Nebraska Real Estate Commission

Real Estate Trust Account Manual

Appendix A to Title 299, Chapter 3 of the Nebraska Administrative Code

March 2020

PREFACE

This Manual is presented for the purpose of assisting Nebraska real estate brokers in understanding and complying with the basic requirements for properly establishing and maintaining a real estate trust account and real estate transaction files. All active brokers are required to maintain trust accounts in compliance with the Nebraska Real Estate License Act and the Rules of the Nebraska Real Estate Commission unless a waiver has been granted by the Commission (waiver form is available in the Commission offices or from the Commission website). As used here and throughout this Manual, the word "broker" refers to self-employed and employing broker licensees only, not to associate brokers.

It should be understood by all licensees that the primary purpose of the Nebraska Real Estate License Act is to protect the public interest. It is the intent of the Nebraska Real Estate Commission to educate real estate licensees concerning their obligations in handling trust funds and transaction records, and how to properly account for them.

The Commission understands that this Manual could not possibly address all situations that a broker may encounter, but it hopes to answer those questions that arise during the normal course of maintaining a real estate trust account and transaction records. Questions and concerns which the Manual does not appear to address may, as always, be directed to the Nebraska Real Estate Commission.

We encourage you to pay close attention to the enclosed information relating to the proper procedures which all brokers are required to utilize. The lack of proper accountability for trust funds is a serious violation of the License Act and Rules, even if it is unintentional.

NEBRASKA REAL ESTATE COMMISSION
TRUST ACCOUNT MANUAL

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I. GENERAL INFORMATION

A. Broker Responsibility

The authority and responsibility for the proper handling of the real estate trust account rests entirely with the broker. It should be noted that the broker may delegate to anyone of his or her choosing the authority to handle trust funds, maintain the trust account records, and even sign checks on the trust account. (This would not, however, include any person who had an interest in the funds maintained in the trust account.) The broker is ultimately responsible for whatever may happen regarding the handling of the trust funds, the trust account, and the attendant records. Therefore, the broker must take an active role in supervising the acts of all persons who handle trust funds and trust account records. This could be achieved by performing a financial institution statement reconciliation and a trial balance at random intervals during the month to monitor the proper handling of trust funds.

If a trust account is closed, the broker must maintain the records for that account in accordance with the records retention rules provided in this manual.

Brokers and their associates should be reminded that violations of the License Act and Rules pertaining to the improper handling of trust funds could result in the suspension or revocation of their real estate license by the Nebraska Real Estate Commission.

I. GENERAL INFORMATION

B. Establishing a Trust Account

The Nebraska Real Estate License Act and Rules of the Commission require each broker to maintain a trust account under the name in which the broker is doing business unless a trust account waiver has been applied for and approved by the Commission. Although it is not mandatory, it is suggested that each broker involved in the management of real estate establish a separate trust account for all property management activities, in addition to the trust account established for real estate brokerage activities.

To establish a trust account, the following requirements must be followed:

1. An insured Nebraska bank, savings bank, building and loan association, or savings and loan association must be utilized;

2. The name of the account must be established in the name under which the broker is doing business, as recorded in the Commission Office;

3. The title of the account must include the heading "Trust Account." (See the "Identification of Trust Account" Sections in the Sales and Property Management Chapters.)

4. Each trust account must be registered with the Real Estate Commission by completing a "Consent to Examine Trust Account" form;

5. Interest Bearing Accounts must be designated as such on the "Consent to Examine Trust Account" form;

6. Duplicate deposit slips and pre-numbered checks must bear the same name as the name of the trust account.

7. Any broker establishing an interest bearing trust account must accrue only to non profit organizations that promote housing. All parties whose money will be deposited in such account must sign the approval.

Note: Brokers who operate under any name other than their own must register that name as a "Trade Name" with the Secretary of State. For example, "Tom Jones - Broker" does not need to be registered, but "Jones Real Estate Co." does.

Brokers are reminded that, if the trust account is opened with a $-0- balance and there are no deposits or disbursements on the account, the financial institution might close the account because of the $-0- balance and lack of activity, or charge the account for various charges which will result in negative balances, without the consent of or notice to the broker.

I. GENERAL INFORMATION

C. FDIC Requirements

Each trust account must be maintained in an insured financial institution. The Federal Deposit Insurance Corporation's requirements provide that the custodial account must be clearly identified as a "Trust Account" and the bookkeeping records of the broker must be accurately maintained and posted on a current, or daily, basis for the purpose of determining the financial interest of each principal on an ongoing basis.

I. GENERAL INFORMATION

D. Unclaimed Trust Funds

The Nebraska Real Estate Commission receives numerous inquiries regarding trust funds which have been in the designated broker's trust account for extended periods of time, but have never been claimed by the rightful owner. Unclaimed funds are usually in the form of earnest monies, escrowed funds, rental proceeds, security deposits, or uncashed trust account checks.

For all unclaimed funds except residential rental security deposits, Neb. Rev. Stat. § 69-1301 et seq., relating to the disposition of unclaimed property, provides that unclaimed funds shall be maintained by the designated broker for a period of five (5) years. The designated broker may make an effort to find the rightful owner of the funds by first-class mail to the last known address of the rightful owner, but such effort is not required. After five years with no communication regarding any claims or inquiries on the monies in the account, the trust finds shall be presumed abandoned and should be sent to the State Treasurer's Office - Unclaimed Property Division. When submitting the unclaimed funds, the designated broker should include the name of the rightful owner and his/her last known mailing address. Unclaimed funds should never be submitted under the names of both the buyer and seller or, in other words, in more than one rightful owner's name. A claim can then be made with the State Treasurer's Office by the rightful owner, should they re-appear. Additionally, unclaimed funds are never to be transferred to the designated broker's Broker Equity account.

For residential rental security deposits the procedure outlined in Neb. Rev. Stat. §76-1416 must be used. This provision of the Uniform Residential Landlord Tenant Act provides that the security deposit shall be sent to the State Treasurer's Office, Unclaimed Property Division not later than 60 days of the mailing of the deposit to the tenant's last known mailing address if the mailing is returned or the security deposit remains outstanding.

The above applies only to unclaimed or abandoned funds. It does not apply to funds placed in dispute by the parties to a real estate transaction. Funds which are "in dispute" must remain in the designated broker's trust account and be handled as specified by the Commission's Rules and Regulations, specifically, Title 299 Chapter 3-007.

For more specific information and the exact procedure for depositing unclaimed funds, contact the Nebraska State Treasurer, Unclaimed Property Division, P.O. Box 94788, Lincoln, NE 68509-4666.

I. GENERAL INFORMATION

E. Records Storage on Alternative Media

Under Nebraska Administrative Code, Title 299, Chapter 3, Section 001, brokers "...must preserve for five years following its consummation records relating to any real estate transaction."

Historically, the retention of the records has taken place in the form of paper files for transaction files or, in the case of computerized bookkeeping systems, on computer.

With the advance of technology, records can now be stored securely on alternative forms of media, e.g. compact disk, optical disk, microfilm, etc.

The Commission's concerns with alternative media storage of required records are that: 1) the records stored on the alternative medium be able to be readily printed when requested by the Commission; and 2) the records, once stored on the alternative medium, are not able to be rewritten while on the alternative medium.

Therefore, the Commission has issued the following guidelines to be used by brokers desiring to retain the required records on a medium other than in original paper format and/or on computer.

1. The records in their original medium or media (paper and/or computer) must be maintained in the original medium until such time that the Real Estate Commission has conducted a trust account examination of the records and all trust account examination issues have been resolved.

2. Examiners shall require that digitally stored records be printed out on paper for examination unless the examination may be conducted more efficiently or effectively by reviewing the digital records

3. The examined records may then be transferred to a **non-rewritable** alternative storage medium for the remaining required record retention time.

4. The non-rewritable alternative storage medium must allow access to the records in a manner which makes the records readily available on demand for the remaining record retention period required in 299 NAC 3-001.

5. Once the original records are transferred to the appropriate alternative medium, the Real Estate Commission will no longer require the retention of the records in the original medium or media.

I. General Information

F. Retention of Canceled Checks and Deposit Slips

Under Title 299, Chapter 3, Section 001, brokers..."must preserve for five years following its consummation records relating to any real estate transaction."

Historically, the preservation of records includes not only the bank statements, but the canceled checks and deposit slips. With the advent of "paperless" transactions, many financial institutions are now providing their clients with micro-images of the canceled check or deposit slip in lieu of returning original documents.

Since these micro-images are small and sometimes hard to read, it is suggested that designated brokers include sufficient information pertaining to the transaction on the original deposit slip and check so that the micro-image of the canceled check or deposit slip can be properly traced to the real estate transaction. That information may include but not be limited to: the date of the document; the correct dollar amount; the name of the buyer/tenant or seller/landlord; and the property address.

Designated brokers are required to receive, along with the trust account bank statement, either the canceled checks and deposit slips, or micro-images of the canceled checks and deposit slips. If your trust account is maintained by a financial institution that provides neither, it is recommended that you discuss the matter with your banking officer and contact the Nebraska Real Estate Commission.

I. General Information

G. Records Relating to Funds That Bypass the Broker Trust Account

Brokers (including the broker, their affiliated licensees, and administrative employees) often come into possession of client or customer funds which bypass the broker trust account. Examples of such funds would include earnest money deposits that bypass the broker trust account, ~~or~~ checks, or other monies payable to a third party, such as a contractor or other service provider. Possession of such funds should be recorded in writing as described in more detail below:

Possession of client or customer funds which bypass the broker trust account should be recorded in writing with such record containing the date the funds come into the licensee's possession, the amount, and to whom the funds are payable according to the terms of the check or money order or the terms of the contract. Likewise, a record of when and to whom the possession of such funds is transferred to should also be recorded.

Such records may be incorporated into an existing contract or other transaction document such as a purchase agreement, or acknowledged by separate receipt. If the third party providing or receiving the funds is unable to or unwilling to provide or sign such record, the broker shall make a note with the information required relating to the possession and transfer of funds in the transaction file.

