

**State of Iowa
Real Estate
Trust Account Manual**

Issued by

**Department of Inspections, Appeals
and Licensing
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Table of Contents

	PAGE
I. GENERAL REAL ESTATE TRUST ACCOUNT INFORMATION	
A) Broker Responsibility	1
B) Why Have Separate Trust Account(s)?	1
C) Establishing Trust Accounts	1-2
D) Interest Requirements & Remittance (deposit)	2-3
E) Non-Interest Bearing Accounts	3
F) Interest to Other Parties	3-4
G) Zero Balance in the Trust Account	4
H) Closing Trust Accounts	4
I) When Do I Use a "Trust Account Affidavit"?	4
J) Unclaimed Trust Funds	5
II. REAL ESTATE TRUST ACCOUNTS	
A) Identification of Trust Accounts	6
B) Trust Account Records	6-7
C) Broker's Equity	7
D) Proper Control of Trust Funds - Receipts	8-9
E) Proper Control of Trust Funds - Disbursements	9-10
F) Bookkeeping - Illustrated	10-20
G) Keeping the Trust Account Balanced at all Times	20
H) Trust Account Examinations	21
III. REAL ESTATE PROPERTY MANAGEMENT ACCOUNTS	
A) Identification of Trust Accounts	22
B) Trust Account Records	23
C) Broker's Equity	24-26
D) Proper Control of Trust Funds – Receipts	26
E) Proper Control of Trust Funds - Disbursements	26
F) Bookkeeping - Illustrated	27-33
G) Property Management Transfer or Termination	33-34
H) Trust Account Examinations	34-35
IV. ADDITIONAL INFORMATION ABOUT TRUST ACCOUNTS	
A) Do's and Don'ts with Real Estate Trust Accounts	36-37
B) Questions Most Often Asked About Trust Accounts	37-39
C) Forms Most Commonly Used:	
1) Consent to Examine & Audit Trust Account	40
2) Trust Account Status Affidavit	41
3) Real Estate Interest Remittance Form	42
4) Trust Account Bank Reconciliation Form	43
5) Bookkeeping Forms	43-48
D) Chapter 13 – Trust Accounts	49-54
E) Chapter 15 – Property Management	55-56

I. GENERAL REAL ESTATE TRUST INFORMATION

A) Broker Responsibility

The authority and responsibility for the proper handling of real estate trust account funds relies entirely with the employing broker. The employing broker may delegate the authority to handle trust funds, maintain real estate trust account records, and sign trust account checks. This authority may not, however, be delegated to any person who has an interest in the funds held in the trust account.

For example, an office manager who normally handles the real estate trust account offers to purchase a property listed by the employing broker. Then the office manager gives the broker funds such as earnest money. The broker must assign the duties of the trust account to another employee or personally handle the duties, because the office manager now has an interest in the trust account.

Remember, the employing broker continues to be responsible for whatever may happen regarding the handling of the trust funds, the real estate trust account, and the related records. The real estate trust account auditor recommends that the employing broker perform a bank reconciliation and a trial balance at random intervals during each month to ensure the proper handling of trust funds at all times.

Violations of the Iowa Administrative Code Chapter 193E, Chapter 13 - pertaining to the improper handling of trust funds can result in the suspension or revocation of a broker's real estate license by the Iowa Real Estate Commission.

B) Why Have Separate Trust Accounts?

The primary reason for creating a trust account is to separate trust funds from the other funds of the broker. This includes funds received from both the sale and management of property. Reasons for establishing and maintaining a trust account separate from the broker's own money include the following:

- In the event the broker should die, the money in the trust account will not become a part of the broker's estate.
- The trust funds will not be at risk if a judgment is entered against the broker.
- Each client's account is insured up to \$250,000 regardless of the total balance in the trust account.
- Individual accounting ensures proper documentation of all trust account transactions, and more accurate auditing by the real estate trust account auditor.

C) Establishing a Trust Account

Per 193E Chapter 13. Each active broker should establish a common trust account separate from the broker's own money. This account is for the deposit of trust funds. Trust funds are defined as all money belonging to others received by the broker, broker-associate or salesperson on the sale, rental, purchase, or exchange of real property located in Iowa. Trust funds shall include, but not be limited to, receipts from property management contracts, rent or lease contracts, advance fee contracts, escrow contracts, collection contracts, earnest money contracts, or money received by a

broker for future investment or other purpose.

The account must have the word "**trust**" in the name of the account. Additionally, all bank records must contain the word "trust" to designate the account and suggest that the word "trust" be included on the checks used for the trust account.

When establishing a trust account, it is the responsibility of the broker to notify the Real Estate Commission staff. The **Consent to Examine and Audit Trust Account** form is used for that purpose. After the form is filled out by the financial representative, it is mailed by the broker to the Professional Licensing & Regulation Bureau, Iowa Real Estate Commission, 200 E Grand, Suite 350, Des Moines, Iowa, 50309. These forms are available on the Iowa Professional Licensing website at www.plb.iowa.gov under the "Forms Index" link.

A broker may have more than one trust account provided that the **Consent to Examine and Audit Trust Account** form is filed for each account. Many brokers choose to have a trust account for sales and a trust account for property management funds. If a broker manages several properties, an account for each owner or property is recommended. The trust account auditor recommends a trust account for security deposits in property management situations.

The most common method to establish a real estate trust account would occur in the following order.

- A federally insured depository institution, bank, savings & loan association, savings bank, or credit union.
- The title of the trust account must include the word "**trust**" in its name.
- The account must be interest-bearing unless specific requirements are met as explained later in the manual.
- Duplicate deposit slips and pre-numbered checks should bear the same name as the name of the real estate trust account.

D) Interest Requirements and Remittance (Deposit)

All trust funds must be deposited into the broker's trust account no later than five (5) banking days after acceptance of the offer to purchase. The trust account is required to be interest-bearing. The amount of interest remitted will be all interest earned less the service charge for maintaining an interest bearing account and/or the charge for remitting the interest to the state. Usually, the service charge is a flat fee. Other service charges like deposits, check clearing and check printing are the broker's expense.

Unless there is a written agreement pursuant to 193E- Chapter 13.1 (543.B), all interest earned on the trust account shall be transferred quarterly to the State of Iowa, beginning July 1, 1985. Quarterly dates are January, April, July, and October. Interest may be remitted monthly. If the interest is not paid monthly, it must be deposited by the designated quarter date.

The broker may have the financial institution deposit the interest directly to:

The State of Iowa
% Bankers Trust Company
P.O. Box 4686
Des Moines, Iowa 50306

Or the broker may remit the interest. Checks should be made payable to the Treasurer-State of Iowa. If the broker remits the interest, the broker must include with the deposit a copy of the bank

statement(s) showing the interest paid and the service charges related to the maintenance of the trust account. If the depository is going to send in the interest, the **Real Estate Remittance Form** is located in the form's section of the manual suitable for photocopying. *It is the responsibility of the broker to see that interest is paid to the state*, whether the financial institution or the broker deposits the funds.

When your trust account is established at a financial institution, the institution should use the federal tax identification (TIN) '52-1699886' when reporting the interest to the IRS on Form 1099. The name to use is "Iowa Finance Authority." The 1099 is then sent to the following address and not to the real estate broker or to the Iowa Real Estate Commission:

Iowa Finance Authority
1963 Bell Avenue
Des Moines, Iowa 50315

If problems or questions arise, the institution may contact the Iowa Finance Authority at (515) 725-4900. Only the Form 1099 is to be mailed to the Iowa Finance Authority. The interest deposit should be mailed to Banker's Trust Company. Do not send interest deposits to the Iowa Real Estate Commission.

E) Non-interest Bearing Accounts

Receipts from property management and rental account transactions may be deposited in a trust account separate from the real estate sales trust account. If the management or rental account is separately maintained, this account does not have to pay interest.

F) Interest to Other Parties

If a property management account or rental account is interest-bearing, the interest shall be deposited on a calendar quarter to the state unless there is a written agreement paying the interest to the property owner or as provided in Iowa Code sections 562A.12(2) and 562B.13(2). The written provision must be in the property management or rental contract.

Occasionally the parties to a sales transaction may require that the interest earned on the trust funds be remitted to them. In order to do so, it is necessary to establish a separate account for that purpose. The following is the recommended procedure:

- Obtain the written agreement signed by all parties (this may be on the offer to purchase or the purchase agreement).
- Deposit the funds in the regular sales trust account.
- Open a new account at a financial institution (usually a passbook savings account, but other federally insured accounts may be used if all parties agree in writing).
- Complete a **Consent to Examine and Audit Trust Account** form and file it with Iowa Real Estate Commission staff in Des Moines, Iowa.
- Transfer the funds from the regular sales trust account to the new trust account.
- At closing, transfer the funds (plus interest) from the special trust account to the regular

sales trust account and disburse the funds as per a usual closing. The amount of the interest to be paid to the party requesting the interest must be noted on the closing statement.

Other forms of investment (e.g., CD's, money market certificates, etc.) are securities and are handled as disbursements prior to the closing. The trust account auditor recommends the earnest money be deposited into the main trust account. The informed written consent should specify the type of security to be bought, identify who will hold the security, and identify who will benefit from the interest earned. Then the funds are transferred to a separate individual trust account. When the security is cashed, the money should be re-deposited into the main trust account and the closing is held in the usual manner.

Please Note: Under no circumstances is the broker to receive any of the interest or any of the interest earned on any trust account.

G) Zero Balance in the Trust Account

A broker should not open a real estate trust account with a -0- balance when there are no deposits or disbursements in the account. The bank might, without the consent of or notice to the broker, close the account because of the -0- balance and lack of activity. The bank might also charge the account for various bank charges that will result in a negative balance. In either case, the broker would be in violation of 193E Chapter 13 rules governing trust accounts.

H) Closing Trust Accounts

The trust account auditor recommends that all brokers inform the Iowa Real Estate Commission staff in writing, whenever they close a real estate trust account. The written notification should include the following:

- The name of the broker or firm
- The account number
- The name of the bank
- The date on which the account was or will be closed
- The date of the last transaction (bank statement)
- Proof that interest was remitted to the state (bank statement)
- Any other information or documentation requested by the Real Estate Commission staff

I) Trust Account Status Affidavit

If a broker does not expect to receive trust funds, earnest money or property management funds, the broker shall file a **Trust Account Status Affidavit** with the Professional Licensing and Regulation Bureau, Iowa Real Estate Commission, 200 E Grand, Suite 350, Des Moines, IA 50309. If the broker receives trust funds after filing the affidavit, the broker must immediately open a trust account and file the **Consent to Examine and Audit Trust Account** form with the Iowa Real Estate Commission staff at the above address. The **Trust Account Status Affidavit** form is located in the forms section of the manual.

J) Unclaimed Trust Funds

Trust funds that are not traceable to any individual for disbursement from the trust account are known as unclaimed property after three (3) years. Unclaimed trust funds shall be paid to the Treasurer of the State of Iowa in accordance with Iowa Code Chapter 556 entitled "Disposition of Unclaimed Property." For more specific information about unclaimed funds, contact the Treasurer-State of Iowa, Unclaimed Property Division, PO Box 10430, Des Moines, Iowa 50306, (515) 281-7546. Do not send unclaimed trust funds to the Iowa Real Estate Commission staff.

II. REAL ESTATE TRUST ACCOUNTS

A. Identification of the Trust Accounts

You must purchase a Trade Name if you are not using your own name. For real estate trust accounts the following trust account titles are recommended:

For a broker operating under his/her own name as a sole proprietor without a registered trade name:

- Tom Jones Trust Account
Business Address

For a broker operating under a registered trade name as a sole proprietor or a partnership:

- Jones Realty Company Trust Account
Business Address
- Jones & Smith Realty Company Trust Account
Business Address

For a broker operating under a registered corporate name

- Jones Realty, Inc. Trust Account
Business Address
- Tom Jones Sales Trust Account
Business Address
- Jones Realty, Inc. Sales Trust Account
Business Address

B) Trust Account Records

Each active real estate broker is required by Iowa Code § 543B.46 and the Iowa Administrative Code 193E Chapter 13.1(6) to maintain a trust account bookkeeping system. The system must clearly and accurately account for all trust funds received and disbursed. A sample bookkeeping system for trust accounts is contained in this section.

193E Chapter 13.2(2) and 13.5 require the broker to retain all trust account records and a complete file on each transaction for a period of at least five (5) years after the date of closing. Pursuant to 193E Chapter 13.5(543B) and 13.1(6)(3) records that must be maintained by the broker include, but are not limited to:

- Listing agreements
- Seller's property disclosure
- Purchase agreements and any addendum
- Closing statements (buyer and seller)
- Checkbooks
- Checkbook registers
- Checks (canceled, voided and unused)

- Bank statements
- Bank reconciliations
- Deposit slips (originals and/or duplicates)
- General ledger bookkeeping system
- Sub-ledger bookkeeping system for individual accounts

C) Broker's Equity (Personal Funds)

"Broker's Equity" is a term most frequently used to describe the personal funds of the broker in the real estate trust account. 193E IAC 13.1(1) c states, in part, "A broker shall not commingle personal funds in a trust account; provided, however, that not more than \$1,000 of the broker's personal funds may be maintained in each separate account if (1) such personal funds are separately accounted for and (2) such personal funds are intended to be used by the broker to pay for expenses directly related to maintaining the account."

When establishing a real estate trust account, up to \$1,000 in personal funds may be deposited into the trust account. These funds are to be used for the accounting of transaction fees assessed against the trust account. Transaction fees are more commonly identified as monthly service charges, such as check printing charges, insufficient fund check charges, etc. These fees must be posted to both the broker's equity individual sub-ledger account and the general ledger immediately after being notified by the bank that the fee was assessed. All deposits and disbursements from broker's equity should be posted immediately to the general ledger and the broker's equity individual sub-ledger. Broker's equity should never show a *negative* balance.

The Broker shall ensure that personal funds are deposited to cover bank service charges as specified in Iowa Code section 543B.46, and at no time should trust moneys be used to cover any charges. Upon notification that the broker's personal funds are not sufficient to cover service charges initiated by the bank that are above the normal maintenance charges, the broker shall deposit personal funds to correct the deficiency within 15 days of the closing date of that bank statement.

