

COMMISSIONS – PAYMENT FROM TRUST

Summary: All payments received by a brokerage as or on account of commission or other remuneration for a trade in real estate shall be paid into a trust account and shall be paid out in accordance with the *Real Estate Act* Rules. This does not apply to a commission or other remuneration that is not to be shared between brokerages or to share of a commission or other remuneration received from another brokerage. [See: *Real Estate Act* Rules, s. 97]

Note: For the purposes of this Information Bulletin, and where the context permits, “real estate broker” refers to all four categories of real estate broker licence i.e. brokerage, broker, associate broker and associate.

When a brokerage receives monies on account of a commission payment for a trade in real estate, the monies must be deposited into the brokerage’s trust account and be recorded as trust monies held for the client who is paying the commission. All commissions flow through the trust account to the general account before they are paid to the industry member.

The two exceptions from the payment into trust are:

- a commission that is not to be shared between brokerages
- a commission received by one brokerage from another brokerage that is a share of a commission

Commission payments in the above two situations must be paid directly into the brokerage’s general account from which the real estate broker is paid.

When the exceptions do not apply and the commission monies are no longer required to be held in trust, they must be paid out of trust as follows:

- If there is a cooperating brokerage, the cooperating brokerage is paid out of trust first.
- The brokerage holding the trust monies may then pay itself by making payment from its trust account into its general account.
- If the commission is to be shared by more than one brokerage and it has not been paid in full by the client, the brokerages may agree on how the commission monies are to be shared. If they are unable to agree, no monies may be withdrawn from the trust account until the cooperating brokerage has been paid in full.

Real estate brokers are not to be paid from a trust account and no personal or general office expenses are to be paid from trust.

If there is a trust shortage, the broker is responsible for the shortage and is required to deposit the broker’s own money into the trust account as soon as the shortage is found.

RECA understands that some brokerages have designated some general accounts as “commissions trust accounts.” The brokerage uses such an account to disburse commissions to the brokerage’s associates or associate brokers. RECA considers

accounts designated as a “commissions trust account” as a general account of the brokerage. As such, brokerages may disburse commissions from the brokerage’s trust account into these accounts when the commissions become payable to the brokerage. However, brokerages may not deposit any commissions received from a client that are to be shared with other brokerages into general accounts designated as “commissions trust accounts.”

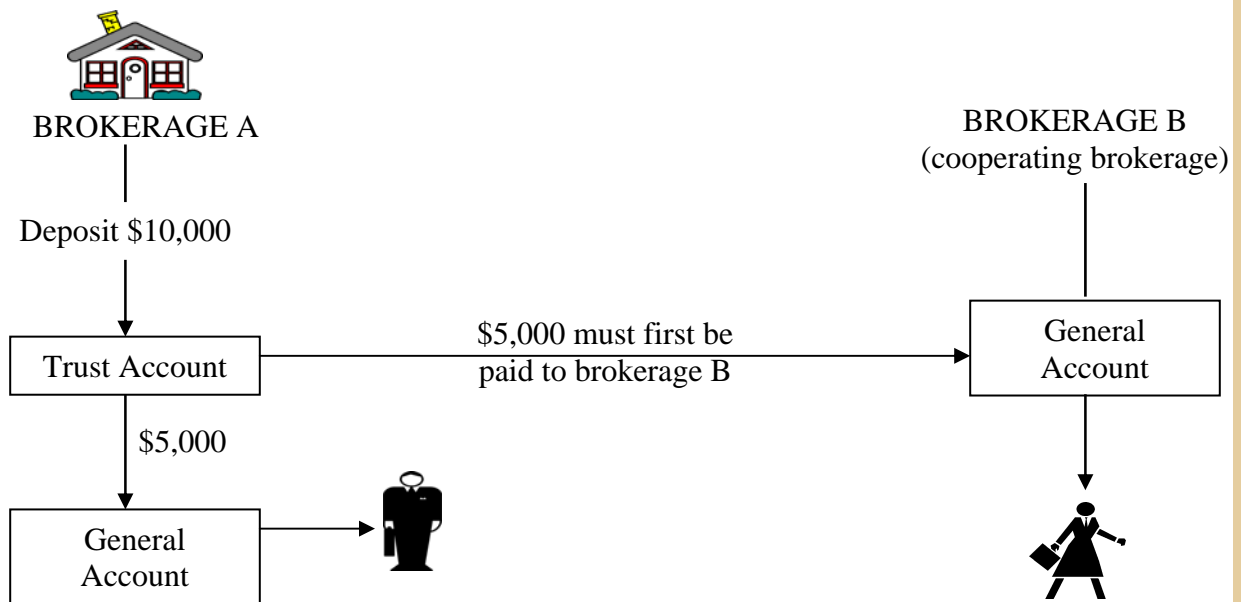
For the purpose of the following diagrams, brokerages who designate a general account as a “commissions trust account” can replace the term “general” account with “commissions trust account.”

