

**ESCROW MANAGEMENT
DEFINITIONS**

COMMINGLING

THE ILLEGAL ACT OF PLACING CLIENT OR CUSTOMER FUNDS
WITH PERSONAL FUNDS

CONVERSION

THE USE OF ESCROW FUNDS FOR PERSONAL USE

WHICH ARTICLE OF THE
REALTORS® CODE OF
ETHICS ADDRESS
ESCROW ACCOUNT
MANAGEMENT?

WHICH
ONE?

ARTICLE 8

REALTORS® CODE OF ETHICS

REALTORS® SHALL KEEP IN A SPECIAL ACCOUNT IN AN APPROPRIATE FINANCIAL INSTITUTION, SEPARATED FROM THEIR OWN FUNDS, MONIES COMING INTO THEIR POSSESSION IN TRUST FOR OTHER PERSONS, SUCH AS ESCROWS, TRUST FUNDS, CLIENTS' MONIES, AND OTHER LIKE ITEMS.

VREB REGULATIONS 18 VAC 135-20-180

- MAINTENANCE OF ESCROW ACCOUNTS
- DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNT
- ACTIONS INCLUDING IMPROPER MAINTENANCE OF ESCROW FUNDS

MAINTENANCE OF ESCROW ACCOUNTS

NAME ON ACCOUNT

EACH FIRM OR SOLE PROPRIETORSHIP SHALL MAINTAIN IN THE NAME BY WHICH IT IS LICENSED ONE OR MORE FEDERALLY INSURED SEPARATE ESCROW ACCOUNTS IN A FEDERALLY INSURED DEPOSITORY IN VIRGINIA.

MAINTENANCE OF ESCROW ACCOUNTS

- FUNDS TO BE PLACED IN ESCROW ACCOUNTS
 - ✓ DOWN PAYMENTS
 - ✓ EARNEST MONEY DEPOSITS
 - ✓ MONEY RECEIVED UPON FINAL SETTLEMENT
 - ✓ RENTAL PAYMENTS
 - ✓ RENTAL SECURITY DEPOSITS
 - ✓ MONEY ADVANCED BY A BUYER OR SELLER FOR THE PAYMENT OF EXPENSES IN CONNECTION WITH THE CLOSING OF REAL ESTATE TRANSACTIONS

MAINTENANCE OF ESCROW ACCOUNTS

FUNDS TO BE PLACED IN ESCROW ACCOUNTS

- ✓ MONEY ADVANCED BY THE BROKER'S CLIENT OR EXPENDED ON BEHALF OF THE CLIENT, OR OTHER ESCROW FUNDS RECEIVED BY HIM OR HIS ASSOCIATES ON BEHALF OF HIS CLIENT OR ANY OTHER PERSON.

EXCEPTION:

- ✓ UNLESS ALL PARTIES AGREE OTHERWISE IN WRITING

MAINTENANCE OF ESCROW ACCOUNTS

BALANCE OF ESCROW ACCOUNT

SUFFICIENT AT ALL TIMES TO ACCOUNT FOR ALL FUNDS THAT ARE DESIGNATED TO BE HELD BY THE FIRM OR SOLE PROPRIETORSHIP.

MAINTENANCE OF ESCROW ACCOUNTS

ESCROW ACCOUNTS MUST BE LABELED AS SUCH

ALL CHECKS AND BANK STATEMENTS SHALL BE LABELED
“ESCROW” AND THE ACCOUNT SHALL BE DESIGNATED
AS “ESCROW” ACCOUNT WITH THE FINANCIAL
INSTITUTION WHERE SUCH AN ACCOUNT IS
ESTABLISHED.

