



## **Brokerage Transaction and Trust Account Policy**

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## **Overview**

Licensees have a professional responsibility to both clients and unrepresented parties to ensure that all records pertaining to real estate trading are created and maintained in compliance with the Brokerage Transaction and Trust Account Policy, “this policy.” This requirement is not limited to the requirements of the Real Estate Trading Act, “the Act”, the Commission By-law, “the By-law,” and the Commission Policies, “the Policies”. This policy sets out specific requirements for both real estate trading files and trust account procedures and records.

The broker has a responsibility to ensure the licensees they supervise comply with the Act, the By-law, and the Policies when handling trust funds and preparing, facilitating and maintaining real estate documentation. The broker is also responsible for overseeing the operation of the trust account’s corresponding trust records.

Brokers and managing associate brokers are authorized under the By-law to supervise the licensees of the brokerage and provide real estate trading advice regarding transactions and trust deposits. This includes, but is not limited to, contracts, representation (agency) agreements, procedures, and trust deposits. The broker is responsible for reviewing all real estate documents upon execution for compliance with the Act, the By-law and the Policies. If the broker identifies instances of non-compliance within real estate documents, the broker must immediately rectify those instances.

All licensees are required to submit documents and contracts to their broker upon execution.

## **Part 1—Residential transaction file requirements**

Licensees must comply with the following requirements when preparing, facilitating, and maintaining real estate documents.

### **Real estate transaction file requirements**

#### **101**

Licensees must ensure that:

- (a) All applicable documentation/records to the transaction are submitted to the broker;
- (b) Licensees use current mandatory forms in accordance with By-law 738;
- (c) All documentation/records are:
  - (i) Legible,
  - (ii) prepared on the correct form,
  - (iii) completed accurately, and in full, using clear and understandable language, and
  - (iv) executed by all parties correctly, i.e. signed, dated, and initialed in the appropriate sections of the forms;
- (d) The brokerage contact information section of brokerage agreements, fee agreements, and unrepresented party acknowledgements are completed in full, including the email address, phone number, and physical address;
- (e) The consumer contact information section of brokerage agreements, fee agreements, and unrepresented party acknowledgements are completed in full. If this information is not available, licensees indicate that this information is “not provided” or strike through the missing portions of the section. The clause cannot remain blank;
- (f) All deleted clauses are identified as such by a line struck through the clause or by inserting “n/a” or “delete” without obscuring the initial wording of the clause and initialed by all parties at the time of signing;
- (g) All schedules to an agreement are identified as forming part of the agreement (APS, SBA, BBA, etc.);
- (h) Any changes to an agreement are carried out in an amendment;
- (i) The disclosures required under Act Section 38 and By-law 734 are made in writing by a licensee when the licensee or an immediate family member or associate of the licensee is acquiring or disposing of property;
- (j) Any additional documents required by the Act, the By-law, or the Policies or by any executed agreement or acknowledgment are maintained in the transaction file. Examples include, but are not limited to:

## **Part 1—Residential Transaction File Requirements**

- (i) Power of attorney,
- (ii) Written verification of an individual's authority to dispose of the property, such as an executor or personal representatives,
- (iii) Copies of documents requested in APS, such as, condo documents, power bills, etc., and
- (iv) Certificates of authenticity for signatures obtained using an electronic signature platform.

## Part 2—Mandatory Forms Requirements

There is an order of operations that licensees are required to follow when completing and handling real estate documentation for consumers. The mandatory requirements of how these forms are completed are listed for each form.

### Working with the Real Estate Industry form

The Working with the Real Estate Industry form (WWREI) is the first step in residential transactions. The purpose of the WWREI form is to provide written disclosure and signed acknowledgement of the types of relationships that can be formed between a consumer and the brokerage or the designated agent. Licensees must review and explain this form with consumers as soon as possible, ensuring it is completed and signed prior to providing real estate services or giving advice.

#### WWREI Mandatory Requirements

##### 201

When working with a consumer, the licensee must ensure that:

- a) The WWREI is signed/initialed and dated by each client/unrepresented party of the brokerage before any buyer or seller agreement/acknowledgement/APS is signed;
- b) The appropriate agency box is selected; and
- c) The brokerage and the real estate representative are identified.

### Seller Service Agreements and Acknowledgements

The relationship between the seller and the brokerage or the designated agent and the services provided are established in writing using one of the following three forms.

#### **1. Seller Designated Brokerage Agreement/Seller Brokerage Agreement**

The Seller Designated Brokerage Agreement (SDBA) and the Seller Brokerage Agreement (SBA) establishes in writing the agency relationship between the seller client and the brokerage or the designated agent and sets out the duties and obligations of both parties.