Examples

1. Deposit Equals Commission – Two Brokerages

A real estate broker from brokerage A enters into a seller brokerage (listing) agreement with his client. Commissions are to be \$10,000 with \$5,000 to go to any cooperating brokerage. A real estate broker from brokerage B finds a buyer for the property. An offer is made and a trust deposit of \$10,000 is held by brokerage A. The deal closes and \$10,000 commissions are payable by the client to brokerage A. A direction is received from the client for brokerage A to use the \$10,000 being held in trust for payment of commissions. Brokerage A in turn owes \$5,000 to brokerage B.

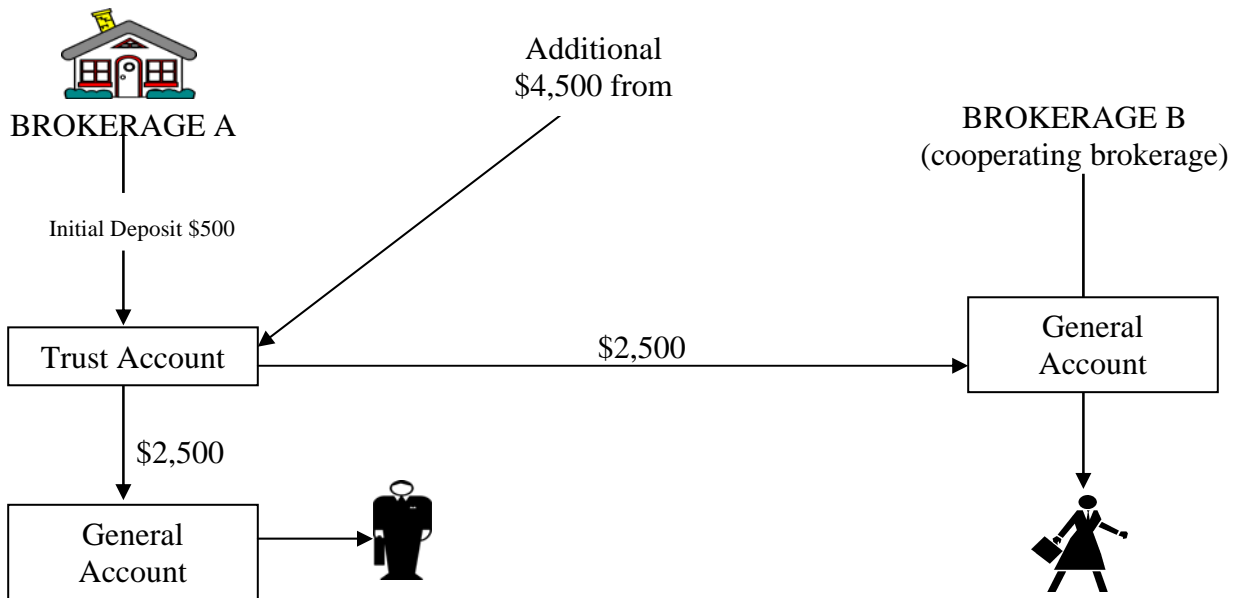
Application of Rule 97: Brokerage A must first pay brokerage B \$5,000 from trust. The trust transfer takes place. Brokerage B deposits the \$5,000 into its general account as a commission payment. Brokerage A draws \$5,000 from the trust account and pays this into its general account for payment of commissions. This may be illustrated by the following diagram.