MAINTENANCE OF ESCROW ACCOUNTS

FUNDS DEPOSITED AND PAID

- FUNDS MUST BE SEPARATELY IDENTIFIED IN
ESCROW ACCOUNT RECORDS
- FUNDS SHALL NOT BE PAID DIRECTLY TO LICENSEE
- FUNDS THAT ULTIMATELY BELONG TO THE
LICENSEE DOES NOT CONSTITUTE
COMMINGLING

MAINTENANCE OF ESCROW ACCOUNTS

FUNDS DEPOSITED AND PAID

- FUNDS BELONGING TO THE LICENSEE MUST BE WITHDRAWN WITHIN 6 MONTHS OF BECOMING THE LICENSEE'S PERSONAL FUNDS – THIS INCLUDES ANY INTEREST PAID ON THE ACCOUNT

MAINTENANCE OF ESCROW ACCOUNTS

FUNDS USED TO PURCHASE A CERTIFICATE OF DEPOSIT, THE PLEDGING OR HYPOTHECATION OF SUCH CERTIFICATE, OR THE ABSENCE OF THE ORIGINAL CERTIFICATE FROM THE DIRECT CONTROL OF THE PRINCIPAL OR SUPERVISING BROKER SHALL CONSTITUTE COMMINGLING

DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS

UPON RATIFICATION OF A CONTRACT, EARNEST MONEY AND DOWN PAYMENT DEPOSITS RECEIVED BY THE PRINCIPAL BROKER OR SUPERVISING BROKER MUST BE PLACED IN AN ESCROW ACCOUNT BY THE END OF THE 5TH BUSINESS BANKING DAY FOLLOWING RATIFICATION UNLESS OTHERWISE AGREED TO IN WRITING BY ALL THE PARTIES TO THE TRANSACTION

DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS

ALL FUNDS PLACED IN AN ESCROW ACCOUNT MUST REMAIN IN THE ACCOUNT UNTIL THE TRANSACTION HAS BEEN CONSUMMATED OR TERMINATED.

DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS

- IF TRANSACTION IS NOT CONSUMMATED OR TERMINATED THE FUNDS MUST REMAIN IN THE ESCROW ACCOUNT UNTIL:
- ALL PARTIES AGREE IN WRITING AS TO THE DISBURSEMENT OF THE FUNDS
- A COURT OF COMPETENT JURISDICTION ORDERS SUCH DISBURSEMENT

DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS

- THE BROKER CAN PAY THE FUNDS TO THE PRINCIPAL TO THE TRANSACTION WHO IS ENTITLED TO RECEIVE THEM IN ACCORDANCE WITH THE CLEAR AND EXPLICIT TERMS OF THE CONTRACT.
- TO DO THIS THE BROKER MUST:
- GIVE WRITTEN NOTICE TO ALL PARTIES
- HAND DELIVERY
- CERTIFIED MAIL
- BY E-MAIL OR FAX IF IT IS WITHIN 90 DAYS OF THE DATE OF NON-CONSUMMATION
- SEND TO ADDRESS PROVIDED IN CONTRACT OR LAST KNOWN ADDRESS
- PARTIES HAVE 30 DAYS TO RESPOND IF PROTESTED

DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS

UNLESS OTHERWISE AGREED TO IN WRITING BY ALL PRINCIPALS TO THE TRANSACTION, A LICENSEE SHALL NOT BE ENTITLED TO ANY PART OF THE EARNEST MONEY DEPOSIT OR ANY OTHER MONEY PAID TO THE LICENSEE AS PART OF THE TRANSACTION UNTIL THE TRANSACTION HAS BEEN CONSUMMATED.

DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS

LEASE TRANSACTIONS

- ALL MONIES RECEIVED BY THE LICENSEE IN CONNECTION WITH A LEASE SHALL BE DEPOSITED BY THE END OF THE 5TH BUSINESS BANKING DAY FOLLOWING RECEIPT.
- WILL REMAIN IN ACCOUNT UNTIL PAID IN ACCORDANCE WITH THE LEASE AND/OR PROPERTY MANAGEMENT AGREEMENT

DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS

- A LICENSEE SHALL NOT BE ENTITLED TO ANY PART OF THE SECURITY DEPOSIT OR ANY OTHER MONEY PAID TO THE LICENSEE AS COMMISSION EXCEPT IN ACCORDANCE WITH THE TERMS OF THE LEASE OR PROPERTY MANAGEMENT AGREEMENT.
- UNLESS THE LANDLORD BECOMES ENTITLED TO RECEIVE THE SECURITY DEPOSIT, THE MONEY SHALL NOT BE REMOVED FROM THE ESCROW ACCOUNT WITHOUT THE WRITTEN CONSENT OF THE TENANT.

