

COMMISSIONS – PAYMENT FROM TRUST

Purpose: This bulletin explains how to handle the receipt and disbursement of funds that are commissions or other remuneration.

This bulletin applies to the broker and administrative staff of a real estate brokerage.

Brokerages Must Maintain a Trust Account

Depositing funds

A brokerage must deposit into its trust account any funds set out as a deposit to be held in trust in the real estate purchase contract. The brokerage must record the money as trust money for the client.

If the trust deposit is authorized to be used to pay commissions:

- in full to only one brokerage
- in full to two or more brokerages

the money is paid from the trust account into the appropriate brokerage(s) general or other account.

If the trust deposit was not adequate to pay all commissions to all brokerages and a brokerage receives additional money for the remaining commission, all additional money for commissions is deposited into the brokerage general or other account and is paid to any other brokerages' general or other accounts.

Disbursing funds

When the brokerage receives authority to disburse money as commissions from the deposit money held in trust, the brokerage must disburse the money payable as commissions as follows:

If full commission is on deposit:

- Step 1: to any cooperating brokerage(s)'s general account or other account
- Step 2: to the brokerage holding the deposit to its general or other account

If commissions cannot be paid in full and two brokerages share the commission:

- Step 1: the brokerages may agree how to share

Step 2: if they do not agree, the brokerage holding trust money must immediately deposit the money in a lawyers trust account until the matter is resolved

A brokerage must not pay any personal or general office expenses from a trust account.

If there are insufficient funds held in trust to pay all monies owed to other brokerages, then brokerages must pay any cooperating brokerages first, then pay any referrals.

If there are multiple referral payments owed, and there are insufficient funds in trust to pay those referrals, the brokerage that signed a referral agreement first will be paid from trust first.

“Other” accounts

Some brokerages may wish to designate an “other account” for commissions. The brokerage may choose to use this “other” account to disburse commissions to the brokerage’s industry professionals. For the purposes of the *Real Estate Act*, the Real Estate Council of Alberta considers “other” accounts as general brokerage accounts. With authority, brokerages may disburse money from the brokerage’s trust account into the general or other account in payment of commissions to the brokerage.

For the purpose of the following diagrams, brokerages who designate a general account or “other account” as a commission account can replace the term “general” or “other” account with “commission account” if they choose.

