

## 61J2-10.032, Notice Requirements

**SUMMARY** (inserted for descriptive purposes. The summary is not part of the amended rule.)

The revision affects the notice requirements placed on a real estate broker upon receiving conflicting demands for any trust funds being maintained in the broker's escrow account. The situations that defined when good faith doubt exists were deleted because the Commission lacked the statutory authority to define good faith doubt.

### **CODED TEXT**

61J2-10.032 Notice Requirements, effective January 17, 2002

(1)(a) No change.

(b) A broker, who has a good faith doubt as to whom is entitled to any trust funds held in the broker's escrow account, must provide written notification to the Commission within 15 business days after having such doubt and must institute one of the settlement procedures as set forth in s. 475.25(1)(d) 1., Florida Statutes, within 30 business days after having such doubt. The determination of good faith doubt is based upon the facts of each case brought before the Commission. ~~Based upon prior decisions of the Commission, good faith doubt shall be deemed to exist in the following situations:~~

~~1. The closing or consummation date of the sale, lease, or other real estate transaction has passed, and the broker has not received conflicting or identical instructions from all of the parties concerning the disbursement of the escrowed funds;~~

~~2. The closing or consummation date of the sale, lease, or other transaction has not passed, but one or more of the parties has expressed its intention not to close or consummate the transaction and the broker has not received conflicting or identical instructions from all of the parties concerning disbursement of the escrowed funds; and~~

(c) If one of the parties to a failed real estate sales transaction does not respond to the broker's inquiry as to whether that party is placing a demand on the trust funds or is willing to release them to the other party, the broker may send a certified notice letter, return receipt requested, to the non-responding party. This notice should include the information that a demand has been placed by the other party, that a response must be received by a certain date, and that failure to respond will be construed as authorization for the broker to release the funds to the other party. ~~Before releasing said trust funds, the broker must have the return receipt as proof the notice was delivered.~~

(2)(a) through (c) No change.

~~(d) If, at the broker's request, an Escrow Disbursement Order is issued, and before the broker disburses the escrowed funds according to the Commission's Order, the dispute is settled or goes to court, the broker shall not disburse the disputed escrowed funds but shall notify the Commission within 10 business days of such event.~~

~~(e) Upon final disposition of the matter, the broker shall notify the Commission within 10 business days of the final account and disbursement of the trust funds.~~

(3) through (4) No change.

*Specific Authority 475.05, 475.25 FS. Law Implemented 83.49(3)(d), 475.25 FS. History—New 10-13-85, Formerly 21V-10.32, Amended 2-18-92, 12-8-92, 6-28-93, Formerly 21V-10.032, Amended 11-16-93, 6-6-94, 8-6-96, 11-10-97, 1-17-02, \_\_\_\_\_.*

## **FINAL VERSION**

### **61J2-10.032 Notice Requirements.**

- (1)
  - (a) A real estate broker, upon receiving conflicting demands for any trust funds being maintained in the broker's escrow account, must provide written notification to the Commission within 15 business days of the last party's demand and the broker must institute one of the settlement procedures as set forth in Section 475.25(1)(d)1., Florida Statutes, within 30 business days after the last demand.
  - (b) A broker, who has a good faith doubt as to whom is entitled to any trust funds held in the broker's escrow account, must provide written notification to the Commission within 15 business days after having such doubt and must institute one of the settlement procedures as set forth in Section 475.25(1)(d)1., Florida Statutes, within 30 business days after having such doubt. The determination of good faith doubt is based upon the facts of each case brought before the Commission.
  - (c) If one of the parties to a failed real estate sales transaction does not respond to the broker's inquiry as to whether that party is placing a demand on the trust funds or is willing to release them to the other party, the broker may send a certified notice letter, return receipt requested, to the non-responding party. This notice should include the information that a demand has been placed by the other party, that a response must be received by a certain date, and that failure to respond will be construed as authorization for the broker to release the funds to the other party.
- (2)
  - (a) If the broker has instituted a settlement procedure other than a request for an Escrow Disbursement Order, the broker shall provide written notification to the Commission within 30 business days of the receipt of the last demand or good faith doubt of the procedure instituted to resolve the matter.
  - (b) If the broker has requested an Escrow Disbursement Order and the broker is notified in writing that no Escrow Disbursement Order will be issued, then the broker shall institute another settlement procedure and so notify the Commission within 30 business days after the broker's receipt of such notification.
  - (c) If the broker has requested an Escrow Disbursement Order and the dispute is subsequently settled or goes to court before the Order is issued, the broker shall notify the Commission within 10 business days of such event.

(3) For purposes of this rule, where a broker is required to provide written notification within a certain period, the effective date of that notification is deemed to be the date of the postmark or other dispatch of notification. A request for an Escrow Disbursement Order as a settlement procedure is deemed instituted when the completed request form is mailed or otherwise dispatched to the Commission.

(4) Brokers who are entrusted with an earnest money deposit (EMD), pursuant to a residential sales contract utilized by the Department of Housing and Urban Development (HUD) in the sale of property owned by HUD, are not required to follow the notice or settlement procedures of Section 475.25(1)(d)1., Florida Statutes, and subsection (1) of this rule. The broker is to follow HUD's Agreement to Abide, Broker Participation Requirements, and 24 C.F.R. s. 291.135 as they pertain to the proper disposition of EMD's.