Under no circumstances should any cash received or checks made payable to the brokerage bypass the broker trust account. Such funds must be deposited into the broker trust account and a check issued from the account to the appropriate party. Brokers who handle or anticipate handling cash payments or checks made payable to the brokerage will not be approved for a trust account waiver.

II. SALES ACCOUNTS

A. Identification of Trust Account

For sales or brokerage accounts, the following trust account titles are recommended:

1. For a broker operating as a sole proprietor without a registered trade name:

   Sara Stone, Broker
   *Trust Account
   Business Address

2. For a broker operating as a sole proprietorship or partnership under a registered trade name:

   Renaissance Realty
   *Trust Account
   Business Address

3. For a broker operating under a registered corporate name:

   Renaissance Realty, Inc.
   *Trust Account
   Business Address

4. For a broker operating under a registered limited liability company (LLC) name:

   Renaissance Realty, LLC
   *Trust Account
   Business Address

* If desired, "Trust Account" may be preceded by "Sales" or "Brokerage."

II. SALES ACCOUNTS

B. Trust Account Records

The Nebraska Real Estate License Act and Rules require each broker to maintain a bookkeeping system which clearly and accurately accounts for all trust funds received and how those trust funds are disbursed. Section G of the Sales Accounts Chapter of this Manual provides the licensee with illustrated examples of trust account bookkeeping for a sales account.

Chapter 3-001 of the Commission Rules states, "It shall be the duty of each broker to preserve for five years following its consummation records relating to any real estate transaction." Records which must be maintained by the broker include, but are not limited to:

1. Listing agreements and any extensions thereto
2. Agency agreements and disclosures
3. Seller Property Condition Disclosure statements, when applicable
4. Estimated closing cost disclosures, when applicable
5. Purchase agreements and any addenda thereto
6. Closing statements - buyer and seller*
7. Checkbooks and checkbook registers
8. Checks - canceled, voided, and unused
9. Financial institution statements and reconciliations
10. Deposit slips - originals and/or duplicates
11. Bookkeeping system - general ledger and sub-ledger
12. Supporting vendor invoices, if applicable
13. Records of funds coming into the broker's possession which bypass the trust account
14. Any other documents pertinent to the transaction.

*Provided – it shall not be considered a compliance issue if the closing statement is absent from the file because the financial institution, closing agent or other party with access to the records will not provide such statements due to privacy concerns.

II. SALES ACCOUNTS

C. Broker's Equity

"Broker's equity" is a term most frequently used to describe the broker's personal funds which are maintained in the trust account. Title 299, Chapter 3-004 of the Nebraska Real Estate Commission Rules states, in part, "Funds deposited in the trust account will necessarily include monies which will ultimately belong to the broker, but such monies shall be separately identified in his or her trust account records and shall be paid to the broker by check drawn on the trust account after the same are due the broker."

As a guideline in establishing the trust account, 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 sub-ledger account, as well as the general ledger, immediately after being notified by the financial institution that the fee was assessed. In fact, all deposits and disbursements from broker's equity should be posted immediately to the general ledger and the broker's equity sub-ledger. Broker's equity can never show a negative balance.

Brokers are cautioned that the maintenance of excessive amounts of the broker's personal funds in the account could cause the trust nature of the account to be placed in jeopardy.

The broker's equity portion of the account cannot be used as an "Operating Account" for the purpose of paying general operating expenses on behalf of the broker or his or her real estate firm.

In a real estate sales transaction, it is permissible to use broker's equity for the purpose of paying a closing expense on behalf of a seller, prior to the real estate closing. Such disbursement must be posted to the broker's equity sub-ledger and the general ledger. Broker's equity would then be reimbursed on the day of closing, and the appropriate postings made to the sub-ledgers.

NOTE: 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 in advance of said disbursement. Under **no** circumstances may compensation or consideration be removed prior to closing.

II. SALES ACCOUNTS

D. Handling Trust Funds - Receipts

The Nebraska Real Estate License Act and Rules require 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." This would include those transactions covered under Title 299, Chapter 2-013, in which the broker is participating as an independent closing agent or as an agent in the transaction. Brokers who have been granted a trust account waiver by the Commission should only enter into transactions where the purchase contract specifically provides for the trust account to be bypassed.

"Trust funds," as defined by the License Act and Rules, may include, but not be limited to, downpayments, earnest money deposits, money received upon final settlement, rents, security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of a real estate transaction, and money advanced by a broker's principal for the payment of expenses on behalf of that principal.

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 be identified to a specific buyer and seller, or the address of the property being sold. Some financial institutions do not return the original deposit slip with the financial institution statement. It is recommended, in these situations, that the duplicate deposit slip be maintained, unremoved from the deposit book, and that the duplicate be date-stamped by the financial institution's teller at the time of deposit, or that a receipt of deposit be obtained at the time of deposit and attached to the unremoved, duplicate deposit slip.

The License Act Rules and Regulations Require the earnest money deposit be deposited within 72 hours or before the end of the next banking day after the offer is accepted in writing, unless all parties to the transaction having an interest in the funds (i.e., all buyers and sellers) have specifically agreed otherwise in writing.

In cooperative transactions between brokers the License Act Rules and Regulations require the selling broker, unless all parties having an interest in the funds (i.e., all buyers and sellers), have specifically agreed otherwise in writing, to deposit the earnest money into his or her trust account within 72 hours or before the end of the next banking day after the offer is accepted in writing, and without delay transfer the earnest money to the listing broker by issuing a check drawn on the selling broker's account and made payable to the listing broker.

If the earnest money is paid directly to a title company, bypassing both the listing broker's and the selling broker's trust account, as agreed to in writing by all parties (i.e., all buyers and sellers), the listing broker and selling broker must both receive and maintain a written receipt from the title company, and maintain a sub-ledger accounting ledger or a separate log on the transaction, reflecting the earnest money was paid directly to the title company.

When accepting other than cash or an immediately cashable check as earnest money, the licensee must communicate this fact to the seller prior to his or her acceptance of the offer, and such fact must be shown in the earnest money receipt section of the offer to purchase.

In a cooperative real estate transaction between brokers, if the buyer offers a promissory note as an earnest money deposit, the note should be made payable to the listing broker or should be endorsed without recourse by the selling broker to the listing broker. In all situations, the promissory note must be delivered to the listing broker with the offer to purchase.

Since both offer and acceptance create a contract, acceptance is normally when the seller signs the offer to purchase and that information has been transmitted to the offering party. For the purpose of depositing earnest money into the trust account, the trust account examiner will use the date of acceptance as indicated by the last party to sign the offer to purchase. The acceptance of the offer to purchase is not when the licensee receives an accepted offer to purchase in the mail from an out-of-town seller or when the buyer and/or seller receipt for a copy of 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 total agreement as to the terms and conditions of the contract. In instances where either the seller or buyer is out-of-town and contracts are mailed, the Commission 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 buyer and seller. This would provide for proper determination as to when final acceptance took place, and give evidence of the date of acceptance to be used in determining if the deposit was made in a timely manner. It should be noted that in any situation, the broker may deposit the earnest money into the trust account prior to acceptance, and refund the earnest money if final acceptance of the offer never takes place. In instances where the acceptance of an offer is by facsimile or telegram, the earnest money must be deposited into the trust account within 72 hours or before the end of the next banking day after the facsimile or telegram is received.

Once the trust funds have been received by the listing broker and have been deposited into the trust account, the License Act and Rules require the trust funds remain in the trust account until the transaction is closed or otherwise terminated, unless all parties having an interest in the funds have agreed otherwise in writing. To clarify this requirement of the License Act and Rules, the trust funds must be deposited into the broker's trust account and then, if all parties have agreed in writing, the funds may be transferred to the place designated in the written agreement of the parties.

If the parties want their funds handled through an interest-bearing account(s) (other than an interest bearing account where the interest is designated to go to a non profit entity) written authorization from all parties having a claim to the funds is required. The written authorization must either be included in the written agreement between the parties or be a separate written authorization, and should include the following: 1) a statement specifying who will earn the interest on the funds; 2) authorization from all parties involved to transfer the funds from the trust account to the interest-bearing account; 3) dated signatures from all parties involved; and 4) the following notice: "Interest-bearing accounts are not examined by the Nebraska Real Estate Commission. It is understood by all parties concerned that placement of funds in such account removes them from the provisions pertaining to trust accounts in the Nebraska Real Estate License Act and the Rules and Regulations of the Nebraska Real Estate Commission."

When opening an interest-bearing account (other than an interest bearing account where the interest is designated to go to a non profit entity), brokers should check with the financial institution as to how the account should be titled. The interest-bearing account may be titled as a "Trust Account," but should not be registered with the Nebraska Real Estate Commission as a real estate trust account. The interest-bearing account will not be examined by the Nebraska

Real Estate Commission, and all records relating to the interest-bearing account should be maintained separately. The Social Security Number or the Federal Identification Number of the interest recipient should be provided to the financial institution for taxation purposes. Brokers should also acquire a "No Right of Offset" letter from the financial institution. This letter is an agreement between the broker and the financial institution in which the financial institution agrees not to offset any personal obligations of the broker with the funds deposited to this account. It is recommended that the broker be the only signatory on the interest-bearing account, so that the broker is the only person who can access the funds.

In order to establish a paper trail for examination purposes, the broker must deposit the funds into the trust account, then transfer the funds to the interest-bearing account via a check drawn on the trust account.

When the transaction has reached the day of closing, the broker should transfer the funds from the interest-bearing account to the trust account and disburse the funds, along with other trust funds received as part of the final settlement, from the trust account.

If a broker designates that the trust account shall be interest bearing for the benefit of a non-profit organization, the trust account shall be examined and managed as provided in this manual, except that interest accruing to the account must be distributed to a nonprofit entity which is exempt from paying federal income tax, and all such interest shall be distributed to the non-profit entity at least once per calendar quarter. Evidence of such deposit shall be provided by the bank statement or a written receipt from the not for profit entity, trust account examiners shall verify that all such deposits match or exceed interest that has accrued, except any accrued interest not yet transferred for the current calendar quarter shall not be included in the reconciliation.

