compliance with this Part. Sponsored licensees, whether managing brokers, brokers or residential leasing agents, may not maintain their own escrow accounts.

k) Offices. Physical or virtual offices may maintain escrow accounts in compliance with this Part or may transmit all escrow moneys received to the principal office, but not to another office.

1) If the office does maintain escrow accounts, all of the requirements of this Part apply, including maintaining all required escrow records and submitting all required escrow forms to the Division.

2) If the office does not maintain escrow accounts but instead transmits all escrow moneys received to the principal office, all escrow moneys must be transmitted by that office to the principal office no later than the next business day following the transaction. A transaction exists once an agreement has been reached and an accepted real estate contract is signed, or a lease is agreed to, by the parties. The office must maintain records showing the date the escrow moneys were transmitted to the principal office. Funds received by the principal office from another office shall be placed in the sponsoring broker's escrow account no later than the next business day following receipt of the funds from that office.

l) Escrow Requirements for Property Management Activities. Security deposits remitted to a sponsoring broker shall be maintained in an escrow account for the duration of the lease, unless the tenant waives this requirement in writing and except if prohibited by State laws and local ordinances. The waiver, if included in the lease, shall appear in bold print.

m) Notice to the Division of the Identity of All Escrow Accounts and the Consent to Examine and Audit All Accounts

1) Each sponsoring broker shall, at the time of the original application for licensure, in a format provided by the Division, include the name of the banks or other recognized depositories in which each escrow account is maintained, the name of each account, and the names of the persons authorized to withdraw funds from those accounts, and shall, as a condition of licensure, consent to the examination and audit by the Division of all escrow accounts, whether or not the account is identified on the form.

2) Updated information shall be submitted by the sponsoring broker to the Division within 10 days after a change of depository, method of doing business, or persons authorized to make withdrawals.

3) Updated information shall not be required each time a new escrow account is opened for an individual transaction when the account falls under an umbrella account that has already been identified. The identity of each of these individual escrow accounts must be included in the Master Escrow Account Log required by subsection (i)(5).

n) Violations. Any licensee who violates this Part may be deemed to have endangered the public interest under Section 20-20(a)(21) of the Act and may be subject to a temporary suspension pursuant to Section 20-65 of the Act.

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