

NOVA SCOTIA REAL ESTATE COMMISSION



January 6, 2008

New Release of Deposit Rules

The Commission has implemented a By-Law change that will provide brokerages with greater flexibility in releasing deposits. The brokerage must be of the opinion that the terms of the agreement were met by the parties and the transaction has collapsed within the terms of one or more conditions in the agreement. Proper notices must have been given within the timeframes called for in the agreement. Some of the most common issues would be:

- Buyer unable to obtain financing
 - Water test failed
 - Buyer is not satisfied with the inspection
 - Buyer unable to obtain insurance
1. **Unable to contact Seller** – In some situations the brokerage has difficulty contacting the seller to obtain a deposit release. Sometimes it is communications problems, but in many cases the seller is unhappy with the transaction collapsing and simply wants to make it difficult for the buyer.
 2. **Seller does not honour conditions** – Sometimes a deal collapses and the seller outright refuses to release the deposit even when any other person looking at the agreement and what had taken place would agree that the buyer is entitled to return of the deposit. An example would be when a buyer declares an agreement void based on an unsatisfactory inspection and notice was given within the required timeframe. The seller is upset with the report or the issues being raised as a result of the inspection and refuses to release the deposit.

Up until now the only option available in these situations would be for the buyer to take the seller to Small Claims Court to force the release of the deposit. As a result of the By-Law change, in these types of situations, the brokerage can send formal written notice to the seller indicating the brokerage will release the deposit to the buyer if the seller does not provide the brokerage with written notice of legal proceedings being taken by the seller to either complete the transaction or force the buyer to forfeit the trust funds to the seller. In most of these cases the seller is just being difficult and is not prepared to spend any money to take legal action. This By-Law change and the enclosed notice will allow brokerages to deal with these situations in a more timely manner. This should result in fewer unhappy buyers who feel like they are being held hostage by unreasonable sellers.

Brokers must always double-check the conditions of the agreement, to see that they were met, before exercising this option. Then the notice must be sent to the seller and the full 14 calendar days must be allowed before any further action is taken. If the brokerage does not receive notice of legal proceedings from the seller, then the brokerage may release the deposit to the buyer. Should the brokerage receive written notice of legal proceedings from the seller, then the deposit must remain in the trust account and By-Law 632 will apply. Should you have any questions or concerns when you are in one of these situations please feel free to call the Commission office.

Enclosed are two forms for your use in dealing with claims against a deposit. One form deals with the return of the deposit to the buyer and the other deals with a claim by the seller for the deposit. When a claim is made by a buyer and the broker is of the opinion that the buyer met the terms of the agreement, the broker may send the seller the notice and release the deposit, as described above. The other notice to the seller is an acknowledgement by the broker that the brokerage has received a written claim for the deposit from the seller. The notice makes it clear to the seller that the deposit will not be released until the parties have come to a written agreement on the disposal of the deposit. This notice is also copied to the buyer so that the buyer is fully informed, in writing, regarding the claim by the seller.

The two applicable By-Law are printed below for reference.

Withdrawal of Trust Funds

No Dispute

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Anytime a transaction is not proceeding and there is a request for the return of deposit based on the terms agreed to in the transaction, the Brokerage shall do one of the following:

- (a) get a release signed by all parties to the transaction and return the trust funds to the buyer or seller as agreed to in the release; or
- (b) when it is not possible to contact the seller or get a clear answer from the seller on the release of the trust funds to the buyer, the Brokerage is to send a notice, in writing, to the seller and copied to the buyer, explaining that the Brokerage will release the trust funds to the buyer within 14 days of this notice being sent to the seller. Should the seller object to the release of the trust funds to the buyer, this notice will require the seller to provide the Brokerage with written notice of legal proceedings being taken by the seller to either complete the transaction or force the buyer to forfeit the trust funds to the seller. Once the 14 days after notice have passed, without a written objection from the seller being received by the Brokerage, the Brokerage may release the trust funds to the buyer.