Brokers are cautioned that having excessive amounts of money belonging to the broker in the trust account could cause the "trust nature" of the account to be placed in jeopardy.

The broker's equity portion of the trust account cannot be used as an "operating account" for the purpose of paying general operating expenses on behalf of the broker or the firm.

No portion of the earnest money can be used to pay an expense prior to closing, unless the buyer and seller have provided written authorization to do so prior to the disbursement.

Money held in a trust account that becomes due and payable to the broker must be promptly withdrawn by the broker.

In a sales transaction it is permissible to use broker's equity to pay a closing expense for the seller prior to the real estate closing. Such disbursement must be posted to the broker's equity individual sub-ledger and the general ledger. The broker's equity would be reimbursed on the day of closing with the appropriate posting to both ledgers.

D) Proper Control of Trust Funds -- Receipts

193E Chapter 13.1(543B) requires that all funds coming into the possession of the broker, while acting in the capacity of a broker, be deposited into an account designated as a "Trust Account." Trust funds include but are not limited to receipts from property management contracts, rent or lease contracts, advanced fee contracts, escrow contracts, collection contracts, earnest money contracts, or money received by a broker for future investment or other purpose.

When depositing funds into the trust account, the deposit slip must identify the funds deposited to a specific real estate transaction. The dollar amount should identify the buyer and seller or the address of the property being sold.

Some banking institutions do not return the original deposit slip with the bank statement. It is recommended that brokers use duplicate deposit slips. The duplicate slip should be date-stamped by the bank teller at the time of deposit. Another method would have the receipt of the deposit attached to the duplicate deposit slip.

When a broker is both the listing and selling broker in a real estate transaction, 193E Chapter 13.1(1) requires the earnest money to be deposited into the broker's real estate trust account no later than five (5) banking days after the date indicated on the document as last signature of acceptance of the offer to purchase, rent, lease, or exchange. In a cooperative real estate transaction between brokers, if the listing broker so elects, the selling broker shall have the buyer make the earnest money check payable to the listing broker's trust account and shall immediately deliver the earnest money check along with the offer to purchase to the listing agent. The offer to purchase shall designate that the earnest money be held in trust by the listing broker. By prior agreement, the listing broker can authorize the selling broker to close. The earnest money check is made payable to the selling broker and the offer to purchase shall designate that the earnest money be held in trust by the selling broker. 193E Chapter 13.2(5)

When cash is accepted as earnest money by the selling agent, the selling agent must deposit the money in the selling broker's trust account in accordance to above rule. Unless by prior agreement the listing broker has authorized the selling broker to close, the selling broker will immediately transfer the earnest money deposit to the listing broker by issuing a check drawn on the selling broker's trust account.

Anything other than cash or an immediately cashable check shall not be accepted as earnest money unless that fact is communicated to the seller prior to the acceptance of the offer to purchase and is stated in the offer to purchase per 193E-13.2(6).

Since an offer and acceptance create a contract, acceptance is normally complete when the seller signs the offer to purchase and that information has been communicated back to the offering party. For the purpose of depositing earnest money into the real estate trust account, the trust account auditor will use the date of acceptance as indicated by the last party to sign the offer to purchase.

In the case of a counter-offer, the acceptance would take place when both parties to the contract have a written understanding and are in agreement as to the terms and conditions of the contract. In instances where the seller or buyer is not in the immediate area and the contracts are mailed, the trust account auditor recommends the retention of the envelope so that verification of postmark can be determined. Any changes made to the original offer to purchase should be initialed and dated by both the buyer and seller. This would give evidence as to when the final acceptance took place and the date to be used in deciding if the deposit of earnest money was made in a timely manner.

The broker may deposit earnest money into a trust account prior to the acceptance of an offer for safekeeping and refund the earnest money if acceptance of the offer never takes place. Since the offer was not accepted, the written authorization of the seller to release the funds is not necessary.

In transactions where the law may allow or specific terms of the offer provide for acceptance of the offer to purchase by facsimile or telegram, the earnest money must be deposited into the trust account no later than five (5) banking days after acceptance of the offer by this method.

Once trust funds have been received by the listing broker and deposited into the trust account, 193E Chapter 13.1(7) requires that the trust funds remain in the real estate trust account until the transaction is closed or otherwise terminated. However, trust funds may be disbursed if there is written consent of all parties having an interest in those trust funds prior to closing.

In the event the real estate transaction does not close and there is a dispute over the return of the earnest money, the broker is required to maintain the funds in the real estate trust account. The broker must then receive a written release from the buyer and seller to direct the disbursement of the disputed funds, or pursue options provided by 193E Chapter 13.1(7) and 13.1(10) in Appendix a.

Whenever a broker is in doubt as to whether activities require funds to be deposited into the broker's trust account, the safest course of action is to account for those funds through a broker's trust account.

E) Proper Control of Trust Funds -- Disbursements

In the event of a cooperative sale between brokers, unless by prior agreement the listing broker has authorized the selling broker to close, the selling broker shall have the buyer write the earnest money check to the listing broker upon acceptance of the offer by the seller. The selling agent will immediately deliver the check to the listing broker. The listing broker must then deposit the check into the trust account no later than five (5) banking days following the date of the agreement or the offer to purchase.

If the selling broker accepts cash as earnest money from a buyer, the cash must be deposited in the selling broker's trust account. Unless by prior agreement the listing broker has authorized the selling broker to close, the selling broker would then write a check on the trust account and immediately deliver the check to the listing broker. Again, the listing broker must then deposit the check into the trust account no later than five (5) banking days following the date of the agreement or the offer to purchase.

If a check is disallowed by the bank for non-sufficient funds in the listing broker's trust account, the broker is to notify the selling broker and buyer of the deficiency. The listing broker should request that the buyer replace the NSF check immediately with cash. If this is not possible, the listing broker should then notify the seller immediately. The seller will dictate the course of action to be followed by the listing broker. The seller may also elect to consult an attorney.

If a check is disallowed by the bank for non-sufficient funds deposited in the selling broker's trust account by prior authorization of the listing broker to close, the selling broker is to notify the listing broker and buyer of the deficiency and request that the buyer replace the NSF check immediately with cash. If this is not possible, the selling broker should immediately notify the listing broker who should then immediately notify the seller. The seller will dictate the course of action to be followed by the listing broker. The seller may also elect to consult an attorney.

All funds received by the listing broker at or before closing are considered to be trust funds. They must be deposited and disbursed from the real estate trust account at the time of closing. If the broker is required to escrow certain funds to pay bills that may not have been received prior to closing, then a written escrow agreement must be signed by both the buyer and seller. The escrow agreement must be in the transaction file.

The listing broker, or selling broker if authorized to close, should understand that 193E Chapter 13.1(8) requires that no trust funds may be disbursed *prior* to the real estate closing without the written consent of all parties having an interest in the funds. This consent must authorize the broker to use all, or part, of the trust funds to pay closing expenses prior to closing. No portion of earnest money can be used to pay any expense *prior* to closing, unless the buyer and seller have given written authorization prior to the disbursement.

Once a real estate transaction has closed, the listing broker is required to provide the buyer and seller a complete accounting of all trust funds received and disbursed. This is done by providing the buyer and seller with a detailed closing statement. These statements explain in detail all funds received and disbursed. The listing broker must maintain a copy of each statement in his records for five (5) years for each real estate transaction.

The listing broker is responsible for a real estate closing even though the closing may be completed by another licensee. If the closing is handled through an unlicensed escrow agent and the escrow agent furnishes a closing statement, the listing broker shall assure that funds the broker has received or paid as part of the transaction are properly accounted for.

Earned real estate commissions should always be removed from the real estate trust account at the time of closing and are always due and payable to the listing broker's operating account. All real estate commission splits with sales associates or other real estate brokers must be paid from the listing broker's operating account and not the real estate trust account.

When a real estate commission is received by the selling broker, it should be deposited directly into the selling broker's operating account and disbursed from that account.

Brokers are reminded that they are required to post all receipts and disbursements in chronological order to the general ledger and the applicable individual sub-ledger as the activity occurs.

F) Bookkeeping – Illustrated -

Each real estate broker on active status is required to maintain a bookkeeping system that will clearly and accurately account for all trust funds received and how they are disbursed.

Once the real estate broker has established the proper trust account records, they are maintained by recording the entries as cash or checks deposited or checks paid out. When funds are deposited, the accounting process consists of: (1) preparing a deposit slip, (2) recording the deposit in the general ledger, (3) recording the deposit in the individual sub-ledger, (4) depositing the trust funds into the real estate trust account, and (5) preparing a transaction file.

A disbursement consists of: (1) preparing a check, (2) recording the check in the general ledger, (3) recording the check in the individual sub-ledger, and (4) mailing the check to the payee.

"Bookkeeping System" implies that a separate record be maintained in some type of organized

fashion. A bookkeeping system should be maintained on a cash-in/cash-out basis. The following recommendations are minimal standards for any bookkeeping system used by the broker.

The general ledger or journal is a permanent record that records the chronological sequence in which trust funds are received and disbursed by the broker on behalf of all clients. This record should include:

- 1) For funds received -
 - The date of the deposit
 - The name of the depositor
 - The name of the principal or identify the property
 - The check number and the dollar amount of the deposit
- 2) For funds disbursed -
 - The date of disbursement
 - The name of payee
 - The name of principal or identify the property
 - The check number and the amount disbursed.

A running balance after each entry should account for the total amount of all trust funds in the account at any given time. This balance will include broker's equity (personal funds) and interest.

The individual sub-ledgers are permanent records that record the chronological sequence in which trust funds are received and disbursed by the broker on behalf of a buyer and a seller as related to a single real estate transaction. On each individual sub-ledger page, the broker should record the name of the seller, the name of the buyer and the address of the property being sold. This record should also include:

- 1) For funds received -
 - The date of deposit
 - The name of the depositor or an explanation of activity
 - The check number and the dollar amount of the deposit
- 2) For funds disbursed -
 - The date of disbursement
 - The name of the payee or an explanation of activity
 - The check number and the dollar amount of the disbursement.

A running balance after each entry should account for the remaining funds to be disbursed relating to that particular real estate transaction in the individual sub-ledgers.

The bookkeeping system should provide a written bank reconciliation of each bank statement received as of the ending date on the bank statement(s). The reconciliation should establish agreement between the following:

- The total cash balance in the general ledger and/or checkbook balance.
- The sum of the cash balance for all individual sub-ledgers, including broker's equity(personal funds) and interest.
- The reconciled bank balance using the most recent monthly bank statement balance, deposits in transit, and outstanding checks.

It is recommended that a written list of all individual sub-ledger balances be completed on the date of bank reconciliation for agreement and completeness.

It should be re-emphasized that all receipts and disbursements must be posted in the chronological order to both the general ledger and the applicable individual sub-ledger(s) at the time they occur. The posting of receipts and disbursements several days after the activity occurs is an *unacceptable* accounting practice.

The following examples illustrate the process of accounting for receipts and disbursements for several real estate transactions. Both sales and property management transactions are included in this single trust account. Each transaction is alphabetically coded for simplicity and is as follows:

- A) Recording the deposit of broker's funds ("broker's equity") to open the real estate trust account for ABC Realty.

It is assumed that \$100.00 was deposited to open the real estate trust account on January 1, 2018. The bank will be charging the trust account for check printing fees that will be recorded when notice of the charge is received from the bank. The proper entries are shown in the general ledger and in the individual sub-ledger card titled "broker's equity" (personal funds).

- B) Recording a buyer's earnest money deposit.

On January 7, 2018, ABC Realty received \$1,000.00 from John Aaron representing an earnest money deposit on the property owned by Mr. & Mrs. Young. The proper entries are shown in the general ledger and in the individual sub-ledger card titled Young-Aaron.

- C) Recording a tenant's security deposit and the first month's rent on a property managed by ABC Realty.

On January 8, 2018, ABC Realty received \$900.00 from Joe Martinez for a \$500.00 refundable security deposit and \$400.00 for the first month's rent of an apartment managed by ABC Realty. The proper entries are shown in the general ledger and the individual sub-ledger card titled Jones-Martinez Rental.

- D) Payment to the owner of a rental unit managed by ABC Realty.

On January 15, 2018, ABC Realty disbursed check #1001 for \$400.00 to Alice Jones, owner, per the written management agreement held by ABC Realty in their property management transaction files. The proper entries are shown in the general ledger and the individual sub-ledger card titled Jones-Martinez Rental.

- E) Recording a buyer's earnest money deposit.

On January 20, 2018, ABC Realty received \$5,000.00 from Bob Schmidt representing an earnest money deposit on the property owned by Mr. & Mrs. Alex Furneaux. The proper entries are shown in the general ledger and in the individual sub-ledger card titled Furneaux-Schmidt.

- F) Recording a buyer's earnest money deposit.

On January 28, 2018, ABC Realty received \$1,000.00 from Jim Frank representing an earnest

money deposit on the property owned by Robert Puch. The proper entries are shown in the general ledger and the individual sub-ledger card titled Puch-Frank.

- G) Recording accrued interest that is shown on the bank statement at the end of the month.

On January 31, 2018, ABC Realty receives their bank statement and it shows \$12.00 interest has been earned by the trust account for the month. The proper entries are shown in the general ledger and the individual sub-ledger card titled accrued interest.

- H) Recording check printing charges that is shown on the bank statement at the end of the month.

On January 31, 2018, the bank statement indicates a \$25.60 check printing charge for the trust account. The proper entries are shown in the general ledger and the individual sub-ledger card titled broker's equity (personal funds).

- I) Recording service charges that are directly related to maintaining an interest-bearing account.

On January 31, 2018, the bank statement indicates that the bank has charged ABC Realty \$4.12 for maintaining the trust account. The proper entries are shown in the general ledger and the individual sub-ledger card titled accrued Interest.

- J) Recording a tenant's rent on property managed by ABC Realty.

On February 5, 2018, ABC Realty received \$400.00 from Joe Martinez for rent of an apartment managed by ABC Realty. The proper entries are shown in the general ledger and the individual sub-ledger card titled Jones-Martinez Rental.

- K) Recording a deposit from Fidelity Mortgage Company for a real estate closing.

On February 10, 2018, ABC Realty received \$45,000.00 from Fidelity Mortgage Company on behalf of Bob Schmidt for his real estate closing at 1542 Juliann Road. The proper entries are shown in the general ledger and the individual sub-ledger card titled Furneaux-Schmidt.

