

COVID-19 Impact on New Brunswick Real Estate Agents Compliance with NB Real Estate Agents Act Questions and Answers

Q: How does COVID-19 situation affect how I operate my trust account?

A: During the COVID-19 crisis, real estate agents must continue to make every effort to respect and abide by the NB *Real Estate Agents Act* and associated NB Regulation 85-24. NBREA recognizes that in some situations this may not be possible. We wish to emphasize, that should you adopt any changes to your trust account procedures and processes in order to deal with the current crisis, please consider adding additional internal controls or staff supervision which may be required to offset any new risks to trust account funds. Keep in mind changes and reasons for changes in particular circumstances must always be documented and retained for NBREA's inspectors' reviews.

Q: What should I do if I am not able to deposit trust money without delay?

A: Sections 19(1) and 19(2) of the NB *Real Estate Agents Act* requires that trust funds must be deposited without delay. NBREA, in conjunction with its co-regulator FCNB, has deemed without delay to mean 3 days from date of receipt if the deposit is received in cash or EFT and 3 days from the day the offer is accepted if the deposit is to be paid by cheque. Under the current crisis, we recognize that situations may arise where this is not possible because banks have reduced their hours of operations or an agent's particular branch may even have closed. If an agent is unable to deposit trust funds into their trust account without delay as defined above, every effort should be made to meet the obligations under the legislation. Remember that the funds being held belong to clients. Therefore, the licensed manager is responsible to adopt procedures that will ensure the security of the funds in their possession. This may include but not be limited to securing the cash or cheques, recording how the funds are secured until they are deposited, recording why the funds were not able to be deposited without delay and developing a plan to deposit the funds at the earliest convenience. Details of securing of cash or cheque, reason for delay, and method and process of deposit should be documented and retained in the respective sales files.

Q: Are there alternative deposit options?

A: There are alternative methods which can be used to deposit funds into the trust account during the COVID-19 crisis; however, these should be used with caution. These may include email transfers, ABM (automatic banking machines) and deposit by cheque scanner or deposit by mobile device. If you must deposit funds using any of these methods, please keep in mind that there may be holding periods placed on these funds and that the funds may take several days to

pass through the bank's clearing process. Please ensure you speak to your financial institution to ensure you are aware of their rules.

Keep in mind that while the NB *Real Estate Agents Act* does not specifically prevent deposit of trust funds by email transfers, as a general rule it is not the recommended method for deposit because of the increased risk in human error and it is highly susceptible to theft by cyber fraud. If this method of deposit is chosen, please take additional procedures to minimize the risk of cyber fraud. This includes utilizing secure passwords and having email transfer sent to a secure email address at the listing agent with only authorized persons having access to this email account.

Regardless of the method of deposit chosen, please keep in mind that any details that support the deposit must be documented and retained in the sales file to show your compliance with the legislation. This may include details of the deposit including how the funds were deposited, why the alternative deposit method was chosen (if applicable) and confirmation of the deposit including the date and any other applicable information. Ensure records are kept up-to-date and carefully review the trust account bank statement when you do your monthly bank reconciliation, at minimum. Any discrepancies must be followed-up on immediately.

Q: Are there alternative withdrawal options?

A: In most instances, funds are withdrawn from a trust bank account using cheques or EFTs. In both of these circumstances, approval of the withdrawal should be completed only by those persons in your organization designated as signing officers on the trust account. If it is impractical or impossible for you to safely use your typical methods to withdraw funds from your trust account, you may use alternative withdrawal methods during the current COVID-19 crisis provided you properly record the transaction and take additional security measures to minimize any risks. This may include utilizing the agent's financial institution internet software or email transfers. Before utilizing any of these methods please consider speaking to financial institution to understand any potential risks such as risk of human error, fraud from staff or cyber fraud. Regardless of the method of withdrawal method chosen, please document and retain in the sale file all details that support the withdrawal. This may include how funds were withdrawn, why the alternative withdrawal method was chosen, confirmation of the date of withdrawal, the approval process for the withdrawal (including evidence of approval for the withdrawal), and any other applicable information.

Additional record keeping will be of high importance during these times to show compliance with legislation. Agents may need to provide more guidance to their bookkeepers during this time and may wish to consult their accountant for additional guidance and appropriate internal controls based on their particular circumstances. Agents must ensure records are kept up-to-date and carefully review the trust account bank statement to ensure deposits and withdrawals are accurately recorded. Any discrepancies must be follow-up on immediately.

Q: Is it appropriate given current circumstances to withdraw commission funds from the trust account prior to closing the transaction to which the trust funds relate in order to pay salespersons who may be experiencing significant cash flow issues?

A: Funds held in the trust account are held on behalf of parties to a purchase and sale agreement. These funds are not the property of the Agent. As such, despite any cash flow issues, these funds should, **under no circumstances**, be withdrawn from the trust account except in accordance with the terms of the agreements to which the trust funds relate.