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Disputed Transaction

Anytime more than one party to a transaction is making demands for any trust funds for which the Brokerage is responsible, the Brokerage shall hold the trust funds in the Trust Account until:

- (a) the parties to the transaction agree, in writing, as to how the money shall be disbursed;
- (b) the Brokerage is ordered, by a court of proper jurisdiction, to disburse the trust funds in a specified manner; or
- (c) until the trust funds are disbursed to the Commission.

Notice of Release of Trust Funds

Claim by the Buyer – Conditions Met

(Approved by the Nova Scotia Real Estate Commission)

Notice of claim by the Buyer for funds held in trust by the Brokerage.

Dated: _____ day of _____, 20____

Seller: _____

Buyer: _____

Brokerage: _____

Re: Claim for refund of trust funds (deposit) held in trust concerning the Transaction involving the parties named above concerning the property described as :

Date of Transaction/Accepted Offer: ____ day of _____, 20____

Amount of Deposit: _____

On the ____ of _____, 20____, the Brokerage received a written claim, from the Buyer, for the refund of the trust funds (deposit) held in the Brokerage's trust account for the above described Transaction.

If within 14 calendar days of this notice being sent you fail to send the Brokerage any legal procedure requiring forced execution of the Transaction or ordering the Brokerage not to refund the trust deposit, the Brokerage will return the trust funds to the Buyer. A copy of this notice is also being sent to the Buyer.

(Signature of Broker or Managing Associate Broker)

Notice of Claim for Trust Funds
Claim by the Seller – Disputed by Buyer
(Approved by the Nova Scotia Real Estate Commission)

Notice of claim by the Seller for funds held in trust by the Brokerage.

Dated: _____ day of _____, 20_____

Buyer: _____

Seller: _____

Brokerage: _____

Re: Claim for refund of trust funds (deposit) held in trust concerning the Transaction involving the parties named above concerning the property described as :

Date of Transaction/Accepted Offer: ____ day of _____, 20____

Amount of Deposit: _____

On the ____ of _____, 20____, the Brokerage received a written claim, from the Seller, for the trust funds (deposit) held in the Brokerage's trust account for the above described Transaction.

In the absence of a document signed by the Buyer authorizing the Brokerage to release the trust funds to the Seller, the Brokerage is obligated to keep these trust funds in the Brokerage trust account. Therefore, for the time being, the Brokerage cannot act on this claim for release of trust funds. A copy of this notice is also being sent to the Buyer.

(Signature of Broker or Managing Associate Broker)

Claim by the Seller for Buyer failing to complete – Buyer did not meet conditions

Sometimes there are instances where the Seller has met all the terms of the agreement, but the buyer has not. When it is clear the Buyer did not meet their obligations as per the agreement, the brokerage may proceed in a similar way that is described in the first situation above. On the next page is a formal notice that may be sent to the parties giving notice that it is the brokerage's intention to release the deposit to the Seller in 14 days if the Buyer does not provide evidence of legal action regarding the status of the transaction and the deposit. This should only be used when it is clear that the Buyer has breached a term or terms of the agreement and is simply being difficult about forfeiting their deposit to the Seller. In all other instances the brokerage should leave the deposit in trust and let the parties take action to claim the trust funds.

Notice of Release of Trust Funds

Claim by the Seller – Conditions Met

(Approved by the Nova Scotia Real Estate Commission)

Notice of claim by the Seller for funds held in trust by the Brokerage.

Dated: _____ day of _____, 20____

Seller: _____

Buyer: _____

Brokerage: _____

Re: Claim for refund of trust funds (deposit) held in trust concerning the Transaction involving the parties named above concerning the property described as :

Date of Transaction/Accepted Offer: ____ day of _____, 20____

Amount of Deposit: _____

On the ____ of _____, 20____, the Brokerage received a written claim, from the Seller, for the refund of the trust funds (deposit) held in the Brokerage's trust account for the above described Transaction.

If within 14 calendar days of this notice being sent you fail to send the Brokerage any legal procedure requiring forced execution of the Transaction or ordering the Brokerage not to refund the trust deposit, the Brokerage will forfeit the trust funds to the Seller. A copy of this notice is also being sent to the Seller.

(Signature of Broker or Managing Associate Broker)