

REDLINE

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
REAL ESTATE COMMISSION
4 CCR 725-1

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
June 2, 2020

CHAPTER 5. Separate Accounts and Accounting

Pursuant to and in compliance with Title 12, Article 10 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Real Estate Commission (the "Commission") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Commission.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Colorado Real Estate Commission is Part 2 of Title 12, Article 10, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the real estate practice act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to amend or repeal existing rules with respect to a Broker or Brokerage Firm's accounting and record keeping responsibilities when accepting money belonging to others for non-real estate brokerage services.

PROPOSED NEW, AMENDED AND REPEALED RULES

Deleted material shown ~~struck through~~; new material is indicated by underline. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Commission at www.dora.colorado.gov/dre.

Proposed New, Amended and Repealed Rules

Chapter 5: Separate Accounts and Accounting

5.2. Trust or Escrow Accounts

All Money Belonging to Others accepted by a Broker or Brokerage Firm for deposit into the Broker's or Brokerage Firm's Trust or Escrow Account must be deposited in one or more accounts separate from other money belonging to the Broker or Brokerage Firm. The Broker or Brokerage Firm must identify the fiduciary nature of each separate Trust or Escrow account~~Account~~ in deposit agreements with a Recognized Depository by the use of the word "trust" or "escrow" and a label identifying the purpose of such account, such as "sales escrow", "rental escrow", "security deposit escrow", or other abbreviated form defined in the deposit agreement. The Broker or Brokerage Firm must retain a copy of each executed Trust or Escrow account~~Account~~ deposit agreement for inspection by the Commission.

5.10. Commingling Prohibited

A Broker's or Brokerage Firm's personal or business operating funds must not be commingled with Money Belonging to Others. One or more separate Trust or Escrow Accounts may be maintained by a Brokerage Firm pursuant to the following duties and limitations:

- A. Money held in a Trust or Escrow Account which becomes due and payable to the Brokerage Firm must be withdrawn monthly.
- B. Money advanced by a Brokerage Firm for the benefit of another may be placed in the Trust or Escrow Account and identified as an advance but may be withdrawn by the Brokerage Firm only on behalf of such person. Any amount advanced to a Trust or Escrow Account must be identified and recorded in the journal and the ledger and disclosed in accounting to the beneficiary as set forth in Rule 5.15.
- C. In the absence of a specific written agreement to the contrary, commissions, fees, and other charges collected by a Brokerage Firm for performing any service on behalf of another are considered "earned" and available for use by the Brokerage Firm only after all contracted services have been performed and there is no remaining right of recall by others for such money. The Brokerage Firm must identify and record all commissions, fees, or other charges withdrawn from a Trust or Escrow Account on the account journal and individual ledgers of those against whom the fees or commissions are charged. If a single disbursement of fees or commissions includes more than one (1) transaction, rental period or occupancy or includes withdrawals from the account of more than one (1) Trust or Escrow Account beneficiary, the Brokerage Firm, upon request, must produce for inspection by the Commission a schedule which details:
 - 1. The individual components of all amounts included in the sum of such disbursement; and
 - 2. Specifically identifies the affected beneficiary or property ledgers as set forth in Rule 5.14.B.
- D. ~~Funds received~~Rental proceeds received by a Broker for managing Broker's own properties through the Broker's Brokerage Firm, including any Broker's properties held in partnership with others, joint ventures, or syndications ~~subject to the Broker meeting the ownership threshold provided the Broker's ownership in the entity or property is more than the 20% threshold~~ pursuant to section 12-10-201(6)(b)(VII), C.R.S. must be deposited in an account separate from any other Trust or Escrow Accounts maintained for Money Belonging to Others. Such funds are not subject to Trust or Escrow Accounts and record keeping requirements as set forth in Rules 5.2. and 5.14.

5.11. ~~Earnest Money on New Construction~~Money Belonging to Others for deposit by a Broker for Non-Real Estate Brokerage Services

~~If a Broker is acting as a builder in a transaction, all deposit money received from a buyer must be placed in a Trust or Escrow Account and not used by the Broker for any purpose, including construction, unless the Broker receives written consent from the buyer.~~

- A. Money Belonging to Others which is accepted for deposit in connection with activities not involving Real Estate Brokerage Services must be deposited into Broker's or Brokerage Firm's Trust or Escrow Account(s). Such activities not involving Real Estate Brokerage Services include:
1. Guest deposits for short term rentals;
 2. Security deposits for Broker's own rental properties including any Broker owned properties held in a partnership, or other entity with others, any joint ventures, or syndications provided the Broker's ownership in the entity or property is more than the 20% threshold pursuant to section 12-10-201(6)(b)(VII), C.R.S.;
 3. Deposits from a buyer when the Broker is acting as a builder; or
 4. Any other non-Real Estate Brokerage Service purposes.
- B. If a Broker accepts Money Belonging to Others for deposit into Broker's or Brokerage Firm's Trust or Escrow Account as set forth in subsection A. of this Rule for activities not involving Real Estate Brokerage Services, the Broker must:
1. If required by the Broker's Brokerage Firm's Office Policy Manual, deposit the funds in the Broker's Brokerage Firm's Trust or Escrow Accounts as set forth in Chapter 5 of these Rules; or
 2. Deposit the funds into Broker's own Trust or Escrow Accounts as set forth in Rule 5.2. and must also comply with the following Chapter 5 Rules:
 - i. Rule 5.6. Trust or Escrow Funds must be Available Immediately without Penalty;
 - ii. Rule 5.9. Diversion and Conversion Prohibited;
 - iii. Rule 5.10. Commingling Prohibited;
 - iv. Maintain a "journal" as set forth in Rule 5.14.A. and 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; and
 - v. Rule 5.21. Production of Documents and Records

A hearing on the above subject matter will be held on Tuesday, June 2, 2020 at the Colorado Division of Real Estate, 1560 Broadway, Suite 110-C, Denver, Colorado 80202 beginning at 9:00 a.m. Interested parties can also join via webinar, please register at:

<https://attendee.gotowebinar.com/register/8395856897624207116>

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.