- L) Recording a real estate transaction that is closed.

On February 10, 2018, ABC Realty closed the real estate transaction at 1542 Juliann Road for Bob Schmidt. The company issued check #1002 through check #1009. The proper entries are recorded in the general ledger and the individual sub-ledger card titled Furneaux-Schmidt. Each check has the payee identified and the reason for payment.

- M) Payment to the owner of a rental unit managed by ABC Realty.

On February 15, 2018, ABC Realty disbursed check #1010 for \$400.00 to Alice Jones, owner, per written management agreement held by ABC Realty in their property management files. The proper entries are shown in the general ledger and the individual sub-ledger card titled Jones-Martinez Rental.

- N) Recording a buyer's earnest money deposit.

On February 20, 2018, ABC Realty received \$2,000.00 from Bill & Bev Rosen representing an earnest money deposit on the property owned by James Flick. The proper entries are shown in the general ledger and the individual sub-ledger card titled Flick-Rosen.

O) Recording a buyer's earnest money deposit.

On February 25, 2018, ABC Realty received \$1,000.00 from George & Kelly Nesmith representing an earnest money deposit on the property owned by Robert Raleigh. The proper entries are shown in the general ledger and the individual sub-ledger card titled Raleigh-Nesmith.

P) Recording a deposit from John Aaron for a real estate closing.

On February 26, 2018, ABC Realty received \$2,390.00 from John Aaron for his real estate closing at 919 Willowbend. The proper entries are shown in the general ledger and the individual sub-ledger card titled Young-Aaron.

Q) Recording a real estate transaction that is closed.

On February 26, 2018, ABC Realty closed the real estate transaction at 919 Willowbend for John Aaron. The company issued check #1011 through check #1016. The proper entries are shown in the general ledger and the individual sub-ledger card titled Young-Aaron. Each check has the payee identified and the reason for the payment.

R) Recording accrued interest that is shown on the bank statement at the end of the month.

On February 28, 2018, ABC Realty receives their bank statement and it shows \$50.00 of interest has been earned by the trust account for the month. The proper entries are shown in the general ledger and the individual sub-ledger card titled accrued interest.

S) Recording service charges that are directly related to maintaining an interest-bearing account.

On February 28, 2018, the bank statement indicates that the bank charged ABC Realty \$4.12 for maintaining the trust account. The proper entries are shown in the general ledger and the individual sub-ledger card titled accrued interest.

T) Recording a tenant's rent on property managed by ABC Realty.

On March 3, 2018, ABC Realty received \$400.00 from Joe Martinez for rent of an apartment managed by ABC Realty. The proper entries are shown in the general ledger and the individual sub-ledger card titled Jones-Martinez rental.

U) Payment to the owner of a rental unit managed by ABC Realty.

On March 15, 2018, ABC Realty disbursed check #1017 for \$400.00 to Alice Jones, owner, per written management agreement held by ABC Realty in their property management transaction files. The proper entries are shown in the general ledger and the individual sub-ledger card titled Jones-Martinez rental.

In the individual sub-ledger card for Jones-Martinez Rental, the balance of the account will never go below the \$500.00 (refundable deposit) until the rent agreement is terminated by either party. The \$500.00 will then be disbursed per written agreement in the property management file.

V) Recording accrued interest that is shown on the bank statement at the end of the month.

On March 31, 2018, ABC Realty receives their bank statement and it shows \$20.00 interest has been earned by the trust account for the month. The proper entries are shown in the general ledger and the individual sub-ledger card titled accrued interest.

W) Recording service charges that are directly related to maintaining an interest-bearing account.

On March 31, 2018, the bank statement indicates that the bank has charged ABC Realty \$4.12 for maintaining the trust account. The proper entries are shown in the general ledger and the individual sub-ledger card titled accrued interest.

X) Recording the interest deposit to the State of Iowa.

On March 31, 2018, the bank statement indicates that the bank has remitted to the State of Iowa the accrued interest that has accumulated for the first quarter of the year in a timely fashion. The proper entries are shown in the general ledger and the individual sub-ledger card titled accrued interest.

An example of totaling sub-ledgers for March 31, 2018, for ABC Realty is presented below. Notice how the general ledger and the individual sub-ledgers agree. These procedures apply whether your accounting system is computerized or not.

<u>Individual Sub-ledgers</u>			<u>General Ledger</u>
Broker's Eq.-Personal Funds	74.40		
Flick-Rosen	2,000.00		
Puch-Frank	1,000.00		
Raleigh-Nesmith	1,000.00		
Jones-Martinez Rental	<u>500.00</u>		
	<u>\$ 4574.40</u>	< = >	<u>\$ 4574.40</u>

Sample Bookkeeping For the Real Estate Trust Account

193E Chapter 13.1(6) Requires a broker to maintain a general ledger for the trust account. Below is an example;

GENERAL LEDGER							
					(Debit)	(Credit)	
	Check #	Date	Payee/Depositor	Transaction	Check Amount.	Deposit Amount	Balance
A		01/01/18	ABC Realty Operating Acct.	Broker Equity-Personal Funds		100.00	100.00
B		01/07/18	John Aaron	Young-Aaron		1,000.00	1,100.00
C		01/08/18	Joe Martinez	Jones-Martinez Rental		900.00	2,000.00
D	1001	01/15/18	Alice Jones	Jones-Martinez Rental	400.00		1,600.00
E		01/20/18	Bob Schmidt	Furneaux Schmidt		5,000.00	6,600.00
F		01/28/18	Jim Frank	Puch-Frank		1,000.00	7,600.00
G		01/31/18	Accrued Interest	Interest		12.00	7,612.00
H		01/31/18	Check Printing Charges	Broker Equity-Personal Funds	25.60		7,586.40
I		01/31/18	Service Charges	Interest*	4.12		7,582.28
J		02/05/18	Joe Martinez	Jones-Martinez Rental		400.00	7,982.28
K		02/10/18	Fidelity Mortgage Co.	Furneaux-Schmidt		45,000.00	52,982.28
L	1002	02/10/18	Allan Gaherty, Attorney	Furneaux-Schmidt	120.00		52,862.28
	1003	02/10/18	Trustworthy Abstract	Furneaux-Schmidt	85.00		52,777.28
	1004	02/10/18	Polk County Treasurer	Furneaux-Schmidt	312.00		52,465.28
	1005	02/10/18	Bob Schmidt	Furneaux-Schmidt	80.00		52,385.28
	1006	02/10/18	ABC Realty Operating Acct	Furneaux-Schmidt	3,500.00		48,885.28
	1007	02/10/18	Allied Bank	Furneaux-Schmidt	32,000.00		16,885.28
	1008	02/10/18	Pest Control Company	Furneaux-Schmidt	100.00		16,785.28
	1009	02/10/18	Mel & Joyce Furneaux	Furneaux-Schmidt	13,803.00		2,982.28
M	1010	02/15/18	Alice Jones	Jones-Martinez Rental	400.00		2,582.28
N		02/20/18	Bill & Bev Rosen	Flick-Rosen		2,000.00	4,582.28
O		02/25/18	George & Kelly Nesmith	Raleigh-Nesmith		1,000.00	5,582.28
P		02/26/18	John Aaron	Young-Aaron		2,390.00	7,972.28
Q	1011	02/26/18	Mary Hoyle, Attorney	Young-Aaron	175.00		7,797.28
	1012	02/26/18	XYZ Abstract Company	Young-Aaron	85.00		7,712.28
	1013	02/26/18	Polk County Treasurer	Young-Aaron	172.00		7,540.28
	1014	02/26/18	John Aaron	Young-Aaron	58.00		7,482.28
	1015	02/26/18	Pest Control Company	Young-Aaron	100.00		7,382.28
	1016	02/26/18	ABC Realty Operating Acct	Young-Aaron	2,800.00		4,582.28
R		02/28/18	Accrued Interest	Interest		50.00	4,632.28
S		02/28/18	Service Charge	Interest	4.12		4,628.16
T		03/03/18	Joe Martinez	Jones-Martinez Rental		400.00	5,028.16
U	1017	03/15/18	Alice Jones	Jones-Martinez Rental	400.00		4,628.16
V		03/31/18	Accrued Interest	Interest		20.00	4,648.16
W		03/31/18	Service Charge	Interest	4.12		4,644.14
X		03/31/18	Interest Remitted to State	Interest	69.64		4,574.40

*NOTE : If service charges exceed interest earned for the quarter, the excess is charged to broker equity.

Individual Sub-ledgers

NOTE: In actual practice, each one of these transactions would be on a separate page. They are combined here to reduce copying costs.

BROKER EQUITY (personal funds)						
	Check #	Date	Explanation	Debit	Credit	Balance
A		01/01/18	ABC Realty Operating Account (Initial Deposit)		100.00	100.00
H		01/31/18	Check Printing Charges	25.60		74.40

ACCRUED INTEREST						
	Check #	Date	Explanation	Debit	Credit	Balance
G		01/31/18	Interest		12.00	12.00
I		01/31/18	Service Charge	4.12		7.88
R		02/28/18	Interest		50.00	57.88
S		02/28/18	Service Charge	4.12		53.76
V		03/31/18	Interest		20.00	73.76
W		03/31/18	Service Charge	4.12		69.64
X		03/31/18	Bank remitted to State	69.64		- 0 -

Young-Aaron 919 Willowbend - Des Moines						
	Check #	Date	Explanation	Debit	Credit	Balance
B		01/07/18	Earnest Money from Aaron		1,000.00	1,000.00
P		02/26/18	Balance to close from Aaron		2,390.00	3,390.00
Q	1011	02/26/18	Mary Hoyle, Attorney (Title Opinion & Contract Preparation)	175.00		3,215.00
Q	1012	02/26/18	XYZ Abstract Company	85.00		3,130.00
Q	1013	02/26/18	Polk County Treasurer (Taxes)	172.00		2,958.00
Q	1014	02/26/18	John Aaron (Tax Proration)	58.00		2,900.00
Q	1015	02/26/18	Pest Control Co. (Termite Inspection)	100.00		2,800.00
Q	1016	02/26/18	ABC Realty Co. (Real Estate Real Estate Commission)	2,800.00		- 0 -

Jones-Martinez Rental 1499 Hilary Street - Des Moines						
	Check #	Date	Explanation	Debit	Credit	Balance
C		01/08/18	Joe Martinez (Security Deposit & January Rent)		900.00	900.00
D	1001	01/15/18	Alice Jones	400.00		500.00
J		02/05/18	Joe Martinez (February Rent)		400.00	900.00
M	1010	02/15/18	Alice Jones	400.00		500.00
I		03/31/18	Joe Martinez (March Rent)		400.00	900.00
U	1017	03/15/18	Alice Jones	400.00		500.00

Furneaux-Schmidt 1542 Juliann Road - Des Moines						
	Check #	Date	Explanation	Debit	Credit	Balance
E		01/20/18	Earnest Money from Schmidt		5,000.00	5,000.00
K		02/10/18	Loan from Fidelity Mortgage		45,000.00	50,000.00
L	1002	02/10/18	Allan Gaherty (Title Opinion & Deed)	120.00		49,880.00
L	1003	02/10/18	Trustworthy Abstract Co. (Continuation)	85.00		49,795.00
L	1004	02/10/18	Polk County Treasurer (Taxes)	312.00		49,483.00
L	1005	02/10/18	Bob Schmidt (Proration)	80.00		49,403.00
L	1006	02/10/18	ABC Realty (Real Estate Real Estate Commission)	3,500.00		45,903.00
L	1007	02/10/18	Allied Bank (Mortgage Payoff)	32,000.00		13,903.00
L	1008	02/10/18	Pest Control Company (Termite Inspection)	100.00		13,803.00
L	1009	02/10/18	Mel & Joyce Furneaux (Proceeds)	13,803.00		- 0 -

Flick-Rosen 1214 Pierre Avenue - Des Moines						
	Check #	Date	Explanation	Debit	Credit	Balance
H		02/20/18	Earnest Money from Rosen		2,000.00	2,000.00

Puch-Frank 1001 Ian Street - Des Moines						
	Check #	Date	Explanation	Debit	Credit	Balance
F		01/28/18	Earnest Money from Jim Frank		1,000.00	1,000.00

Raleigh-Nesmith 1432 Allison Avenue - Des Moines						
	Check #	Date	Explanation	Debit	Credit	Balance
O		02/25/18	Earnest Money from Nesmith		1,000.00	1,000.00

Bookkeeping -- Illustrated (Computerized Systems)

The computer system must maintain records as if it were a manually posted bookkeeping system, as described earlier in the manual. Remember, the system must be posted as events occur and kept current at all times.

The computer program selected must be capable of generating a general ledger or journal that will account for the income and expenses related to all transactions on a day-to-day basis. The program must also be capable of generating individual sub-ledgers that will account for the income and

expenses related to individual accounts on a day-to-day basis for specific transactions.

The ledgers must have a debit, credit and balance format with a specific ledger balance identified after each bookkeeping entry. Income and expenses must be posted in chronological order and kept current at all times. All data entered into the computer system should be transferred to hard copy to prevent loss of information and to avoid printing long computer runs.

The program must provide the ability for the broker to print hard copies of the general ledger and individual sub-ledgers as needed or requested. Voided, unused, as well as canceled checks must be maintained for trust account examination purposes, just like the manual system. Also, a trial balance by itself will not be an acceptable system for a trust account examination. It will only be accepted as a report that would support the general ledger and the individual sub-ledgers.

The broker is reminded of the fiduciary responsibility to their principals. It is the intent of the Real Estate Commission to ensure that bookkeeping systems clearly and accurately account for all trust funds received and disbursed. A balance must be identified on the general ledger and each individual sub-ledger after each bookkeeping entry.

This computer generated general ledger is acceptable under the guidelines recommended by the Iowa Real Estate Commission. All bookkeeping entries are posted in chronological order and the balance is provided after each entry.

