

**Broker
Sales Meeting
Packets**



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Trust Accounts

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Sizzle Packet – Trust Accounts

Question #1. A “depository” must be located in Iowa for:

- a. All rents collected on behalf of a landlord by a real estate licensee for an account maintained in the name of the owner.
- b. Only earnest money offered from citizens located in Iowa.
- c. Trust funds received for Iowa property.
- d. All earnest payments for commercial, residential, agricultural, and governmental property, except that owned or leased by the federal government.

Question # 1A. Bonus Question – Is Earnest money required for all real estate transactions?

- a. Yes. That is the “consideration” required for all contracts.
- b. Yes. That is the sign of “good faith” required for all real estate contracts.
- c. Yes. It is both the “consideration” and “good faith” required for real estate.
- d. No.

Question #2. A brokerage must authorize the Iowa Real Estate Commission to examine each trust account they manage except for:

- a. Those accounts which never have more than \$1,000 of earnest money.
- b. Farm management accounts maintained in the name of the owner.
- c. Individual property management accounts maintained in the name of the brokerage.
- d. Commercial accounts for non-residential property.

Question # 3. Which of the following is not on the Iowa Real Estate Commission web site www.state.ia.us/irec:

- a. The consent to Examine & Audit Trust account form.
- b. The entire trust account manual.
- c. Real Estate Interest Remittance form.
- d. The Revenue and Finance schedule of real estate taxes.

Question #4. A broker:

- a. may not put any of the brokers personal money in the trust account.
- b. may never commingle brokerage funds and trust funds.
- c. may place \$500 of the brokerage money to cover earnest money for clients.
- d. may place up to \$500 of personal money to cover account expenses.

Question # 5. The Iowa Real Estate Commission

- a. Auditor may review all aspects to any records which a brokerage is required to keep.
- b. Auditor position has been vacant for nearly two years.
- c. Must report trust account violations to the Iowa Banking Superintendent.
- d. Auditor may only review those documents relative to trust records.

Question #6. I have earnest money from a transaction which was not consummated. The seller's attorney has sent me a letter demanding the earnest money immediately be sent to the seller. The Buyers have also claimed they are entitled to a refund of the money. I can:

- a. because attorney's have fiduciary duties, give the money immediately to the attorney.
- b. because they put the money up, give the money immediately to the buyers.
- c. give to neither party since you do not have a release from all parties.
- d. because the transaction failed to consummate, give to the sellers.

Question # 7. I have earnest money from a transaction which was not consummated. The seller's attorney has sent me a letter demanding the earnest money immediately be sent to the seller. The Buyers have also claimed they are entitled to a refund of the money. I can

- a. if I believe in good faith that the buyers had acted in good faith and were unable to meet a contingency contained within the contract – send the money to the buyer following certain rules.
- b. if I believe in good faith that the buyer has failed to perform as agreed – send the money to the seller following certain rules.
- c. credit the brokerage for the amount of commission earned, and send the money to the attorney to hold in trust until the dispute is resolved.
- d. a and b
- e. None of the above

Question # 8. I have earnest money from a transaction which was not consummated. The seller's attorney has sent me a letter demanding the earnest money immediately be sent to the seller. The Buyers have also claimed they are entitled to a refund of the money. I can

- a. if the parties just argue back and forth, file an interpleader action with the appropriate court pursuant to Iowa Rules of Civil Procedure and pay the deposit into court.
- b. if the parties just argue back and forth, sit tight with the money and wait them out to settle – up to at least three (3) years.
- c. if the parties just argue back and forth, and if the earnest money is \$5,000 or less encourage them to file a small claims action and allow a judge to decide.
- d. if the parties just argue back and forth, think “a vacation sounds pretty good right now”.
- e. All the above.

Question #9. If you cannot find the rightful owner of earnest money you may:

- a. deposit the money to the Treasurer – State of Iowa.
- b. use it to pay costs associated with maintaining the account.
- c. if the buyer has bought another home, deposit it to a bona-fide not for profit agency.
- d. If a court has not ruled on within three years, the seller may in good faith claim.

Question # 10. Interest on trust accounts may be directed to:

- a. the Iowa Association of REALTORS® Foundation.
- b. the Iowa Department of Economic Development.
- c. where the parties to the transaction wish.
- d. all the above.

ANSWERS -- Trust Accounts

Question #1. A “depository” must be located in Iowa for:

- a. All rents collected on behalf of a landlord by a real estate licensee for an account maintained in the name of the owner.
- b. Only earnest money offered from citizens located in Iowa.
- c. Trust funds received for Iowa property.**
- d. All earnest payments for commercial, residential, agricultural, and governmental property, except that owned or leased by the federal government.

Answer to Q #1. Best Answer = C. Iowa Administrative Rule 13.1 reads in part “Any money belonging to another received by the broker in such capacity of a broker ... 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. The “depository” may be a federally insured bank, savings and loan association, savings bank, or credit union located in Iowa. Money received from the federal government still must follow trust account rules.

Question # 1A. Bonus Question – Is Earnest money required for all real estate transactions?

- a. Yes. That is the “consideration” required for all contracts.
- b. Yes. That is the sign of “good faith” required for all real estate contracts.
- c. Yes. It is both the “consideration” and “good faith” required for real estate.
- d. No.**

Answer to question # 1A. Answer = d. Earnest money is not required for an offer for real estate. It is a sign of good faith which most sellers seem to prefer when they receive an offer.

Question #2. A brokerage must authorize the Iowa Real Estate Commission to examine each trust account they manage except for:

- a. Those accounts which never have more than \$1,000 of earnest money.
- b. Farm management accounts maintained in the name of the owner.**
- c. Individual property management accounts maintained in the name of the brokerage.
- d. Commercial accounts for non-residential property.