2. Deposits Less Than Commissions – Two Brokerages

A real estate broker from brokerage A enters into a seller broker agreement (listing) with her client. Commissions are to be paid in the amount of 5% of the selling price with 2.5% of the selling price to be paid to any cooperating brokerage. A real estate broker from brokerage B finds a buyer for the property. An offer is made and a trust deposit of \$500 is held by brokerage A. The deal closes and \$5,000 commissions are payable to brokerage A. A direction is received from the client for brokerage A to use the \$500 being held in trust in payment of commissions. With this direction, a further \$4,500 is paid to brokerage A to satisfy the commissions owing. Brokerage A owes \$2,500 to brokerage B.

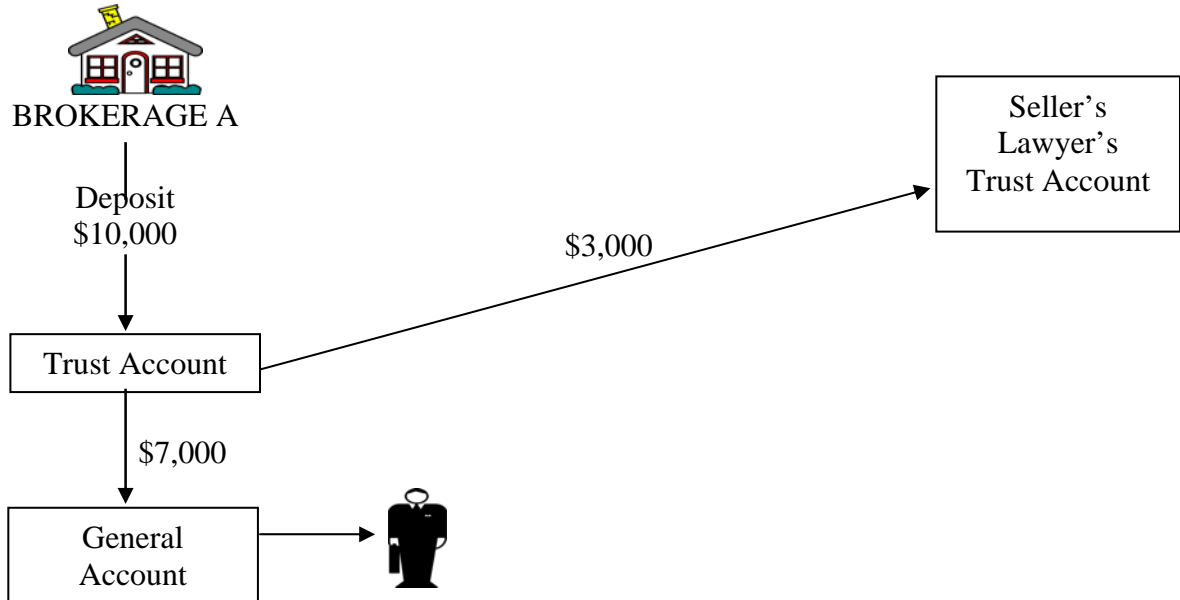
Application of Rule 97: Brokerage A must deposit the \$4,500 received from its client into brokerage A's trust account. There will then be \$5,000 in brokerage A's trust account. From the \$5,000 being held in trust, brokerage A must pay brokerage B \$2,500. The trust transfer takes place. Brokerage B deposits this \$2,500 into its general account as a commission payment. Brokerage A draws \$2,500 from the trust account into the general account to pay the commissions to its real estate broker. This may be illustrated by the following diagram.



3. Deposits Greater Than Commissions – Transaction Brokerage

A real estate broker from brokerage A enters into a seller brokerage agreement (listing) with a client. Commissions are to be paid in the amount of 7% of the selling price. The real estate broker from brokerage A is successful in finding a buyer (whom he also represents) for the property. A \$10,000 deposit is made to brokerage A on the deal. The deal closes and commissions in the amount of \$7,000 are payable by the client to brokerage A. A direction is received from the client for brokerage A to pay \$3,000 from trust to the client's lawyer and to maintain the balance of \$7,000. Later a direction is received from the client to pay the \$7,000 owed for commissions from the \$7,000 held in trust.

