

## Unclaimed Funds Guide for Real Estate Brokers

The following type of accounts held by a Real Estate Brokers & property management companies can become reportable as unclaimed funds:

| Nature of Funds Code | Description of Funds                         | Dormancy Period | Statutory Reference |
|----------------------|--|-----------------|---------------------|
| MS02                 | Commissions                                  | 1               | 169.02 (N)          |
| MS01                 | Wages- Payroll or Salary                     | 1               | 169.02 (N)          |
| MS22                 | Real Estate Escrow Funds                     | 2               | 169.02 (M) (2)      |
| MS19                 | Deposits for Rent, Leases or Unused Services | 1               | 169.02 (M) (1)      |
| AC06                 | Security Deposits                            | 1               | 169.02 (M) (1)      |
| CK10                 | Expense Reimbursement Checks                 | 3               | 169.02 (P)          |

### Commissions

**NAUPA Code :** MS02

**Dormancy Period:** One (1) year

Commissions are **not** exempt Business to Business transactions. They represent payments to the R/E agents of a percentage of the property sold. Only checks issued by a company as the result of receiving and invoice or customer overpayments received as the result of a company issuing an invoice are exempt Business to Business transactions

### Earnest Money Currently Held by a Real Estate Broker

**NAUPA Code:** MS22

**Dormancy Period:** Two (2) years

The change to section 4735.18(A)(26), O.R.C. and the addition of section 4735.24, O.R.C. effective April 7, 2009 clarifies the unclaimed funds reporting responsibility of R/E Brokers in the State with respect to unclaimed earnest money deposits. Unclaimed earnest money deposits are reportable as unclaimed funds if:

- ? The purchase transaction fails to close;
- ? and there is no specific signed agreement between the parties regarding how to disburse the earnest money;
- ? or no final court order specifies to whom the earnest money is awarded.

In the case where there is a specific signed agreement between the parties regarding how to disburse the earnest money; or a final court order specifying how to disburse the earnest money the checks issued to one or both parties can become unclaimed if one or both fails to claim the funds and/or cash the check issued for the payment for two (2) years after the check issue date.

As of June 30, 2009 for the 2009 unclaimed funds reporting cycle R/E brokers will need to address any earnest money funds that have been in their possession for **two (2) or more years**. This would include any earnest money held in the brokerage trust account and any checks issued to disburse earnest money to the buyer or seller.

### Disputed Earnest Money Due-Diligence Mailing Requirements

If there is a dispute between the buyer & seller regarding who should receive payment of the earnest money from a failed real estate purchase contract **and** if the names and addresses of the buyer & seller are known then the R/E broker will need to complete the statutorily required due-diligence mailing of an OUF-8 Notice of Unclaimed Funds to the last known address of **both** parties.

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Because of the contractual nature of the dispute it needs to be preserved through the unclaimed funds reporting process. This fact and the status of earnest money accounting records create special circumstances regarding how the R/E broker would perform the due-diligence mailing and report unclaimed earnest money which are as follows:

### **If Both Parties Sign and Return the OUF-8 Notice of Unclaimed Funds**

If both the buyer & seller sign and return an OUF-8 form then owner contact has been established and the earnest money would not be reportable as unclaimed. Due to the dispute over the earnest money the buyer & seller would need to agree how to distribute the funds before payment could be made to either party. If they are not able to reach an agreement then the R/E broker would hold the earnest money for another two (2) year period and repeat the due-diligence mailing.

### **If Only One Party Signs and Returns the OUF-8 Notice of Unclaimed Funds**

If only one party signs and returns an OUF-8 form then owner contact has been established and the earnest money would not be reportable as unclaimed. Due to the dispute over the earnest money both the buyer & seller would need to sign and return the OUF-8 **and** agree how to distribute the funds before payment could be made to either party. If they are not able to reach an agreement then the R/E broker would hold the earnest money for another two (2) year period and repeat the due-diligence mailing.

### **If Neither Party Signs and Returns the OUF-8 Notice of Unclaimed Funds**

If neither party signs nor returns the OUF-8 form then the earnest money is reportable as unclaimed. To preserve the dispute over the earnest money through the unclaimed funds reporting process the R/E broker would list the buyer & seller as joint owners with an “AND” relationship on the OUF-2 List of Owners of Unclaimed Funds and remit the funds. To claim the funds from the State the buyer & seller would **both** need to submit claim forms **and** agree on the distribution of the funds before the unclaimed earnest money could be disbursed.

### **If the Last Known Address of the Buyer & Seller are Unknown**

If the last known address of the buyer & seller are unknown then the earnest money is reportable and the R/E broker would enter “Unknown” for the last known address of both the buyer & seller. To preserve the dispute over the earnest money through the unclaimed funds reporting process the broker would list the buyer & seller as joint owners with an “AND” relationship on the OUF-2 List of Owners of Unclaimed Funds and remit the funds. To claim the funds from the State the buyer & seller would **both** need to submit claim forms **and** agree on the distribution of the funds before the unclaimed earnest money could be disbursed.

### **If the Name & Last Known Address of the Buyer & Seller are Unknown**

If the name & last known address of the buyer & seller are unknown then the earnest money is reportable and the R/E broker would enter a single record on the OUF-2 form and “Unknown” for the name & last known address of the owner(s).

### **Description Field: Subject Property**

Based on early responses from R/E brokers in many cases they have retained only the names of the buyer & seller and the address of the property that was subject to the real estate sales contract. Due to the nature of the underlying transaction this address is neither the address of record of the buyer or seller. However, it may be valuable information in the claim process. We should request that in the case where the sale property address is the only address retained the R/E broker should enter this information in the Description field as “Subject Property: {Street & City Address}”.