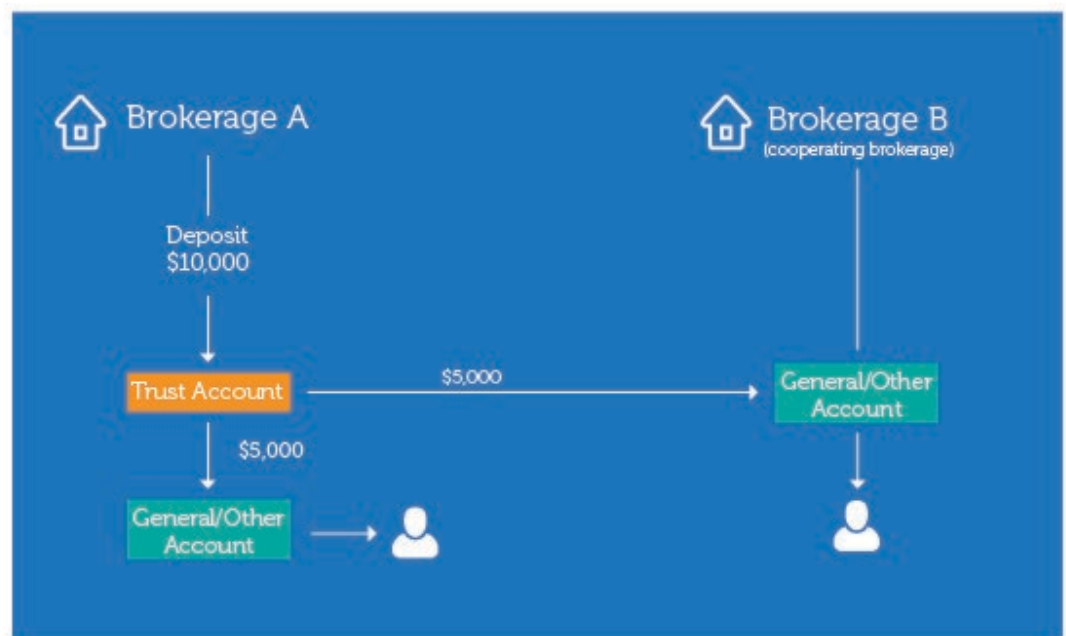
Examples

1. Deposit in trust equals commission owed to two co-operating brokerages

Brokerage A enters into a seller representation agreement. The commission is \$10,000 with \$5,000 offered to any cooperating brokerage. Brokerage B finds a buyer for the property. The buyer and seller reach an agreement with Brokerage A holding a trust deposit of \$10,000. The deal closes and \$10,000 commissions are payable by the client to Brokerage A. Brokerage A receives notice from the client/lawyer to use the \$10,000 in trust to pay the commissions. Brokerage A owes \$5,000 to Brokerage B.

Application of Rule 97: Brokerage A pays Brokerage B \$5,000 immediately out of Brokerage A's trust account, directly into Brokerage B's general or other account as a commission payment. Brokerage A draws the remaining \$5,000 from Brokerage A's trust account and pays this into its general or other account for payment of commissions.

This diagram illustrates the scenario.

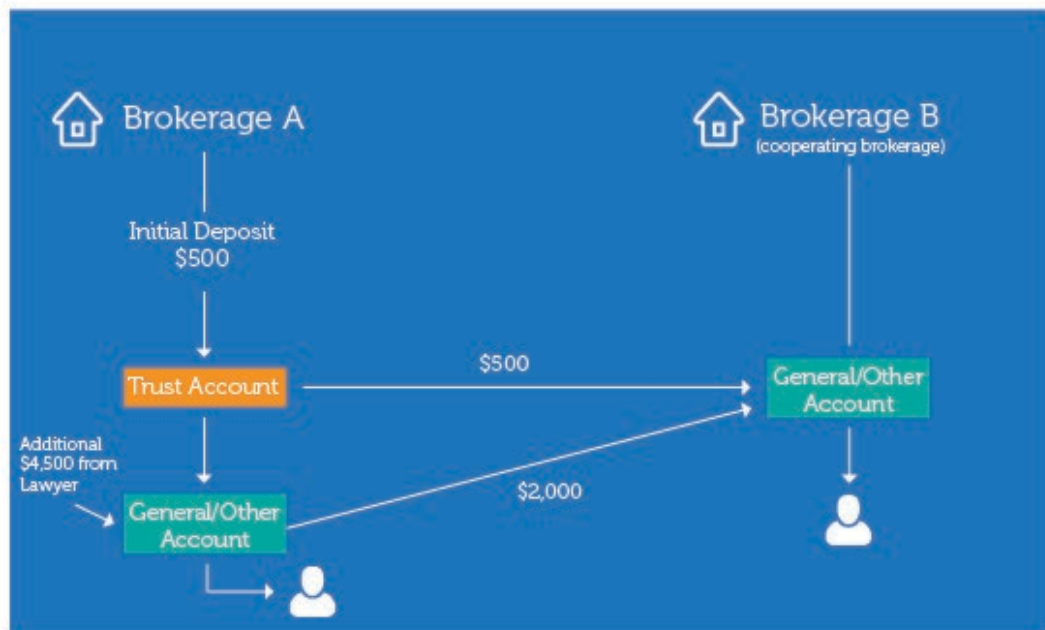


2. Deposit in trust is less than commissions owed to two brokerages

Brokerage A enters into a seller representation agreement. Commissions are 5% of the selling price with 2.5% of the selling price to pay any cooperating brokerage. Brokerage B finds a buyer for the property. The buyer and seller reach an agreement with a trust deposit of \$500 held by Brokerage A. The deal closes and \$5,000 commissions are payable to Brokerage A. Brokerage A receives notice from the client/lawyer to use the \$500 in trust to pay the commissions. The client pays an additional \$4,500 to Brokerage A to satisfy the commissions owing. Brokerage A owes \$2,500 to Brokerage B.