#### **2. Seller Unrepresented Party Acknowledgement and Fee Agreement**

The Seller Unrepresented Party Acknowledgment and Fee Agreement establishes in writing that the seller acknowledges that they are an unrepresented party, that they do not have an agency relationship with the brokerage or any of its representatives and are therefore not owed any agency obligations, including fiduciary duties. This form is used when a seller is selling their property privately and the brokerage has a buyer client who is interested in purchasing the seller's property.

#### **3. Mere Posting Agreement**

A Mere Posting Agreement is a limited-service agreement between the seller and the brokerage. In a mere posting, there is no agency relationship between the parties. The brokerage agrees to input and

## Part 2—Mandatory Forms Requirements

maintain data on the property on the MLS® system, and the seller is selling their property without assistance or advice from the brokerage. There are certain conditions in the agreement that require the seller to provide limited information (purchase price and condition dates of the APS) to the brokerage for the purpose of posting the information to the MLS® system.

### **Seller Service Agreements and Acknowledgements Mandatory Requirements**

#### **202**

When working with a seller, the licensee must ensure that:

- a) The effective date is on or later than the date the agreement/acknowledgment is executed by the seller and the brokerage representative;
- b) The Seller Designated Brokerage Agreement/Seller Brokerage Agreement is executed by the seller and the brokerage representative before any agency services are provided by the brokerage or the designated agent; and
- c) The Seller Unrepresented Party Acknowledgment and Fee Agreement is executed by the seller and the brokerage representative before the buyer's licensee relays an Agreement of Purchase and Sale to a seller.

### **Buyer Service Agreements and Acknowledgements**

The relationship between the buyer and the brokerage or the designated agent and the services provided are established in writing using one of the following two forms.

#### **1. Buyer Designated Brokerage Agreement/ Buyer Brokerage Agreement**

The Buyer Designated Brokerage Agreement (BDBA) and the Buyer Brokerage Agreement (BBA) establishes in writing the agency relationship between the buyer client and the brokerage or the designated agent and sets out the duties and obligations of both parties.

#### **2. Buyer Unrepresented Party Acknowledgement**

The Buyer Unrepresented Party Acknowledgement form is used when a seller is in a client relationship with the brokerage or the designated agent, and the buyer is unrepresented. This form is a disclosure document and does not impose any contractual obligations for the buyer.

### **Buyer Service Agreements and Acknowledgements Mandatory Requirements**

#### **203**

When working with a buyer, the licensee must ensure that:

- a) The effective date is on or later than the date the agreement/acknowledgment is executed by the buyer and the brokerage representative;
- b) The Buyer Designated Brokerage Agreement/Buyer Brokerage Agreement is executed by the buyer and the brokerage representative before any agency services are provided by the brokerage-or the designated agent;

## Part 2—Mandatory Forms Requirements

- c) The Buyer Unrepresented Party Acknowledgement is executed by the buyer and the brokerage representative before the preparation of an Agreement of Purchase and Sale; and
- d) If the remuneration is different than what is in the agreement, and the buyer is to pay the brokerage, an amendment is required before the preparation of the APS. If the buyer is not paying remuneration, written notification (email) must be provided to the buyer before the preparation of an APS.

### **When Conflicts Arise—Independent Representation, Unrepresented Party Status and Transaction Brokerage**

A conflict of interest arises when a brokerage or a designated agent represents two or more parties in the same trade. For example, a buyer and a seller or two or more buyers.

#### **Independent Representation**

The best option for both parties, which allows all parties to receive full agency representation for the transaction, is for the brokerage to continue to represent one party and refer the other party to seek independent representation with a different brokerage or a designated agent.

If the brokerage practices designated agency, the conflict can be resolved by the broker designating another designated agent of the brokerage or by referring the client to a different brokerage. Licensees at a designated-agency brokerage owe agency only to their own clients, not the clients of other designated agents at their brokerage.

If the brokerage practices common-law agency, only referrals to another brokerage can solve the conflict. Clients cannot be “reassigned” to other licensees within a common-law agency brokerage to resolve a conflict because the obligation of agency still remains, regardless of which licensee may be working directly or regularly with the client.

#### **Independent Representation Requirements**

**204**

When treating one party to a transaction as a client and referring the conflicting client to another brokerage/designated agent, the licensee must ensure that:

- a) The Brokerage Agreement of the party being referred is amended to appoint another designated agent using Amendment to Seller Buyer Brokerage Agreement/Designated Brokerage Agreement or is terminated using the Temporary Withdrawal or Termination of Seller/Buyer Brokerage Agreement/Designated Brokerage Agreement; and
- b) Subsection (a) is completed prior to preparing an Agreement of Purchase and Sale.

