

to this Agreement agree and acknowledge that any real estate firm involved in this transaction shall be deemed a non-party beneficiary only for the purposes of enforcing their commission rights, and as such, shall have the right to maintain an action on this Agreement for any and all compensations due and any reasonable attorney's fees and court costs.

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12. Default. Should Buyer default hereunder, the Earnest Money/Trust Money shall be forfeited as damages to Seller and shall be applied as a credit against Seller's damages. Seller may elect to sue, in contract or tort, for additional damages or

Unauthenticated user, is involved as a TAR authorized user, Dwayne B. Powell

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376 specific performance of the Agreement, or both. Should Seller default, Buyer's Earnest Money/Trust Money shall be
377 refunded to Buyer. In addition, Buyer may elect to sue, in contract or tort, for damages or specific performance of this
378 Agreement, or both. In the event that any party hereto shall file suit for breach or enforcement of this Agreement (including
379 suits filed after Closing which are based on or related to the Agreement), the prevailing party shall be entitled to recover
380 all costs of such enforcement, including reasonable attorney's fees. In the event that any party exercises its right to
381 terminate due to the default of the other pursuant to the terms of this Agreement, the terminating party retains the right to
382 pursue any and all legal rights and remedies against the defaulting party following termination. The parties hereby agree
383 that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies, rights and/or
384 obligations as a defense in the event of a dispute.

13. Home Protection Plan. This is not a substitution for Home Inspection. Exclusions to coverage may apply. (Select the appropriate box below. Items not selected are not part of this Agreement).

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Home Protection Plan. _____ to pay \$ _____ for the purchase of a limited home protection plan to be funded at Closing. Plan Provider: _____ (Real Estate Company)
Ordered by: _____
 Home Protection Plan waived.

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Closing Agency for Seller & Contact Information : _____

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3. **Earnest Money/Trust Money.** Buyer has paid or will pay within _____ days after the Binding Agreement Date to
(name of Holder) (“Holder”) located at
(address of Holder), a Earnest

Money/Trust Money deposit of \$ _____ by check (OR
_____) (“Earnest Money/Trust Money”).

A. **Failure to Receive Earnest Money/Trust Money.** In the event Earnest Money/Trust Money (if applicable) is not timely received by Holder or Earnest Money/Trust Money check or other instrument is not honored for any reason by, the bank upon which it is drawn, Holder shall promptly notify Buyer and Seller of the Buyer’s failure to deposit the agreed upon Earnest Money/Trust Money. Buyer shall then have one (1) day to deliver Earnest Money/Trust Money in immediately available funds to Holder. In the event Buyer does not deliver such funds, Buyer is in default and Seller shall have the right to terminate this Agreement by delivering to Buyer or Buyer’s representative written notice via the Notification form or equivalent written notice. In the event Buyer delivers the Earnest Money/Trust Money in immediately available funds to Holder before Seller elects to terminate, Seller shall be deemed to have waived his right to terminate, and the Agreement shall remain in full force and effect.

B. **Handling of Earnest Money/Trust Money upon Receipt by Holder.** Earnest Money/Trust Money (if applicable) is to be deposited promptly after the Binding Agreement Date or the agreed upon delivery date in this Earnest Money/Trust Money section or as specified in the Special Stipulations section contained herein. Holder shall disburse Earnest Money/Trust Money only as follows:

- (a) at Closing to be applied as a credit toward Buyer’s Purchase Price;
- (b) upon a written agreement signed by all parties having an interest in the funds;
- (c) upon order of a court or arbitrator having jurisdiction over any dispute involving the Earnest Money/Trust Money;
- (d) upon a reasonable interpretation of the Agreement; or
- (e) upon the filing of an interpleader action with payment to be made to the clerk of the court having jurisdiction over the matter.