ACCOUNT: ABC Realty Trust Account **BROKER:** Thomas Abcock
ADDRESS: 2900 Douglas Ave. Des Moines, IA 50310 **FIRM:** ABC Realty

<u>DATE</u>	<u>DESCRIPTION</u>	<u>CHECK#</u>	<u>DEBIT</u>	<u>CREDIT</u>	<u>BALANCE</u>
2018					
01-01	ABC/brokers equity			100.00	100.00
01-07	Aaron/earnest deposit			1000.00	1100.00
01-08	Martinez/rental			900.00	2000.00
01-15	A. Jones/payment	1001	400.00		1600.00
01-20	Schmidt/earnest deposit			5000.00	6600.00
01-28	Frank/earnest deposit			1000.00	7600.00
01-31	Accrued Interest			12.00	7612.00
01-31	Check charge/brokers equity		25.60		7586.40
01-31	Service charge – accrued interest		4.12		7582.28
02-05	Martinez/rental			400.00	7982.28
02-10	Fidelity/closing funds		45000.00		52982.28
02-10	Gaherty/attorney	1002	120.00		52862.28
02-10	Trustworthy/abstract.	1003	85.00		52777.28
02-10	Polk County taxes	1004	312.00		52465.28
02-10	Schmidt/proration	1005	80.00		52385.28
02-10	ABC Realty commission	1006	3500.00		48885.28
02-10	Allied payoff	1007	32000.00		16885.28
02-10	Pest /termites Services	1008	100.00		16785.28
02-10	Furneaux/proceeds	1009	13803.00		2982.28

This computer generated individual sub-ledger is acceptable under the guidelines recommended by the Iowa Real Estate Commission staff. All bookkeeping entries are posted in chronological order and the balance is provided after each entry.

SELLER: Mr. & Mrs. Alex Furneaux
PROPERTY ADDRESS: 1542 Juliann Rd., Des Moines, IA 50322
BUYER: Robert Schmidt
SELLING BROKER/AGENT: ABC Realty/(name)

<u>DATE</u>	<u>DESCRIPTION</u>	<u>CHK#</u>	<u>AMOUNT</u>	<u>BALANCE</u>
2018				
01-20	Earnest Money from Schmidt		5000.00	5000.00
02-10	Closing money - Fidelity Mtg.		45000.00	50000.00
02-10	A.Gaherty (title op. & deed)	1002	-120.00	49880.00
02-10	Trustworthy Abstract (cont.)	1003	-85.00	49795.00
02-10	Polk County Treasurer (taxes)	1004	-312.00	49483.00
02-10	Bob Schmidt (proration)	1005	-80.00	49403.00
02-10	ABC Realty (Real Estate Real Estate Commission)	1006		-3500.00 45903.00
02-10	Allied (mortgage payoff)	1007	-32000.00	13903.00
02-10	Pest Control Co (termites)	1008	-100.00	13803.00
02-10	Furieux (proceeds)	1009	-13803.00	-0-

G) Keeping the Trust Account Balance at All Times

A broker can easily maintain the trust account and keep it in balance with just a few simple rules.

- 1) When money is accepted or disbursed, immediately record the amount in the general ledger and on the corresponding individual sub-ledger.
- 2) In a routine basis, check to see that the balance in the checkbook and the balance in the general ledger are equal and that the amount totals the balance of all the individual sub-ledgers.
- 3) When the bank statement arrives be sure to make the necessary entries in the broker's equity (personal funds) ledger and the interest ledger.
- 4) Reconcile your bank statement each month.
 - ✓ Take the ending bank statement.
 - ✓ Add all deposits made since the statement and if there are funds to be deposited.
 - ✓ Subtract any checks written since the statement or outstanding checks from a previous statement.
 - ✓ The total you now have is the amount of funds that should be in the trust account. The funds are either earnest money, management funds, broker equity (personal funds), or interest.
 - ✓ If funds remain or there are not enough funds to cover the accounts named above, the discrepancy **must** be found immediately. Review the general ledger, the deposit book, the checkbook and the transaction files. Review the closing statements of both the buyer and seller.
 - ✓ The Bank statement reconciliation form in the forms section of the manual will assist you with the reconciliation.
- 5) Each month the broker is required to conduct a three-way tie reconciliation. If the reconciled bank total, the general ledger balance, and the sum of sub-ledgers are not in agreement, then there is an error.
- 6) Since 193E Chapter 13.1(6) a (3) states that a monthly reconciliation on a written worksheet must be provided to ensure agreement. This means that a bank statement for the trust account must be received by the broker on a monthly basis. Bi-monthly and quarterly bank statements are not acceptable.

H) Trust Account Examinations

The Iowa Real Estate Commission has a very active trust account examination program (Iowa Code sections 543B.46(6) and (7), and 193E Chapter 13.5(543B)). It is designed to be educational and to help brokers on active status implement the requirements for proper record keeping and understand their obligations in handling trust funds. The examination will also determine the compliance level being achieved by the broker.

Each real estate broker on active status can expect to have their real estate trust account(s) examined on an irregular schedule. The examination could be announced or unannounced.

The trust account examination process generally takes only a few hours (depending on the amount of business that the real estate broker does). During this period, the field auditor will verify that the bank statements have been reconciled and will perform a random inspection of transaction files, both pending and closed. The auditor will also review on a random basis the entries to the bookkeeping system and the supporting documentation. This is to ensure full compliance with the rules and regulations governing trust accounts.

The Real Estate Commission requires that posting to the bookkeeping system be current at all times. Since some examinations will be unannounced, the broker should verify that posting is current so the trust account auditor can conduct the examination in an accurate and efficient manner.

It also assists auditor if key personnel other than the broker are aware of the location of the trust account records in case the broker is not available at the time of the trust account examination. Per 193E 13.5(543 B) file record keeping "The records shall be made available for reproduction and inspection by the commission, staff, and commission-authorized representatives at all times during usual business hours at the broker's regular place of business".

The broker will be asked to provide the following records for the period being examined:

- Checkbook and checkbook register
- Checks - canceled, voided and unused
- Bank statements and bank reconciliations
- Deposit slips - original and/or duplicate
- Bookkeeping system (general ledger and individual sub-ledgers)
- Transaction files, both pending and closed
- Any other pertinent files or documents.

The broker can ease the efficiency of the examination process if the files and records are maintained in a neat and orderly fashion.

The auditor will review the listing and purchase agreements, closing statements of both the buyer and seller, lead paint disclosures (if applicable), agency agreements, and any other written agreements between principals that may have an effect on the handling of the transaction.

III REAL ESTATE TRUST ACCOUNTS -- PROPERTY MANAGEMENT

A) Identification of Trust Accounts

The following trust account titles are recommended for property management accounts:

For a broker operating under his/her own name as a sole proprietor without a registered trade name:

- Tom Jones Property Management Trust Account
Business Address

- For a broker operating under a registered trade name as a sole proprietor or a partnership:

Jones Realty Company Property Management Trust Account
Business Address
Jones & Smith Property Management Trust Account
Business Address

- For a broker operating under a registered corporate name:

Jones Realty, Inc. Property Management Trust Account
Business Address

- If preferred, the broker may precede the words "trust account" by the word "management":

Jones Realty, Inc. Management Trust Account
Business Address

You must have a trade name filing if not using own name.

It is recommended that security deposits being held by a broker be maintained in a separate trust account for each owner or property. The following are examples of appropriate titles:

- Property Management Trust Account - Easy Care Apartments
- Management Trust Account - Stan Wilson Properties
- Management Trust Account - Stan Wilson - Hillside Apartments
- Security Deposit Trust Acct. - Bill Webb Properties
- Security Deposit Trust Acct. - Easy Care Apartments

B) Trust Account Records

Each active real estate broker is required by the Iowa Code § 543B.46 and 193E Chapter 13.1(6) to maintain a trust account bookkeeping system. The system must clearly and accurately account for all trust funds received and disbursed. A suggested bookkeeping system for property management is contained in this section.

193E 13.2(2) requires the broker to retain all trust account records and a complete file on each transaction for a period of at least five (5) years after the date of closing. Pursuant to 193E 13.5(543B) and 13.1(6)(3)d records that must be maintained by the broker include, but are not limited to:

- Property management agreement
- Lease agreements
- Checkbooks
- Checkbook registers
- Checks (canceled, voided and unused)
- Bank statements
- Bank reconciliations
- Deposit slips (original and/or duplicates)
- General ledger bookkeeping system
- Sub-ledger bookkeeping system for individual tenants
- Property owner financial reports

193E Chapter 15.1(543B) requires a broker to have a written property management agreement or other written authorization to manage rental property in the property transaction file (193E Chapter 15.1(543B)). Pursuant to 193E Chapter 15.1(1), this agreement must include, but not be limited to the following:

- Proper identification of the property to be managed.
- Terms and conditions under which the property is to be managed, powers and authority given to the broker by the owner.
- Terms and conditions that the broker will remit property income to the owner and when the broker will provide written statements of property income & expenses to the owner, which shall be done no less than annually.
- Which payments of property-related expenses are to be made by the broker to third parties.
- Amount of fee or commission to be paid to the broker.
- Who will hold the security deposits (broker or owner).
- Effective date of the agreement.
- Terms and conditions for termination of the agreement by the broker or the owner of the property; and signatures of the broker and owner or their authorized agent.

C) Broker's Equity (Personal Funds)

"Broker's Equity" is a term most frequently used to describe the personal funds of the broker in the real estate trust account. 193E Chapter 13.1(1) c states, in part, "A broker shall not commingle personal funds in a trust account; provided, however, that not more than \$1,000 of the broker's personal funds may be maintained in each separate account if (1) such personal funds are separately accounted for and (2) such personal funds are intended to be used by the broker to pay for expenses directly related to maintaining the account."

When establishing a real estate trust account, up to \$1,000 in personal funds may be deposited into the trust account. These funds are to be used for the accounting of transaction fees assessed against the trust account. Transaction fees are more commonly identified as monthly service charges, check printing charges, insufficient fund check charges, etc. These fees must be posted to the broker's equity individual sub-ledger account, as well as the general ledger immediately after being notified by the bank that the fee was assessed. All deposits and disbursements from broker's equity should be posted immediately to the general ledger and the broker's equity individual sub-ledger. Broker's equity should *never* show a negative balance.

Brokers are cautioned that having excessive amounts of money belonging to the broker in the trust account could cause the "trust nature" of the account to be placed in jeopardy.

The broker's equity portion of the trust account cannot be used as an "operating account" for the purpose of paying general operating expenses on behalf of the broker or the firm.

Money held in a property management trust account which becomes due and payable to the broker must be promptly withdrawn by the broker.

A problem area most common to property management trust accounts occurs when a broker issues a check on the real estate trust account to pay an expense on behalf of an owner whose account does not have sufficient funds to cover the check. Since the owner had insufficient funds available, the broker had to use another person's funds to cover the check. This is a violation of 193E Chapter 15.1(7) a.

The broker can eliminate the possibility of a negative fund balance by following some simple procedures. The broker should perform any of these arrangements before the account has a negative balance:

- Contact the owner and request funds to cover the expense. The expense may not be paid until funds are received, deposited, and posted to the general ledger and applicable property individual sub-ledger. Then, issue the check for the expense.
- The broker can provide a short term loan from the broker's operating account. The check would be made payable to the real estate trust account and the broker would post the deposit to the general ledger and the appropriate property individual sub-ledger. After posting, the broker would then issue a check from the owner's trust account to cover the expense. The loan should be supported with proper written documentation and must be pre-approved by the owner.
- Prepare a journal entry on the real estate account books which would reduce the balance in the broker's equity (personal funds) individual sub-ledger. Then, increase the property individual sub-ledger by the same amount. This entry must be made prior to the issuing of the check for the expense.

- In situations above the broker must understand that once a personal loan is made from either the broker's operating account or from broker's equity (personal funds), the funds immediately become the property of the owner and no longer belongs to the broker. When the property individual sub-ledger has enough funds to replace the loan from the broker, it should be done immediately and the proper accounts should be posted.

D) Proper Control of Trust Funds -- Receipts

193E Chapter 13.1 requires that all funds coming into the possession of the broker while acting in the capacity of a broker, be deposited into an account designated as a "Trust Account." Trust funds include but are not limited to, receipts from property management contracts, rent or lease contracts, advance fee contracts, escrow contracts, collection contracts, earnest money contracts, or money received by a broker for future investment or other purpose. Once the property manager has collected any rents, security deposits or other trust funds which are property of the owner, these funds must be deposited into a trust account. This deposit must be made no later than five (5) banking days following the collection of the funds. Once the trust funds are deposited in the trust account, they are to remain in the trust account unless the owner has agreed otherwise in writing. The management agreement between the broker and the owner should dictate the disbursement of the owner's trust funds.

Other fees charged to the tenant, such as late rent payment fees or insufficient fund check charge fees, are considered income for the owner, unless the management agreement authorizes the broker to earn such fees in addition to the management fee.

When depositing funds into the trust account, the deposit slip must identify the funds deposited to a specific property address. The dollar amount should identify the tenant and the property address.

Some banking institutions do not return the original deposit slip with the bank statement. It is recommended that brokers use duplicate deposit slips. The duplicate slip should be date-stamped by the bank teller at the time of deposit. Another method would have the receipt of the deposit attached to the duplicate deposit slip. Either way is acceptable.

Cash payments of any kind, i.e. rent, security deposits, etc., should go through the real estate trust account.

Security deposits collected by the broker that have been deposited into the real estate trust account must remain in the trust account unless the tenant and owner have agreed in writing otherwise to the disposition of the security deposit.

In the absence of written authorization from all parties having an interest in the funds, the security deposit should be maintained by the broker in his real estate trust account. The security deposit cannot be used to pay the operating expenses of the owner.

Security deposits held in the same trust account with the owner's funds should be separately identified. This can be done by establishing a separate individual sub-ledger for the security deposits. This will eliminate the possibility of using security deposits for operating expenses of the owner.

If the tenant has agreed in the lease agreement and the management agreement states the security deposits are to be held by owner, the owner is responsible for the return of the deposit not the broker. If the tenant's check is made out to the broker, the broker should deposit the check into his trust account and issue a check to the owner from his trust account.

If a tenant's check is made out to the owner, the broker should have the tenant deliver the check to the owner. Otherwise, the broker should have the tenant rewrite the check to the broker and handle the deposit as described above.

Receipts from property management and rental account transactions may be deposited in a trust account separate from the real estate transactions funds. If separately maintained, this account is not required to be an interest-bearing account.