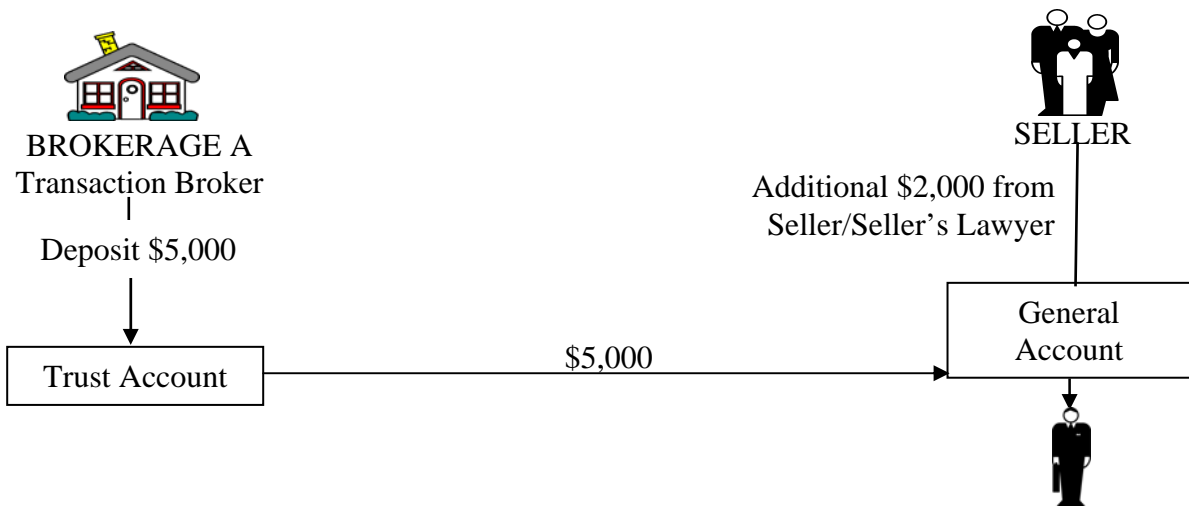
Application of Rule 97: Brokerage A draws \$7,000 from the trust account and pays it into the general account in payment of commissions to pay its real estate broker. This may be illustrated by the following diagram.



4. Deposits Less Than Commissions – Transaction Brokerage/Double Ender Exemption

A real estate broker with brokerage A enters into a seller brokerage agreement (listing) with a client. Commissions to be paid are 7% of the selling price. The real estate broker with brokerage A is successful in finding a buyer. A \$5,000 deposit is made payable to brokerage A on the deal. The deal closes and commissions in the amount of \$7,000 are payable from the client to brokerage A. When the deal closes the client provides brokerage A with an additional \$2,000 in payment of commissions. A direction on the commission payment of the other \$5,000 being held in trust is also received.

Application of Rule 97: The exemption applies. Brokerage A draws the \$5,000 from the trust to pay into the general account in payment of commissions. The further deposit of \$2,000 received from the client is deposited into brokerage A's general account. This may be illustrated by the following diagram.