#### **Treating One Party as an Unrepresented Party**

Depending on the conflict, one party can agree to forfeit their agency relationship and proceed with the transaction as an unrepresented party, while the other party maintains their agency relationship with the brokerage or the designated agent. This is not an ideal resolution and the party must be given the

## **Part 2—Mandatory Forms Requirements**

opportunity to receive independent representation and consult with legal counsel. The party being offered an unrepresented party relationship must understand that this option puts them at a disadvantage, because they must represent themselves whereas the other party will continue to receive agency representation from the brokerage or designated agent. If the party believes they are sophisticated enough to proceed with the transaction and forgoes agency representation, it is an option that can resolve the conflict. With only one party in an agency relationship, and the other reduced to an unrepresented party relationship, there is no longer a representation conflict of interest.

### **Treating One Party as an Unrepresented Party Mandatory Requirements**

**205**

When treating one party to a transaction as an unrepresented party, the licensee must ensure that:

- a) The Brokerage Agreement of the party becoming an unrepresented party is terminated using Form 221: Temporary Withdrawal or the Termination of Seller/Buyer Brokerage Agreement/Designated Brokerage Agreement; and
- b) The party signs the applicable Buyer or Seller Unrepresented Party Acknowledgement.
- c) Subsections (a) and (b) are completed prior to preparing an Agreement of Purchase and Sale.

### **Transaction Brokerage**

Transaction brokerage is rarely used as it offers the least benefits and the most risk to the parties. Transaction brokerage is used when conflicting parties and the brokerage or the designated agent agree to forgo agency representation. The three parties must agree, in writing, prior to the preparation of an Agreement of Purchase and Sale, to limit the services provided by the brokerage from that of an agency relationship to that of an impartial facilitator.

### **Transaction Brokerage Agreement Mandatory Requirements**

**206**

When entering conflicting parties and the brokerage into transaction brokerage, the licensee must ensure that the Transaction Brokerage Agreement is executed by all parties before the preparation of Agreement of Purchase and Sale.

### **Agreement of Purchase and Sale**

An Agreement of Purchase and Sale (APS) is an offer on a property from the buyer to the seller. The seller can choose to accept, reject, counter, or not respond to the offer. If the seller accepts the buyer's offer, the Agreement of Purchase and Sale becomes the purchase contract for the property.

### **Agreement of Purchase and Sale Mandatory Requirements**

**207**

When preparing and relaying an Agreement of Purchase and Sale, the licensee must ensure that:

- a) The number of pages is completed and reflects the total number of pages as prepared and presented.

## **Part 2—Mandatory Forms Requirements**

- b) The Agreement of Purchase and Sale is accepted within the time frame specified in the Agreement.

### **Counter Offer**

A Counter Offer is considered a new offer from the seller to the buyer and can be proposed at any time, even after the 'open for acceptance date' in the buyer's offer. The Counter Offer form allows the seller to propose new terms or change existing terms from the buyer's offer, such as price, fixtures or chattels. Once completed and signed by the seller and relayed to the buyer, the Counter Offer form and the attached buyer's APS becomes the seller's offer to the buyer. Once relayed, it is irrevocable until the 'open for acceptance date'. The buyer can choose to accept, reject, or not respond. If the buyer accepts the seller's Counter Offer, the Counter Offer and the APS form the purchase contract for the property.

#### **Counter Offer Mandatory Requirements**

**208**

When relaying a Counter Offer, the licensee must ensure that if the buyer accepts the Counter Offer, that the buyer does so within the time frame specified in the Counter Offer.

### **Trade Record Sheets and Co-listing Agreement Requirements**

Licensees must comply with the requirements for trade record sheets and co-listing agreements.

#### **Trade Record Sheets Mandatory Requirements**

**209**

In accordance with By-law 616, a completed trade record sheet must be maintained in the transaction file.

#### **Co-listing Agreements Mandatory Requirements**

**210**

If a property is co-listed with two brokerages, the co-listing documentation must be in accordance with the requirements set out in the Conducting an Open House for Another Brokerage Policy.

## **Part 3—Commercial Transaction File Requirements**

Licensees must comply with the following requirements when preparing, facilitating and maintaining commercial real estate documents.