Application of Rule 97: Brokerage A pays \$500 from its trust account immediately to Brokerage B's general or other account. Brokerage A deposits the \$4,500 paid by the client into Brokerage A's general or other account. Brokerage A pays Brokerage B the remaining \$2,000 owed to Brokerage B's general or other account. Brokerage A has \$2,500 remaining in its general or other account for its commissions.

This diagram illustrates the scenario.

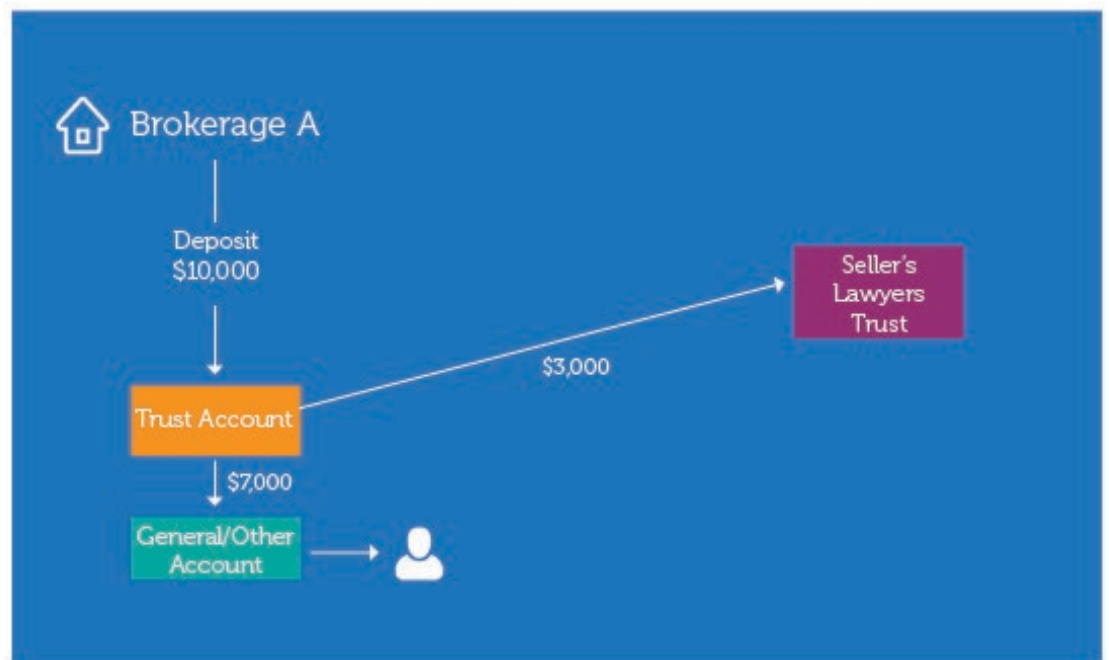


3. Deposits paid are greater than commissions owed in transaction brokerage

Brokerage A enters into a seller representation agreement. Commissions are 7% of the selling price. Brokerage A finds a buyer for the property. The buyer and seller reach an agreement with a trust deposit of \$10,000 held by Brokerage A. Brokerage A receives notice 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 for commissions. The deal closes and the Brokerage A receives notice from the client to use the \$7,000 in trust to pay the commissions.

Application of Rule 97: Brokerage A draws \$7,000 from the trust account and pays it into its general or other account in payment of commissions.

This diagram illustrates the scenario.

