

ANSWERS TO Q & A

ELECTIVE F – BROKER SUPERVISION

BASICS OF INDEPENDENT CONTRACTOR AGREEMENTS

Can a licensee offer to donate a portion of his or her commission to a nonprofit organization for each referral the licensee receives from a member of that organization?

Fee splitting for referrals to non-party, non-licensees is illegal. Wis. Stat. § 452.19 limits the payment of referral fees, finder fees and commission splits to Wisconsin licensees or persons lawfully and regularly engaged in real estate brokerage in another state. However, incentives may be offered to sellers or buyers provided they are documented properly prior to closing. The party must have a clear, thorough, advance understanding of all the terms and conditions of the incentive. Such incentives may be offered in any amount in order to induce the buyers and sellers to purchase or sell. After closing gifts, which were not previously documented, should be restricted to nominal value. The ability to direct a charitable donation is of itself a thing of value and therefore an illegal referral. **READ MORE ABOUT IT:** More information about referral fees is available on pages 1-4 of *Legal Update 02.01, "Getting Paid Outside of the MLS,"* online at www.wra.org/LU0201.

TRUST ACCOUNTS – RL 18

i. Can a broker legally hold escrowed funds for the seller's portion of the 2009 taxes in his trust account without a written escrow agreement that is all stated in the offer to purchase?

RL 18.07 provides brokers authorization to hold certain funds after closing. Provided the closing statement authorizes the broker to hold funds the broker may hold tax proration per 18.07(2).

RL 18.07 After closing escrow agreements. (1) BY SEPARATE AGREEMENT. If the parties to a contract wish, or are required, to place funds in escrow which are to be held after closing by the broker in the broker's trust account or by another person until some future occurrence, an agreement to that effect shall be prepared by the parties or an attorney. If the broker holds these funds, the broker shall place them in the broker's real estate trust account. The broker may draft the escrow agreement if a form for this purpose has been approved by the department for use by licensees pursuant to s. RL 16.03.

(2) ON CLOSING STATEMENT. A broker may hold in the broker's trust account without a separate escrow agreement occupancy or possession escrows, escrows for final proration of taxes, and escrows for charges incurred by a seller but not yet billed provided that the closing statement shows that the broker is holding the funds.

ii. Who can sign checks from trust account?

Administrative Code RL 18.04 provides that a broker may authorize any person to sign real estate trust account checks provided the person is at least 18 years of age. The Administrative Code does not require the signatory to hold a real estate license.