### **Commercial transaction file requirements**

#### **301**

Licensees must ensure:

- (a) All applicable documentation/records to the transaction are submitted to the broker.
- (b) All documentation/records are:
  - (i) legible;
  - (ii) prepared on the correct form;
  - (iii) completed accurately, and in full, using clear and understandable language; and
  - (iv) executed by all parties correctly, i.e. signed, dated, and initialed in the appropriate sections of the forms.
- (c) All deleted clauses are identified as such by a line struck through the clause or by inserting “n/a” or “delete” without obscuring the initial wording of the clause and initialed by all parties at the time of signing.
- (d) All schedules to an agreement are identified as forming part of the agreement (APS, lease agreement, representation agreement, etc.).
- (e) Any changes to an agreement are carried out in an amendment;
- (f) The disclosures required under Act Section 38 and By-law 734 are made in writing by a licensee when the licensee or an immediate family member or associate of the licensee is acquiring or disposing of property.
- (g) All additional documents required by any executed form must be maintained in the transaction file.
- (h) Representation agreements, fee agreements, and unrepresented party acknowledgements that require brokerage contact information are completed in full, including email, phone number, and address.
- (i) The consumer contact information section of representation agreements, fee agreements, and unrepresented party acknowledgements are completed in full. If this information is not available, licensees indicate that this information is “not provided” or strike through the missing portions of the section. The clause cannot remain blank.
- (j) In accordance with By-law 616, a completed trade record sheet is maintained in the file.
- (k) An offer:
  - (i) identifies the date the buyer executes an offer (offer date),

### **Part 3—Commercial Transaction File Requirements**

- (ii) contains an open for acceptance date and time, and
  - (iii) contains a closing date;
- (l) If an agreement contains a deposit clause, the clause must specify:
  - (i) the deposit amount;
  - (ii) the date the deposit is due,
  - (iii) to whom the deposit is payable, and
  - (iv) terms of the deposit release from trust.

## Part 4—Commercial Transaction Relationship Disclosures

Similar to residential transactions, the Working with the Real Estate Industry form is the first step in a commercial transaction to provide written disclosure and signed acknowledgement of the types of relationships that can be formed between a consumer and a brokerage/designated agent. Licensees must review this form with consumers as soon as possible, ensuring it is completed and signed prior to providing services or giving advice. That said, if the commercial practitioner determines the consumer is sophisticated in commercial real estate transactions, the licensee would not be required to have the Working with the Real Estate Industry form signed by the consumer. The licensee has a professional responsibility to make this determination.

### Establishing Relationships

The second step is for the commercial licensee to either have the consumer sign a client representation agreement or an unrepresented party acknowledgement. The Commission does not have standard commercial forms. The broker is responsible for creating these documents and ensuring they comply with the Real Estate Trading Act, the Commission By-law and the Policies. These documents establish the relationship between the consumer and the brokerage or the designated agent, setting out the duties and obligations of the parties. The relationship must be established in writing prior to the preparation of a purchase agreement, a letter of intent, a lease agreement, or an offer to lease.

### Disclosing Relationships to all Parties to the Transaction

The third step for the commercial licensee is to disclose to all parties to the transaction, or their respective representative(s), their role (relationships) in the transaction. The disclosure can be made in the purchase agreement, letter of intent, lease agreement and/or offer to lease. If the disclosure is not made in one of these documents, an email citing the required disclosures to all applicable parties is sufficient provided it is sent with the purchase agreement, letter of intent, lease agreement and/or offer to lease. Commercial licensees must ensure that all parties to the transaction understand the roles of the licensees involved. This either must be documented in the agreement or before the preparation of the agreement.

### Working with the Real Estate Industry Member Requirements if the Licensee Determines the Commercial Consumer is not Sophisticated

401

When working with an unsophisticated consumer, the licensee must ensure that:

- a) The WWREI is signed/initialed and dated by each client/unrepresented party of the brokerage before any buyer or seller agreement/acknowledgement/APS is signed;

## Part 4—Commercial Transactions

- b) The appropriate agency box is selected; and
- c) The brokerage and the real estate representative are identified.

### **Client Representation Agreement Mandatory Requirements**

#### **402**

When working with a client, the licensee must ensure that the Agreement:

- a) Identifies all parties to the agreement;
- b) Is in writing and signed by the brokerage representative and the client;
- c) Has a commencement date and expiry date;
- d) Identifies and explains the duties and obligations of the parties;
- e) Identifies the appointment of designated agent by the broker, if applicable;
- f) Identifies the remuneration to be paid, by whom, and when it will be paid to the brokerage;
- g) Identifies the list price, if applicable;
- h) Has an effective date that is on or later than the date the agreement/acknowledgment is executed by the client and the brokerage representative;
- i) Is signed by the client on or before the preparation of the transaction agreement (APS, Sale/Letter of Intent/Offer to Lease/Lease Agreement);
- j) If the remuneration is different than what is in the agreement, and the buyer is to pay the brokerage, an amendment is required before the preparation of the APS. If the buyer is not paying remuneration, written notification (email) must be provided to the buyer before the preparation of an APS; and
- k) If the remuneration is different than what is in the buyer representation agreement, and the buyer is to pay the brokerage, an amendment is required before the preparation of the APS/Lease Agreement. If the buyer is not paying remuneration, written notification (email) must be provided to the buyer before the preparation of an APS/Lease Agreement.

