

## Separate Accounts and Accounting for Real Estate Brokers Concerning Money Belonging to Others for Services Other than Real Estate Brokerage Services FAQs

---

On June 2, 2020, the Colorado Real Estate Commission (“Commission”) adopted rules concerning Money Belonging to Others for deposit by a Broker for services other than Real Estate Brokerage Services. This adoption specifically modifies Rule 5.11, to set a standard and add clarity for Brokers concerning accepting monies from others in these instances. **These rule adoptions are effective on July 30, 2020.**

The rule changes were a result of the real estate industry’s request to provide greater clarification and direction concerning the requirements for Brokers holding Money Belonging to Others for non-Real Estate Brokerage Services. The rule changes were also necessitated due to the statutory language found in section 12-10-217(1)(h), C.R.S., which states, “Failing to account for or to remit, within a reasonable time, any money coming into the licensee’s possession that belongs to others, **whether acting as real estate brokers or otherwise**, and failing to keep records relative to the money, which records shall contain such information as may be prescribed by the rules of the commission relative thereto and shall be subject to audit by the commission.”

### Rule 5.11. (Money Belonging to Others for Deposit by a Broker for Non-Real Estate Brokerage Services)

Rule 5.11 was expanded to include that monies accepted for deposit by Brokers for activities **not** involving Real Estate Brokerage Services must be deposited into the Broker’s or Brokerage Firm’s Trust or Escrow Account(s), and that those funds are subject to record-keeping requirements.

The Division has received many questions about Rule 5.11, and below are some of the most frequently asked questions:

**Question:** What are some examples of accepted deposits for non-real estate related activities that are subject to this rule?

**Answer:**

- Guest deposits for short term rentals;

- Security deposits for the broker's own rental properties where the broker's ownership interest is more than 20%;
- Deposits from a buyer when the broker is acting as a builder; or
- Any other purposes, other than Real Estate Brokerage Service.

**Question:** What does the threshold of 20% ownership mean?

**Answer:** If you own less than 20% interest in a property and are managing it for yourself and others, you must have a property management relationship with the ownership entity. That means you must have all of the proper disclosures, contracts, and adhere to the accounting and record keeping requirements outlined for property managers and it must be allowed within your Brokerage Firm's Office Policy Manual.

If you own at least 20% interest in a property, you may manage the property but must place deposits into the Broker's own Trust or Escrow Account or the Brokerage Firm's Trust or Escrow Account.

**Question:** How do I know if I should keep it in the Brokerage Firm Trust or Escrow Account or my own Trust or Escrow Account?

**Answer:** Check the Brokerage Firm's office policy manual. If the office policy manual states that all deposits must go into the Brokerage Firm Trust account, that requirement must be met. In that case, three way reconciliation is required and you must follow all the accounting rules as prescribed in Chapter 5 (Separate Accounts and Accounting), of the Commission's Rules and Regulations for Real Estate Brokers.

If the Office policy manual does not require use of the Brokerage Firm Trust Account, the individual broker must establish a Trust Account and the Broker must identify the fiduciary nature of each Trust or Escrow Account. The broker must not divert or convert monies, must maintain a journal of the account and must be able to produce documents and records if requested by a member of Division staff. Also with regard to these funds, the Broker is required to perform a two-way reconciliation monthly to show that on the date of reconciliation the cash balance shown in the journal and the reconciled bank balance are the same. Please note that this is a different standard than the three-way reconciliation required for Brokerage Firms.

**Question:** What makes an account a "trust account"?

**Answer:** A Trust account is not just a way to name any bank account. In order to be an actual trust account the funds must be available immediately without penalty, and must not be at risk in the case of the broker being sued or filing for bankruptcy. You will want to check with the bank to make sure that it is an actual trust account that meets these requirements.

**Question:** Where can I find a bank to open a trust account?

**Answer:** See the list of banks below for a sample of banks that offer compliant trust accounts. This list may not be exhaustive.

**Question:** In setting up a compliant trust or escrow account, is there something that I can take to the bank to assist with establishing this account for me as a broker outside of the brokerage?

**Answer:** Yes. The Commission has a statutory and rule compliant [Notice of Escrow or Trust Account](#) (For Services Other than Real Estate Brokerage Services) document that one should use to present to your banking institution when setting up these types of accounts.

**Question:** Does this mean that if I own 3 rental properties with my spouse, we have to deposit the tenants' security deposits in a trust account and do a two-way reconciliation every month?

**Answer:** Yes, you must comply with the security deposit and reconciliation requirements.

**Question:** Is there a minimum number of rentals that requires a trust account? Or a maximum number over which more than one trust account is required?

**Answer:** There is no minimum. Even if you have only one rental you must hold the tenant's security deposit in a Security Deposit Trust Account. There is also no maximum. You can hold multiple security deposits in the Security Deposit Trust Account.

**Question:** If I have 10 rental properties do I need 10 separate trust accounts, or can I put all the security deposits into one trust account?

**Answer:** You can put them all in one trust account.

**Question:** Do rental proceeds need to go into the trust account?

**Answer:** Rental proceeds do not go into the trust account.

**Question:** Can I also keep the rent we collect in that account? Or take money out of that account for repair to the property?

**Answer:** No. The only monies that should be in that account are the tenants' security deposits. To add other money would be considered commingling. To take money out of that account for purposes of paying repair bills would be considered diverting. Those funds should not be commingled with personal or business operating funds.

**Question:** If I am receiving rental proceeds from my personally owned properties, do I need to put those proceeds into a trust account?

**Answer:** No, if the rental proceeds are from your personally owned properties, you do not need to put those into a trust account.

**Question:** What if I am receiving rental proceeds for the landlord(s) that I am managing properties for?

**Answer:** In that case, those rental proceeds need to be placed in a separate trust account separate from the security deposit trust account.

**Question:** Would putting security deposits into a savings account suffice?

**Answer:** No, security deposits must go into a trust account.

**Question:** Can the trust account be interest bearing?

**Answer:** Yes, however, the Commission has taken the position that in the absence of a contract signed by the proper parties to the contrary, any interest accumulating on a trust

account does not belong to the broker who is acting as escrow agent. (This position is based upon §12-10-217(1)(t), C.R.S., and upon the well-established tenet of agency that the agent may not profit personally from the agency relationship except for agreed upon compensation.)

**Question:** If I own rental properties and my real estate license is inactive, do I still need to put security deposits into a trust account?

**Answer:** Yes, even if your license is on an inactive status, you will need to maintain security deposits in a trust account.

**Question:** Am I allowed to add my own funds to the trust account in order to cover bank fees for that account?

**Answer:** Yes, you may add broker funds in order to keep the account from going negative, however, those amounts must be reasonable under the circumstances and those added funds should not be excessive as compared to the bank fees.

**Question:** I have a question about my LLC which is taxed as an S Corp and the tax implications of the monies held in the Security Deposit Trust Account, can you help me?

**Answer:** Some situations are unique and require the broker to seek the advice of an attorney and/or tax professional to fully understand the detailed nature of your situation and to obtain professional tax and legal advice.

**Question:** Do you have any additional information and resources that I can review regarding establishing a trust account?

**Answer:** Yes, the Division has information on this topic at this link: [Establishing a Trust or Escrow account](#).

**Question:** Do you have any additional information and resources that I can review regarding 3-Way Reconciliation of a bank trust or escrow account?



**Answer:** Yes, the Division has information on this topic at this link: [3-Way Reconciliation](#).