193E Chapter 15.1(7) g states, "Except as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2), if refundable deposits and funds are received from others pursuant to a property management agreement, deposited in an interest-bearing trust account, and there is not a separate written agreement to pay the interest earned to the owner or tenant, the interest shall be paid to the state pursuant to Iowa Code section 543B.46. The property manager shall not receive or benefit from the interest."

If there is an agreement, it shall be signed by each party having an interest in the funds. The agreement shall fully disclose how the funds are to be handled by the property manager, who will benefit from the interest earning, how and when interest earnings will be paid and any limitations that may be provided for on the withdrawal of the funds deposited in the interest-bearing trust account.

E) Proper Control of Trust Funds -- Disbursements

When trust funds are deposited into a property management trust account, the property management agreement dictates the disbursements of those funds. A broker should have a property management agreement or other written authorization to manage rental property.

Property management fees are determined by the property management agreement. 193E Chapter 15.1(7) d states, "Management fees must be withdrawn from the owner's account at least once a month unless the agreement provides otherwise. The fees shall be identified by property or account number for which the fees were earned and withdrawn by the broker and deposited into the broker's business operating account."

The Real Estate Commission recommends that brokers avoid letting banks make automatic withdrawals, such as a mortgage payment, from real estate trust accounts. An automatic debit on the trust account occurs even if funds are not available to cover the expense. This could result in an unnecessary service charge or an overdraft charge against the trust account. This would also create a negative balance in the owner's account. 193E Chapter 15.1(7) e prohibits this.

It is the responsibility of the broker to initiate all disbursements from the property trust account. The broker will issue checks on the trust account and see that the proper ledgers are posted as the events occur. The broker must provide to the broker's client a complete accounting of all moneys received and disbursed from the trust account(s) at least once a year.

F) Bookkeeping -- Illustrated

Each real estate broker on active status is required to maintain a bookkeeping system which will accurately account for all trust funds received and how they are disbursed.

Once the real estate broker has established the proper trust account records, they are maintained by recording the entries as cash or checks deposited or checks paid out. When funds are deposited, the accounting process consists of: (1) preparing a deposit slip, (2) recording the deposit in the general ledger, (3) recording the deposit in the individual sub-ledger, (4) depositing the trust funds into the real estate trust account and (5) preparing a client transaction file, if it is a new client.

A disbursement consists of: (1) preparing a check, (2) recording the check in the general ledger, (3) recording the check in the individual sub-ledger, and (4) mailing the check to the payee.

"Bookkeeping System" implies that a separate record be maintained in some type of organized fashion. The basic requirement for a bookkeeping system is based on a cash-in/cash-out basis and the following recommendations are minimal for any bookkeeping system used by the broker.

The general ledger is a permanent record which records the chronological sequence in which trust funds are received and disbursed by the broker on behalf of all clients. This record should include:

- 1) For funds received -
 - The date of deposit
 - The depositor's name or the specific property or unit identification, (i.e.; Howe's Farm, Unit 12A, etc.), for which the funds were received
 - The property address for which the funds should be applied
 - The check number
 - The dollar amount of the deposit

- 2) For funds disbursed -
 - The date of disbursement
 - The name of the payee
 - The property address for which the funds were disbursed
 - The check number
 - The amount of disbursement

A running balance after each entry would account for the total amount of all trust funds in the account at any given time. This balance would include broker's equity (personal funds).

The owner's or property individual sub-ledgers are permanent records that record the chronological sequence in which trust funds are received and disbursed by the broker on behalf of all clients. On each individual sub-ledger page, the broker should record the name of the owner, the name of the tenant, the tenant's security deposit, and the address or unit number of the property being managed. This record should also include:

- 1) For funds received -
 - The date of deposit
 - The remitter's name or specific property or unit identification, i.e. Howe's Farm, Unit 12A, etc., for which the funds were received
 - The check number
 - The dollar amount of the deposit

- 2) For funds disbursed -
 - The date of disbursement
 - The name of the payee
 - The check number
 - The amount of the disbursement
- 3) Must be able to show that each owner's or property individual sub-ledger does not show a negative balance at any time.

The bookkeeping system would provide a written bank reconciliation of each bank statement received as of the ending date on the bank statement(s). The reconciliation would prove agreement to the following:

- The total cash balance in the general ledger
- The sum of the cash balance for all individual sub-ledgers, including "broker's equity" (personal funds)
- The checkbook balance

It is recommended that a written list of all owner or property individual sub-ledger balances be completed on the date of bank reconciliation for agreement and completeness. It should be re-emphasized that all receipts and disbursements must be posted in chronological order to both the general ledger and the applicable individual sub-ledger(s) at the time they occur. The posting of receipts and disbursements several days after the receipt or payment is an *unacceptable* accounting practice.

The broker must make certain that sufficient funds are available in the trust account to cover any disbursement on the date of payment. Any overdraft charges assessed against the trust account is a violation of 193E Chapter 13.1(1) c.

Transfers of funds between two or more individual sub-ledgers maintained by the same owner may be made if the broker receives the specific written authorization of the owner. Transfers of funds must be done by the writing of invoices and the receipt of deposits. The broker will then debit and credit the appropriate accounts. Transfers cannot be done by ledger entries alone.

The following examples illustrate the process of accounting for receipt of income and disbursement of expenses on a rental property. The general ledger is not represented in this section. If it were, it would be the same as it appears on *page 16* in the sales section of the manual. This example will show the property individual sub-ledger after several months of bookkeeping entries.

The property management agreement authorizes an 8% fee payable on the 15th of the month. The rent on the property is \$500.00 per month with a security deposit equal to one month's rent. It also states that security deposits are to be held by the broker in the trust account. Finally, it authorizes the broker to pay expenses related to the rental property. Each transaction is alphabetically coded for simplicity and is as follows:

- A) Recording a tenant's security deposit and the first month's rent on a property managed by ABC Realty.

On January 2, 2018, ABC Realty received \$1000.00 from Larry Smith representing \$500.00 for a security deposit and \$500.00 for his first month's rent. The proper entries are \$1,000.00 in the general ledger (not shown) and \$500.00 in the property individual sub-ledger and \$500.00

in the tenant security deposit ledger.

B) Recording the property mortgage for January on a property managed by ABC Realty.

On January 10, 2018, ABC Realty disbursed check #1001 for \$300.00 to Metropolitan Bank per written management agreement held by ABC Realty in their property management transaction files. The proper entries are \$300.00 in the general ledger (not shown) and \$300.00 in the property individual sub-ledger.

C) Payment to the realty company for January management fees.

On January 15, 2018, ABC Realty disbursed check #1002 to themselves for \$40.00 (\$500.00 x 8%) for January management fees per written management agreement held by ABC Realty in their property management transaction files. The proper entries are \$40.00 in the general ledger (not shown) and \$40.00 in the property individual sub-ledger.

D) Payment of expenses related to the rental property.

On January 18, 2018, ABC Realty disbursed check #1003 for \$49.15 to Quality Repair for invoice #6992 per written management agreement held by ABC Realty in the property management transaction files. This invoice should also remain in the transaction files for proof of the disbursement. The proper entries are \$49.15 in the general ledger (not shown) and \$49.15 in the property individual sub-ledger.

E) Payment to the owner of the rental unit managed by ABC Realty.

On January 20, 2018, ABC Realty disbursed check #1004 for \$110.85 to Stan Wilson, owner, per the written management agreement held by ABC Realty in their property management transaction files. The proper entries are \$110.85 in the general ledger (not shown) and \$110.85 in the property individual sub-ledger.

F) Recording a tenant's rent on property managed by ABC Realty.

On February 1, 2018, ABC Realty receives \$500.00 from Larry Smith representing his rent for the month of February. The proper entries are \$500.00 in the general ledger (not shown) and \$500.00 in the property individual sub-ledger.

G) Recording the property mortgage for February on a property managed by ABC Realty.

On February 10, 2018, ABC Realty disbursed check #1005 for \$300.00 to Metropolitan Bank per written management agreement held by ABC Realty in their property management transaction files. The proper entries are \$300.00 in the general ledger (not shown) and \$300.00 in the property individual sub-ledger.

H) Recording a loan from Broker's Equity (personal funds).

On February 12, 2018, the broker has an invoice from Barr's Plumbing & Heating for \$215.25. After reviewing the property individual sub-ledger, the broker realizes he needs more funds in the account to cover the expense. The broker decides to loan the additional funds from broker's equity (personal funds). The proper entries are \$15.25 in the property individual sub-ledger and \$15.25 in the broker's equity (personal funds) account.

- I) Payment of expenses related to the rental property.

On February 12, 2018, ABC Realty disbursed check #1006 for \$215.25 to Barr's Plumbing for invoice #892 per written management agreement held by ABC Realty in the property management transaction files. This invoice should also remain in the transaction files for proof of disbursement. The proper entries are \$215.25 in the general ledger (not shown) and \$215.25 in the property individual sub-ledger.

- J) Recording a tenant's rent on property managed by ABC Realty.

On March 1, 2018, ABC Realty receives \$500.00 from Larry Smith representing his rent for the month of March. The proper entries are \$500.00 in the general ledger (not shown) and \$500.00 in the property individual sub-ledger.

- K) Repayment of a loan to broker's equity (personal funds) when there are sufficient funds in the property individual sub-ledger.

On March 1, 2018, adequate funds are available in the property individual sub-ledger to repay the loan made on February 12, 2018. The proper entries are \$15.25 in the property individual sub-ledger and \$15.25 in the broker's equity (personal funds) account.

- L) Recording the property mortgage for March on a property managed by ABC Realty.

On March 10, 2018, ABC Realty disbursed check #1007 for \$300.00 to Metropolitan Bank per written management agreement held by ABC Realty in their property management transaction files. The proper entries are \$300.00 in the general ledger (not shown) and \$300.00 in the property individual sub-ledger.

- M) Payment to the realty company for February management fees.

On March 15, 2018, ABC Realty disbursed check #1008 to themselves for \$40.00 ($\$500.00 \times 8\%$) for February management fees per written management agreement held by ABC Realty in their property management transaction files. The proper entries are \$40.00 in the general ledger (not shown) and \$40.00 in the property individual sub-ledger.

- N) Payment to the realty company for March management fees.

On March 15, 2018, ABC Realty disbursed check #1009 to themselves for \$40.00 ($\$500.00 \times 8\%$) for March management fees per written management agreement held by ABC Realty in their property management transaction files. The proper entries are \$40.00 in the general ledger (not shown) and \$40.00 in the property individual sub-ledger.

- O) Payment to the owner of a rental unit managed by ABC Realty.

On March 20, 2018, ABC Realty disburses check #1010 to Stan Wilson, owner, per written management agreement held by ABC Realty in their property management transaction files. The proper entries are \$114.75 in the general ledger (not shown) and \$114.75 in the property individual sub-ledger.

At the end of each month, your reconciled bank balance should equal your general ledger balance, and the total the individual sub-ledger sheets. If they don't, there is an error. Errors are relatively easy to find if discovered within a one-month period.

An example of reconciliation for March 31, 2018 for ABC Realty is presented below. Notice how the general ledger and the individual sub-ledgers agree. These procedures apply whether your accounting system is computerized or not.

	Individual Sub-ledgers	General Ledger
Broker's Eq. - Personal Funds	73.50	
Property/Owner	- 0 -	(not shown)
Tenant's Security Deposit	500.00	
	\$573.50	< = >
		\$573.50

Individual Sub-ledgers

NOTE: In actual practice, each one of these ledger cards would be on a separate page. They are combined here to reduce copying costs.

PROPERTY/OWNER LEDGER CARD							
	Check #	Date	Payee/Depositor	Transaction	(Debit) Check Amt.	(Credit) Deposit Amt.	Balance
A	590	01/02/18	Larry Smith	January Rent		500.00	500.00
B	1001	01/10/18	Metropolitan Bank	January Mortgage payment	300.00		200.00
C	1002	01/15/18	ABC Realty Operations Acct.	January Fees \$500.00 X 8%	40.00		160.00
D	1003	01/18/18	Quality Repair	INV. #6992	49.15		110.85
E	1004	01/20/18	Stan Wilson	Owner proceeds	110.85		- 0 -
F	625	02/01/18	Larry Smith	February Rent		500.00	500.00
G	1005	02/10/18	Metropolitan Bank	February Mortgage Payment	300.00		200.00
H	J/E	02/12/18	Loan from Broker's Equity			15.25	215.25
I	1006	02/12/18	Barr's Plumbing	INV. #892	215.25		- 0 -
J	640	03/01/18	Larry Smith	March Rent		500.00	500.00
K	J/E	03/01/18	Repayment of Loan (02/12/14)		15.25		484.75
L	1007	03/10/18	Metropolitan Bank	March Mortgage Payment	300.00		184.75
M	1008	03/15/18	ABC Realty	February Fee - \$500.00 X 8%	40.00		144.75
N	1009	03/15/18	ABC Realty	March Fee - \$500.00 X 8%	40.00		114.75
O	1010	03/20/18	Stan Wilson	Owner Proceeds	114.75		- 0 -

BROKER EQUITY						
	Check #	Date	Explanation	Debit	Credit	Balance
G/L	2315	01/02/18	To Open Account		100.00	100.00
G/L		01/31/18	Check printing charges	26.50		73.50
H	J/E	02/12/18	Loan to 3109 SE Terrace	15.25		58.25
K	J/E	03/01/18	Repayment		15.25	73.50

TENANT SECURITY DEPOSIT						
	Check #	Date	Explanation	Debit	Credit	Balance
A	590	01/02/18	Security deposit		500.00	500.00

F) Bookkeeping -- Illustrated (Computerized Systems)

The computer system must maintain records as if it were a manually posted bookkeeping system. Remember, the system must be posted as events occur and kept current at all times.

The computer program selected must be capable of generating a general ledger which will account for the income and expenses related to all transactions on a day-to-day basis. The program must also be capable of generating individual sub-ledgers which will account for the income and expenses related to individual accounts on a day-to-day basis for specific transactions.

The ledgers should have a debit, credit and balance format with a specific ledger balance identified after each bookkeeping entry. Income and expenses must be posted in chronological order and kept current at all times.

Voided, unused, as well as canceled checks must be maintained for trust account examination purposes, just like the manual system. Also, a trial balance by itself will not be an acceptable system for a trust account examination. It will only be accepted as a report which would support the general ledger and the individual sub-ledgers.

