

FDIC Insurance for Funds in Broker Escrow Accounts

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The fallout caused by the unprecedented events that have taken place in the credit and equity markets over recent months has impacted all areas of business and industry throughout the country. A specific area of concern for the real estate industry is the proper insurance of client monies being held in broker escrow accounts. To ensure that the client monies are protected by the FDIC against the possible failure or default of the depository institution, the broker must strictly comply with all FDIC requirements governing the creation of a fiduciary account.

FDIC Insurance and Limits of Coverage

The Federal Deposit Insurance Corporation ("FDIC") is an independent agency of the United States government that protects against the loss of deposits held in certain types of accounts in FDIC-insured banks. One protected category of accounts is the "fiduciary account," which is defined as an account containing funds deposited by a fiduciary (such as a real estate professional) on behalf of one or more owners (such as clients). An escrow account is a common form of a fiduciary account.

The FDIC has temporarily increased the basic coverage limit from \$100,000.00 to \$250,000.00 per depositor¹. This single limit of coverage applies to all funds held in an individual's name at a single FDIC-insured depository.

FDIC Insurance of Funds in Fiduciary Accounts

When a real estate broker deposits money belonging to a client or customer into a fiduciary account, FDIC regulations permit the money to be insured to the same extent as if it had been deposited by the client/customer himself or herself in his or her own name. Therefore, if the trust account contains funds belonging to more than one client, the FDIC will insure the funds for each client up to \$250,000.

Brokers should caution their clients that if they have a personal account at the same bank where the broker is holding the escrow money in a fiduciary account, the full amount being held in the client's name (i.e. the escrowed funds plus the full amount held in the personal account) will be subject to the \$250,000.00 limit.)

FDIC Disclosure Requirements for Fiduciary Accounts

FDIC regulations require that the fiduciary nature of the account be clearly stated in the account title. Thus, the broker should include the phrase "Escrow Account" or "As Escrow Agent for..." in the title of the account. Further, the name and ownership interest of each owner must be ascertainable from either the deposit account records of the insured bank or from records maintained by the agent (or by some person or entity that has agreed to maintain records for the agent). Additional requirements apply to the establishment of "multi-tier fiduciary accounts," which are accounts involving multiple agents making deposits on behalf of a principal.

The Pennsylvania Real Estate Commission has adopted rules governing the use and management of brokerage escrow accounts designed to complement the FDIC regulations

¹ Pursuant to the Emergency Economic Stabilization Act of 2008, this temporary increase will remain in effect until December 31, 2009.¹

and maximize insurance coverage available to clients and customers of real estate brokers. (See, 49 Pa. Code §§ 35.321 – 35.328). The Pennsylvania Real Estate Commission Rules state that a “broker shall deposit money that the broker receives belonging to another into an escrow account in a Federally or State-insured bank or depository to be held pending consummation of the transaction...” (49 Pa. Code §§ 35.321(a)). The escrow account must (1) be maintained in a Federally- or State-insured bank or recognized depository; (2) designate the broker as trustee; (3) provide for the withdrawal of funds without prior notice; and, (4) be used exclusively for escrow purposes. (49 Pa. Code § 35.325(a))

The key to adequately protecting yourself and your client in the event of the failure or default of the bank at which you have deposited escrow funds is strict compliance with all FDIC requirements relating to the establishment of and record keeping in connection with brokerage escrow accounts.