OTHER ESCROW REQUIREMENTS

- IF FUNDS ARE PLACE IN AN INTEREST BEARING ACCOUNT, ALL PARTIES TO THE TRANSACTION MUST BE INFORMED AS TO THE DISBURSEMENT OF THE INTEREST
- A LICENSEE SHALL NOT DISBURSE MONEY FROM AN ESCROW OR PROPERTY MANAGEMENT ACCOUNT UNLESS SUFFICIENT MONEY IS ON DEPOSIT IN THAT ACCOUNT TO THE CREDIT OF THE INDIVIDUAL CLIENT OR PROPERTY INVOLVED.
- UNLESS AGREED IN WRITING, EXPENSES INCIDENTAL TO CLOSING A TRANSACTION SHALL NOT BE DEDUCTED FROM A DEPOSIT OR DOWN PAYMENT

IMPROPER MAINTENANCE OF ESCROW ACCOUNTS

- ACCEPTING ANY NOTE, NONNEGOTIABLE INSTRUMENT OR ANYTHING OF VALUE NOT READILY NEGOTIABLE AS A DEPOSIT WITHOUT ACKNOWLEDGING ITS ACCEPTANCE IN THE AGREEMENT.
- COMMINGLING
- FAILURE TO DEPOSIT ESCROW FUNDS IN AN ACCOUNT DESIGNATED TO RECEIVE ONLY SUCH FUNDS

IMPROPER MAINTENANCE OF ESCROW ACCOUNTS

FAILING AS A PRINCIPAL BROKER TO REPORT TO THE BOARD WITHIN 3 BUSINESS DAYS INSTANCES WHERE THE PRINCIPAL BROKER REASONABLY BELIEVES THE IMPROPER CONDUCT OF A LICENSEE HAS CAUSED NONCOMPLIANCE WITH THIS SECTION

MAINTENANCE & MANAGEMENT OF FINANCIAL RECORDS

- COMPLETE FINANCIAL RECORDS MUST BE KEPT BY THE PRINCIPAL BROKER AT THE BROKER'S PLACE OF BUSINESS OR IN A DESIGNATED BRANCH OFFICE.
- BROKER'S NOT IN VIRGINIA WHO HAVE A VIRGINIA OFFICE MUST KEEP A COPY OF THE RECORDS IN THE VIRGINIA OFFICE.

MAINTENANCE & MANAGEMENT OF FINANCIAL RECORDS

RECORDS MUST CONTAIN THE FOLLOWING INFORMATION:

- FROM WHOM THE MONEY WAS RECEIVED
- THE DATE OF RECEIPT
- PLACE OF DEPOSIT
- DATE OF DEPOSIT
- FINAL DISPOSITION OF THE FUNDS



IMPROPER RECORD KEEPING

- FAILING TO RETAIN FOR A PERIOD OF 3 YEARS FROM THE DATE OF THE CLOSING OR RATIFICATION IF THE TRANSACTION FAILS TO CLOSE, A COMPLETE AND LEGIBLE COPY OF;
- DISCLOSURE OF BROKERAGE RELATIONSHIP
- EACH EXECUTED CONTRACT
- AGREEMENTS
- CLOSING STATEMENT



IMPROPER RECORD KEEPING

- FAILING TO MAINTAIN A COMPLETE AND ACCURATE RECORD OF MONIES RECEIVED AND DISBURSED FOR A PERIOD OF 3 YEARS FROM DATE OF CLOSING OR TERMINATION OF A LEASE OR CONCLUSION OF THE LICENSEE'S INVOLVEMENT IN THE LEASE
- FAILING WITHIN A REASONABLE TIME TO ACCOUNT FOR OR TO REMIT ANY MONIES COMING INTO THE LICENSEE'S POSSESSION WHICH BELONG TO OTHERS.