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Holder shall be reimbursed for, and may deduct from any funds interpleaded, its costs and expenses, including reasonable attorney’s fees. The prevailing party in the interpleader action shall be entitled to collect from the other party the costs and expenses reimbursed to Holder. No party shall seek damages from Holder (nor shall Holder be liable for the same) for any matter arising out of or related to the performance of Holder’s duties under this Earnest Money/Trust Money section. Earnest Money/Trust Money shall not be disbursed prior to fourteen (14) days after deposit unless written evidence of clearance by bank is provided.

4. **Closing, Prorations, Special Assessments and Warranties Transfer.**

1260-02-.08 OFFERS TO PURCHASE. A broker or affiliate broker promptly shall tender every written offer to purchase or sell obtained on a property until a contract is signed by all parties. Upon obtaining a proper acceptance of an offer to purchase, or any counteroffer, a broker or affiliate broker promptly shall deliver true executed copies of same, signed by the seller, to both the purchaser and the seller. Brokers and affiliate brokers shall make certain that all of the terms and conditions of the real estate transaction are included in the contract to purchase. In the event an offer is rejected, the broker or affiliate broker shall request the seller to note the rejection on the offer and return the same to the offeror or the offeror's agent.

Authority: T.C.A. §§ 62-13-203. Administrative History: Original rule certified June 7, 1974. Amendment filed September 13, 1978; effective October 30, 1978. Repealed and refiled March 3, 1980; effective April 27, 1980. Amendment filed September 16, 1987; effective October 31, 1987. Amendment filed September 13, 1989; effective October 28, 1989. Amendment filed July 31, 2006; effective October 14, 2006.

1260-02-.09 MANAGING ESCROW OR TRUSTEE ACCOUNTS.

- (1) Definitions: for purposes of this rule, the following definitions are applicable:
 - (a) "Commingling" is defined as the act of a licensee maintaining funds belonging to others in the same bank account that contains his or her personal or business funds.
 - (b) "Trust money" is defined as either of the following:
 1. Money belonging to others received by a licensee who is acting as an agent or facilitator in a real estate transaction; or
 2. Any money held by a licensee who acts as the temporary custodian of funds belonging to others.
- (2) Each principal broker shall maintain a separate escrow or trustee account for the purpose of holding any trust money which may be received in his fiduciary capacity.
- (3) An affiliated broker shall pay over to the principal broker with whom he is affiliated all trust money immediately upon receipt.
- (4) Principal brokers are responsible at all times for trust money accepted by them or their affiliated brokers, in accordance with the terms of the contract.
- (5) Where a contract authorizes a principal broker to place trust money in an escrow or trustee account, the principal broker shall clearly specify in the contract:

(6) Where a contract authorizes an individual or entity other than the principal broker to hold trust money, the principal broker will be relieved of responsibility for the trust money upon receipt of the trust money by the specified escrow agent.

(7) A principal broker may properly disburse trust money:

(a) upon a reasonable interpretation of the contract which authorizes him to hold the trust money;

(b) upon securing a written agreement which is signed by all parties having an interest in such and is separate from the contract which authorizes him to hold the trust money;

(c) at the closing of the transaction;

(d) upon the rejection of an offer to purchase, sell, rent, lease, exchange or option real estate;

(e) upon the withdrawal of an offer not yet accepted to purchase, sell, rent, lease, exchange or option real estate;

(f) upon filing an interpleader action in a court of competent jurisdiction; or

(g) upon the order of a court of competent jurisdiction.

(8) Trust money shall be disbursed in a proper manner without unreasonable delay.

(9) Absent a demonstration of a compelling reason, earnest money shall be disbursed, interpleaded, or turned over to an attorney with instructions to interplead the funds within twenty-one (21) calendar days from the date of receipt of a written request for disbursement.

(10) No postdated check shall be accepted for payment of trust money unless otherwise provided in the offer.

(11) Trust money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer unless the offer contains a statement such as "Trust money to be deposited by:".

(12) In addition to the escrow or trustee account referenced in paragraph (2), all trust money received and held which relates to the lease of property must be held in one (1) or more separate escrow or trustee accounts.

(13) Commingling of funds contained within firm accounts is expressly prohibited.

(14) Interest-bearing escrow or trustee accounts are neither required nor