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 trust account until a written release is received from the buyer and seller directing the broker how to disburse the funds, or until civil action is filed, at which time the broker may pay the funds into the court or retain the funds until directed by the court as to the disposition of the funds.

In the case of a dispute and in the absence of a pending civil action, the broker will not be subject to disciplinary action by the Nebraska Real Estate Commission if the earnest money deposit is returned to the buyer, based on a good faith decision by the broker that a contingency in the purchase agreement has not been met. Also, it will not be grounds for disciplinary action by the Nebraska Real Estate Commission if, in the case of a dispute and in the absence of a pending civil action and after one year has elapsed from the date of acceptance, the broker pays the earnest money deposit to the seller, based on a good faith decision by the broker that the buyer has abandoned any claim to the funds. Although these provisions of the Rules prohibit disciplinary action against the broker if the Rule is followed, it does not eliminate the possibility of civil action being taken against the broker.

Brokers are required to post all receipts and disbursements in chronological order to the general ledger and the applicable sub-ledger(s) as the activity occurs.

II. SALES ACCOUNTS

E. Handling Trust Funds - Disbursements

Title 299, Chapter 3-006, states: "In the case of cooperative sales between brokers, the selling broker, unless all parties to the transaction with an interest in the funds have agreed otherwise in writing, shall deposit the earnest money payment in his or her real estate trust account within 72 hours or before the end of the next banking day, after an offer is accepted, in writing, and then forthwith transfer such earnest money deposit to the listing broker by issuing a check drawn on the selling broker's trust account." Chapter 3-006.01 further states, "If for any reason the earnest money check tendered to the selling broker is returned by the financial institution unpaid, the selling broker shall forthwith notify the listing broker, who shall immediately refund from his or her trust account the earnest money deposit which has been tendered by the selling broker."The seller should be informed immediately if a check is returned for insufficient funds.

The closing of a real estate transaction may be handled by licensed real estate brokers; licensed attorneys; title insurance agents licensed and authorized to engage in escrow activities; and persons or entities regulated by the State Banking Department, the Federal Deposit Insurance Corporation, the Federal Office of Thrift Supervision, the Federal Farm Credit Administration, or the National Credit Union Administration, unless prohibited by statute, rule, or regulation. The requirements for a third party closing are further discussed in Section F of the Sales Accounts Chapter of this Manual.

Generally speaking, the listing broker should understand that the License Act and Rules require that no funds may be disbursed prior to a 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 certain closing expenses prior to closing. In no case, however, may the broker be paid any part of his or her compensation or consideration, prior to the closing of the real estate transaction. It should be emphasized that the broker is not entitled to compensation or consideration until the transaction is closed or otherwise consummated. Obtaining the written consent of the parties authorizing such compensation or consideration payment is strictly prohibited, and would constitute a serious violation of the License Act and Rules. Also, 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.

All funds received by the listing broker at or before closing are considered to be trust funds, and must be deposited and disbursed from the trust account at the time of closing. Therefore, all funds pertaining to a particular real estate transaction should be disbursed on the date of closing. Exceptions may include situations in which the broker is required to escrow certain funds to pay bills which may not have been received prior to closing, or if the written permission of all parties has authorized prior disbursements as set forth previously.

Real estate brokers, as well as other entities authorized to close real estate transactions, are required to have "good funds" available for disbursement at the time of closing a real estate transaction. "Good funds" are defined as: (a) lawful money of the United States; (b) wired funds when unconditionally held by the real estate closing agent; (c) cashier's checks, certified checks, bank money orders, or teller's checks issued by a federally insured financial institution and unconditionally held by the real estate closing agent; or (d) United States treasury checks, federal reserve checks, federal home loan financial institution checks, State of Nebraska warrants, and warrants of a city of the metropolitan or primary class. "Federally insured financial institution," as used above, is defined as an institution in which the monetary deposits are

insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. (Note: Brokers should understand that the definition of "federally insured financial institution" as used here **only** applies to "good funds," and should not be confused with where a trust account can be placed. For information on where a trust account can be placed, see section on "Establishing a Trust Account.")

Once the 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 how those funds were disbursed. This is done by providing the buyer and seller with a detailed closing statement which accounts for all funds received and how those funds were disbursed. The listing broker must maintain, within his records, a copy of each statement. Although some real estate companies have developed a policy which requires the closing statement to be signed by the buyer or the seller, this is not a requirement of the License Act or Rules, but would serve as evidence of receipt.

Earned compensation or consideration should always be removed from the trust account at the time of closing, and are always due and payable to the listing broker, or to the operating account under which the listing broker is doing business, upon closing. All compensation splits with sales associates or other real estate brokers must be paid from the listing broker's operating account and not the trust account. When compensation or consideration is received by the selling broker, it should be deposited directly into the operating account of the selling broker and disbursed, if necessary, from there. (It should be noted by all licensees that the Real Estate Commission does not get involved in disputes between licensees over the payment or division of compensation or consideration.)

The broker must ensure that sufficient funds are available, at all times, to cover any check issued **on the date of issuance**.

As previously noted, brokers are required to post all receipts and disbursements in chronological order to the general ledger and the applicable sub-ledger as the activity occurs.

II. SALES ACCOUNTS

F. Third Party Closings

Under Neb. Rev. Stat. § 76-2,121 through 76-2,123, the closing of a real estate transaction may be handled by licensed real estate brokers; licensed attorneys; title insurance agents licensed and authorized to engage in escrow activities; and persons or entities regulated by the State Banking Department, the Federal Deposit Insurance Corporation, the Federal Office of Thrift Supervision, the Federal Farm Credit Administration, or the National Credit Union Administration, unless prohibited by statute, rule, or regulation. When the listing broker utilizes the services of any third party closing agent identified above, certain authorizations from the buyer and seller are required. It is the responsibility of the broker(s) involved in the transaction to ensure that these authorizations are in place.

Once the listing broker has received an accepted offer to purchase and has received the earnest money, the trust funds must be deposited into the trust account and remain there until closing. If a third party will be utilized to close the transaction, the broker must:

1. Receive written authorization from all parties having an interest in the funds, buyer(s) and seller(s), allowing for the use of the third party in the closing of the real estate transaction;

2. Receive written authorization from both buyer(s) and seller(s) allowing for the transfer of earnest money from the ~~listing~~ broker's trust account to the third party closing the transaction;

3. Acquire written agreement of the buyer(s) and seller(s) as to who will pay any applicable fee charged for the third party closing, or how the fee will be split;

4. Deposit the earnest money into the trust account before transferring the earnest money by a trust account check to the third party closer.

Although the third party closing agent may prepare the closing statements of the buyer and seller, it remains the responsibility of the listing broker to ensure that a copy of the closing statement is delivered to both the buyer and seller. The broker must also retain a copy of each closing statement in the transaction file.

It is the position of the Nebraska Real Estate Commission that should any broker use any entity other than those third party closing agents identified above to close a real estate transaction, such broker would be in violation of the Nebraska Real Estate License Act, Section 81-885.24(29), and that such violation could result in disciplinary proceedings being instituted against the broker.

Licensed title insurance agents authorized to engage in escrow activities would not include entities formed by title insurance companies or agents which are not subject to licensing and regulation by the Nebraska Department of Insurance under the Nebraska Title Insurance Act. Subsidiary entities not regulated under the Nebraska Title Insurance Act would not be qualified closing entities under this policy. Authorized and licensed title insurance agents must actually complete or supervise the closing.

Brokers may close transactions for third parties under 299 NAC 2-013. This normally occurs in one of two scenarios: 1) the broker becomes involved in the transaction after the written purchase agreement has been entered into by both parties; and 2) the broker becomes involved in the transaction before a written purchase agreement has been entered into by the parties.

Scenario 1: Broker involved after written agreement by the parties:

> As set forth in the accepted agreement, the broker performs the ministerial functions necessary to complete the transaction under the applicable provisions of the License Act and Rules, including the receipt and disbursement of funds through the trust account, delivering buyer and seller settlement papers, etc. Prior to the transaction closing, the broker shall provide written disclosure to all parties involved which states that the broker is only providing those ministerial services, and is not acting as an agent for either party. The disclosure shall be signed by both parties, and a copy shall be maintained in accordance with 299 NAC 3-001.

Scenario 2: Broker involved before written agreement by the parties:

> Technically, in this scenario, the broker is not acting as a third party closing entity. The broker needs to decide the agency relationship, as set forth in Neb. Rev. Stat. § 76-2401 through 2430, and fulfill all obligations required of a licensed broker in the transaction.

II. SALES ACCOUNTS

G. Trust Account Bookkeeping - Illustrated

1. Manually Posted Systems

The Nebraska Real Estate License Act and Rules require each broker to maintain a bookkeeping system which will clearly and accurately account for all trust funds received and how those trust funds are disbursed.

Once the 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 preparing a deposit slip, recording the deposit in the general ledger, recording the deposit on the individual sub-ledger, depositing the trust funds into the trust account, and preparing a transaction file. A disbursement consists of preparing the check, recording the check in the general ledger, recording the check on the individual sub-ledger, and mailing the check to the payee.

"Bookkeeping system," as defined, 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. The following recommendations are minimal for any bookkeeping system implemented by the broker.

A. General Ledger - 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 is commonly referred to as a "checkbook register." This record should include:

   1. For funds received: a) the date of the deposit; b) the name of the party from whom the funds were received, or the property address for which the funds should be applied; and c) the dollar amount of the deposit.

   2. For funds disbursed: a) the date of the disbursement; b) the payee's name; c) the property address for which the funds were disbursed; d) the check number; and e) the amount of the disbursement.

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

B. Sub-Ledgers - A permanent record which records 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 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: a) the date of the deposit; b) the name of the party from whom the funds were received; and c) the dollar amount of the deposit.