### **Unrepresented Party (self represented) Acknowledgements must:**

#### **403**

When working with an unrepresented party, the licensee must ensure that the Acknowledgement:

- a) Identifies all parties to the acknowledgement;
- b) Is in writing and signed by the unrepresented party and the brokerage representative;
- c) Has a commencement date and expiry date;

## **Part 4—Commercial Transactions**

- d) Identifies and explains the duties of the parties and document that the brokerage or the designated agent is not providing fiduciary duties and not acting in an agency capacity for the unrepresented party;
- e) Specifies that if the unrepresented party is paying the brokerage remuneration, it is by written agreement and identifies the amount to be paid and when it will be paid to the brokerage;
- f) Includes the list price; if applicable;
- g) Has an effective date that is on or later than the date the acknowledgment is executed by the client and the brokerage representative; and
- h) Is signed by the unrepresented party on or before the preparation of the transaction agreement (APS, Sale/Letter of Intent/Offer to Lease/Lease Agreement).

### **Transaction Brokerage Agreement, if applicable**

#### **404**

When entering conflicting parties and the brokerage into transaction brokerage, the licensee must ensure that the Transaction Brokerage Agreement or other consent waiver to representation is executed by all parties before the preparation of the offer to lease, lease, purchase agreement, or letter of intent.

## Part 5—Trust Accounts

Real estate deposits are held in the trust account of the brokerage for all parties to the transaction. The broker is the trustee of these funds for both parties. The funds are held in accordance with the terms of the agreement and are also subject to the requirements of the Act, the By-law and the Policies. As the trustee, the broker requires specific direction on how and when funds will be deposited to and withdrawn from the trust account. Brokers can deposit trust funds into their trust account only. Trust funds are funds held in trust for a trade in real estate once there is an accepted agreement in place.

The broker is responsible to oversee and manage the trust account and trust record keeping requirements. This includes ensuring that all licensees and unlicensed persons at the brokerage are provided with, and instructed on, the requirements for handling trust funds in accordance with the Act, the By-law and the Policies.

The broker may appoint a person to prepare the trust account record keeping, however the ultimate responsibility remains with the broker. Brokers are required to advise the Commission immediately, in writing, when they open or close a trust account.

### Required Trust Record Keeping

#### 501

The broker is required to prepare and maintain the following trust account record keeping requirements:

- a) Trust control ledger;
- b) Monthly bank reconciliations;
- c) Monthly trust liability listings; and
- d) Individual trust records.

For each of these requirements, transaction information must be consistent when identifying the trade.

### No trust activity

If a brokerage does not have any trust activity and does not hold funds, i.e. a \$0 balance, the broker is not required to maintain the four mandatory trust record keeping requirements for those months.

## 1. Trust Control Ledger

By-law 604 (b)(i): *The broker must prepare and maintain the following trust account record keeping requirements: (i) Trust control ledger;*

A trust control ledger is a chronological list of all trust deposits and disbursement transactions. This record is to be prepared perpetually. This means at the time each deposit or disbursement occurs. A Trust control ledger in accounting terms, may be referred to as a general journal. It can be prepared electronically or manually.

## Part 5—Trust Accounts

### Trust Control Ledger

#### 502

A trust control ledger must show:

- Entries in chronological order;
- All deposits/disbursements to/from the trust account;
- The date of deposit/disbursement;
- The running balance after each transaction;
- For each deposit, information sufficient to identify the trade, which includes any two of the following: transaction address, trade number, last names of sellers and buyers; and
- For each disbursement, the type of disbursement, i.e. cheque number, EFT confirmation number, email address, identify the payee and information sufficient to identify the trade, which includes any two of the following: transaction address, trade number, last names of sellers and buyers.