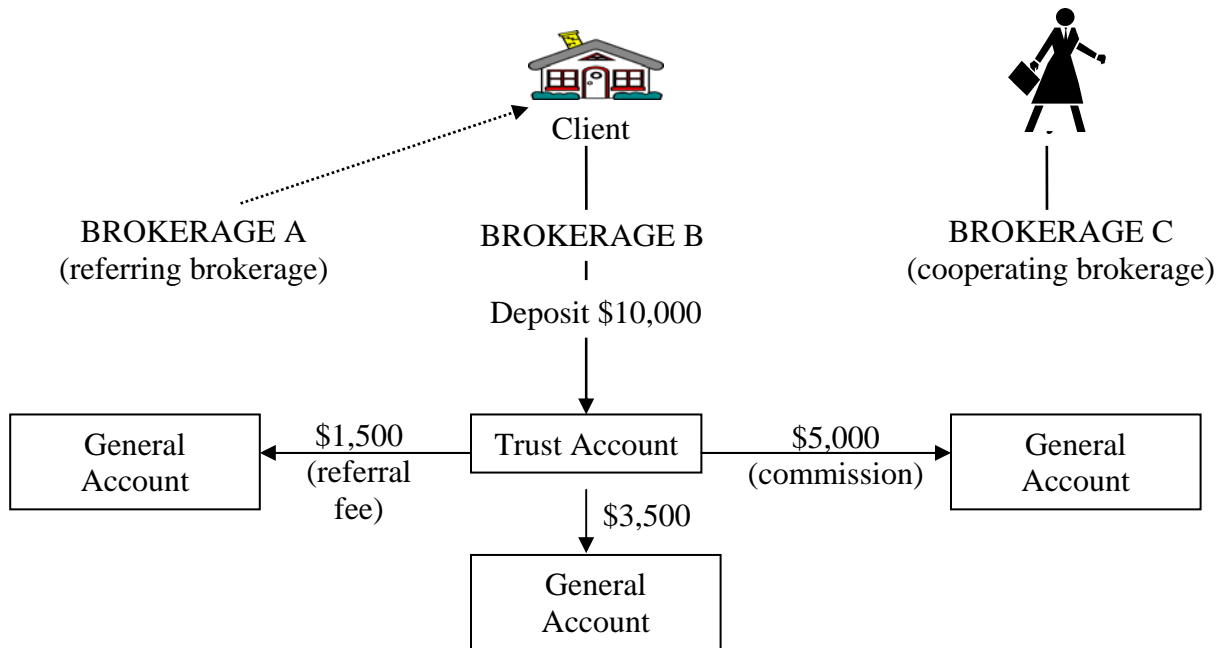


5. Commissions to Referring and Cooperating Brokerage for Seller Client

A real estate broker with brokerage A refers clients wishing to sell their property to a real estate broker working for brokerage B. A 30% referral fee is agreed to between brokerages A and B. The commissions are to be \$10,000 in total with \$5,000 to go to any cooperating brokerage. An associate registered to brokerage C finds a buyer for the property. An offer is made and brokerage B holds the \$5,000 trust deposit. The deal closes and \$10,000 in commissions are payable by the client to brokerage B. A direction is received from the client's lawyer for brokerage B to use the \$5,000 being held in trust in payment of commissions. With this direction a further \$5,000 is paid to brokerage B to satisfy the commissions owing. Brokerage B owes \$5,000 to brokerage C and \$1,500 to brokerage A.

Application of Rule 97: Brokerage B deposits the \$5,000 received from its client into its trust account. There will then be \$10,000 in brokerage B's trust account. From the \$10,000 being held in trust, brokerage B pays brokerage C \$5,000 as commissions and pays brokerage A a referral fee of \$1,500. Brokerage B draws the remaining \$3,500 from the trust account into the general account in payment of commissions.

This is illustrated in the following diagram:



6. Commissions to Referring and Cooperating Brokerages for Buyer Clients

A real estate broker registered with brokerage A refers her buyer clients to brokerage B. A 30% referral fee is agreed upon between brokerages. A real estate broker with brokerage B is successful in finding property for the clients, and a deposit of \$5,000 is placed in trust with the seller's brokerage C. The deal closes and commissions in the amount of \$7,000 are payable by the seller to brokerage C. A direction is received from the seller's lawyer for brokerage C to use the \$5,000 being held in trust for payment of commissions. With this direction a further \$2,000 is paid to brokerage C to satisfy the commissions owing. Brokerage C owes \$3,500 in commissions to brokerage B. Brokerage B owes a referral fee of \$1,050 to brokerage A.

Application of Rule 97: Brokerage C deposits the \$2,000 received from the seller's lawyer in trust. There is now \$7,000 in trust. Brokerage C pays \$3,500 to brokerage B from trust. Brokerage C draws \$3,500 from the trust account into the general account. Brokerage B deposits the \$3,500 into its general account, and brokerage B pays brokerage A from the general account for the referral fee.

This may be illustrated in the diagram below.

