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Advice to Colorado Property Managers for Collecting and Reconciling Rent and Security Deposits

The Colorado Real Estate Commission has specific trust account and accounting requirements for brokers who collect and distribute rent or security deposits. Any brokerage firm or broker who receives money belonging to others must establish written accounting control policies and procedures, including adequate checks and balances over the financial activities to manage the risk of fraud or illegal acts. Below is a breakdown of some of these requirements:

✔ All money belonging to others which is received by a broker must be placed in an escrow or trust account. This applies to tenant security deposits and advance rental deposits held by a property manager.

✔ Review the brokerage firm's office policy manual for guidance on where to keep tenant security deposits and advance rental deposits.

☐ If the office policy manual states that all deposits must go into the brokerage firm trust account, that requirement must be met. In that case, three-way reconciliation is required and all accounting rules must be followed. The total of the liability ledgers must be compared to the reconciled bank statement and journal total for purposes of a three-way reconciliation.

☐ If the office manual does not require use of the brokerage firm trust account, the individual broker/property manager must establish a trust account and identify the fiduciary nature of each trust or escrow account. The property manager is required to perform a two-way reconciliation monthly to show that on the date of reconciliation the cash balance shown in the journal and the reconciled bank balance are the same.

✔ If a broker owns less than 20% interest in a property and is managing it for him/herself and others, the broker must have a property management relationship with the ownership entity, which includes proper disclosures, contracts, and adherence to the accounting and record-keeping requirements for property managers outlined in the office policy manual for the brokerage.

✔ Monies accepted for deposit by brokers for activities not involving real estate brokerage services (e.g. guest deposits for short term rentals, security deposits for the broker's own rental properties where the broker's ownership interest is more than 20%, etc.) must also be deposited into the broker's or brokerage firm's trust or escrow account and these funds are subject to the same record-keeping requirements (revised Rule 5.11, effective July 30, 2020).

✔ The property manager or brokerage must not divert or convert monies, must maintain a journal of the account, and must be able to produce documents and records upon request.

✔ In order to be a complying trust account, the funds must be available immediately without penalty and must not be at risk in the event the brokerage or property manager is sued or files for bankruptcy.

✔ Only work with a bank that confirms that it offers true trust or escrow accounts. The Colorado Department of Regulatory Agencies Division of Real Estate has published a non-exhaustive list of banks that offer compliant trust accounts.

✔ Use a written deposit agreement between the brokerage/individual broker and the bank that identifies the fiduciary nature of each separate trust or escrow account. Each account must have a label identifying the purpose of such account, such as "rental escrow" or "security deposit escrow". When setting up a trust or escrow account with the bank, verify that the account is established as a fiduciary/trust account for the purpose of holding monies for others.

✔ Present Notice(s) of Escrow or Trust Account to the bank when setting up these types of accounts.

✔ Properly title the escrow or trust account signature card using specific language for the creation of a fiduciary/escrow relationship.

✔ Keep rental proceeds in a trust account that is separate from the security deposit trust account. Avoid adding or commingling other money with the monies in the security deposit trust account. Taking money out of the security deposit trust account for purposes of paying bills is prohibited and would be considered diverting funds.

✔ Cash basis of accounting shall be used for maintaining all escrow or trust accounts in the absence of a written agreement to the contrary.

✔ In the absence of a contract signed by the proper parties to the contrary, any interest accumulating on a trust account does not belong to the property manager who is acting as escrow agent.

✔ Software can be an essential tool for brokers managing a large volume of properties, but ensure that the software is compliant with Colorado law.

✔ If a property manager will no longer be managing the property, the property manager must transfer a copy of the entire file to the landlord or, upon written authorization from the landlord, to the new property manager. The file should include outstanding tenant balances, tenant security deposit(s), and owner's funds.

  ☐ The property manager must give written notice by first class mail to the tenant that the security deposit has been transferred to the landlord or new property manager along with the landlord or new property manager's contact information. The notice must indicate who is holding the security deposit and the procedure in which the tenant may request return of the deposit.

☐ The property manager also must provide the landlord with a final accounting of all trust funds held by the property manager.

☐ The transfer of the landlord's funds needs to occur within a reasonable amount of time.

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