   2. For funds disbursed: a) the date of the disbursement; b) the payee's name; c) the check number; and d) the amount of the disbursement.

3. A running balance after **each** entry which would account for the remaining funds to be disbursed relating to that particular real estate transaction.

C. A written reconciliation of each financial institution statement received which would prove agreement, as of the ending date on the financial institution statement, to the following:

1. The total cash balance in the general ledger;

2. The sum of the cash balances for **all** sub-ledgers, including broker's equity;

3. The checkbook balance.

D. A written list of all sub-ledger balances, as of the date of the financial institution reconciliation.

NOTE: All receipts and disbursements must be posted in chronological order to both the general ledger and the applicable sub-ledger(s) at the time at which they occur. The posting of receipts and disbursements several days after the activity occurs is an unacceptable accounting practice. This would include the posting of insufficient fund checks returned by a financial institution, refunds of earnest monies to a buyer, transfers of earnest money to the listing broker or to a third party, and the like.

The following examples illustrate the process of accounting for receipts and disbursements for several real estate transactions. For simplicity, receipt transactions are shown first, followed by the related disbursements and, finally, the process of reconciling the financial institution statement to the general ledger and sub-ledgers.

Example 1: Recording the deposit of broker's money, i.e. broker's equity, to open the trust account for Tom Jones, Broker.

On April 1 of the current year, $100.00 belonging to Tom Jones was deposited to open the trust account. On April 5, the financial institution charged $20.00 to the trust account for check printing fees, which were recorded when notice of the charge was received from the financial institution. The proper entries are shown as follows:

Deposit Slip dated April 1

COIN	
CURRENCY	
CHECKS (list separately)	
Tom Jones, Broker	100.00

Sub-Ledger Entry

ADDRESS		NAME Tom Jones, Broker			
MEMO Broker's Equity					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
4-1	Personal funds to open trust account			100.00	100.00
4-5	Charter S&L - check printing charge		20.00		80.00

General Ledger Entry

ADDRESS		NAME Tom Jones, Broker			
MEMO General Ledger					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
4-1	Personal funds to open trust account			100.00	100.00
4-5	Charter S&L - check printing charge		20.00		80.00

Example 2: Recording a buyer's earnest money deposit. Property is listed by Tom Jones and sold by Sara Stone.

On April 8, Tom Jones received a $1,000.00 check from Sara Stone representing an earnest money deposit from Mary Smith for the property located at 1717 South Hawkins Drive. The seller is Henry Wright. This receipt is recorded on the books of Tom Jones (listing broker) as follows:

Deposit Slip dated April 8

COIN	
CURRENCY	
CHECKS (list separately)	
Sara Stone, Broker, on behalf	1000.00
of Mary Smith, for 1717 S.	
Hawkins Dr.	

Sub-Ledger Entry

ADDRESS 1717 S. Hawkins Dr.		NAME Henry Wright to Mary Smith			
MEMO Selling Broker - Sara Stone					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
4-8	Earnest money from Mary Smith			1000.00	1000.00

General Ledger Entry

ADDRESS		NAME Tom Jones, Broker			
MEMO General Ledger					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
4-1	Personal funds to open trust account			100.00	100.00
4-5	Charter S&L - check printing charge		20.00		80.00
4-8	Earnest money from Sara Stone, on behalf of			1000.00	1080.00
	Mary Smith, for 1717 S. Hawkins Dr.				

Example 3: Recording a buyer's earnest money deposit when the property is listed by another broker, Sara Stone, and sold by Tom Jones.

On April 12, the broker received a $750.00 earnest money check from buyer Mark Hadley, which represents an earnest money deposit for 2106 Arbor Drive. The seller is Angela Brown. This receipt is recorded on the books of Tom Jones (selling broker) as follows:

Deposit Slip dated April 12

COIN	
CURRENCY	
CHECKS (list separately)	
Mark Hadley, for 2106 Arbor Dr.	750.00

Sub-Ledger Entry

ADDRESS 2106 Arbor Dr.		NAME Angela Brown to Mark Hadley			
MEMO Listing Broker - Sara Stone					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
4-12	Earnest money from Mark Hadley			750.00	750.00

General Ledger Entry

ADDRESS		NAME Tom Jones, Broker			
MEMO General Ledger					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
4-1	Personal funds to open trust account			100.00	100.00
4-5	Charter S&L - check printing charge		20.00		80.00
4-8	Earnest money from Sara Stone, on behalf of			1000.00	1080.00

	Mary Smith, for 1717 S. Hawkins Drive				
4-12	Earnest money from Mark Hadley, for			750.00	1830.00
	2106 Arbor Dr.				

Example 4: Recording the transfer of earnest money from the selling broker to the listing broker.

On April 13, Tom Jones issued check number 101 to the listing broker, Sara Stone. This disbursement is recorded on the books of Tom Jones as follows:

Sub-Ledger Entry

ADDRESS 2106 Arbor Dr.		NAME Angela Brown to Mark Hadley			
MEMO Listing Broker - Sara Stone					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
4-12	Earnest money from Mark Hadley			750.00	750.00
4-13	Transfer earnest money to listing broker	101	750.00		0
	Sara Stone				

General Ledger Entry

ADDRESS		NAME Tom Jones, Broker			
MEMO General Ledger					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
4-1	Personal funds to open trust account			100.00	100.00
4-5	Charter S&L - check printing charge		20.00		80.00
4-8	Earnest money from Sara Stone, on behalf of			1000.00	1080.00
	Mary Smith, for 1717 S. Hawkins Drive				

4-12	Earnest money from Mark Hadley, for			750.00	1830.00
	2106 Arbor Dr.				
4-13	Transfer earnest money to listing broker	101	750.00		1080.00
	Sara Stone, for 2106 Arbor Drive				

Example 5: Recording a real estate transaction which is closed by the listing broker (Tom Jones).

The closing of the sale on 1717 South Hawkins Drive was held in the listing broker's office on April 22. The listing broker received buyer loan proceeds in the amount of $23,746.10, and the broker issued checks numbered 102 through 108 as shown below:

Deposit Slip dated April 22

COIN	
CURRENCY	
CHECKS (list separately)	
Bailey Building & Loan - closing	23,746.10
funds for 1717 S. Hawkins Dr.	

Sub-Ledger Entry

ADDRESS 1717 S. Hawkins Dr.			NAME Henry Wright to Mary Smith		
MEMO Selling Broker - Sara Stone					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
4-8	Earnest money from Mary Smith			1000.00	1000.00
4-22	Bailey Building & Loan - closing funds			23,746.10	24,746.10
4-22	Henry Wright - seller proceeds	102	3518.10		21,228.00
4-22	Northstar Savings & Loan - loan payoff	103	18,591.00		2637.00
4-22	Tom Jones, Broker - compensation	104	1960.00		677.00

4-22	County Clerk - recording fee	105	11.00		666.00
4-22	County Treasurer - real estate taxes	106	371.00		295.00
4-22	Sawyer Title & Escrow - title insurance	107	245.00		50.00
4-22	County Surveyor - surveying fee	108	50.00		0

General Ledger Entry

ADDRESS		NAME Tom Jones, Broker			
MEMO General Ledger					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
4-1	Personal funds to open trust account			100.00	100.00
4-5	Charter S&L - check printing charge		20.00		80.00
4-8	Earnest money from Sara Stone, on behalf of			1000.00	1080.00
	Mary Smith, for 1717 S. Hawkins Drive				
4-12	Earnest money from Mark Hadley, for			750.00	1830.00
	2106 Arbor Dr.				
4-13	Transfer earnest money to listing broker	101	750.00		1080.00
	Sara Stone, for 2106 Arbor Drive				
4-22	Bailey Building & Loan - closing funds for			23,746.10	24,826.10
	1717 S. Hawkins Dr.				
4-22	Henry Wright - seller proceeds for	102	3518.10		21,308.00
	1717 S. Hawkins Dr.				
4-22	Northstar Savings & Loan - loan payoff for	103	18,591.00		2717.00
	1717 S. Hawkins Dr.				
4-22	Tom Jones, Broker - compensation for	104	1960.00		757.00
	1717 S. Hawkins Dr.				
4-22	County Clerk - recording fee for	105	11.00		746.00
	1717 S. Hawkins Dr.				
4-22	County Treasurer - real estate taxes for	106	371.00		375.00
	1717 S. Hawkins Dr.				
4-22	Sawyer Title & Escrow - title insurance for	107	245.00		130.00
	1717 S. Hawkins Dr.				
4-22	County Surveyor - surveying fee for	108	50.00		80.00
	1717 S. Hawkins Dr.				

