



Alaska Real Estate Education

*Education for Professionals*

## **Broker Post-License Education**

7 Hours / Recovery Fund & Trust Accounting

### **Recovery Fund**

Alaska Statutes require the establishment of the real estate recovery fund. The recovery fund is composed of payments made by real estate licensees, filing fees, and income earned on investments of the money in the fund. The purpose of the recovery fund is to protect the public and should not be considered insurance for the benefit of licensees. The commission may make payments from the fund for awards, for hearing and legal expenses directly related to fund operations and claims, and for real estate educational purposes.

The Department of Commerce, Community, and Economic Development shall provide the commission every three months with a statement of the activities of, balances in, interest earned on, and interest returned to the real estate recovery fund.

If money from the real estate recovery fund is expended to prepare, print, manufacture, sponsor, produce, or otherwise provide an item or a service to a member of the public, to a real estate licensee, to a potential real estate licensee, or to another person, any money paid by the person to the commission, either directly or through an agent or contractor of the commission, to receive the item or service shall be deposited in the fund.

When applying for or renewing a real estate license, in lieu of obtaining a corporate surety bond, licensees shall pay to the commission a recovery fund fee not to exceed \$125. After each two-year licensing cycle, if the commission finds that the average balance in the recovery fund during the two-year licensing cycle was less than \$250,000 or more than \$500,000, the commission shall by regulation adjust the recovery fund fees so that the average balance of the recovery fund during the next two-year licensing cycle is anticipated to be an amount that is not less than \$250,000 or more than \$500,000. The average balance means the average balance after taking into account anticipated expenditures for awards from the fund and legal expenses directly related to fund operations, and for real estate educational purposes. All fees collected under this section shall be paid at least once a month by the department into the general fund. These payments shall be credited to the real estate recovery fund.

A person may seek an award from the recovery fund for a loss suffered in a real estate transaction as a result of a licensee's fraud, intentional tort, deceit, or the conversion of trust funds or community association accounts that are under the control of a community association manager. The claimant shall obtain a final judgment from a court of competent jurisdiction, a final arbitration award, or a settlement agreement with a licensee that involves a person committing fraud, an intentional tort, deceit, the conversion of trust funds, or the conversion of community association accounts. They shall submit an affidavit describing the efforts made to

collect the final judgment, final arbitration award, or settlement agreement stating that the person has used due diligence to collect the amount due, stating that the judgment, arbitration award, or settlement agreement is uncollectable using reasonable efforts, and that the conduct that is the subject of the judgment, arbitration award, or settlement agreement involved an activity for which a person must obtain a license under Alaska Statutes. Claims need to be made to the commission for an award from the recovery fund on a form furnished by the commission. In order to be eligible for an award by the commission, the claim form must be filed within two years after the date a judgment, arbitration award, or settlement agreement that is the basis for the award from the recovery fund is no longer subject to appeal. The form must be executed under penalty of unsworn falsification in the second degree and must include the following:

- a. The name and address of each real estate licensee involved.
- b. A copy of the final judgment, final arbitration award, or settlement agreement.
- c. A copy of the affidavit asserting due diligence but lack of success in collecting the entire amount due.
- d. The amount of the final judgment, final arbitration award, or settlement agreement that remains unpaid.
- e. The name and address of the claimant.
- f. A general statement of facts relative to the claim.

The commission shall send a copy of the claim to each real estate licensee that is named. The claimant shall pay a filing fee of \$250 to the commission at the time the claim is filed. The filing fee shall be refunded if the commission makes an award to the claimant from the real estate recovery fund, or the claimant withdraws the claim. If the claim is for a loss incurred as a result of acts or omissions occurring in the course of the licensee's practice of community association management, only the owners' association for which the real estate licensee practices community association management may file a claim.

The maximum liability of the real estate recovery fund may not exceed \$50,000 for any one real estate licensee. If the \$50,000 liability of the fund is insufficient to pay in full the valid claims of all persons who have obtained a final judgment, final arbitration award, or settlement agreement involving an individual licensee and have filed claims for an award from the recovery fund, the \$50,000 shall be distributed among the claimants in the ratio that their individual claims bear to the aggregate of valid claims, or in another manner that the commission considers equitable. Distribution shall be among the persons entitled to share in the recovery without regard to the order in which their claims were filed. If the money deposited in the real estate recovery fund is insufficient at a given time to satisfy a legally authorized claim against the fund, the commission shall, when sufficient money has been deposited in the fund and appropriated, satisfy unpaid claims in the order that the claims were originally filed, plus accumulated interest at the rate of eight percent a year.

A person who files with the commission a notice, statement, or other document required

under this chapter that contains a wilful material misstatement of fact, is guilty of a misdemeanor and is punishable by imprisonment for a period of not more than one year, or a fine of not more than \$1,000, or by both.

