



# **Escrow Account & Record Keeping Requirements**

**Act of 2000**



# Illinois Department of Financial and Professional Regulation

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## Division of Professional Regulation

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## ESCROW ACCOUNT & RECORD KEEPING REQUIREMENTS

The Real Estate License Act and the Rules governs the management of escrow funds held by Real Estate Brokers. The following instructions and samples are to illustrate the requirements of The Real Estate License Act of 2000, 225 ILCS 454, and the Rules, Part 1450.175, regarding escrow record keeping. **PLEASE REVIEW THE REQUIREMENTS OF THE ACT AND RULES.** If you have any questions concerning the proper management of the escrow funds, please contact the Division of Professional Regulation, Real Estate Enforcement in Chicago.

### Escrow Funds

The Act defines escrow money as:

"all monies, promissory notes or any other type or manner of legal tender or financial consideration deposited with any person for the benefit of the parties to the transaction. A transaction exists once an agreement has been reached and an accepted real estate contract signed or lease 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 and for which the security deposit is being held."

Rent or other monies are not considered escrow money if a written agreement, such as a property management agreement, exists between the licensee and the client. Additionally, other monies held in a custodial account for transmittal to a licensee's client shall not be considered escrow if the money is collected by the licensee pursuant to the terms of a written agreement. Absent a written agreement to the contrary, rent money collected by a licensee for a client shall be considered escrow.

### The Escrow Account

Sponsoring / Managing Brokers are not required to maintain an escrow account if they do not accept escrow funds. However, if escrow funds are accepted, an account at a federally insured financial institution must be established.

Sponsoring / Managing Brokers may maintain more than one escrow account. However, sponsored licensees may not maintain their own escrow account.

A Consent to Examine and Audit form for each financial institution must be completed by the Managing Broker and filed with the Division of Professional Regulation, Real Estate Section. Every time the Broker changes financial institutions or opens a new account, a new Consent to Audit Form must be filed. A copy of the Consent to Examine and Audit form is attached.

The identity of each signatory on the account must be provided. The Broker should consider very carefully who is made a signatory on the account. The Sponsoring/Managing Brokers are responsible for any theft and/or mismanagement of escrow funds.

All escrow moneys must be held in a non-interest bearing account unless otherwise required by law or unless the principals to the transaction specifically require, in writing, that the escrow funds be placed in an interest bearing account. The written instructions to place the escrow funds in an interest bearing account must state specifically to whom the interest will be paid.

### Commingling is prohibited

The Broker shall maintain escrow moneys separate and apart from any personal, business or operating accounts.

A Sponsoring/Managing Broker shall not deposit personal funds in an escrow account, with one exception. The Broker may deposit from his or her own personal funds, and keep in any escrow account, the minimum amount necessary to avoid incurring bank service charges.

## Time of Deposit

All escrow funds received by the Sponsoring/Managing Broker shall be deposited into the broker's escrow account not later than the next business day following the transaction. A transaction exists once an agreement has been reached and an accepted real estate contract signed or lease agreed to by the parties. If the funds are received on a day prior to a bank holiday or day on which the bank is closed, the funds must be deposited no later than the next business day upon which the bank is open.

## Disbursement of Escrow Moneys

Pursuant to Section 20-20(h)(8) of the Act, the sponsoring broker shall disburse escrow moneys according to the following requirements, however, a sponsoring broker may not disburse funds until they have been honored by the payor's depository.

- 1) The Broker must disburse escrow moneys upon consummation or termination of the transaction. Such disbursement must be according to the terms of the contract and must be made not earlier than the day the transaction is consummated or terminated and not later than the next business day following the sponsoring brokers receipt of notice of the consummation or termination, or otherwise in accordance with the written direction of all principals to the transaction.
  - a) Commissions or fees earned by a sponsoring broker in any transaction shall be disbursed 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 was consummated or terminated, or otherwise in accordance with the written direction of all principals to the transaction.
  - b) Authorized disbursements are those, which are made on behalf of, and at the written direction of, all principals to the transaction.
  - c) 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.
- 2) Pursuant to subparagraph (i) of Section 20-20(h)(8) 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 broker must disburse the escrow moneys according to the written directions. Such disbursement must be made not later than the next business day following the Broker's receipt of the last required written direction.

- 3) The Broker may release escrow moneys pursuant to subparagraph (ii) of Section 20-20(h)(8) of the Act which allows a 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. In any such case the Broker shall adhere to the terms of the contract concerning the release of the escrow moneys.