Example 6: The financial institution statement for April of the current year was received on May 5. The ending cash balance, per the financial institution statement as of April 30, was $4025.10. On April 30, a monthly maintenance charge of $5.00 was assessed by the financial institution, which had not been recorded on the general ledger or the sub-ledger for broker's equity. The financial institution statement also shows that checks numbered 101, 103, 104, and 107 have cleared the trust account prior to April 30 and appear on the statement. Checks numbered 102, 105, 106, and 108 are still outstanding as of April 30. The monthly maintenance charge will be recorded on the books of Tom Jones as follows:

Sub-Ledger Entry

ADDRESS		NAME Tom Jones, Broker			
MEMO Broker's Equity					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
4-1	Personal funds to open trust account			100.00	100.00
4-5	Charter S&L - check printing charge		20.00		80.00
4-30	Charter S&L - monthly maintenance charge		5.00		75.00

General Ledger Entry

ADDRESS		NAME Tom Jones, Broker			
MEMO General Ledger					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
4-1	Personal funds to open trust account			100.00	100.00
4-5	Charter S&L - check printing charge		20.00		80.00
4-8	Earnest money from Sara Stone, on behalf of			1000.00	1080.00
	Mary Smith, for 1717 S. Hawkins Drive				
4-12	Earnest money from Mark Hadley, for			750.00	1830.00
	2106 Arbor Dr.				
4-13	Transfer earnest money to listing broker	101	750.00		1080.00
	Sara Stone, for 2106 Arbor Drive				
4-22	Bailey Building & Loan - closing funds for			23,746.10	24,826.10
	1717 S. Hawkins Dr.				
4-22	Henry Wright - seller proceeds for	102	3518.10		21,308.00
	1717 S. Hawkins Dr.				
4-22	Northstar Savings & Loan - loan payoff for	103	18,591.00		2717.00
	1717 S. Hawkins Dr.				
4-22	Tom Jones, Broker - compensation for	104	1960.00		757.00
	1717 S. Hawkins Dr.				
4-22	County Clerk - recording fee for	105	11.00		746.00
	1717 S. Hawkins Dr.				
4-22	County Treasurer - real estate taxes for	106	371.00		375.00
	1717 S. Hawkins Dr.				
4-22	Sawyer Title & Escrow - title insurance for	107	245.00		130.00
	1717 S. Hawkins Dr.				
4-22	County Surveyor - surveying fee for	108	50.00		80.00
	1717 S. Hawkins Dr.				
4-30	Charter S&L - monthly maintenance charge		5.00		75.00

Example 7: The reconciliation of the April 30 financial institution statement would appear as follows:

Statement Reconciliation Worksheet

Statement Balance as of April 30 For Trust Account # 5432678 At Hometown Savings and Loan			**4025.10**
Plus Deposits	Date	Amount	
	Total Deposits	0.00	0.00
Statement Balance Plus Deposits			**4025.10**
Minus Checks Outstanding	Check Number	Amount	
	102	3518.10	
	105	11.00	
	106	371.00	
	108	50.00	
	Total Checks Outstanding	3950.10	3950.10
Reconciled Statement Balance as of April 30			**75.00**

A basic accounting equation has been illustrated and proven as follows: Reconciled Financial Institution Statement Balance ($75.00) equals General Ledger Balance ($75.00) equals the total of all Sub-Ledgers ($75.00). In addition to the above, the checkbook balance, which has not been illustrated, should also be $75.00. If all the above balances do not agree, then a posting error has been made and the broker should immediately review the bookkeeping entries made during the period of the financial institution statement for accuracy.

The financial institution statement must be reconciled in a timely manner after receipt. It is recommended that a list of all sub-ledgers with a cash balance be prepared as of the period ending date shown on the financial institution statement, and attached to the financial institution statement. It should be noted that the total cash balance of this list must agree with the reconciled financial institution statement balance and the checkbook balance.

II. SALES ACCOUNTS

G. Trust Account Bookkeeping - Illustrated

2. Computerized Systems

For trust account examination purposes, computerized bookkeeping systems must provide the same bookkeeping records as if the broker were maintaining a manually-posted bookkeeping system as described in the preceding pages. The system must be posted current at all times.

The computer program must be capable of generating a general ledger which accounts for the income and expenses relating to all transactions on a day-to-day basis, and sub-ledgers which account for the income and expenses relating to each specific transaction on a day-to-day basis. The ledger and sub-ledgers must be a debit/credit/ledger balance format, with a specific ledger balance identified after each bookkeeping entry. (See examples on following pages.) Income and expenses must be posted in chronological order and on a current basis at all times. All data entered into the computer system should be transferred to hard copy as soon as practical to prevent the loss of information due to any unforeseen circumstances, and to avoid excessive printing delays at the time of the trust account examination. The trust account examiner will not examine information directly from the computer screen. Canceled, voided, and unused checks must be maintained for trust account examination purposes, just as required in the manual system.

The computer program must also be capable of generating, upon request, a current Trial Balance which identifies the ledger balance of trust funds for a specific transaction as of a specific date. This Trial Balance report should be attached to the financial institution statement, and used only to check that the sum of the individual sub-ledger funds equals the reconciled financial institution balance and the checkbook balance. The Trial Balance report, and any other financial-type report, will not be accepted as a bookkeeping system itself, because it does not identify the specific bookkeeping entries that were required to arrive at the ledger balance. The Trial Balance report will be used only as supporting documentation for the bookkeeping system.

The broker is reminded of the fiduciary responsibility to the principals. It is the intent of the Commission to ensure that the bookkeeping system clearly and accurately accounts for all trust funds received and disbursed, and to ensure that a balance is identified on the general ledger and each sub-ledger after each bookkeeping entry.

Example 1: Debit, Credit, and Ledger Balance Format

This computer-generated transaction sub-ledger is acceptable under the guidelines established by the Nebraska Real Estate Commission. All bookkeeping entries are posted in chronological order, and the balance is shown after each entry. NOTE: Posting to both the general ledger and appropriate sub-ledger(s) is described in Section G, Subsection 1, of the Sales Account Chapter of this Manual. An account balance must be provided after each bookkeeping entry.

Sub-Ledger Entry

SELLER: Henry Wright
BUYER: Mary Smith

PROPERTY ADDRESS: 1717 S. Hawkins
SELLING COMPANY/AGENT: Sara Stone/Broker

DATE	DESCRIPTION	CK#	DEBIT	CREDIT	BALANCE
4-08	Earnest Money - Mary Smith			1,000.00	1,000.00
4-22	Bailey Bldg & Loan - closing funds			23,746.10	24,746.10
4-22	Henry Wright - proceeds	102	3,518.10		21,228.00
4-22	Northstar Savings & Loan	103	18,591.00		2,637.00
4-22	Tom Jones - compensation	104	1,960.00		677.00
4-22	County Clerk - recording	105	11.00		666.00
4-22	County Treasurer - real est. taxes	106	371.00		295.00
4-22	Sawyer Title/Escrow - title insurance	107	245.00		50.00
4-22	County Surveyor - survey	108	50.00		.00

Example 2: Dollar Amount and Balance Format

This computer-generated property sub-ledger is acceptable under the guidelines established by the Nebraska Real Estate Commission. All bookkeeping entries are posted in chronological order, and the balance is provided after each entry. NOTE: Posting to both the general ledger and appropriate sub-ledger(s) is described in Section G of the Sales Account Chapter of this Manual. An account balance must be provided after each bookkeeping entry.

Sub-Ledger Entry

SELLER: Henry Wright
BUYER: Mary Smith

PROPERTY ADDRESS: 1717 S. Hawkins
SELLING COMPANY/AGENT: Sara Stone/Broker

DATE	DESCRIPTION	CK#	DEBIT CREDIT	BALANCE
4-08	Earnest Money - Mary Smith		1,000.00	1,000.00
4-22	Bailey Bldg/Loan - closing funds		23,746.10	24,746.10
4-22	Henry Wright - proceeds	102	-3,518.10	21,228.00
4-22	Northstar Savings & Loan	103	-18,591.00	2,637.00
4-22	Tom Jones - compensation	104	-1,960.00	677.00
4-22	County Clerk - recording	105	-11.00	666.00
4-22	County Treasurer - real est. taxes	106	-371.00	295.00
4-22	Sawyer Title/Escrow - title insurance	107	-245.00	50.00
4-22	County Surveyor - survey	108	-50.00	.00

II. SALES ACCOUNTS

H. Trust Account Examinations

The Nebraska Real Estate Commission has an active trust account and transaction file examination program, which is designed to be educational and help acquaint brokers with the requirements for proper record keeping and their obligation in handling trust funds, as well as to determine the compliance level being achieved by brokers.

Each broker can expect to have an examination on an irregular schedule, and the examination may be unannounced. The examination process generally takes only a few hours. During this period, the examiner will verify that the financial institution statements have been reconciled and will perform a random inspection of transaction files, both pending and closed. The examiner will also review, on a random basis, the entries to the bookkeeping system and the supporting documentation to ensure full compliance with the License Act and Rules. The Commission requires that posting to the bookkeeping system be current at all times. Since the examinations are unannounced, the broker needs to ensure that posting is current so that the examiner can complete the examination in an accurate and efficient manner. It is also of assistance to the examiner if key personnel, other than the broker, are aware of the location of the records, in case the broker is not available at the time the examiner arrives.

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

1. Checkbooks and checkbook registers
2. Checks - canceled, voided, and unused
3. Financial institution statements and reconciliations
4. Deposit slips - originals and/or duplicates
5. Bookkeeping system - general ledger and sub-ledgers
6. Transaction files - both pending and closed
7. Supporting vendor invoices, if applicable
8. Any other pertinent files or documents.

The broker can make the examination process more efficient by maintaining the files and records in a neat and orderly fashion. The examiner will review the listing and purchase agreements, closing statements of both buyer and seller, and any written agreements between the principals which might have an effect on the way the transaction is or was to be handled. The examiners do not review the general business records of the broker, and it is recommended that those records be maintained separate from the trust account records.

III. PROPERTY MANAGEMENT ACCOUNTS

A. Identification of Trust Account

For property management accounts, the following trust account titles are recommended:

1. For a broker operating as a sole proprietor without a registered trade name:

   Sara Stone, Broker
   Property Management Trust Account
   Business Address

2. For a broker operating as a sole proprietorship or partnership under a registered trade name:

   Renaissance Realty
   Property Management Trust Account
   Business Address

3. For a broker operating under a registered corporate name:

   Renaissance Realty, Inc.
   Property Management Trust Account
   Business Address

4. For a broker operating under a registered limited liability company (LLC) name:

   Renaissance Realty, LLC
   Property Management Trust Account
   Business Address

If preferred, the broker may simply precede the words "Trust Account" by the word "Management" only. It is also recommended that security deposits, if held by the broker, be held in a separate trust account. In the case of a security deposit trust account, the words "Trust Account" would be preceded by "Security Deposit".