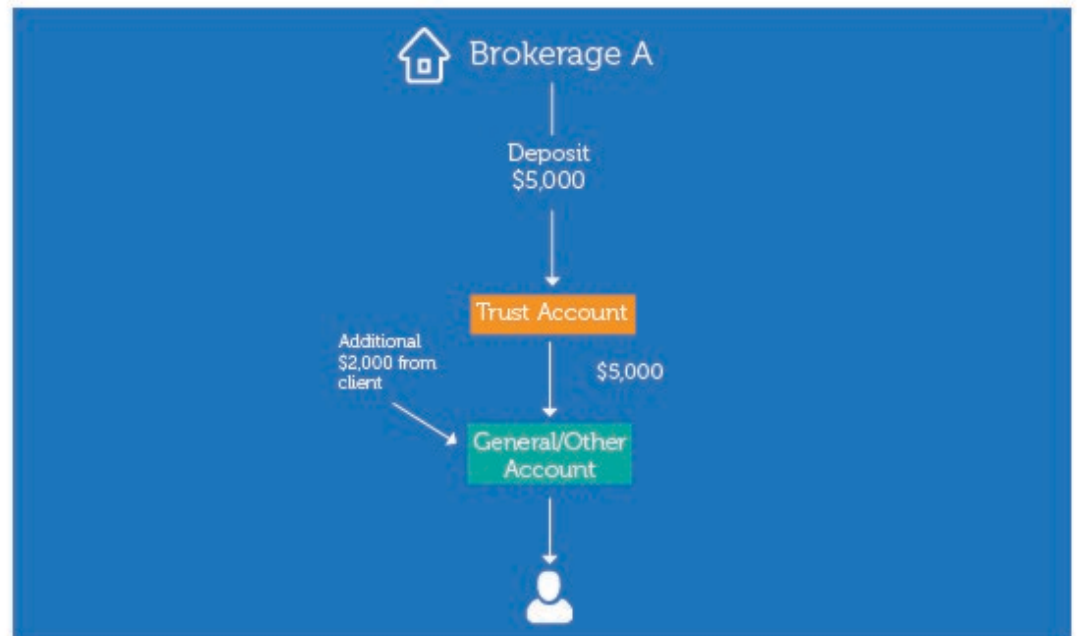


4. Deposit paid is less than commissions owed

Brokerage A enters into a seller representation agreement. Commissions are 7% of the selling price. Brokerage A finds a buyer. The buyer and seller reach an agreement with a trust deposit of \$5,000 held by Brokerage A. The deal closes and commissions are \$7,000. The client pays Brokerage A an additional \$2,000 for commissions. Brokerage A receives notice from the client/lawyer to use the \$5,000 in trust to pay the commissions.

Application of Rule 97: Brokerage A draws the \$5,000 from trust into the general or other account to pay commissions. Brokerage A deposits the \$2,000 received from the client into Brokerage A's general or other account.

This diagram illustrates the scenario.