#### Example 1: Trust Control Ledger

| XYZ Realty Ltd. Real Estate Trust Account |   |                               |                         |            |             |                    |
|---|---|-------------------------------|-------------------------|------------|-------------|--------------------|
| Trust Account Control Ledger              |   |                               |                         |            |             |                    |
| Date                                      | Transaction/Purpose                                     | Details/Payee                 | Disbursement Identifier | Debit      | Credit      | Balance            |
| 1-Jan-24                                  | Black to Smith, 1 Park St., Trade #4567                 | Trust Deposit                 |                         |            | \$1,000.00  | <b>\$1,000.00</b>  |
| 5-Jan-24                                  | Baker to Rodgers, 55 Eagle St, Trade# 9678              | Trust Deposit                 |                         |            | \$200.00    | <b>\$1,200.00</b>  |
| 5-Jan-24                                  | Black to Smith, 1 Park St., Trade#4567                  | Increase trust deposit        |                         |            | \$1,000.00  | <b>\$2,200.00</b>  |
| 7-Jan-24                                  | Ryan to Zhang, 110 Line Rd., Trade#1234                 | Trust Deposit                 |                         |            | \$500       | <b>\$2,700</b>     |
| 15-Jan-24                                 | Black to Smith, 1 Park St., Trade#4567                  | XYZ Realty Ltd. General Acct  | EFT-GA123               | \$2,000.00 |             | <b>\$700.00</b>    |
| 15-Jan-24                                 | Smith to Jones, 2 Colonial Ave., Trade#4444             | Trust Deposit                 |                         |            | \$5,000.00  | <b>\$5,700.00</b>  |
| 6-Feb-24                                  | Johnson to Public, 5 School Ave. Trade#5555             | Trust Deposit                 |                         |            | \$10,000.00 | <b>\$15,700.00</b> |
| 10-Mar-24                                 | Smith to Jones, 2 Colonial Ave., Trade#4444             | XYZ Realty Ltd. General Acct  | Chq 002                 | \$2,000.00 |             | <b>\$13,700.00</b> |
| 10-Mar-24                                 | Smith to Jones, 2 Colonial Ave., Trade#4444             | ABC law firm "In Trust"       | Chq 003                 | \$3,000.00 |             | <b>\$10,700.00</b> |
| 30-Mar-24                                 | Ryan to Dixon, 110 Line Rd., Trade#7777                 | Trust Deposit                 |                         |            | \$1,500.00  | <b>\$12,200.00</b> |
| 31-Mar-24                                 | Return Deposit – Ryan to Zhang, 110 Line Rd. Trade#1234 | Fallen Transaction-Bill Zhang | Chq 004                 | \$500.00   |             | <b>\$11,700.00</b> |

## 2. Individual Trust Records

By-law 604(b)(iv): *The broker must prepare and maintain the following trust account record keeping requirements: (iv) Individual trust records.*

## Part 5—Trust Accounts

Every time a brokerage accepts a deposit for a transaction, the broker must create and maintain an individual trust record for that transaction. The record reflects the deposit at the time they accept the trust funds and it must be updated if there is an increase in the deposit and when the broker makes the disbursement.

### Individual Trust Records

#### 503

The individual trust record(s) must show:

- a) Information sufficient to identify the trade, which includes any two of the following: transaction address, trade number, last names of sellers and buyers;
- b) The deposit amount and date received; and
- c) The disbursement amount and date, and identify type of disbursement, i.e. cheque number, EFT confirmation number, email address, and identify the payee.

#### Example 2: Individual trust record

| Name: Black to Smith         |   |            | Trade # 4567 |            |
|------------------------------|---|------------|--------------|------------|
| Address: 1 Park St., Anytown |   |            |              |            |
| Date                         | Description   | Debits     | Credits      | Balance    |
| 1-Jan-24                     | Deposit to Brokerage Trust Account                                  |            | \$1,000.00   | \$1,000.00 |
| 5-Jan-24                     | Deposit Increase  |            | \$1,000.00   | \$2,000.00 |
| 15-Jan-24                    | Disbursed to Brokerage General Account, XYZ Realty Ltd. – EFT-GA123 | \$2,000.00 |              | \$0.00     |

## 3. Monthly Trust Liability Listings

By-law 604(b)(iii): *The broker must prepare and maintain the following trust account record keeping requirements: (iii) Monthly trust liability listings; and*

A monthly trust liability listing is a detailed list of all deposits held for each transaction in the trust account for each respective month with a total balance at the bottom. This must be prepared every month.

### Monthly Trust Liability Listings

#### 504

The monthly trust liability listing must show:

- a) The month end date and year;

## Part 5—Trust Accounts

- b) The date of each deposit;
- c) The amount of each deposit;
- d) Information sufficient to identify each deposit transaction (any two of the following: transaction address, trade number, names of seller and buyer parties); and
- e) The total balance of all deposits.