In instances where a broker manages property for more than one owner, or many properties for one or more owners, the broker may want to establish separate trust accounts for each owner or for each property. After indicating in the trust account title the name under which the broker is doing business, the following would be examples of appropriate titles:

1. Trust Account - Easy Living Apartments

2. Management Trust Account - Rebecca Wilson Properties

3. Management Trust Account - Rebecca Wilson - Hillside Apartments

4. Security Deposit Trust Account - Stan Weber Properties

5. Security Deposit Trust Account - Easy Living Apartments

III. PROPERTY MANAGEMENT ACCOUNTS

B. Trust Account Records

The Nebraska Real Estate License Act and Rules require each broker to maintain a bookkeeping system which will clearly and accurately account for all trust funds received, and how those trust funds are disbursed. Section F of the Property Management Chapter of this Manual provides the licensee with illustrated examples of trust account bookkeeping for a property management account.

Chapter 3-001 of the Commission Rules states, "It shall be the duty of each broker to preserve for five years following its consummation records relating to any real estate transaction." Records which must be maintained by the broker include, but are not limited to:

1. Management agreements
2. Lease agreements
3. Checkbooks and checkbook registers
4. Checks - canceled, voided, and unused
5. Financial institution statements and reconciliations
6. Deposit slips - originals and/or duplicates
7. Bookkeeping system - general ledger and sub-ledger
8. Property owner financial reports
9. Supporting vendor invoices.
10. Records of funds coming into the broker's possession which bypass the trust account

III. PROPERTY MANAGEMENT ACCOUNTS

C. Broker's Equity

"Broker's equity" is a term most frequently used to describe the broker's personal funds which are maintained in the trust account. Title 299, Chapter 3-004 of the Nebraska Real Estate Commission Rules states, in part, "Funds deposited in the trust account will necessarily include monies which will ultimately belong to the broker, but such monies shall be separately identified in his or her trust account records and shall be paid to the broker by check drawn on the trust account after the same are due the broker."

As a guideline in establishing the trust account, 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 sub-ledger account, as well as the general ledger, immediately after being notified by the financial institution that the fee was assessed. In fact, all deposits and disbursements from broker's equity should be posted immediately to the general ledger and the broker's equity sub-ledger. Broker's equity can never show a negative balance.

Brokers are cautioned that the maintenance of excessive amounts of the broker's personal funds in the account could cause the trust nature of the account to be placed in jeopardy.

The broker's equity portion of the account cannot be used as an "Operating Account" for the purpose of paying general operating expenses on behalf of the broker or his or her real estate firm.

A common violation found during examinations of property management trust accounts occurs when the broker issues a check on the trust account to pay an expense on behalf of the owner, but the owner does not have sufficient funds available in the account to cover the expense. Since the owner had insufficient funds available, the broker has used another owner's funds to cover the expense. This is a violation of the Nebraska Real Estate License Act and the Rules and Regulations of the Commission.

To eliminate the possibility of a negative fund balance for an owner, the broker may remedy the situation by performing any of the following prior to the account going into a negative cash situation:

1. Immediately prior to issuing any property management trust account check, contact the owner and request funds to cover the expense. The expense may not be paid until those funds are received, deposited into the trust account, and posted to the general ledger and appropriate sub-ledger; or

2. Provide a short-term loan from the broker's operating account, made payable to the trust account, and post the deposit to the general ledger and the property sub-ledger account prior to the issuing of the check to cover the expense; or

3. Prepare a journal entry on the trust account books which would reduce the balance in the broker's equity sub-ledger account, without creating a negative balance, and increase the balance in the property sub-ledger account. This entry

must be made prior to issuing a trust account check that would create a negative balance on behalf of the owner.

In alternatives 2 and 3, the broker must understand that, once a personal loan is made, either from the broker's operating account or the broker's equity account, the funds immediately become the property of the owner and no longer belong to the broker. Once the property sub-ledger account has sufficient funds available, the broker should immediately reimburse the operating account or the broker's equity sub-ledger account, and record the transaction in the general ledger and the appropriate sub-ledgers.

III. PROPERTY MANAGEMENT ACCOUNTS

D. Handling Trust Funds - Receipts

The Nebraska Real Estate License Act and Rules require 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," as defined by the License Act and Rules, may include, but not be limited to, downpayments, earnest money deposits, money received upon final settlement, rents, security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of a real estate transaction, and money advanced by a broker's principal for the payment of expenses on behalf of that principal.

Once the property manager has collected any rents, security deposits, or any other trust funds which might be considered the property of the owner, these funds must be deposited into the trust account in a timely fashion. Once the trust funds, which belong to the owner, have been received by the broker and have been deposited into the trust account, the License Act and Rules require that the trust funds remain in the trust account unless the owner has agreed otherwise in writing. In this case, the written management agreement between the broker and owner should dictate how the owner's trust funds are to be handled. Rent monies may be deposited directly into the broker's trust account by a lessee, provided that the financial institution immediately sends a receipt to the broker which identifies the remitter's name and the amount received, to establish a paper trail for examination purposes.

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

When depositing funds into the trust account, the deposit slip must itemize the funds to clearly identify each dollar amount to a specific tenant and rental property address. Some financial institutions do not return the original deposit slip with the financial institution statement. In this situation, it is recommended that the duplicate deposit slip be maintained, unremoved from the deposit book, and that the duplicate be date-stamped by the teller at the time of deposit, or that a receipt of deposit be obtained at the time of deposit, and attached to the unremoved, duplicate deposit slip.

Cash payments of any kind, i.e. rent, security deposits, etc., **must** go through the trust account. Brokers who handle or anticipate handling cash payments will not be approved for a trust account waiver.

Once a security deposit has been deposited into the trust account, the security deposit must remain in the trust account unless the tenant and the owner have agreed otherwise, in writing, as to the disposition of the security deposit. Written authorization will normally occur in the management and lease agreement. In the absence of written authorization from all parties having an interest in the funds, i.e. the tenant and the owner, the security deposit must be maintained by the broker in the trust account. Security deposits held in the same trust account with owner's funds should be separately identified in the accounting system. This can be done by establishing separate sub-ledgers for the security deposits and for the owner's other funds,

thereby eliminating the possibility of using a portion of the security deposits to pay the operating expenses of the owner.

In residential property management only, while the security deposit is maintained by the broker, it cannot be used to pay the operating expenses of the property owner unless both the tenant and the owner have given written authorization.

In commercial property management, the security deposit may be used to pay operating expenses of the owner, as long as the owner and tenant do not stipulate that the security deposit is to be held in the broker's trust account.

If both the lease agreement and the management agreement state that the security deposit is to be maintained by the owner, and if the tenant's check is made out to the broker, then the broker shall deposit the security deposit in the trust account and then remit the security deposit to the owner via a check drawn on the trust account. In this situation, it would be the owner's responsibility to return the deposit, not the broker's.

If both the lease agreement and the management agreement state that the security deposit is to be maintained by the owner, and if the tenant's check is made out to the owner, the check would not need to be deposited into the trust account prior to sending it to the owner, even if the check comes into the possession of the broker. In this situation, the broker would simply forward the check to the owner.

If both the lease agreement and the management agreement state that the security deposit is to be maintained by the owner, the owner may authorize the broker to use the security deposit to pay operating expenses. Any security deposit paid to the property owner must be authorized in both the management agreement **and** the lease agreement. The only time the management agreement does not have to state that the security deposit is to be maintained by the owner is when the lease agreement names the owner as the landlord, and each lease agreement is signed by the owner.

If the owner wants his or her funds (other than security deposits maintained by the broker) to be handled through an interest-bearing account(s) (other than an interest bearing account going to a designated non profit organization), written authorization from the owner is required. The written authorization must either be included in the written agreement between the parties or be a separate written authorization, and should include the following: a statement specifying who will earn the interest on the funds; authorization from the owner to transfer the funds from the trust account to the interest-bearing account; a dated signature from the owner; and the following notice: "Interest-bearing accounts are not examined by the Nebraska Real Estate Commission. It is understood by all parties concerned that placement of funds in such account removes them from the provisions pertaining to trust accounts in the Nebraska Real Estate License Act and the Rules and Regulations of the Nebraska Real Estate Commission." For security deposits, written authorizations from both the owner and the tenant are required.

When opening an interest-bearing account (other than an interest bearing account going to a designated non profit organization), brokers should check with the financial institution as to how the account should be titled. The interest-bearing account may be titled as a "Trust Account," but should not be registered with the Nebraska Real Estate Commission as a real estate trust account. The interest-bearing account will not be examined by the Nebraska Real Estate Commission, and all records relating to the interest-bearing account should be maintained

separately. The Social Security Number or the Federal Identification Number of the interest recipient should be provided to the financial institution for taxation purposes. Brokers should also acquire a "No Right of Offset" letter from the financial institution. This letter is an agreement between the broker and the financial institution in which the financial institution agrees not to offset any personal obligations of the broker with the funds deposited to this account. It is recommended that the broker be the only signatory on the interest-bearing account, so that the broker is the only person who can access the funds.

In order to establish a paper trail for examination purposes, the broker must deposit the funds into the trust account, then transfer the funds to the interest-bearing account via a check drawn on the trust account. The only exception is when the rent checks are made payable to the owner per the lease agreement, and the management agreement calls for the use of an interest-bearing account instead of a trust account. In that case, the rent checks may be deposited directly to the interest-bearing account even if they come into the possession of the broker.

If a satellite office, e.g. the rental office at an apartment complex, collects rent checks or cash rent payments, and the satellite office is at a location where the main depository for trust funds is not readily accessible, a trust account should be established near the satellite office so that the trust funds may be deposited in a timely fashion. The satellite office would prepare the itemized deposit slip, deposit the trust funds, and forward the duplicate deposit slip to the main office, where the rents could be posted to the bookkeeping system and expenses could be paid. Trust funds should be transferred directly from the satellite trust account to the main depository account. A general ledger and/or sub-ledger(s) would need to be maintained on the satellite trust account, following the same procedures as the main trust account. Obviously, when transferring funds to the main depository, the applicable ledgers would need to be posted accordingly to establish a paper trail for examination purposes.

III. PROPERTY MANAGEMENT ACCOUNTS

E. Handling Trust Funds - Disbursements

Once trust funds are deposited into the trust account, the written management agreement usually dictates how those funds should be handled. The Commission will assume that all disbursements are to be made from the trust account and are supported by a vendor invoice, and that the payment of such invoice has been authorized by the owner, unless otherwise outlined in the written management agreement.