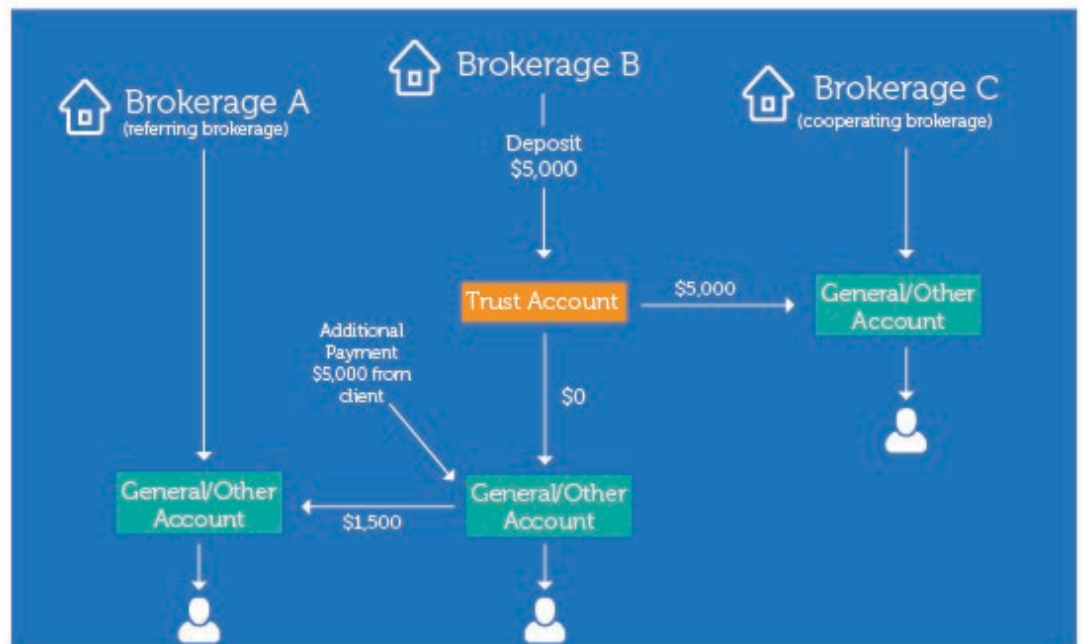


5. Commissions to referring and cooperating brokerage for seller client

Brokerage A refers a seller to Brokerage B. Brokerage A and B agree to a 30% referral fee of Brokerage B's portion of the commission. Brokerage B enters into a Seller Representation Agreement. The commissions are \$10,000 with \$5,000 for any cooperating brokerage. Brokerage C finds a buyer for the property. The buyer and seller reach an agreement with a trust deposit of \$5,000 held by Brokerage B. The deal closes and commissions are \$10,000 payable to Brokerage B. Brokerage B receives notice to use the \$5,000 deposit for commissions. Brokerage B receives a cheque from the client for \$5,000 for the balance of commissions. Brokerage B owes \$5,000 to brokerage C and \$1,500 to brokerage A.

Application of Rule 97: The initial \$5,000 deposit is in Brokerage B's trust account. Brokerage B deposits the additional \$5,000 for commissions to its general/other account. Brokerage B pays Brokerage C the \$5,000 owed directly from its trust account into Brokerage C's general or other account. Brokerage B then pays the \$1,500 referral fee from its general or other account into Brokerage A's general or other account, and the remainder in its general or other account is for payment of commissions to its own industry professionals.

This diagram illustrates the scenario.



6. Commissions to referring and cooperating brokerages for buyer clients

Brokerage C enters into a Seller Representation Agreement with commissions of \$7,000. Brokerage C offers \$3,500 to a cooperating brokerage. Brokerage A refers buyer clients to Brokerage B. Brokerage A and B agree to a 30% referral fee. Brokerage B finds a property for the buyer. The buyer and seller reach an agreement with a trust deposit of \$5,000 held by Brokerage C. The deal closes and commissions of \$7,000 are payable to Brokerage C. Brokerage C receives notice to use the \$5,000 deposit for commissions. Brokerage C receives a cheque for \$2,000 from the seller's lawyer for the balance of commissions. Brokerage C owes \$3,500 in commissions to Brokerage B. Brokerage B owes a referral fee of \$1,050 to Brokerage A.

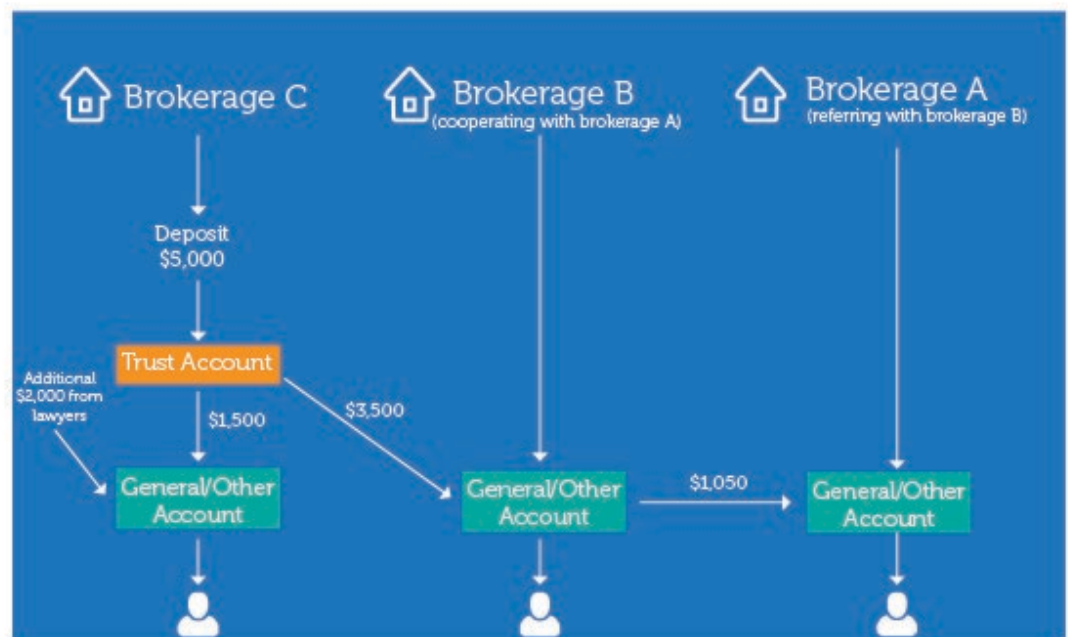
Application of Rule 97: Brokerage C deposits the \$2,000 received from the seller's lawyer in its general or other account. Brokerage C pays \$3,500 from the \$5,000 deposit it holds in trust directly to Brokerage B's general or other account. Brokerage C draws the remaining \$1,500 from the trust account into its general or other account. Brokerage B pays the \$1,050 owed to Brokerage A directly from its general or other account to Brokerage A's general or other account. Brokerage C uses the funds in its general or other account to pay commissions owed to its industry professionals.