**Note: ...The Broker must not use his or her judgment to determine if a default has occurred. Contract law is very complicated. The occurrence of certain events may, under law, excuse performance of one of the parties. What appears to be a default may not trigger the exercise of a forfeiture clause. Always comply with the mutually written instructions of the parties or their duly authorized agents. If the parties cannot agree, they must seek appropriate remedies in a court of law.**

- 4) Pursuant to subparagraph (iii) of Section 20-20(h)(8) of the Act and notwithstanding any other requirements of responsibilities in this Rule, if the sponsoring broker receives an order from a court of competent jurisdiction providing for the disbursement of the escrow moneys, that broker must disburse the escrow moneys according to the terms of the order.

A Broker who receives written direction of the principals to a transaction as to how the escrow funds should be disbursed must disburse the money accordingly. If the Broker has a claim for a commission or other remuneration, then the Broker should seek payment directly from the obligated party. The escrow funds cannot be withheld because the Broker has a claim against one of the parties. The Broker may not require that a party who is not his client agree to allow the Broker to retain a portion of the funds in order for the non-client party to receive a portion of the funds.

## Record Keeping Requirements

The Rules (1450.175 and 1450.180) address the specifics of records needed to be kept by the Broker for: escrow accounts, transaction records, employment records and records reflecting the payment of compensation.

Escrow records may be kept manually or with computer software. If a computer is used to keep the escrow account information, the Broker must retain monthly printouts (hard copy) of each report. In addition, the Broker shall ensure that a back up copy is made of all escrow records, at least monthly. The monthly reconciliation, including a work sheet, shall be printed out and maintained by hard copy.

The Sponsoring Broker shall maintain all escrow records for five (5) years. The Broker shall ensure that all escrow records for the immediate prior two (2) year period of time, are maintained in the office location. All escrow records more than two (2) years old may be stored at a location other than the office.

The Sponsoring Broker shall maintain the following records, as defined in Sections 1450.175 and 1450.180:

- 1) Escrow Journal for each escrow account;
- 2) Ledger for each transaction;
- 3) Monthly Reconciliation;
- 4) Master Log of Escrow Accounts;
- 5) Bank Statements;
- 6) Records relating to real estate transactions;
- 7) Employment agreements; and
- 8) Payment of Compensation.

### **Journal**

The Journal is a chronological record of all the deposits and withdrawals from the escrow account. Each escrow account must have a separate Journal. Each line of the Journal reflects only one transaction at a time. A sample Journal is attached as Exhibit A.

Each Journal shall include the following information:

- 1) For funds received:
  - A) The date such funds are received;
  - B) The names of the person on whose behalf the funds are delivered;
  - C) The amount of deposit; and
  - D) Maintain a running balance after each entry.
- 2) For funds disbursed:
  - A) The date such funds are disbursed;
  - B) The names of the payee;
  - C) The check number of any disbursement;
  - D) The amount disbursed; and
  - E) Maintain a running balance after each entry.

### **Ledger Cards**

In addition to a Journal, the Broker is required to maintain a Ledger Card for each transaction. Unlike the Journal, which contains information on many transactions, each Ledger Card has information on a single transaction. A sample Ledger Card is attached as Exhibit B.

Each Ledger Card shall include the following information:

- 1) The property address;
- 2) The names of all parties to a transaction;
- 3) The amount of escrow funds received;
- 4) The date such funds are received and disbursed;
- 5) The payee of any disbursement; and
- 6) The check number of any disbursement.

If the Ledger Card is computer generated from the same computer software program from which the Journal is generated, the Broker must maintain copies of the bank deposit slips and receipts, bank disbursement slips and receipts, and all other bank instruments, to account for the data on the Ledger Card.

A separate Ledger Card shall be maintained for the Broker's funds which are kept in each escrow account. These funds represent non-escrow monies deposited into an escrow account to cover costs associated with the maintenance of an escrow account. A sample Ledger Card for "Broker's Funds" is attached as Exhibit C.

### **Monthly Reconciliation and Written Work Sheets**

The Broker is required to reconcile each escrow account within ten days of receipt of the monthly bank statement. The reconciliation allows the Broker to discover errors and discrepancies such as a deposit into a wrong account, earnest money checks that have been dishonored, or irregularities in the account.

The monthly reconciliation shall include a written work sheet comparing the reconciled bank statement balance, with the Journal balance, and with the sum of all the Ledger Cards. A sample reconciliation work sheet is attached, as Exhibit D.

