

Commission Position 6 - Release of Earnest Money Deposits

(Recodification adoption June 7, 2022: CP-6 Commission Position on Release of Earnest Money Deposits recodified to CP 6 - Release of Earnest Money Deposits)

The Commission will not pursue disciplinary action against a Brokerage Firm for refusal to disburse disputed funds when the Brokerage Firm is acting in accordance with the terms and provisions of the contract.

Brokerage Firm Holding Earnest Money Deposits:

In the Commission-Approved Contract to Buy and Sell Real Estate, a Brokerage Firm, if selected by the parties, holds the earnest money on behalf of both buyer and seller. If there is no dispute as to the disposition of the earnest money, the Brokerage Firm should disburse funds as directed by the parties within a timely manner.

Some Brokerage Firms unnecessarily require a signed release by both parties even when there is no disagreement as to the distribution of an earnest money deposit. Audits have disclosed many instances where Brokerage Firms have held earnest money deposits for extended periods of time because one or both parties will not sign a release. While good judgment is always encouraged, releases are not required by the Commission. In addition, when one party has given written authorization to release an earnest money deposit to the other party, a written release by the other party is not required.

Exculpatory provisions in releases holding the Brokerage Firm harmless or otherwise relieving the Brokerage Firm of liability are prohibited as set forth in Rule 7.4. Unless otherwise stated in the contract, a Brokerage Firm is not required to take any action, other than as specified in the contract when there is a controversy regarding the release of an earnest money deposit.

Unclaimed Earnest Money Deposits:

If the Brokerage Firm is unable to locate the party entitled to a distribution of an earnest money deposit, the Brokerage Firm may be required to transfer the earnest money deposit to the Colorado State Treasurer after proper notice under the provisions of Colorado's Unclaimed Property Act found at section 38-13-101 *et seq.*, C.R.S. Further information and reporting forms may be obtained from that office.

Third Parties Holding Earnest Money Deposits:

If an earnest money deposit is held by a third party (e.g., a title company or attorney), the Brokerage Firm is not responsible for the disposition of the earnest money deposit.