The broker is reminded of the fiduciary responsibility to their principals. It is the intent of the Real Estate Commission to ensure that bookkeeping systems clearly and accurately account for all trust funds received and disbursed. A balance must be identified on the general ledger and each individual sub-ledger after each bookkeeping entry.

This computer generated property individual sub-ledger is acceptable under the guidelines recommended by the Iowa Real Estate Commission. All bookkeeping entries are posted in chronological order and the balance is provided after each entry.

OWNER: Stan Wilson
 PROPERTY: 3109 SE Terrace, DSM, 50313
 TENANT: Larry Smith
 MGMT. FEE: 8%

<u>DATE</u>	<u>PAYEE/DEPOSITOR</u>	<u>TRANSACTION</u>	<u>CHECK#</u>	<u>DEBIT</u>	<u>CREDIT</u>	<u>BALANCE</u>
01-02	Larry Smith	January rent	590		500.00	500.00
01-10	Metropolitan Bank	January mortgage	1001		300.00	200.00
01-15	ABC Realty	January Fees	1002	40.00		160.00
01-18	Quality Repair	INV# 6992	1003	49.15		110.85

01-20	Stan Wilson	Owner Proceeds	1004	110.85		0.00
02-01	Larry Smith	February rent	625		500.00	500.00
02-10	Metropolitan Bank	February mortgage	1005	300.00		200.00
02-12	Broker's Equity	Loan	J/E	15.25		215.25
02-12	Barr's Plumbing	INV# 892	1006	215.25		0.00
03-01	Larry Smith	March rent	640		500.00	500.00
03-01	Broker's Equity	Repymt. loan	J/E		15.25	484.75
03-10	Metropolitan Bank	March mortg. pymt.	1007	300.00		184.75
03-15	ABC Realty	February Fees	1008	40.00		144.75
03-15	ABC Realty	March Fees	1009	40.00		114.75
03-20	Stan Wilson	Owner Proceeds	1010	114.75		-0.00

This computer generated property individual sub-ledger is acceptable under the guidelines recommended by the Iowa Real Estate Commission. All bookkeeping entries are posted in chronological order and the balance is provided after each entry.

OWNER: Stan Wilson
PROPERTY: 3109 SE TERRACE, DSM, IA 50313
TENANT: Larry Smith
MGMT. FEE: 8%

<u>DATE</u>	<u>DESCRIPTION</u>	<u>CHECK#</u>	<u>AMOUNT</u>	<u>BALANCE</u>
01-02	Larry Smith January rent	590	500.00	500.00
01-10	Metropolitan Bank January mortgage	1001	300.00	200.00
01-15	ABC Realty January Fees	1002	-40.00	160.00
01-18	Quality Repair INV# 6992	1003	-49.15	110.85
01-20	Stan Wilson owner proceeds	1004	-110.85	0.00
02-01	Larry Smith February rent	625	500.00	500.00
02-10	Metropolitan Bank February mortgage	1005	-300.00	200.00
02-12	Broker's equity loan	J/E	15.25	215.25
02-12	Barr's Plumbing INV# 892	1006	-215.25	0.00
03-01	Larry Smith March rent	640	500.00	500.00
03-01	Broker's equity repay loan	J/E	15.25	484.75
03-10	Metropolitan Bank March mortgage	1007	-300.00	184.75
03-15	ABC Realty February fees	1008	-40.00	144.75
03-15	ABC Realty March fees	1009	-40.00	114.75
03-20	Stan Wilson owner proceeds	1010	-114.75	0.00

G) Property Management Transfer or Termination

If a property management agreement is terminated or transferred for any reason, the broker should follow the procedures as outlined in 193E IAC 15.1(5). They are as follows:

- The broker shall terminate the management activities of the property as provided in the agreement and except as otherwise provided by the agreement.
- The broker shall notify the owner and any tenants of the property of the termination.
- The broker must provide the owner, not later than 30 days after the effective date of termination, with any unobligated funds due to the owner under the agreement and not later than 60 days after the effective date of the termination, provide the owner with a final accounting of the owner's ledger account, the amount of any obligated funds held in the property manager's client trust account under the agreement, a statement of why obligated funds are being held by the property manager, and a statement of when and to whom the obligated funds will be disbursed by the property manager.

- The broker may disburse any unobligated funds only to the owner, or with the proper written authorization of the owner, to another property manager designated in writing by the owner.
- The broker must immediately notify each tenant that the conditionally refundable deposit will be transferred to the owner or to a new property manager and, at the same time, the name and address of the owner or the new property manager to whom these deposits will be transferred.

If any of the unobligated funds held by the property manager under the terminated agreement represent tenants conditionally refundable deposits received from current tenants, the broker must follow the procedures as outlined in 193E Chapter 15.1(6). They are as follows:

- The broker must not expend any tenant's conditionally refundable deposit for payment of any expense or fees not otherwise allowed by the tenant's rental or lease agreements, and if any tenant terminates tenancy at the same time as or prior to the termination of the management of the rented or leased property, the broker must complete any final accounting, inspection or other procedure required by the tenant's rental or lease agreement, by the Uniform Residential Landlord and Tenant Law, Mobile Home Parks Residential Landlord and Tenant Law, or by the property management agreement unless the owner directs otherwise in writing.

193E Chapter IAC 15.1(5) and 15.1(6) are reprinted in Appendix a.

H) Trust Account Examinations

The Iowa Real Estate Commission has a very active trust account examination program. It is designed to be educational and to help brokers on active status implement the requirements for proper record keeping and understand their obligations in handling trust funds. The examination will also determine the compliance level being achieved by the broker.

Each real estate broker on active status can expect to have their real estate trust account(s) examined on an irregular schedule. The examination could be announced or unannounced.

The trust account examination process generally takes only a few hours. During this period, the trust account auditor will verify that the bank statements have been reconciled and will perform a random inspection of files related to properties managed, both current and those no longer being managed for which management was terminated or transferred during the period being examined. The auditor will also review on a random basis the entries to the bookkeeping system and the supporting documentation. This is to ensure full compliance with the rules and regulations governing trust accounts.

The Real Estate Commission requires that posting to the bookkeeping system be current at all times. Since some examinations will be unannounced, the broker should verify that posting is current so the auditor can complete the examination in an accurate and efficient manner.

It also assists the auditor if key personnel other than the broker are aware of the location of the trust account records in case the broker is not available at the time of the trust account examination. Per 193E 13.5(543 B) file record keeping - "The records shall be made available for reproduction and inspection by the commission, staff, and commission-authorized representatives at all times during usual business hours at the broker's regular place of business".

The broker will be asked to provide the following records for the period being examined:

- Checkbook and checkbook register
- Checks - canceled, voided and unused
- Bank statements and bank reconciliations
- Deposit slips - original and/or duplicate
- Bookkeeping system (general ledger and individual sub-ledgers)
- Property management agreements
- Lease agreements
- Supporting vendor invoices
- Any other pertinent files or documents.

The broker can ease the efficiency of the examination process if the files and records are maintained in a neat and orderly fashion.

IV. ADDITIONAL INFORMATION ABOUT TRUST ACCOUNTS

A) Do's and Don'ts with Real Estate Trust Accounts

The following list of do's and don'ts is merely a summary and is not for official use. Always consult the statutes and rules when you have a trust account question. Keep yourself informed. Exercise sound judgment and use common sense if an issue arises which is not addressed in the statutes and rules you are required to follow. Consult legal counsel when necessary.

DO

- Establish a common trust account in a federally insured bank, savings and loan association, savings bank, or credit union.
- Include the word "trust" in the title of all trust accounts.
- Make all real estate sales trust accounts interest-bearing.
- Make the quarterly interest deposit to the State of Iowa, unless there is a written statement between the buyer and seller to the contrary.
- Mail to the Real Estate Commission staff a **Consent to Examine and Audit Trust Account** form for each trust account.
- Deposit trust funds in trust account no later than five (5) banking days after acceptance.
- Maintain a general ledger for all trust accounts reflecting all receipts and disbursements in a chronological order, recorded as activity occurs.
- Maintain an individual sub-ledger reflecting all receipts and disbursements for each separate Real estate sales transaction in chronological order, recorded as activity occurs.
- Maintain an individual sub-ledger reflecting all receipts and disbursements for each separate property management trust account in chronological order, recorded as activity occurs.
- Make a bank reconciliation part of your monthly procedures to ensure agreement between The balance reflected in the general ledger, the individual sub-ledger accounts, and the check book.
- Maintain all trust account records for five (5) years after the date of closing.
- Deposit earnest money checks in the trust account of the listing broker.
- Deposit cash accepted as earnest money in the selling broker's trust account and transfer by check to the listing broker's trust account.

DON'T

- Commingle (mix) personal funds with the trust funds, although up to \$1,000 may be deposited in the trust account to pay for expenses directly related to maintaining the account.
- Take interest earned on the trust account.
- Disburse funds from a trust account prior to closing without the informed written consent of all parties, except in strict compliance with 193E Chapter 13.1(8).
- Withhold any portion of the earnest money when a transaction fails to consummate (close), even if a real estate commission is earned. 193E Chapter 13.1(9)
- Pay property management fees directly to yourself from an owner's trust account.
- Engage in property management without a written agreement from the owner or owner's agent listing the terms as prescribed by 193E Chapter 15.1(1).

B) Questions Most Often Asked About Trust Accounts

- Q** Could you interpret this law or rule for me and tell me how to handle or proceed with this situation?
- A** No, to answer this question would be giving legal advice or opinion. Licensees should consult with their broker or the broker's attorney. The public should consult with a privately retained attorney.
- Q** How should a broker disburse earnest money that is in dispute and being requested by both the buyer and seller?
- A** The broker should consult both parties to see if a written agreement to release the funds can be obtained. If a written agreement cannot be reached, the broker may make a good faith decision and disburse the money as provided in sub rule 193E Chapter 13.1(8). Nothing in the rules requires a broker to disburse money when the disposition is disputed.
- Q** At what time do I have to deposit earnest money into the trust account?
- A** No later than five (5) banking days after final acceptance. The Real Estate Commission will not take disciplinary action against a licensee who deposits money for safekeeping prior to acceptance.
- Q** The terms of the contract provide a contingency on obtaining financing and the buyers didn't get financed. Is this sufficient to make a good faith decision and return the earnest money that is disputed?
- A** Staff cannot give legal advice or determinations. You would need to contact an attorney.
- Q** My bank requires the trust account to maintain a minimum balance of \$1,500 to avoid service charges and I do not have that much activity. Can I put \$1,500 of my money in the account or can I have a non-interest bearing account?
- A** No, you cannot have over \$1,000 in personal funds in the account to cover service charges, and you must have an interest bearing trust account unless it is a property management

account. You will have to make different arrangements with your bank or find another bank for the real estate trust account.

Q What kind of record keeping do I need to comply with Real Estate Commission requirements?

A See Iowa Code § 543B.46 and 193E – 13.5

Q How many trust accounts can I have?

A As many as you need, provided the word "trust" is in the title and a **Consent to Examine and Audit Trust Account** form is filed with the Real Estate Commission staff.

Q The interest on the trust account is not enough to cover the service charges as I really do not do enough business. Can I close the account?

A Yes, provided you will not be receiving trust monies. You must file a **Trust Account Status Affidavit** that indicates you will not conduct business that would require a trust account and the Real Estate Commission staff should be notified.

Q My broker's license is on file in the Real Estate Commission's office on inactive status. Must I maintain a trust account?

A No, you should not be receiving real estate trust funds.

Q To whom am I required to exhibit my trust account records?

A To the Real Estate Commission or any duly authorized representative of the Real Estate Commission.

Q The Iowa Administrative Code requires a separate bank account for the deposit of down payments, etc., received by a broker on behalf of his principal to be designated a "Trust Account". Is it permissible to designate this account "Escrow Account"?

A No, the account must have the word "trust" in the title.

Q How should I handle an earnest money check which the buyer does not want deposited until the offer has been accepted?

A The check should be held *until the offer is accepted* and then placed in trust within five (5) banking days. The fact that the check is held in uncashed form must be disclosed to the seller.

Q Is it proper for me to pay my salesperson his real estate commission by a check drawn on my trust account?

A No, all real estate commissions paid to your salesperson must be paid out of your regular business operating account.

Q May I maintain one trust fund account for both my property management business and real estate sales transactions?

A Yes, funds from either rentals or earnest money deposits may be placed in the same trust account as long as all interest is paid to the State of Iowa.

Q Our firm deposits all earnest money in a trust account. However, on closing, the earnest money is withdrawn and placed in an office operating account along with final settlement money, and all disbursement of funds is from the office operating account. Is our firm in violation of 193E Chapter 13?

A Yes, this is a violation. All expenses to be paid for from trust account funds should be made

on trust account checks and properly accounted for in the trust account ledger books.

- Q** Can I leave my real estate commission in the trust account for a period of time after I have closed out a transaction?
- A** No, your real estate commission must be removed and deposited into your business operating account at closing. You are not to keep more than \$1,000 of your personal funds in the trust account, which sum shall be specifically identified and deposited to cover bank service charges related to the trust account.
- Q** If our firm or corporation hires a broker-salesperson, are they required to have a trust account of their own, or may they use the firm's or corporation's trust account?
- A** The broker and/or salesperson must use the firm's or corporation's trust account.
- Q** I am the broker in my firm, but I licensed my firm name. Does this mean I must file a **Consent to Examine and Audit Trust Account** form for my firm?
- A** Yes, if a firm is licensed, a **Consent to Examine and Audit Trust Account** form must be filled out.
- Q** Do I have to tell the buyers & sellers that earnest money is being placed in an interest-bearing account and that interest goes to the State of Iowa?
- A** No, the broker may, but shall not be required to, inform the parties to the transaction of the intended use of the interest.
- Q** Do I have to tell the buyers and sellers that they can have a separate interest-bearing account?
- A** No, see above answer.
- Q** If the buyer and seller decide to go directly to an attorney, and the buyer makes out a check to the seller and hands it directly to the attorney or seller, do I have to maintain any records of the check?
- A** No, do not record as "trust funds" in your ledgers. However, you are required to furnish a complete, detailed closing statement to the seller and to the buyer showing an itemized accounting of the transactions, which would include the check being held by a third party (the attorney).
- Q** When an earnest money check is returned for NSF does that automatically cancel the purchase agreement?
- A** To answer this question would be giving legal advice or opinion. Staff cannot give legal advice or determinations. Licensees should consult with their broker or the broker's attorney.
- Q** What in particular are the trust account auditors looking for?
- A** Refer to section **Trust Account Examinations** for both Sales and Property Management in the manual.
- Q** Can I expect to have my trust account audited by a representative of the Real Estate Commission?
- A** Yes, all brokers are subject to having their trust account(s) randomly audited or any time the Real Estate Commission feels that it should be done.