**Note:** *...There is confusion concerning the monthly reconciliation work sheet. Some Brokers believe that the monthly reconciliation work sheet refers only to reconciling the escrow account bank statement. That belief is incorrect.*

*The monthly reconciliation work sheet is used as a tool to document and compare the reconciled bank statements with the running balance on the Journal and with the total of all pending/active Ledger Cards.*

Each reconciliation work sheet must be kept for at least five (5) years.

If the Broker discovers a discrepancy when reconciling the accounts monthly, the Broker should review the Journal, Ledgers, and both the open and recently closed deal files.

In addition, the Broker should reconcile the business or operating accounts. The Broker may find that the funds were deposited in the wrong account or that an entry was not made in the Journal and/or Ledger Card.

### **Escrow Account Log**

Each Sponsoring / Managing Broker who maintains an escrow account, or accounts, shall maintain a Master Escrow Account Log, identifying all escrow bank account numbers, and the name and address of the bank where the escrow account(s) are held. A sample Escrow Account Log is attached, see exhibit E

### **Bank Statements**

Bank statements, and all other bank records, i.e., deposit receipts, account transfers, etc., for each escrow account shall be kept by the Sponsoring / Managing Broker for a period of at least five (5) years.

### **Records Relating to Real Estate Transactions**

The Sponsoring / Managing Broker shall ensure that all records relating to transactions are kept in the office which is involved in the transaction. These records shall include all original documents that are pertinent to a transaction. Sponsoring / Managing Brokers may allow their sponsored licensees to maintain a duplicate copy of the transaction records.

These records might include:

- 1) Signed contracts or leases;
- 2) Written release of escrow funds;
- 3) Dual agency authorization;
- 4) Written direction to deposit escrow moneys in an interest bearing account;
- 5) Disclosures (i.e., lead paint, seller disclosure);
- 6) Rental finding agreement;
- 7) Earnest money receipts; and/or
- 8) Bank deposit slips.

**Note:** *...The above list of records is not intended to be all inclusive, rather it is intended to show examples of some pertinent documents.*

All records relating to a real estate transaction shall be maintained by the Sponsoring / Managing Broker for five (5) years.

### **Employment Agreements**

The Sponsoring / Managing Broker shall maintain a written employment agreement for every licensee who is employed by, or affiliated with the sponsoring broker. A copy of the employment agreement for each sponsored licensee shall be maintained at the office location for which the licensee is sponsored. If a branch office sponsors the licensee, then the branch office must maintain a copy of the respective employment contract.

The Broker shall maintain employment agreements for five (5) years after the sponsored licensee is no longer affiliated with the sponsoring broker.

### **Payment of Compensation**

The Sponsoring Broker shall maintain records reflecting the payment of compensation to any person, or to any entity, for the performance of any and all licensed activities for five (5) years.

Please contact the Division of Professional Regulation, Real Estate Enforcement if you have further questions. You can also visit our web site at [www.idfpr.com](http://www.idfpr.com) for a copy of the Act and Rules.

## Exhibit A

### Sample Escrow Journal

#### ABC REALTY

Trans. or I.D. Number	Date Received or Disbursed	Received From or Payee	Property Address or Description	Sellers Name	Buyers Name	Amount Received	Amount Disbursed	Disbursement Check Number	Running Balance
	3-Mar-03	Broker	Broker's Funds to open account			500.00			500.00
30101	3-Mar-03	Al Jones / Block Realty	1234 S. Main St, Hammond	J. Jackson	E. Smith	2,000.00			2,500.00
30102	3/6/12003	S. Miller	843 Washington, Oak Park	Vera White	S. Miller	1,000.00			3,500.00
30103	10-Mar-03	E. Smith	1234 S. Main St, Hammond	J. Jackson	E. Smith	8,000.00			11,500.00
30104	14-Apr-03	Mary Pulsson	20 Sycamore, Lombard	Julie Brown	Pulsson	5,000.00			16,500.00
30105	29-Apr-03	ABC Realty	1234 S. Main St, Hammond	J. Jackson	E. Smith		6,000.00	1302	10,500.00
30106	29-Apr-03	J. Jackson	1234 S. Main St, Hammond	J. Jackson	E. Smith		4,000.00	1303	6,500.00
30107	3-May-03	G. Lewis	1846 Oak, Chicago	Marek	G. Lewis	4,000.00			10,500.00
30108	10-May-03	Sanders	456 N. Main, Glen Ellen	Smith	Sanders	1,000.00			11,500.00
	11-May-03	First National Bank	Bank fee/charge for new checks	Broker's Funds			23.75		11,476.25
30109	12-May-03	Jay Smith / C-21 City Realty	76 Mapleleaf, Wheaton	Johnson	M. Mercer	1,000.00			12,476.25
30110	15-May-03	ABC Realty	843 Washington, Oak Park	Vera White	S. Miller		1,000.00	1304	11,476.25
30111	27-May-03	Rogers	310 S. Michigan, Chicago	Humphrey	Rogers	10,000.00			21,476.25
30112	28-May-03	ABC Realty	20 Sycamore, Lombard	Julie Brown	Pulsson		5,000.00	1305	16,476.25
30113	3-Jun-03	John Black / Homer Realty	148 Circle, Lombard	Berreles	Wolf	3,000.00			19,476.25