CODE OF VIRGINIA
54.1-2108

PROTECTION OF ESCROW
FUNDS, ETC., HELD BY BROKER



CODE OF VIRGINIA
54.1-2108

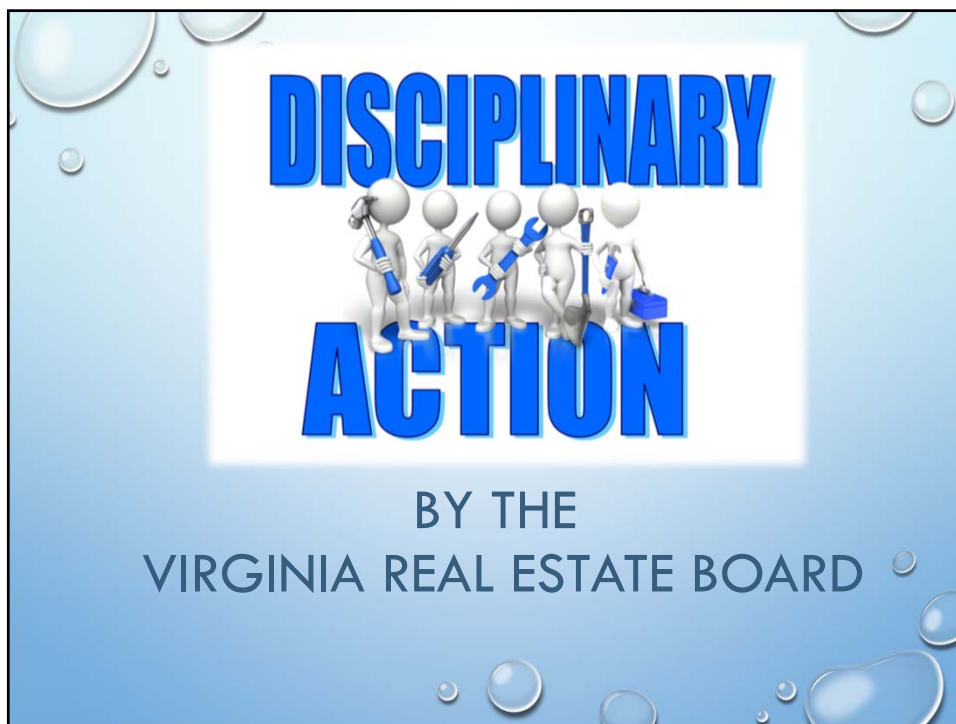
- BOARD'S ACTIONS TO PROTECT THE PUBLIC
- APPOINTMENT OF RECEIVERS
- PAYMENT AND EXPENSES & FEES TO RECEIVER

**CODE OF VIRGINIA
54.1-2108.1**

**PROTECTION OF ESCROW FUNDS, ETC., HELD
BY A REAL ESTATE BROKER IN THE EVENT OF
FORECLOSURE OF REAL PROPERTY; REQUIRED
DEPOSITS**

**CODE OF VIRGINIA
54.1-2108.1**

- RIGHT TO FILE INTERPLEADER ACTION
- FORECLOSURE CONSIDERED A TERMINATION OF CONTRACT
- WHAT HAPPENS TO TENANT'S SECURITY DEPOSIT IN RESIDENTIAL DWELLING UNIT-AT DATE OF FORECLOSURE
- HANDLING PRE-PAID RENT
- HANDLING SECURITY DEPOSITS
- HANDLING FUNDS MADE BY PROSPECTIVE TENANT
- FUNDS TO REMAIN IN ACCOUNT UNTIL DISBURSED IN ACCORDANCE WITH A THE TERMS OF LEASE, PROPERTY MANAGEMENT AGREEMENT OR APPLICABLE STATUTORY PROVISIONS.



**Real Estate Escrow & Trust Account
Requirements & Management
(3 Classroom Hours)
Timed Outline**

I. Where can our Rules and Regulations be found5 Minutes

- A. Virginia Administrative Code (VAC)
18 VAC 135-20-180 & 18 VAC 135-20-185
- B. Code of Virginia Title 54.1-2180 & 2108.1
- C. Realtor Code of Ethics (for members of NAR)

II. Who Must Have an Escrow Account and Why15 Minutes

- A. Who is responsible – Principal broker, supervising broker,
any licensee with escrow account authority. – new changes
to include principal broker
having signatory authority on these accounts
- B. Who maintains the account
- C. Financial Institution requirements – federally insured
- D. Definitions
 - 1. Commingling –mixing broker personal funds with
other people’s funds
 - 2. Conversion – the use of other people’s funds