CONSENT TO EXAMINE AND AUDIT TRUST ACCOUNT

(NAME OF SOLE PROPRIETOR, PARTNERSHIP, OR CORPORATION FILING THIS FORM)

having filed an application for a real estate broker license or being a holder of a broker license in compliance with Chapter 543B.46, Code of Iowa, 2003, does register with the Iowa Real Estate Commission as the depository in which applicant now maintains a real estate trust account in which the broker shall deposit all down payments, earnest money, rentals, or other trust funds received by said broker, or the broker associate or salesperson of said broker, on behalf of their principals or any other persons pending the consummation or termination of the transaction. The account is carried with said depository under the following account name and number:

_____,
(NAME OF DEPOSITORY)* (CITY)(STATE)

TRUST ACCOUNT**
(EXACT NAME OF ACCOUNT ACCORDING TO DEPOSITORY RECORDS) (ACCOUNT NUMBER)

_____ does hereby covenant and agree to authorize
(NAME OF SOLE PROPRIETOR, PARTNERSHIP OR CORPORATION FILING THIS FORM)

_____ to allow at any time any duly authorized representative
(NAME OF DEPOSITORY)

of the Iowa Real Estate Commission to examine and audit the aforementioned trust account.

Executed at _____, _____ this _____ day of _____, 20____.
(CITY) (STATE)

This account is:

- Interest bearing with interest to be transferred to treasurer of state.
- Interest bearing with interest to buyer and/or seller or property owner, or to _____ by written agreement of all parties.
- Non-interest bearing property management account.

(SIGNATURE OF SOLE PROPRIETOR)

(SIGNATURE OF LICENSED OFFICER OR PARTNER)

(SIGNATURE OF LICENSED OFFICER OR PARTNER)

CERTIFICATION OF DEPOSITORY

The undersigned, a duly authorized official of said depository, on behalf of said depository, does hereby certify that the above applicant or licensee does maintain a real estate trust account as set forth above and agrees that said depository will allow a duly authorized representative of the Iowa Real Estate Commission to examine and audit the aforementioned real estate trust account upon demand.

Executed at _____, _____ this _____ day of _____, 20____
(CITY) (STATE)

(SEAL OF DEPOSITORY)

(NAME OF DEPOSITORY)

(SIGNATURE AND TITLE OF DEPOSITORY OFFICER)

*TRUST ACCOUNT MUST BE IN BANK, SAVINGS & LOAN ASSOCIATION, SAVINGS BANK OR CREDIT UNION
**TRUST ACCOUNT MUST BE PART OF THE TITLE OF THE ACCOUNT

"The information you provide will be open for public inspection under Iowa Code 22.

IOWA REAL ESTATE COMMISSION

200 E Grand, Suite 350
Des Moines, IA 50309

TRUST ACCOUNT STATUS AFFIDAVIT

Iowa Real Estate Commission Administrative Rule 193E—13.1(5)a states as follows:

"13.1(5)a: If a broker does not expect to receive trust funds, the broker shall file an affidavit with the Real Estate Real Estate Commission on a form prescribed by and available from the Real Estate Real Estate Commission."

Administrative Rule 193E—13.1(5) further states:

"13.1(5)b: If trust funds are received by the broker after filing an affidavit, the broker must immediately open a trust account and file the appropriate Consent to Examine and Audit Trust Account form with the Real Estate Real Estate Commission."

I HEREBY CERTIFY that as an Active Broker I do not expect to receive trust funds in the course of my business; therefore, I do not wish to maintain an open trust account. I understand a *Consent to Examine* form will be filed with the Real Estate Real Estate Commission at such time as a trust account is opened.

* * * * *

(Signature of Broker)

(Broker License Number)

(Print Name of Broker)

(Current Business Address)

(City) (State) (Zip Code)

Executed this ____ day of _____, 20 ____.

193E—13.1(543B) Trust account. All earnest payments, all rents collected, property management funds, and other trust funds received by the broker in such capacity or broker associate or salesperson on behalf of the broker’s client shall be deposited in a trust account maintained by the broker in an identified trust account, with the word “trust” in the name of the account, in a federally insured depository institution and, for the purposes of this rule, may be referred to as the “depository.”

13.1(1) All money belonging to others received by the broker, broker associate or salesperson on the sale, rental, purchase, or exchange of real property located in Iowa are trust funds and must be deposited in a trust account as directed by the principals to a transaction constituting dealing in real estate. This shall include, but not be limited to, receipts from property management contracts; rental or lease contracts; advance fee contracts; escrow contracts; collection contracts; earnest money contracts; or money received by a broker for future investment or other purpose, except a nonrefundable retainer need not be placed in an escrow account if specifically provided for in the written agreement between the broker and the broker’s principal.

a. All trust funds must be deposited into the broker’s trust account by no later than five banking days after the date indicated on the document that the last signature of acceptance of the offer to purchase, rent, lease, exchange, or option is obtained.

b. Money belonging to others shall not be invested in any type of fixed-term maturity account, security or certificate without the written consent of the party or parties to whom the money belongs.

c. A broker shall not commingle personal funds in a trust account; provided, however, that not more than \$1,000 of the broker’s personal funds may be maintained in each separate account if (1) such personal funds are separately accounted for and (2) such personal funds are intended to be used by the broker to pay for expenses directly related to maintaining the account.

The broker shall ensure that personal funds are deposited to cover bank service charges as specified in Iowa Code section 543B.46 and that at no time are trust moneys used to cover any charges. Upon notification that the broker’s personal funds are not sufficient to cover service charges initiated by the bank that are above the normal maintenance charges, the broker shall deposit personal funds to correct the deficiency within 15 calendar days of the closing date of that bank statement.

d. Money held in the trust account, which becomes due and payable to the broker, shall be promptly withdrawn by the broker.

e. The broker shall not use the trust account as a business operating account or for personal use. Commissions, salaries, related items and normal business expenses shall not be disbursed directly from the trust account.

13.1(2) Unless there is a written agreement between all parties to the transaction to the contrary, or the provisions of paragraph 13.1(2)“g” apply, all interest earned on the trust account shall be transferred on a calendar quarter basis to the state. The amount to be remitted to the state will be the amount of interest earned less any service charges directly attributable to the requirement of maintaining an interest-bearing account and of remitting the interest to the state. The broker may have the depository remit the interest directly or the broker may remit the interest but, in either case, it shall be the responsibility of the broker to see that the interest is remitted.

a. If the interest is remitted by the broker, the broker should use the commission-approved Real Estate Interest Remittance Form and include a copy of the applicable bank statement(s) showing the interest paid and the service charges attributable to maintaining the account.

b. If the interest is remitted by the broker, the broker shall mail the interest remittance check and required documentation to:
The State of Iowa
c/o Bankers Trust Company
P.O. Box 4686
Des Moines, Iowa 50306

c. The depository should use the name “Iowa Finance Authority” and the federal tax identification number (TIN) 52-1699886 on the 1099 reporting form when reporting interest to the IRS.

d. The depository should send the 1099 reporting form to:
Iowa Finance Authority
2015 Grand Avenue
Des Moines, Iowa 50312

e. If the property management or rental account is interest-bearing, the interest shall be transferred on a calendar quarter basis to the state unless there is a written agreement paying the interest to the property owner.

f. In no event shall the broker be paid interest earned on moneys held in trust for others by the broker.

g. A broker shall enter into a written agreement to pay interest to a buyer or seller in a transaction, or to a third party if requested by the parties to the contract and agreed to by the broker, if the client’s trust funds can earn net interest. In determining whether a client can earn net interest on funds placed in trust, the broker shall take into consideration all relevant factors including the following:

- (1) The amount of interest that the funds would earn during the period in which they are reasonably expected to be deposited;
- (2) The cost of establishing and administering an individual interest-bearing trust account in which the interest would be

transmitted to the client, including any needed tax forms; and

(3) The capability of the financial institution to calculate and pay interest to individual clients through subaccounting or otherwise.

13.1(3) With disclosure to and the written agreement of all parties, a trust account may bear interest to be disbursed to (1) the buyer or seller involved in a real estate purchase, sale or exchange transaction, or (2) the property owner, if the property management or rental contract contains this specific provision, or (3) as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2), or (4) a third party if requested by the parties to the contract and agreed to by the broker. Disbursements of interest on trust funds are subject to all provisions of law that require a broker to safeguard and account for the handling of funds of others.

13.1(4) Receipts from property management and rental account transactions may be deposited in a trust account separate from real estate transaction funds. If separately maintained, this account shall not be required to be an interest-bearing account.

a. The broker shall provide to the broker's client a complete accounting of all moneys received and disbursed from the trust account(s) not less often than annually.

b. A broker may only utilize a separate property management or rents trust account for those moneys received by a broker pursuant to a written property management or rental agreement.

13.1(5) A broker shall be required to open and maintain one or more trust accounts if the broker is in the practice of depositing funds in a trust account. For each separate trust account opened, the broker shall file with the commission a written Consent to Examine and Audit Trust Account form, which irrevocably authorizes the commission to examine and audit the trust account. The form of consent shall be prescribed by and available from the commission and shall include the account names and number and the name and address of the depository.

a. If the broker is not in the practice of depositing trust funds in a trust account, the broker shall file an affidavit with the commission on a form prescribed by and available from the commission.

b. If trust funds are received by the broker after filing an affidavit, the broker must immediately open a trust account and file the appropriate Consent to Examine and Audit Trust Account form with the commission.

c. As provided by Iowa Code section 543B.46(3), a consent to examine is not required for a separate farm business operating account in the name of the owner or owners and used by either the farm owner or farm manager or agent to conduct business as a part of a written farm management agreement.

d. As provided by Iowa Code section 543B.46(3), a consent to examine is not required for a separate property management account in the name of the owner or owners and used by either the property owner or property manager or agent to conduct property management as a part of a written property management agreement.

13.1(6) Each broker required to maintain a trust account shall maintain at all times a record of each account, as required by these rules, in the place of business, consisting of at least the following:

a. A record called a journal which records in chronological order all receipts and disbursements of moneys in the trust account.

(1) For receipts, the journal for each trust account must include the date, name of depositor, the check number and the amount deposited, and the name of principal or identify the property.

(2) For disbursements, the journal for each trust account must include the date, name of payee, name of principal or identify the property, the check number and the amount disbursed.

(3) The journal must provide a means for monthly reconciliation on a written worksheet of the general ledger balance with the bank balance and with the individual ledger accounts to ensure agreement.

b. Real estate sales transactions shall additionally require an individual ledger account identified by the property or the principal, which records all receipts and disbursements of the transaction and clearly separates the transaction from all others. The individual ledger account shall include the date, check number, amount, name of payee or depositor or explanation of activity with a running balance.

c. Property management trust account records shall additionally include an individual ledger account for each tenant, identifying the tenant's rental unit and security deposit and including all receipts and disbursements together with check number and date. The journal for each account shall be maintained as an owner's ledger account for all properties owned by each owner showing receipts and disbursements applicable to each property managed.

(1) All disbursements must be documented by bids, contracts, invoices or other appropriate written documentation.

(2) The running balance may be determined at the time of monthly reconciliation.

d. Trust account supporting documents shall include, but not be limited to, the following:

(1) Bank statements;

(2) Canceled checks;

(3) Copies of contracts, listing, sales, rental and leasing;

(4) Closing statements;

- (5) Pertinent correspondence; and
- (6) Any additional items necessary to verify or explain an entry.

13.1(7) Funds, including interest on trust funds, shall only be disbursed from the trust account as provided in Iowa Code section 543B.46(1) and by the terms and conditions of the contract or escrow agreement. No funds shall be disbursed from the trust account prior to the closing, or other than as provided by the terms of the escrow agreement, without the informed written consent of all the parties. In the event of a dispute over the return or forfeiture of an earnest money deposit or the disbursement of an escrow deposit held by a broker, the broker shall continue to hold the deposit in the trust account until one of the following conditions is met:

- a.* The broker is in receipt of a written release from all parties to the transaction consenting to the disposition of the deposit or escrow funds; or
- b.* The broker is in receipt of a final judgment of the court directing the disposition of the deposit or escrow funds; or
- c.* There is a final decision of a binding alternative dispute resolution process, or mediation directing the disposition of the deposit or escrow funds; or
- d.* A civil court action is filed by one or more of the parties to determine the disposition of the deposit or escrow funds, at which time the broker may seek court authorization to pay the deposit or escrow funds into court.

13.1(8) No funds shall be disbursed from the trust account prior to the closing without the informed written consent of all the parties to the transaction as provided in 13.1(7), except in accordance with this rule. Nothing in this rule requires a broker to remove money from the broker's trust account when the disposition of such money is disputed by the parties to the transaction. The commission will not take disciplinary action against a broker who in good faith disburses trust account moneys pursuant to this rule.

a. In the absence of a pending civil court action or written agreement, it shall not be grounds for disciplinary action when, upon passage of 30 days from the date of the dispute, a broker disburses the earnest money deposit to a buyer, renter, or lessee in a transaction based upon a good faith decision that a contingency has not been met, but disbursement shall be made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known addresses, setting forth the broker's proposed action and the grounds for the decision.

b. In the absence of a pending civil action or written agreement, it shall not be grounds for disciplinary action when, upon passage of six months from the date of the dispute, a broker disburses the earnest money deposit to a seller or landlord in a transaction based upon a good faith decision that the buyer, renter, or lessee has failed to perform as agreed, but disbursement shall be made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known addresses, setting forth the broker's proposed action and grounds for the decision.

c. The dispute must be legitimate. If a buyer or seller, or a landlord or lessee, or a renter demands the return of the earnest money deposit, the broker shall consult with the other party who may agree or disagree with the return.