All expenses paid on behalf of the owner must be paid from the trust account, regardless of whether the funds are held in an interest-bearing account, unless otherwise specified in writing by the owner.

Property management fees are normally determined by a written management agreement, and should be removed from the property sub-ledger account when due the broker. Removal of the management fees can be accomplished by issuing a check drawn on the trust account for each management fee earned, or by transferring the management fee to the broker's equity sub-ledger account. The transfer to the broker's equity would be accomplished by journal entries which would lower the fund balance on the property sub-ledger account and increase the fund balance on the broker's equity sub-ledger account. The transfer of fees to the broker's equity sub-ledger account allows the broker to remove from the trust account, via a check drawn on the trust account, several management fees at one time versus issuing a check for each management fee.

Except as provided in the following paragraph, a broker is prohibited from authorizing a financial institution to automatically remove trust funds, such as a mortgage payment, from the trust account. The prohibition is due to the fact that 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 overdraft charge against the trust account and the property owner. It would also create a negative balance to the owner's funds, which would be a violation of the License Act and Rules. It is the responsibility of the broker to initiate all disbursements from the trust account by the issuance of a check or wire transfer drawn on the trust account, and to ensure that concurrent posting occurs.

A broker may authorize a financial institution to automatically remove trust funds from an account if a separate trust account is created for each client for whom the automated withdrawals are authorized and each client specifically agrees to the use of automated withdrawals in writing.

The broker must ensure that sufficient funds are available, at all times, to cover any check issued **on the date of issuance**.

III. PROPERTY MANAGEMENT ACCOUNTS

F. Trust Account Bookkeeping - Illustrated

1. Manually Posted Systems

The Nebraska Real Estate License Act and Rules require each broker to maintain a bookkeeping system which will clearly and accurately account for all trust funds received and how those trust funds are disbursed.

Once the 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 preparing a deposit slip, recording the deposit in the general ledger, recording the deposit on the property or owner's sub-ledger, depositing the funds into the trust account, and preparing a client transaction file, if one has not previously been prepared. A disbursement consists of preparing the check, recording the check in the general ledger, recording the check on the property or owner's sub-ledger, and mailing the check to the payee.

"Bookkeeping system," as defined, 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. The following recommendations are minimal for any bookkeeping system implemented by the broker.

A. General Ledger - 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 is commonly referred to as a "checkbook register." This record should include:

   1. For funds received: a) the date of the deposit; b) the remitter's name or the specific property or unit identification, i.e. Smith Farm, Unit 12B, etc., for which the funds were received; c) the property address for which the funds should be applied; and d) the dollar amount of the deposit.

   2. For funds disbursed: a) the date of the disbursement; b) the payee's name; c) the property address for which the funds were disbursed; d) the check number; and e) the amount of the disbursement.

   3. A running balance after **each** entry which accounts for the total amount of all trust funds in the account at any given time. This balance includes broker's equity.

B. Sub-Ledgers - A permanent record which records the chronological sequence in which trust funds are received and disbursed by the broker on behalf of an owner for whom the broker is managing property. On each sub-ledger page, the broker should record the name of the owner, the name of the tenant, and the address or unit number of the property being managed. This record should also include:

   1. For funds received: a) the date of the deposit; b) the remitter's name or the specific property or unit identification, i.e. Smith Farm, Unit 12B, etc.,

for which the funds were received; and c) the dollar amount of the deposit.

2. For funds disbursed: a) the date of the disbursement; b) the payee's name; c) the check number; and d) the amount of the disbursement.

3. Must document that each sub-ledger account maintained a positive balance at all times.

C. A written reconciliation of each financial institution statement received which would prove agreement, as of the ending date on the financial institution statement, to the following:

1. The total cash balance in the general ledger;

2. The sum of the cash balances for **all** sub-ledgers, including broker's equity;

3. The checkbook balance.

D. A written list of all sub-ledger balances, as of the date of the reconciliation.

Posting to the general ledger and sub-ledger of receipts and disbursements must occur concurrent to the time at which this activity occurs and in chronological order. This includes the posting of insufficient fund checks returned by a financial institution, refunds, and the like.

If the trust funds of multiple owners (2 or more), and/or tenant security deposits, and/or broker's funds (broker's equity) are maintained in one trust account, the posting to the bookkeeping system **must** be done at the time of receipt of funds or disbursement of funds.

If a separate management trust account is maintained for each owner or each property managed, and the trust funds in the trust account are not commingled with those of another owner or any security deposits, the posting of income and expenses would only need be completed through the date of the last monthly financial institution statement received, but never more than five weeks in arrears. Brokers in this situation must receive monthly financial institution statements. This would provide the broker with sufficient time to reconcile the current financial institution statement and post the activity to the bookkeeping system. If the current financial institution statement has been received, the broker must make reconciliation and posting of all current activity a priority item so that a trust account examination could be completed through the date of the last financial institution statement received. Broker's equity may be commingled if it is **accurately** identified at **all** times.

The broker must ensure that sufficient funds are available in the trust account at all times to cover any check issued **on the date of issuance**. Any overdraft charges assessed the trust account are considered a violation of the License Act and/or Rules of the Commission, and should be charged to the broker, not the owner. "Floating" checks in anticipation of future deposits is strictly prohibited.

The following examples illustrate the process of accounting for the income received and the expenses paid on a residential property managed by Tom Jones, broker. For simplicity, we will show how the sub-ledgers would appear after several months of bookkeeping entries, instead

of illustrating the recording of each receipt and disbursement. Deposit slips should be completed as outlined in Chapter 2, Section G, with the remitter's name, the type of payment, and the property address noted (Bill Johnson, Feb. Rent for 3767 A Strand.).

Example 1: The broker has assumed his duties as "Property Manager" under a fully-executed management agreement which authorizes the broker to collect a management fee of 8% per month, and requires the broker to maintain the security deposit in the trust account. The rent will be $425.00 per month, with a security deposit equal to one month's rent. The property sub-ledger account would appear as follows:

Sub-Ledger

ADDRESS 3767 A St.		NAME Owner: Mark Smith			
MEMO Tenant: Bill Johnson		$425.00/month; $425 deposit; 8% mgmt. fee			
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
1-2	Bill Johnson - January rent			425.00	425.00
1-2	National Bank - January mortgage payment	101	285.00		140.00
1-2	Appliance Center - invoice #6142	102	47.18		92.82
1-2	Tom Jones - Jan. property management fee	103	34.00		58.82
	(425.00 x 0.08)				
1-2	Mark Smith - owner proceeds	104	58.82		0
2-1	Bill Johnson - February rent			425.00	425.00
2-1	National Bank - February mortgage payment	105	285.00		140.00
2-1	Loan from broker's equity	j/e		26.21	166.21
2-1	Ace Plumbing/Heating - invoice #4911	106	166.21		0
3-1	Bill Johnson - March rent			425.00	425.00
3-1	National Bank - March mortgage payment	107	285.00		140.00
3-1	Tom Jones - Feb. property management fee	108	34.00		106.00
3-1	Tom Jones - March property management fee	109	34.00		72.00
3-1	Repayment of loan from broker's equity	j/e	26.21		45.79
3-1	Mark Smith - owner proceeds	110	45.79		0

* On February 1, the broker had an option to pay the management fee of $34.00 and/or the invoice for $166.21. Since there were insufficient funds available to pay the invoice, the broker decided to make a personal loan of $26.21 to the owner and pay the invoice for $166.21, and wait until there were sufficient funds in the account to pay the management fee. If the broker had paid the invoice for $166.21 without making the loan, the owner's account balance would have been overdrawn in the amount of $26.21, and the broker would have been in violation of the Nebraska Real Estate License Act and Rules of the Commission.

Example 2: Security deposit sub-ledger account.

On January 2, the broker also received a security deposit of $425.00 from the tenant, as stipulated in the lease agreement. The management agreement and the lease agreement both state the security deposit will be held by the broker and not the owner. Therefore, the broker immediately deposited the security deposit in the trust account. Although not illustrated, the broker is reminded that all entries must be posted to both the general ledger and the appropriate sub-ledger as set forth at the beginning of this Subsection. The security deposit sub-ledger would appear as follows:

Sub-Ledger

ADDRESS 3767 A St.		NAME Owner: Mark Smith			
MEMO Security Deposit - $425.00					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
1-2	Bill Johnson - Security Deposit			425.00	425.00

The security deposit was posted to a separate sub-ledger so that the funds would not be inadvertently used to pay the expenses of the owner. Until a residential lease is terminated, the broker cannot apply the security deposit to unpaid rent or damages. The broker cannot transfer the security deposit to the owner unless the broker obtains the written permission of both the tenant and the owner, since both agreements stipulate that the security deposit will be held by the broker.

Example 3: Broker's equity sub-ledger account.

On February 1, the broker made a personal loan of $26.21 to the owner in order to pay the invoice for $166.21. The journal entry would appear as follows:

Sub-Ledger

ADDRESS		NAME Tom Jones, Broker			
MEMO Broker's Equity					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
1-2	Broker funds to open account			100.00	100.00
2-1	Broker loan to 3767 A St.	j/e	26.21		73.79
2-1	3767 A St. - loan repayment	j/e		26.21	100.00

Example 4: General Ledger Entries. Note that the journal entries regarding the sub-ledger loan from broker's equity are not recorded on the general ledger, because they do not affect the general ledger balance.