When the commission has paid to a claimant from the real estate recovery fund the sum awarded by the commission, the commission shall be subrogated to all of the rights of the claimant to the amount paid, and the claimant shall assign all right, title, and interest in that portion of the claim to the commission. Money collected by the commission on the claim shall be deposited to the real estate recovery fund.

Repayment in full of all obligations to the real estate recovery fund does not nullify or modify the effect of disciplinary proceedings brought under the provisions of this chapter.

### **Trust Accounting & General Accounts**

Every real estate broker shall establish one or more trust accounts in a federally insured bank or credit union authorized to do business in this state. The name of the account must include the words "trust account" or "trustee account." The broker shall file with the commission the name of the account, the account number, and the name and branch of the bank that holds the account for all trust accounts maintained by the broker. The broker who establishes the account shall be trustee of the account and responsible for all signatories to that account. If maintenance expenses are charged against a trust account, the broker shall deposit a sum of money not exceeding \$100 to the trust account for the purpose of paying the maintenance expenses of the account and shall make additional deposits when necessary, but not to exceed \$100 on deposit. All trust accounts must be demand accounts only. No provision may be made for a bank to withhold issue of funds from a trust account except upon a court order.

All money deposited with the broker or person employed by or affiliated with the broker as trustee in real estate transactions must be deposited in or mailed to the appropriate trust account within five days following receipt unless factors such as geographical location, weather conditions, or transportation facilities make such depositing impossible or unreasonable. If a trust account bears interest, that fact and the rate of interest must be disclosed to the trustor. To avoid commingling funds, interest earned does not belong to the broker.

A broker shall assign a transaction code and establish a transaction ledger for each written offer to purchase real estate. This ledger must include the following:

- a transaction code;
- a legal description of the property;
- the name of the property owner;
- for all deposits, the
  - date;
  - name of the trustor; and
  - purpose of the funds received;
- for all funds paid from the account, the

- date;
- check number;
- name of payee; and
- purpose of the payment.

For each property management contract, a broker shall assign a transaction code that is identified with a specific landlord or property. The broker shall track the funds received and disbursed for the landlord in an accompanying transaction ledger. The broker shall also track the funds of each tenant through a related but separate transaction code and transaction ledger. These transaction ledgers must include the following:

- a transaction code;
- an identification of the property or unit within the property;
- the name of the property owner;
- for all deposits, the
  - date;
  - name of the person making the payment; and
  - purpose of the payment; and
- for all disbursements from the account, the
  - date;
  - check number;
  - name of the payee; and
  - purpose of the payment.

A broker shall establish a separate ledger to account for any funds deposited to a trust account to cover service charges in accordance with Alaska Regulations. A broker shall establish a ledger for every transaction, including those transactions for which the deposit is held in the trust account of a cooperating broker, title company, or another third party. A broker shall retain the following transaction and trust account records:

- transaction ledgers;
- records of deposit showing the date, transaction code, amount of the deposit, and trustor's name
- all disbursement records, including voided checks written on the trust account, showing the date, payee, and transaction code;
- all cancelled checks, bank statements, and monthly reconciliations;
- all transaction contracts and supporting documents.

Trust accounts must be reconciled monthly by completing a reconciliation of the bank statement with the check register, reconciliation of the monthly deposits and expenditures with the independent transaction ledger for each transaction, and cross-check of the bank balance with

the sum of the transaction ledgers.

For trust funds other than earnest money, rents, or security deposits, including mortgage payments or funds for repairs, records must be kept consistent with the requirements of Alaska Regulations.

Each withdrawal of a broker's commission from a trust account must be separate and identified as to the specific transaction. A broker shall withdraw his or her commission from a trust account within 15 days after the date that the transaction has been closed or otherwise settled. A broker shall disburse from a trust account the fee earned for providing property management services. The disbursement must be made on a regular monthly basis after the collection of monthly receipts and disbursement of expenses for that management contract are completed. A broker licensed under Alaska Statutes may pay a commission to a person who does not hold a license in Alaska but is licensed to perform real estate activities in another licensing jurisdiction, for assistance to the broker in the performance of an act for which a license is required. The broker must obtain, and retain for a period of three years, a request from the person licensed to perform real estate activities in another licensing jurisdiction for payment of the commission and a copy of an active, current real estate license for the person requesting the commission from the jurisdiction where the person is licensed to perform real estate transactions.

Prohibited activity of a broker's trust account management include the following:

- paying a salesperson's commission directly from the trust account;
- paying bills for the broker's business or personal obligations from the trust funds;
- using trust funds to pay the maintenance expenses of a trust account;
- commingling of funds by depositing the broker's own funds in a trust account
- withdrawing funds from a trust account without fully complying with the recordkeeping requirements of regulations
- refusing to provide an accounting to the principals of a transaction for funds being held in trust; or
- refusing to return a deposit to a prospective buyer whose offer was not accepted;
  - the broker may delay the return of the deposit until one business day after the prospective buyer's check has cleared.