

Commission Position 5 - Interest Bearing Trust or Escrow Accounts

(Recodification adoption June 7, 2022: CP-4 Commission Position on Interest Bearing Trust Accounts recodified to CP 5 – Interest Bearing Trust or Escrow Accounts)

Section 12-10-217(1)(i), C.R.S., requires Brokers to place Money Belonging to Others in a Trust or Escrow Account with a Recognized Depository and permits the type of account to be interest bearing. The Commission has taken the position that in the absence of a specific written agreement to the contrary, any interest accumulating on a Brokerage Firm's Trust or Escrow Account does not belong to the Brokerage Firm. The position is based upon section 12-10-217(1)(h), (i) and (t), C.R.S., and Rule 5.17. which prohibits a Broker or Brokerage Firm from taking any secret or undisclosed amount of compensation, commission, or profit, and establish the protocols for how a Broker must handle the funds of another.

Earnest Money:

Contracts calling for earnest money deposits or other payments that accrue interest should contain a provision specifying which party is entitled to interest earned and under what conditions. The Commission-Approved Contract to Buy and Sell Real Estate provides that all interest may be paid to a fund established for affordable housing (e.g., Colorado Association of REALTORS® Foundation) if the earnest money holder has agreed to do so.

Money Belonging to Others Received by a Brokerage Firm for Property Management:

If interest will accrue on Money Belonging to Others received by the Brokerage Firm for Property Management, the Brokerage Firm's Management Agreement must contain a provision specifying who is entitled to interest earned and under what conditions relating to both the rental receipts and tenant's security deposits. Additionally, the lease agreement must contain a similar provision addressing interest earned on the security deposit. (Note: Some cities and counties mandate a set interest rate to be earned for a tenant's security deposit.)

Any interest income accrued in the Property Management Trust and Escrow Accounts must be accounted for as set forth in Rule 5.14.