**Example 3: Trust Liability Listing** including both the special trust account(s) and the brokerage's trust account.

| XYZ Realty Ltd.<br>Real Estate Trust Account<br>Trust Liability Listing for March 31, 2024 |                 |        |                     |
|--|-----------------|--------|---------------------|
| Transaction  | Date of Deposit | Trade# | Funds held in trust |
| Baker to Rodgers, 55 Eagle St,   | 5-Jan-24        | 9678   | \$200.00            |
| Johnson to Public, 5 School Avenue   | 6-Feb-24        | 5555   | \$10,000.00         |
| Ryan to Dixon, 110 Line Road   | 30-Mar-24       | 7777   | \$1,500.00          |
| Total Balance  |                 |        | \$11,700.00         |

### 4. Monthly Trust Account Bank Reconciliations

By-law 604(b)(ii): *(b) The broker must prepare and maintain the following trust account record keeping requirements: (ii) Monthly bank reconciliations;*

The purpose of the reconciliation is to identify if there are any differences between the trust bank statement ending balance and the trust control ledger ending balance. For example, a broker may have written a trust cheque that is identified on the trust control ledger, but it is not showing on the trust account bank statement because the cheque has not been cashed. This is considered an outstanding disbursement. An example of an outstanding deposit is when a deposit is made on a Friday afternoon of a long weekend at the end of the month. The deposit may not show until the next month.

The monthly trust account bank reconciliation is typically created using the ending balance of the trust account bank statement. Sometimes the bank statement ending date is not always the last date of the month. To reconcile to the last day of the month, print the online financial institution statement reflecting all transactions up to and including the end date. For example, if the bank statement end date is January 29, the bank reconciliation can be prepared as of January 29. Alternatively, to prepare the bank reconciliation to the end of the month, the online printout from the financial institution must reflect all transactions on January 30 and 31.

Outstanding deposits and disbursements are then added/subtracted to this amount to account for any amounts reflected on the trust control ledger, but not identified on the bank statement.

### Outstanding deposit example

The trust bank statement end date is May 31. On May 31, the broker deposits funds. The broker makes the entry in the control ledger for this deposit. The trust deposit record reflects the funds being deposited on May 31; however, the deposit may not be reflected on the May bank statement and it will be reflected in the June bank statement. In this scenario, the bank statement end balance and the control ledger end balance would not match on May 31. This deposit is to be identified on the May trust bank reconciliation as an outstanding deposit. After preparing the bank reconciliation, the ending reconciled bank balance and the trust control ledger balance should now match.

### Outstanding disbursement example

The trust account bank statement end date is May 31. On May 31, the broker writes a cheque for a return deposit. The broker makes the entry in the control ledger for this disbursement. If the payee cashed the cheque on June 2, the disbursement would not be reflected on the May bank statement. The cashed cheque would be reflected on June's bank statement. In this scenario, the bank statement end balance and the control ledger end balance would not match on May 31. This disbursement is to be identified on the May trust bank reconciliation as an outstanding disbursement (cheque). After preparing the bank reconciliation, the ending reconciled bank balance and the trust account control ledger balance should now match.

After preparing the monthly trust liability listing and monthly trust bank reconciliation, the ending balances of these two records should match the trust control ledger balance. If the balances don't match, this is an indication there is an error(s).

Examples of errors:

- control ledger entry error
- error when preparing the reconciliation
- disbursement error (cheque written for incorrect amount)
- deposit error
- bank error (service charges)

Unresolved errors must be identified on the monthly reconciliation and the broker is responsible to rectify the error (before the next month's reconciliation is prepared).

### Monthly Trust Account Bank Reconciliation

**505**

A monthly trust account bank reconciliation must:

- a) Identify the bank statement date (day, month, year) to which the bank reconciliation is prepared;
- b) Identify the bank statement ending balance;

## Part 5—Trust Accounts

- c) Identify outstanding deposits—identify the amount and date of the deposit and information sufficient to identify the trade, which includes any two of the following: transaction address, trade number, names of seller/buyer/landlord/tenant;
- d) Identify outstanding disbursements—identify the disbursement confirmation number, payee, date and amount, and information sufficient to identify the trade, which includes any two of the following: transaction address, trade number, names of seller/buyer/landlord/tenant;
- e) Identify reconciled balance; and
- f) Be signed and dated by the broker or managing associate broker within 30 days of the trust bank statement end date.

### Example 4: Sample Bank Reconciliation

**XYZ Realty Ltd.**  
**Real Estate Trust Account**

**Bank Reconciliation as of March 31, 2024**

|   |   |                             |
|---|---|-----------------------------|
| <b>Bank statement ending balance as of March 31, 2024</b> |   | <b>\$10,700.00</b>          |
| <b><u>Add:</u></b>  | Outstanding deposits<br><i>03/30/24: Ryan to Dixon, 110 Line Road, Trade#7777</i>   | <u>\$1,500.00</u>           |
| <b><u>Less:</u></b>                                       | Outstanding withdrawals/cheques<br><i>03/31/24, Payee: Bill Zhang, Ryan to Zhang, 110 Line Road (fallen sale). Trade#1234</i> | <u>(Chq 004 (\$500.00))</u> |
| <b>Reconciled balance</b>                                 |   | <b>\$11,700.00</b>          |

## Other Requirements

### Trust Deposits

506

- a) Any deposit clause in an Agreement of Purchase and Sale or lease agreement must identify the amount of the deposit, the due date of the deposit and to whom the deposit is payable, i.e. brokerage in trust, lawyer in trust, etc.
- b) When deposits are received in accordance with the accepted agreement, the funds must be deposited into the brokerage trust account within two business days following the date of receipt by a brokerage representative.