This is a sample. For requirements please refer to:

**The Illinois Real Estate License Act of 2000 – Administrative Rules  
Section 1450.175 (i)(1)**





**Exhibit D**  
**Sample**  
**RECONCILIATION WORK SHEET**

Account Number \_\_\_\_\_

Month May 31, 2003  
(date of bank statement)

**BANK STATEMENT**

Bank Balance per Statement	<u>21,476.25</u>	
Add Deposits Not Credited to Statement	<u>0.00</u>	
<b>TOTAL</b>	<u>21,476.25</u>	
Less Outstanding Checks	<u>5,000.00</u>	
<small>List checks by name and amount on a separate page. <u>Attach to Report</u></small>		
Reconciled Bank Balance	<u>16,476.25</u>	<u>16,476.25</u>

**JOURNAL**

Journal Balance Brought Forward	<u>16,476.25</u>	<u>16,476.25</u>
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**LEDGER CARD**

Total of Open Transactions	<u>16,000.00</u>	
<small>(attach tape) If tape is not used, list balances by name and amount on a separate page. <u>Attach to Report</u></small>		
Broker's Fund	<u>476.25</u>	
<b>TOTAL</b>	<u>16,476.25</u>	
Reconciled Ledger Balance	<u>16,476.25</u>	<u>16,476.25</u>

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This is a sample. For requirements please refer to,  
**The Illinois Real Estate License Act of 2000 – Administrative Rules**  
**Section 1450.175 (i)(3)**

**Exhibit D-2**

**Sample  
Supplement to the  
Reconciliation Work Sheet**

Outstanding Checks		
Check #	Payee	Amount
1305	ABC Realty	5,000.00
Total:		5,000.00
Ledger Cards Total of Open Transactions		
Trans #	Name	Amount
30126	G. Lewis	4,000.00
30127	Sanders	1,000.00
30129	M. Mercer	1,000.00
30130	R. Rogers	10,000.00
Total:		16,000.00



CONSENT TO EXAMINE AND AUDIT SPECIAL ACCOUNTS

Illinois Department of Financial and Professional Regulation
Division of Professional Regulation / Real Estate Professions Section
320 West Washington Street
Springfield, IL 62786
Real Estate Licensing 217/782-3414

Important Notice: Completion of this form is necessary to accomplish the requirements outlined in the Illinois Real Estate License Act of 2000 {225 ILCS 454}. Disclosure of this information is REQUIRED. Failure to comply may result in this form not being processed. This form has been approved by the Agency Forms Coordinator.

- I have one or more special accounts, and authorize a representative of the Illinois Department of Financial and Professional Regulation to examine those accounts.
I do not accept escrow monies, and do not hold monies belonging to others. Therefore, I do not maintain any special accounts.

PART A: BROKER INFORMATION

1. Name of Individual Broker, Partnership, Corporation, or Limited Liability Company

2. Business Address (Street, City, State, Zip Code)

3. Telephone Number ( \_ \_ \_ ) \_ \_ \_ - \_ \_ \_ \_

4. License Number

PART B: DEPOSITORY AT WHICH REAL ESTATE SPECIAL ACCOUNT(S) ARE MAINTAINED. A separate Consent to Audit form is required for each depository at which you maintain special account(s). Copy this form as needed.

1. Name and address of Bank or Savings and Loan Association

Blank lines for name and address of bank or savings and loan association.

2. Specific Special Accounts to be Examined and Audited

Table with 3 columns: Title(s) of Special Account(s), Account Number, Identifying Number(s) Required by IRS (FEIN or Social Security No.)

3. List Those Persons Authorized to Withdraw Funds From the Above-Named Special Account

Table with 4 columns: Name, Sex, Title, License Number

I hereby authorize the above named-depository to allow, at any time, a duly authorized representative of the Department of Financial and Professional Regulation to examine and audit the above named special account(s). I am one of the individuals listed under Part B(3) above.

Signature of Managing Broker, License Number, Date, Title