III. Virginia Real Estate Board Regulations 18 VAC 135-20-180

- A. Maintenance of Escrow Accounts.....30 Minutes
 - 1. If money is held in escrow
 - a. Name on account
 - b. Separate from brokers general funds
 - c. Federally insured depository requirements
 - d. what funds to be placed in escrow accounts
 - e. Balance of escrow account
 - f. Responsibility for account
 - g. Account clearly labeled
 - 2. Funds deposited and paid
 - a. Separately identified
 - b. Not paid directly to licensee from account
 - c. Withdrawal requirements
 - 3. Pledging or Hypothecation of Money
 - a. Direct control of funds
 - b. Commingling

BREAK.....10 Minutes

B. Disbursement of Funds from Escrow Accounts.....30 Minutes

- 1. Purchase Transactions
 - a. Deposit requirements
 - b. How long funds are held in escrow
 - c. Disbursement requirements
 - d. Disputes over escrow
- 2. Lease Transactions
 - a. Security deposits – new changes
 - b. Compliance with Virginia Landlord Tenant Act
 - c. Disbursement of security deposit from escrow
 - d. Rent and other money paid
- 3. Other Escrow Requirements
 - a. Payment on interest bearing accounts
 - b. Sufficient funds credited to individual
 - c. What cannot be deducted from funds

IV. Virginia Real Estate Board Regulations 18 VAC 135-20-185.....20 Minutes

- A. Maintenance & Management of Financial Records
 - 1. Where records are kept
 - 2. What information financial records must contain
 - 3. Who maintains financial records
 - 4. Actions constitution improper record keeping
 - a. Failure to acknowledge in agreement anything of value not readily negotiable
 - b. Commingling
 - c. Failure to deposit escrow funds in proper account
 - d. Failure to have sufficient balances to cover escrow funds held
 - e. Failing to report to board improper conduct under this section

BREAK.....10 Minutes

V. Code of Virginia §54.1-2108.....5 Minutes

Protection of Escrow Funds, etc., Held by Broker

- A. Board's actions to protect public
- B. Appointment of receivers
- C. Payment of expenses & fees to receiver

VI. Code of Virginia §54.1-2108.120 Minutes
Protection of Escrow Funds, etc., held by a real estate broker in the event of foreclosure of real property; required deposits.

- A. Right to file interpleader action
- B. Foreclosure considered a termination of contract
Earnest Money may be returned to purchaser if contract provides, without further consent from or notice to the parties.
- C. Tenant in residential dwelling unit – at date of foreclosure, landlord will return security deposit to tenant with any applicable interest regardless of any contractual agreements between landlord and their successors in interest.
May make lawful deductions from the deposit in accordance with applicable law.
- D. Prepaid rent more than one month prior to the rent due date must be placed in broker’s escrow account by the end of the 5th business banking day
rent paid less than one month in advance is current rent and can be placed in the operating account unless otherwise agreed to in writing.
- E. Security deposits paid to a real estate licensee acting on behalf of a landlord will be placed in escrow account by the end of the 5th business banking day unless otherwise agreed to in writing.
- F. Any deposits paid by prospective tenant for the purpose of being considered as a tenant shall be placed in escrow by the end of the 5th business banking day following approval of application by landlord, unless otherwise agreed to in writing.
- G. Funds shall remain in escrow until disbursed in accordance with the terms of lease, property management agreement, or applicable statutory provisions.

VII. Disciplinary Actions by the Virginia Real Estate Board20 Minutes

- A. (Handout) A snapshot of the VREB meetings
January and March 2012
over 40% of the cases pertained to Escrow mismanagement!
- B. Where to find cases involving escrow mismanagement.
- C. A discussion of several recent disciplinary actions by the VREB.
(names of licensees, principals to the transaction and company names omitted)

The following are samples of cases instructor will discuss with the class demonstrating the board's authority and sanctions against licensees who fail to follow and comply with the escrow rules and regulations.

1. Case #1 - File # 2013-01504
2. Case #2 - File # 2013-00816
3. Case #3 - File # 2012-02619
4. Case #4 - File # 2012-01295
5. Case #5 - File # 2013-01981
6. Case # 6 - File # 2011-02715

VIII. Conclusion5 Minutes

A. Review of what we learned

B. Questions & Answers

TOTAL TIME.....(not including breaks).....150 Minutes