## Part 5—Trust Accounts

- c) When a brokerage does not receive a deposit per the terms of an Agreement of Purchase and Sale or a lease, the broker must immediately notify the seller(s) in writing.
- d) If the buyer wants to pay the deposit in cash, they may provide the cash to their brokerage who will deposit the cash into their trust account and then immediately disburse the funds to the brokerage to whom the deposit was made payable in the agreement.

### Disbursements Directly from Trust Account

507

- a) Funds must be disbursed from the brokerage's trust account as follows:
  - (i) To the brokerage's general/operating account for remunerations owed to the brokerage after the successful completion of a transaction;
  - (ii) To another brokerage's trust account if the deposit received was cash or by agreed amendment;
  - (iii) To a lawyer's trust account;
  - (iv) By agreed amendment;
  - (v) Per the instruction of NSREC's Agreement of Purchase and Sale clause 1 (Excess Deposit);
  - (vi) To the Commission for unresolved/unclaimed trust funds;
  - (vii) To the person identified on the Release of Deposit (Termination of Agreement of Purchase and Sale and Release of Deposit) from all parties (or their respective lawyers), other written agreement, or written court order. The written agreement must specify to whom the funds are to be paid and the amount. Brokers must first ensure a deposit has cleared before they return the funds to the agreed party.
- b) For unresolved/unclaimed trust funds, when the funds are two years of being deposited into the brokerage's trust account, the broker is required to notify all parties or their respective legal representative that the funds will be disbursed to the Commission per Section 32 6 A) of the Act and that the Commission will hold these funds for an additional four years. After which the funds will transfer to the Commission.
- c) Confirmation of closing must be maintained in the transaction file.

### Confirmation of Closing Examples

- Written confirmation from the sellers' lawyer/seller confirming closing;
- A copy of the remuneration cheque from the sellers' lawyer; or
- A well-documented verbal confirmation from the sellers' lawyer confirming closing on the trade record sheet. This note must include the date and time and must be signed off by the broker or broker designate.

**Note:** In the case of a lease, confirmation can come from the landlord.

**Bank Records that the Broker must Maintain**

**508**

- a) Monthly trust account bank statements, which must identify:
  - (i) The full licensed name of the brokerage; and
  - (ii) That that it is a trust account in Nova Scotia.
- b) When depositing, the broker must ensure that trust deposit records identify:
  - (i) The amount and date of the deposit. The record must be generated or validated by the bank;
  - (ii) Information sufficient to identify the trade, which includes (any two of the following:
    - 1. transaction address,
    - 2. trade number, or
    - 3. names of seller/buyer/landlord/tenant.
- c) The trust disbursement record must identify:
  - (i) The bank processing date;
  - (ii) The amount;
  - (iii) The payee;
  - (iv) A confirmation/ reference identifier (one of the following):
    - 1. cheque number,
    - 2. bank generated number(s) and/or letter(s), or
    - 3. email address of payee,
  - (v) Information sufficient to identify the trade, which includes (any two of the following:
    - 1. transaction address,
    - 2. trade number, or
    - 3. names of seller/buyer/landlord/tenant.
- d) Trust cheques must identify the full licensed name of the brokerage and that it is a trust account. Brokers must maintain the front and back of cleared trust cheques, which includes the processing date.

**Non-Compliant Use of the Trust Account**

**509**

- a) Trust funds are funds held in trust for a trade in real estate once there is an accepted agreement in place. Brokers are prohibited from depositing any funds other than trust funds into the trust account.
- b) Non-compliant uses of the brokerage's trust account include:
  - (i) Co-mingling non trust funds—failing to disburse funds from the trust account for remuneration owed within 30 days of a closed transaction, adding money to the trust account to pay for bank service fees;
  - (ii) Accruing interest—any accruing interest must not be deposited into the trust account;
  - (iii) Bank service fees charged to the trust account—monthly fees, ordering cheques, wire transfer fees, NSF, etc.;
  - (iv) Property management funds—monthly rental, first and last month rent, property maintenance fees etc.; and
  - (v) Depositing funds for real estate trades of property outside of Nova Scotia.
- c) If any of the above events occur, the broker must take necessary steps to rectify them within 30 days of the bank statement end date.