Answer to Q # 2. Answer = B. Iowa Code Section 543B.46(3) exempts Farm Management and Individual Property Managements maintained in the name of the owner from the requirements to consent to examine.

Question # 3. Which of the following is not on the Iowa Real Estate Commission web site www.state.is.us/irec:

- a. The consent to Examine & Audit Trust account form.
- b. The entire trust account manual.
- c. Real Estate Interest Remittance form.
- d. The Revenue and Finance schedule of real estate taxes.**

Answer to Q # 3. Answer = D. All the other forms, plus Trust Account Status Affidavit, Real Estate Bank Reconciliation, Bookkeeping forms are found on the commissions site.

Question #4. A broker:

- a. may not put any of the brokers personal money in the trust account.
- b. may never commingle brokerage funds and trust funds.
- c. may place \$500 of the brokerage money to cover earnest money for clients.
- d. may place up to \$500 of personal money to cover account expenses.**

Answer to Q #4 = d. Iowa Administrative Rule 13.1(1)(c) reads “ a broker shall not commingle personal funds in a trust account; provided, however, that not more than \$500 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.

Question # 5. The Iowa Real Estate Commission

- a. Auditor may review all aspects to any records which a brokerage is required to keep.
- b. Auditor position has been vacant for nearly one year.
- c. Must report trust account violations to the Iowa Banking Superintendent.
- d. Auditor may only review those documents relative to trust records.**

Answer to Q #5. Answer = D. A previous Real Estate auditor was found to have over stepped his authority by requesting and issuing citations for records which a trust account auditor has no authority over. The auditor may only review those documents pertaining to trust records. The trust account position has been vacant for over two years and higher licensing fees were supposed to assist in filling the position. Ideas have also been floated to have bank examiners take over responsibility to audit real estate trust accounts.

Question #6. I have earnest money from a transaction which was not consummated. The seller’s attorney has sent me a letter demanding the earnest money immediately be sent to the seller. The Buyers have also claimed they are entitled to a refund of the money. I can:

- a. because attorney’s have fiduciary duties, give the money immediately to the attorney.
- b. because they put the money up, give the money immediately to the buyers.
- c. give to neither party since you do not have a release from all parties.**
- d. because the transaction failed to consummate, give to the sellers.

Answer to Q #6. Answer = c. Iowa Administrative Rules 13.1(7) reads “Funds shall only be disbursed from the trust account as provided 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 if 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.

Question # 7. I have earnest money from a transaction which was not consummated. The seller's attorney has sent me a letter demanding the earnest money immediately be sent to the seller. The Buyers have also claimed they are entitled to a refund of the money. I can

- a. I believe in good faith that the buyers had acted in good faith and were unable to meet a contingency contained within the contract – send the money to the buyer following certain rules.
- b. If I believe in good faith that the buyer has failed to perform as agreed – send the money to the seller following certain rules.
- c. Credit the brokerage for the amount of commission earned, and send the money to the attorney to hold in trust until the dispute is resolved.
- d. a and b**
- e. None of the above

Answer to Q # 7. Answer = d (both A and B). Iowa Administrative Rule 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 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 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.

Iowa Administrative Rule 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 as provided in (rules) 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.

Question # 8. I have earnest money from a transaction which was not consummated. The seller's attorney has sent me a letter demanding the earnest money immediately be sent to the seller. The Buyers have also claimed they are entitled to a refund of the money. I can

- a. if the parties just argue back and forth, file an interpleader action with the appropriate court pursuant to Iowa Rules of Civil Procedure and pay the deposit into court.
- b. if the parties just argue back and forth, sit tight with the money and wait them out to settle – up to at least three (3) years.
- c. If the parties just argue back and forth, and if the earnest money is \$5,000 or less encourage them to file a small claims action and allow a judge to decide.
- d. If the parties just argue back and forth, think “a vacation sounds pretty good right now”.
- e. **All the above.**

Answer to Question #8. Answer = All the above. Note to file an interpleader action it will likely cost you attorney fees and court costs. And nothing in the rules requires a broker to remove money from the broker's trust when the disposition of such money is disputed by the parties to the transaction.

Iowa Administrative Rule 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 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 seller from naming the broker in the civil suit and order them to litigate their claims to the deposit.

Question #9. If you cannot find the rightful owner of earnest money you may:

- a. **deposit the money to the Treasurer – State of Iowa.**
- b. use it to pay costs associated with maintaining the account.
- c. if the buyer has bought another home, deposit it to a bona-fide not for profit agency.
- d. If a court has not ruled on it within three years, the seller may in good faith claim.

Answer to Question #9. Answer = A. 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 the Treasurer 515-281-5367. The brokerage may never keep money of others for their personal benefit.

Question # 10. Interest on trust accounts may be directed to:

- a. the Iowa Association of REALTORS® Foundation.
- b. the Iowa Department of Economic Development.
- c. Where the parties to the transaction wish.
- d. all the above.**

Answer to Question # 10. Answer = d. all the above. The Iowa Association of REALTORS® Foundation has followed the lead of other REALTOR® associations and will collect and utilize the interest on trust account for housing and housing related programs in the state of Iowa. Check out colorealtor.org CARHOF program for an idea on how the Iowa Foundation may be modeled after. Contact the IAR for routing and account numbers of the financial institution to forward the interest. You are encouraged to immediately switch the interest to the IAR Foundation but brokerages may continue to forward the interest to the state program, as well as to wherever the parties to the transaction desire.