General Ledger

ADDRESS		NAME Tom Jones, Broker			
MEMO General Ledger					
DATE	ITEM	CK#	DEBIT	CREDIT	BALANCE
1-2	Broker funds to open account			100.00	100.00
1-2	Bill Johnson - security deposit for 3767 A St.			425.00	525.00
1-2	Bill Johnson - January rent for 3767 A St.			425.00	950.00
1-2	National Bank - January mortgage payment	101	285.00		665.00
	for 3767 A St.				
1-2	Appliance Center - invoice #6142	102	47.18		617.82
	for 3767 A St.				
1-2	Tom Jones - Jan. property management fee	103	34.00		583.82
	(425.00 x 0.08) for 3767 A St.				
1-2	Mark Smith - owner proceeds for 3767 A St.	104	58.82		525.00
2-1	Bill Johnson - February rent for 3767 A St.			425.00	950.00
2-1	National Bank - February mortgage payment	105	285.00		665.00
	for 3767 A St.				
2-1	Ace Plumbing/Heating - invoice #4911	106	166.21		498.79
	for 3767 A St.				
3-1	Bill Johnson - March rent for 3767 A St.			425.00	923.79
3-1	National Bank - March mortgage payment	107	285.00		638.79
	for 3767 A St.				
3-1	Tom Jones - Feb. property management fee	108	34.00		604.79
	for 3767 A St.				
3-1	Tom Jones - March property management fee	109	34.00		570.79
	for 3767 A St.				
3-1	Mark Smith - owner proceeds for 3767 A St.	110	45.79		525.00

The financial institution statement must be reconciled in a timely manner after receipt, as outlined in Chapter 2, Section G. It is recommended that a list of all sub-ledgers with a cash balance be prepared, as of the period ending date shown on the financial institution statement, and attached to the financial institution statement. The total cash balance of this list must agree with the reconciled financial institution statement balance and the checkbook balance.

III. PROPERTY MANAGEMENT ACCOUNTS

F. Trust Account Bookkeeping - Illustrated

2. Computerized Systems

For trust account examination purposes, computerized bookkeeping systems must provide the same bookkeeping records as if the broker were maintaining a manually-posted bookkeeping system as described in the preceding pages.

The computer program must be capable of generating a general ledger which accounts for the income and expenses relating to all properties on a day-to-day basis, and sub-ledgers which account for the income and expenses relating to each specific property on a day-to-day basis. (Note the exception for separate accounts specified earlier in this Chapter.) The ledger and sub-ledgers must be a debit/credit/ledger balance format, with a specific ledger balance identified after each bookkeeping entry. (See examples on following pages.) Income and expenses must be posted in chronological order and on a current basis at all times. (Note the exception for separate accounts specified earlier in this Chapter.) All data entered into the computer system should be transferred to hard copy as soon as practical to prevent the loss of information due to any unforeseen circumstances, and to avoid excessive printing delays at the time of the trust account examination. The trust account examiner will not examine information directly from the computer screen. Canceled, voided, and unused checks must be maintained for trust account examination purposes, just as required in the manual system.

The computer program must also be capable of generating, upon request, a current Trial Balance which identifies the ledger balance of trust funds for a specific owner, property address, or security deposit as of a specific date. This Trial Balance report should be attached to the financial institution statement, and used only to check that the sum of the individual sub-ledger funds equals the reconciled financial institution balance and the checkbook balance. The Trial Balance report, and any other financial-type report, will not be accepted as a bookkeeping system itself, because it does not identify the specific bookkeeping entries that were required to arrive at the ledger balance. The Trial Balance report will be used only as supporting documentation for the bookkeeping system.

The broker is reminded of the fiduciary responsibility to the principals. It is the intent of the Commission to ensure that the bookkeeping system clearly and accurately accounts for all trust funds received and disbursed, and to ensure that a balance is identified on the general ledger and each sub-ledger after each bookkeeping entry.

Example 1: Debit, Credit, and Balance Format

This computer-generated property sub-ledger is acceptable under the guidelines established by the Nebraska Real Estate Commission. All bookkeeping entries are posted in chronological order, and the balance is shown after each entry. NOTE: Posting to both the general ledger and appropriate sub-ledger(s) is described in Section F of the Property Management Chapter of this Manual. An account balance must be provided after each bookkeeping entry.

Sub-Ledger Entry

OWNER: Terry Smith TENANT: T & B Farms
LEGAL: NE 1/4 30-14-2 Sunburst County MGMT. FEE: 10% of income

DATE	DESCRIPTION	CK#	DEBIT	CREDIT	BALANCE
1-02	Balance forward				3,302.98
1-09	Received from Terry Smith, owner			2,140.63	5,443.61
1-09	People's Electric - Jan. bill	1989	19.00		5,424.61
1-30	Agriplex Co-op - invoice 2116	1990	2,140.63		3,283.98
2-06	Midtown Irrig. - pump switch	1991	18.00		3,265.98
2-09	Agriplex Co-op - Sold 1990 corn 3022 bu/2.25			6,799.50	10,065.48
2-09	Tom Jones - management fee	1992	679.95		9,385.53
2-11	Agriplex Co-op - Sold 1990 corn 3878 bu/2.25			8,725.50	18,111.03
2-11	Tom Jones - management fee	1993	872.55		17,238.48
2-18	People's Electric - Feb. bill	1994	26.45		17,212.03
2-24	Agriplex Co-op - Sold 1990 corn 395 bu/2.25			888.75	18,100.78
2-24	Tom Jones - management fee	1995	88.88		18,011.90
3-18	Hayseed Co. - seed corn 43 bags @ 61.82	1997	2,658.26		15,353.64
3-21	National Insurance - buildings	1998	621.18		14,732.46
3-30	County Treasurer -1st half r.e. taxes	1999	1,151.71		13,580.75
3-30	Terry Smith - owner proceeds	2000	12,000.00		1580.75
	Beginning Balance			3,302.98	
	Total Credit				18,554.38
	Total Debits				-20,276.61
	Ending Balance			1580.75	

Example 2: Dollar Amount And Balance Format

This computer-generated property sub-ledger is acceptable under the guidelines established by the Nebraska Real Estate Commission. All bookkeeping entries are posted in chronological order, and a balance is shown after each entry. NOTE: Posting to both the general ledger and appropriate sub-ledger(s) is described in Section F of the Property Management Chapter of this Manual. An account balance must be provided after each bookkeeping entry.

Sub-Ledger Entry

OWNER: Terry Smith TENANT: T & B Farms
LEGAL: NE 1/4 30-14-2 Sunburst CountyMGMT. FEE: 10% of income

DATE	DESCRIPTION	CK#	AMOUNT	BALANCE
1-02	Balance forward			3,302.98
1-09	Received from Terry Smith, owner		2,140.63	5,443.61
1-09	People's Electric - Jan. bill	1989	-19.00	5,424.61
1-30	Agriplex Co-op - invoice 2116	1990	-2,140.63	3,283.98
2-06	Midtown Irrig. - pump switch	1991	-18.00	3,265.98
2-09	Agriplex Co-op - Sold 1990 corn 3022 bu/2.25		6,799.50	10,065.48
2-09	Tom Jones - management fee	1992	-679.95	9,385.53
2-11	Agriplex Co-op - Sold 1990 corn 3878 bu/2.25		8,725.50	18,111.03
2-11	Tom Jones - management fee	1993	-872.55	17,238.48
2-18	People's Electric - Feb. bill	1994	-26.45	17,212.03
2-24	Agriplex Co-op - Sold 1990 corn 395 bu/2.25		888.75	18,100.78
2-24	Tom Jones - management fee	1995	-88.88	18,011.90
3-18	Hayseed Co. - seed corn 43 bags @ 61.82	1997	-2,658.26	15,353.64
3-21	National Insurance - buildings	1998	-621.18	14,732.46
3-30	County Treasurer -1st half r.e. taxes	1999	-1,151.71	13,580.75
3-30	Terry Smith - owner proceeds	2000	-12,000.00	1580.75

Beginning Balance	3,302.98
Total Credit	18,554.38
Total Debits	-20,276.61
Ending Balance	1580.75

III. PROPERTY MANAGEMENT ACCOUNTS

G. Trust Account Examinations

The Nebraska Real Estate Commission has an active trust account and transaction file examination program, which is designed to be educational and help acquaint brokers with the requirements for proper record keeping and their obligation in handling trust funds, as well as to determine the compliance level being achieved by brokers.

Each broker can expect to have an examination on an irregular schedule, and the examination may be unannounced. The ~~trust account~~ examination process generally takes only a few hours. During this period, the examiner will verify that financial institution statements have been reconciled and will perform a random inspection of the files related to properties managed, including currently-managed properties, those no longer being managed, and those for which management was terminated during the period being examined. The examiner will also review, on a random basis, the entries to the bookkeeping system and the supporting documentation to ensure full compliance with the License Act and Rules. The Commission requires that posting to the bookkeeping system be current at all times. (Note exception for separate accounts as set forth in Section F of the Property Management Chapter of this Manual.) Since the examinations are unannounced, the broker needs to ensure that posting is current so that the examiner can complete the examination in an accurate and efficient manner. It is also of assistance to the examiner if key personnel, other than the broker, are aware of the location of the ~~trust~~ records, in case the broker is not available at the time the examiner arrives.

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

1. Management agreements
2. Lease agreements
3. Checkbooks and checkbook registers
4. Checks - canceled, voided, and unused
5. Financial institution statements and reconciliations
6. Deposit slips - originals and/or duplicates
7. Bookkeeping system - general ledger and sub-ledgers
8. Supporting vendor invoices
9. Any other pertinent files or documents.

The broker can make the examination process more efficient by maintaining the files and records in a neat and orderly fashion. The examiners do not review the general business records of the broker, and it is recommended that those records be maintained separate from the trust account records.

III. PROPERTY MANAGEMENT ACCOUNTS

H. Ownership Interest

If a broker owns the majority interest in a piece of real estate (50.1% or better) or is acting as a general partner, and that real estate is being managed by the broker/owner or broker/general partner, the funds relating to the property being managed would not need to be handled through a trust account, unless compensation or consideration is being paid to the broker.

If the broker owns less than the majority interest in a piece of real estate (50.0% or less) and that real estate is being managed by the broker, the funds **must** be deposited and disbursed from a trust account established by the broker under the License Act and Rules of the Commission, and in accordance with this Manual.