

SLIDE 24 - Handling of Deposits

As a normal component of the real estate business, the broker or his firm handles funds that belong to others. This can be in the form of security deposits, rent money, earnest money deposits or any other type of money being held by the broker in escrow for a buyer or seller. In this section we'll look at the legal requirements for managing accounts setup for this purpose.

SLIDE 25

Escrow account – 61J2-14.008(2)(a) FAC

An account in a bank or trust company, title company having trust powers, credit union, or a savings and loan association within the State of Florida.

No personal funds of any licensee shall be deposited or intermingled with any funds being held in escrow, trust or on condition except as provided in subsection 61J2-14.010(2), FAC

SLIDE 26

Real Estate Sales Associate – 61J2-14.009 FAC

Every sales associate who receives any deposit, as defined in Rule 61J2-14.008 shall deliver the same to the broker or employer no later than the end of the next business day following receipt of the item to be deposited.

Saturday, Sundays and legal holidays shall not be construed as business days.

Receipt by a sales associate or any other representative of the brokerage firm constitutes receipt by the broker for purposes of paragraph 61J2-14.008(3), F.A.C

SLIDE 27

Deposit timeframe – 61J2-14.008(3) FAC

“Immediately” means the placement of a deposit in an escrow account no later than the end of the third business day following receipt of the item to be deposited.

Saturdays, Sundays and legal holidays shall not be considered as business days.

SLIDE 28

Deposit notification – 61J2-14.008(2)(b) FAC

When a deposit is placed or to be placed with a title company or an attorney, the licensee who prepared or presented the sales contract (“Licensee”), shall indicate on that contract the name, address, and telephone number of such title company or attorney.

Deposit notification must be made within ten (10) business days after each deposit is due under the sales contract.

SLIDE 29

Interest-Bearing Escrow Account – 61J2-14.014(2)(b) FAC

Brokers are allowed to place escrow funds in an interest-bearing account with the expressed written permission of all the parties to the transaction and provide:

1. Name of party to receive the interest
2. Date interest must be disbursed

Said escrow account must be in an insured account in a depository located and doing business in Florida.

SLIDE 30

Escrow conflicting demands – F.S. 475.25(1)(d)1

1. Within 15 days of receiving conflicting demands for escrow funds, the broker holding any escrow funds must submit a written notification to:

Division of Real Estate
400 West Robinson Street, N801
Orlando, FL 32801

The DRE provides a form for this: NOTICE OF ESCROW DISPUTE/GOOD FAITH DOUBT
This is included in the resources for this lesson.

There are three exceptions to this rule:

1. If it is a property utilizing HUD (Department of Housing and Urban Development www.hud.com)
2. If the buyer of a condominium unit delivers written notice to cancel as provided under the Condominium Act
3. If the buyer is unable to satisfy a financing contingency within the time frame provided by the contract.

SLIDE 31

Escrow good-faith doubt – F.S. 475.25(1)(d)1

Should a broker have good-faith doubt as to the validity of a conflicting claim against an escrow account, the broker should promptly report the claim to the FREC and:

1. Request that the commission issue an escrow disbursement order determining who is entitled to the escrowed property;
2. With the consent of all parties, submit the matter to arbitration;
3. By interpleader or otherwise, seek adjudication of the matter by a court; or
4. With the written consent of all parties, submit the matter to mediation.

The broker has 30 days from the last party's demand to implement one of these four procedures to settle the escrow dispute.

An example of good faith doubt is when one party to the dispute does not respond to the broker's correspondence about the escrow money when a transaction fails to close on time or if the buyer (or his spouse) refuses to close at all.

SLIDE 32

Escrow disbursement order – F.S. 475.25(1)(d)1

An escrow disbursement order (EDO) is a course of action for determining the disposition of a contested deposit.

The broker must follow the instructions of the FREC during the EDO process.

Should the FREC decline to issue an EDO brokers must use an alternate procedure to resolve the conflict.

SLIDE 33

Arbitration – F.S. 475.25(1)(d)1

The act of having a third party render a binding decision in a dispute between two parties.

Much like arbitration, **mediation** is a third party attempt to reconcile a dispute between two parties. If the issue is not resolved by mediation within 90 days the parties must move to another dispute procedure.

SLIDE 34

Litigation – F.S. 475.25(1)(d)1

An action brought in court to enforce a particular right. It is the act or process of bringing a lawsuit in court and pleading your case before a judicial authority.

The presiding judicial authority would issue a declaratory judgement which is then the binding decision of the rights and status of the parties in the conflict.