

OAR 863-15-0186

Clients' Trust Accounts – Disbursal of Disputed Funds

(1) A sole practitioner or principal real estate broker may disburse disputed funds in a Clients' Trust Account using the procedures in Sections 3 through 7 of this rule or may disburse funds in a Clients' Trust Account under the terms of a lawful contractual agreement, by law, or under the provisions of ORS chapter 696, ORS chapter 105, OAR 863-015-0185 or OAR 863-025-0025.

(2) For purposes of ORS 696.241(10) and this rule, "disputed funds" are funds in a Clients' Trust Account delivered by a person to a sole practitioner or principal real estate broker pursuant to a written contract and the parties to such contract dispute the disbursal of the funds.

(3) As soon as practicable after receipt of a demand by one of the parties for the disbursal of funds in a Clients' Trust Account, the sole practitioner or principal real estate broker must deliver written notice to all parties that a demand has been made for disbursal of the funds and that such funds may be disbursed to the party who delivered the funds within 20 calendar days of the date of the demand.

(4) The written notice in section (3) of this rule must include substantially the following information:

(a) A party has made a demand for disbursal of funds and the sole practitioner or principal real estate broker may disburse such funds from the Clients' Trust Account to the party who delivered the funds unless:

(A) The parties enter into a written agreement regarding disbursal of the funds and deliver such agreement to the sole practitioner or principal real estate broker within 20 calendar days of the date of the demand for disbursal; or

(B) A party provides proof to the sole practitioner or principal real estate broker that the party has filed a legal claim to such funds within 20 calendar days of the date of the demand for disbursal;

(b) The sole practitioner or principal real estate broker has no legal authority to resolve questions of law or fact regarding disputed funds in a Clients' Trust Account;

(c) The disbursal of the funds from the Clients' Trust Account to the party who delivered the funds will end the responsibility of the sole practitioner or principal real estate broker

to account for the funds but will not affect any right or claim a person may have to such funds; and

(d) Both parties may wish to seek legal advice on the matter.

(5) Regardless of whether a party disputes the disbursal of funds as outlined in section (4) of this rule, if the parties have not entered into a written agreement regarding such disbursal or if a party has failed to provide proof of filing a legal claim, the sole practitioner or principal real estate broker may disburse the disputed funds to the person who delivered the funds within 20 calendar days of the date of the demand for disbursal.

(6) Nothing in this rule shall prevent a sole practitioner or principal real estate broker from disbursing such funds pursuant to:

(a) The terms of the original contract between the parties;

(b) Any subsequent agreement between the parties regarding the disbursal of funds provided to the sole practitioner or principal real estate broker within 20 calendar days of the demand for disbursal; or

(c) The requirements of law.

(7) Nothing in this rule shall prevent the broker from filing an action to interplead the disputed funds.

(8) Real estate licensees with property management Clients' Trust Accounts must review and follow the requirements for handling client funds under the Residential Landlord and Tenant statutes in ORS Chapter 90. For any other non-real estate sales transaction disputes, the sole practitioner or principal real estate broker must review the terms of the written contract for handling disputed funds.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.241