13.1(9) Under no circumstances is the broker entitled to withhold any portion of the earnest money when a transaction fails to consummate even if a commission is earned. The earnest money must be disposed of as provided in 13.1(7), 13.1(8), or 13.1(10), and the broker shall pursue any claim for commission or compensation against the broker's client.

13.1(10) Interpleader. Anytime the broker in good faith believes that the parties disputing the return of the deposit will not agree on the disposition of the deposit or file a civil court action to determine the disposition of the deposit, then the broker may elect to file an interpleader action with the appropriate court pursuant to Iowa Rules of Civil Procedure and pay the deposit into court. The broker may, in filing such an interpleader court action:

- a.* Attempt to claim a part of the deposit pursuant to the listing contract with the seller, if the seller is successful in the suit.
- b.* Disclaim any part of the deposit and request the court to restrain the buyer and the seller from naming the broker in the civil suit and order them to litigate their claims to the deposit.

13.1(11) A trust account may bear interest to be disbursed to the buyers or sellers or to a third party if requested by the parties to the contract and agreed to by the broker with the written approval of all parties to the contract or to the owner if the trust account is for a property management account and the management contract so specifies, or as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2). The account shall be a separate account from the account(s) which is to accrue interest to the state. The broker shall not benefit from interest received on funds of others in the broker's possession. Interest shall be disbursed to the owner or owners of the funds at the time of settlement of the transaction or as agreed to in the management contract and shall be properly accounted for on closing statements. A broker shall not disburse interest on trust funds except as provided in 13.1(3) and 13.1(7). Service charges for the account are a business expense of the broker and shall not be deducted from the proceeds.

13.1(12) Property management account funds may be withdrawn at any time for the purpose of returning the funds to the payee in accordance with the terms of the contract or receipt.

13.1(13) Property management funds may be withdrawn when and if the broker reasonably believes, from evidence available, that the tenant has obtained a rental or lease through information supplied by or on behalf of the broker.

13.1(14) Trust funds that are not traceable to any individual for disbursement from the trust account are unclaimed property. Unclaimed trust funds must be entered on a separate individual ledger for accounting purposes. In accordance with Iowa Code chapter 556, after three years, unclaimed trust funds shall be paid to:

Treasurer, State of Iowa
Unclaimed Property
P.O. Box 10430
Des Moines, Iowa 50306

[ARC 7559B, IAB 2/11/09, effective 3/18/09; ARC 0410C, IAB 10/31/12, effective 12/5/12; ARC 3722C, IAB 3/28/18, effective 5/2/18]

193E—13.2 (543B) Closing transactions. It shall be mandatory for every broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete detailed statement, showing all of the receipts and disbursements handled by the broker. Also, the broker shall at the same time deliver to the buyer a complete statement showing all moneys received in the transaction from the buyer and how and for what the same were disbursed.

13.2(1) In the event all funds being held by the broker for a transaction cannot be disbursed at the time of closing, the broker shall obtain an escrow agreement signed by both parties to the transaction which shall direct the broker regarding the future disbursement of the funds.

13.2(2) The broker shall retain all trust account records and a complete file, which shall include but not be limited to the records required by 13.5(543B), on each transaction for a period of at least five years after the date of the closing. Records required by this rule may be retained as an electronic record as provided by 13.5(543B).

13.2(3) The listing broker shall be responsible for the closing even though the closing may be completed by another licensee.

13.2(4) If the closing transaction is handled through an unlicensed escrow agent and the escrow agent renders a closing statement, the listing broker shall ensure that funds which the broker has received or paid as part of the transaction are accounted for properly.

13.2(5) In the case of a cooperative sale between brokers, the listing broker may elect to close the transaction or, by prior agreement, authorize the selling broker to close.

a. If the listing broker so elects, the selling broker shall have the buyer make the earnest money check or money order payable to the listing broker and shall immediately deliver the earnest money check or money order along with the offer to purchase to the listing broker or listing agent.

b. Unless by prior agreement the listing broker has authorized the selling broker to close, the offer to purchase shall designate that the earnest money is to be held in trust by the listing broker.

c. Unless by prior agreement the listing broker has authorized the selling broker to close, when cash is accepted as earnest money by the selling agent, the selling agent must deposit the money in the selling broker's trust account in accordance with commission rules, and then immediately transfer the earnest money deposit to the listing broker by issuing a check drawn on the selling broker's trust account.

13.2(6) Any means other than cash or an immediately cashable check shall not be accepted as earnest money unless that fact is communicated to the seller prior to the acceptance of the offer to purchase, and is stated in the offer to purchase.

13.2(7) Brokers acting as agents for the buyer in a specific real estate transaction shall have the same requirements for retention of copies as stated in this rule, except that a buyer's agent who is not a party to the listing contract is not required to retain a copy of the listing contract or the seller's settlement statement.

13.2(8) Iowa Ct. R. 37.5, limited real estate practice. All Iowa real estate licensees should be aware that Iowa Ct. R. 37.5 authorizes nonlawyers to select, prepare, and complete certain legal documents incident to residential real estate transactions of four units or less. The preparation of documents beyond that authorized by this court rule may constitute the unauthorized practice of law.

a. Except to the extent authorized by the court rule, the selection, preparation, and completion of legal documents in connection with real estate transactions by nonlawyers constitutes the unauthorized practice of law unless the nonlawyer is acting on the person's own behalf as a buyer or seller.

b. Upon written request of a buyer or seller, a nonlawyer may select, prepare, and complete form documents for use incident to a residential real estate transaction of four units or less. Such documents shall be limited to:

(1) Offers to purchase or purchase agreements, provided the parties are given written notice that these are binding legal documents and competent legal advice should be sought before signing;

(2) Groundwater hazard statements; and

(3) Declaration of value forms.

c. Nonlawyers may not charge for preparation of the legal documents authorized by the court rule. Nonlawyers shall not select, prepare or complete:

(1) Deeds;

(2) Real estate installment sales contracts;

(3) Affidavits of identity or nonidentity;

(4) Affidavits of payment of spousal or child support; or

(5) Any other documents necessary to correct title problems or deficiencies.

193E—13.3 (543B) Salesperson shall not handle closing. A salesperson shall not handle the closing of any real estate transaction except under the direct supervision or with the consent of the employing broker.

193E—13.4 (543B) Consent to return earnest money not required. When an offer to purchase is withdrawn or the acceptance is revoked without liability pursuant to Iowa Code chapter 558A, any earnest money deposit shall be promptly returned to the buyer without delay. The seller’s consent and agreement to release the funds is not required. A copy of the written revocation or withdrawal shall be retained with the trust account supporting documents.

193E—13.5 (543B) File record keeping. Every broker shall retain for a period of at least five years true copies of all business books; accounts, including voided checks; records; contracts; closing statements; disclosures; signed documents; the listing; any offers to purchase; and all correspondence relating to each real estate transaction that the broker has handled and each property managed. The records shall be made available for reproduction and inspection by the commission, staff, and commission-authorized representatives at all times during usual business hours at the broker’s regular place of business. If the brokerage closes, the records shall be made available for reproduction and inspection by the commission, staff, and commission-authorized representatives upon request.

13.5(1) Contracts and other documents that have been changed or altered to the point where the language is unreadable and faxed contracts and documents in which the language is unreadable are not acceptable records and must be redrafted and signed by the parties.

13.5(2) Copies of unreadable documents are not acceptable as true copies of the originals regardless of the medium.

13.5(3) Electronic records. The files, records, and other documents required by this chapter may be stored in electronic format for convenience and efficiency in a system for electronic record storage, analysis, and retrieval.

a. A record required by this chapter may be retained as an electronic record only if the record storage medium can be easily accessed and the records can be readily retrieved and transferred to a legible printed form upon request.

b. The scanning or electronic generation of a record must be monitored to ensure that the copy is clear, legible and true before the original is shredded.

c. Once the original record is transferred to the appropriate electronic storage medium consistent with this rule, the commission will no longer require the retention of the record in its original medium. For the purposes of this chapter, electronic records shall be considered the same as originals.

193E—13.6 (543B) Licensee acting as a principal. When a licensee is acting in the capacity of a real estate broker, broker associate or salesperson and is also a principal in the sale, lease, rental or exchange of property owned by the licensee, all payments, rent, or security deposits received from the lessee, renter or buyer must be deposited into the broker’s trust account. The use of the broker’s trust account is not required if all of the following exist:

1. The sale, rental, or exchange is strictly, clearly and completely a “by owner” transaction and there is not a listing or brokerage agreement;
2. No commission or other compensation is paid to or received by the licensee; and
3. The licensee does not function throughout the transaction in any capacity requiring a real estate license.

CHAPTER 15
PROPERTY MANAGEMENT

[Prior to 9/4/02, see 193E—Ch 1]

193E—15.1(543B) Property management. A licensee shall not rent or lease real estate, offer to rent or lease real estate, negotiate or offer or agree to negotiate the rental or leasing of real estate, list or offer to list real estate for the leasing or rental of real estate, assist or direct in the negotiation of any transaction calculated or intended to result in the leasing or rental of real estate or show property to prospective renters or lessees of real estate unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

15.1(1) Every property management agreement or other written authorization between a broker and an owner of real estate shall include, but not be limited to, the following:

- a.* Proper identification of the property to be managed.
- b.* All terms and conditions under which the property is to be managed and the powers and authority given to the broker by the owner.
- c.* Terms and conditions under which the broker will remit property income to the owner and when the broker will provide periodic written statements of property income and expenses to the owner, which shall be done no less than annually.
- d.* Which payments of property-related expenses are to be made by the broker to third parties.
- e.* Amount of fee or commission to be paid to the broker and when it will be paid.
- f.* Amount of security deposits and prepaid rents to be held by the broker or the owner.
- g.* Effective date of the agreement.
- h.* Terms and conditions for termination of the property management agreement by the broker or the owner of the property.
- i.* Signatures of the broker and owner or the owner's authorized agent.

15.1(2) The licensee shall give the owner or the owner's authorized agent a legible copy of every written property management agreement or written authorization at the time the signature of the owner is obtained, and the licensee's broker shall retain a copy.

15.1(3) A licensee who is managing the leasing or rental of real estate may act as an agent in the sale or exchange of that real estate only if the property management agreement clearly grants the specific authorization and contains all of the required elements for a listing as set forth in rule 193E—11.1(543B) or if a separate listing agreement is secured.

15.1(4) The broker shall deposit all funds received on behalf of the owner, by no later than five banking days after receipt of the funds, into a trust account maintained by the broker, under the broker's control and in compliance with Iowa Code section 543B.46 and rule 193E—13.1(543B).

15.1(5) If the property management agreement is terminated or transferred for any reason, the property manager:

- a.* Shall terminate the management activities of the property as provided in the agreement and except as otherwise provided by the agreement;
- b.* Shall notify the owner and any tenants of the property of the termination;
- c.* Shall provide the owner, not later than 30 days after the effective date of the termination, with any unobligated funds due the owner under the agreement and not later than 60 days after the effective date of the termination, provide the owner with a final accounting of the owner's ledger account, the amount of any obligated funds held in the property manager's client trust account under the agreement, a statement that explains why obligated funds are being held by the property manager and a statement of when and to whom the obligated funds will be disbursed by the property manager;
- d.* May disburse any unobligated funds only to the owner or, with the proper written authorization of the owner, to another property manager designated in writing by the owner;
- e.* Shall immediately notify each tenant that the conditionally refundable deposit will be transferred to the owner or to a new property manager and, at the same time, provide the name and address of the owner or the new property manager to whom these deposits will be transferred.

15.1(6) If any of the unobligated funds held by the property manager under the terminated agreement represent tenants' conditionally refundable deposits received from current tenants, the property manager:

- a.* May not expend any tenant's conditionally refundable deposits for payment of any expenses or fees not otherwise allowed by the tenant's rental or lease agreements, and
- b.* If any tenant terminates tenancy at the same time as or prior to the termination of the management of the rented or leased property, the licensee shall complete any final accounting, inspection or other procedure required by the tenant's rental or lease agreement, by the Uniform Residential Landlord and Tenant Law, Mobile Home Parks Residential Landlord and Tenant Law, or by the property management agreement, unless the owner directs otherwise in writing.

15.1(7) Financial dealings under a property management agreement shall be conducted subject to the following:

- a.* A check shall not be issued or presented for payment prior to sufficient funds being in the owner's account to cover the

check.

b. Transfers of funds between two or more accounts maintained for the same owner may be made if proper entries are made on the ledgers of the accounts affected and the broker maintains the specific written authorization of the owner.

Transfers of funds between an individual owner's accounts must be done by writing billings and receipts debiting and crediting the appropriate accounts. Transfers may not be done by ledger entries alone.

c. The broker shall not withdraw, pay or transfer money from the owner's account in excess of the remaining credit balance at the time of withdrawal, payment or transfer.

d. Management fees must be withdrawn from the owner's account at least once a month unless the agreement provides otherwise. The fees shall be identified by property name or account number for which the fees were earned and withdrawn by the broker and deposited into the broker's business operating account. Fees may not be paid directly from the owner's trust account to the broker.

e. Conditionally refundable deposits shall be placed in a trust account until refund is made or until all or a portion of the deposit accrues to the owner under the tenant's agreement.

If refundable deposits are not maintained in a separate trust account, the running balance of the account shall not, at any time, go below the total of the refundable deposits being held in the account.

f. The total of balances of the individual property management accounts of the broker must equal the balance shown on the journal, the account ledgers, and the reconciled bank balance of the broker.

All accounts and records must be in compliance with Iowa Code section 543B.46 and rule 193E—13.1(543B).

g. Except as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2), if refundable deposits and funds are received from others pursuant to a property management agreement, deposited in an interest-bearing trust account, and there is not a separate written agreement to pay the interest earned to the owner or tenant, the interest shall be paid to the state pursuant to Iowa Code section 543B.46. The property manager shall not receive or benefit from the interest.

The written approval agreement shall be signed by each party having an interest in the funds, fully disclosing how the funds are to be handled by the property manager, who will benefit from the interest earnings, how and when interest earnings will be paid and any limitations that may be provided for on the withdrawal of the funds deposited in the interest-bearing trust account.

This rule is intended to implement Iowa Code chapters 17A, 272C, and 543B.

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