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Last Revised
April 2019

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This diagram illustrates the scenario.

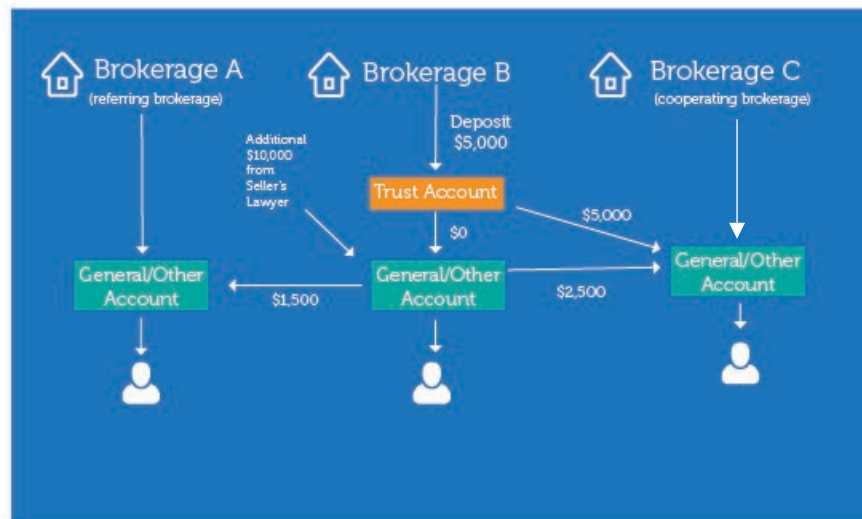


7. Commissions to cooperating and referring brokerages when trust deposit is not sufficient to cover commissions

Brokerage A refers seller clients to Brokerage B. Brokerage A and B agree to a 20% referral fee of Brokerage B's portion of commissions. Brokerage B enters into a Seller Representation Agreement. Brokerage C brings a buyer for the property. The buyer and seller reach an agreement with a trust deposit of \$5,000 held by Brokerage B. The deal closes and commissions of \$7,500 are payable to Brokerage C, and \$7,500 commissions are owed to the listing brokerage. The Seller's lawyer pays Brokerage B \$10,000 for commissions directly into Brokerage B's general or other account, making \$15,000 available to pay all commissions and referral fees. Brokerage B receives notice to use the \$5,000 deposit for commissions. Brokerage B pays Brokerage C \$5,000 directly from Brokerage B's trust account into Brokerage C's general or other account. Brokerage B pays the remaining \$2,500 owed to Brokerage C from their general or other account into Brokerage C's general or other account. Brokerage B pays a referral fee of \$1,500 to Brokerage A from their general or other account into Brokerage A's general or other account.

Application of Rule 97: Brokerage B deposits the \$10,000 received from the seller's lawyer in its general or other account. Brokerage B pays \$5,000 from the \$5,000 deposit it holds in trust directly to Brokerage C's general or other account. Brokerage B pays the remaining \$2,500 owed to Brokerage C from the general or other account into Brokerage C's general or other account. Brokerage B then pays the \$1,500 owed to Brokerage A directly from its general or other account to Brokerage A's general or other account. Brokerage B uses the remaining funds in its general or other account to pay commissions owed to its industry professionals.

This diagram illustrates the scenario.



Related information

Legislation

- *Real Estate Act Rules - sections 96, s.97*

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