

1976 S.C. Op. Atty. Gen. 95 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4281, 1976 WL 22902

Office of the Attorney General

State of South Carolina

Opinion No. 4281

March 4, 1976

***1** Real estate trust and escrow accounts could be interest bearing if they retain the exact same safety and fiducial characteristics of non-interest accounts in harmony with the S. C. statute law governing the real estate profession. However, ambiguities existing currently in the real estate rules and regulations and interpretations, especially as they relate to demand accounts, require resolution by the S. C. Real Estate Commission before interest bearing escrow and trust accounts would be generally appropriate.

TO: R. H. Baer, Jr.,
S. C. Real Estate Commissioner

QUESTION PRESENTED:

Can a real estate broker have interest-bearing escrow and trust accounts?

STATUTES:

Code of Laws of South Carolina, 1972, as amended, Section 56-1545 et seq.,

S. C. Real Estate Manual, 1975 edition.

DISCUSSION OF ISSUES:

A real estate broker is required to place all money received by him in a real estate transaction in a separate trust or escrow account maintained in a banking institution authorized to do business in this State. See Section 56-1545.16(13), infra.

Page 22, item 21 of the Rules and Regulations adopted by the S. C. Real Estate Commission requires a similar separate escrow or trust account to be kept.

Page 26 of the Rules and Regulations states that trust funds are not to be invested in interest bearing securities, nor savings accounts, and that the trust account must be a demand account in a bank. The next sentence says that any interest earned belongs to the beneficial owner and not the trustees.

Again at page 26, the Rules say 'Do Not place the trust funds in interest bearing account.'

Page 59 of the South Carolina Real Estate Manual (5th Edition, 1975) clearly implies that it would be permissible to place security deposits in an interest bearing account providing the lease specifically so provides and states the amount of interest and how often it is to be dispersed to the tenant.

These conflicting provisions have prompted requests from various sources for clarification from the Real Estate Commission. The law itself, Section 56-1545.16(13), and Regulation Number 21, page 22 of the Rules and Regulations, require a broker to keep a separately designated escrow or real estate trust account. Interest per se is not mentioned as

an element of such account. Only in the interpretation section of the License Law and Regulations booklet, at page 26, does language appear which seems to prevent any use of interest bearing accounts.

My opinion, after discussing the matter with the Real Estate Commission and several bankers, is that there is no technical reason why an account in a State bank could not be designated and operated as an escrow or trust account, in harmony with the real estate law, and still bear interest. The major problem is the term demand account mentioned on page 26 of the Rules and Regulations. By federal law, interest cannot be paid on a demand account. Therefore, it appears to be a matter of policy rather than of statutory mandate that interest bearing trust or escrow accounts are discouraged in the interpretative section of the Real Estate booklet.¹

*2 Based on such a principal it is my opinion that the existing ambiguities could be resolved by the Real Estate Commission in favor of allowing interest bearing trust and escrow accounts, as long as the interest bearing accounts have the same level of security as non-interest accounts. Such a decision should be made only after the Commission reviews the current ambiguities in the regulations, and evaluates the advantages and disadvantages of making a policy change in favor of interest bearing accounts.

CONCLUSION:

Real estate trust and escrow accounts could be interest bearing if they retain the exact same safety and fiducial characteristics of non-interest accounts in harmony with the S. C. statute law governing the real estate profession. However, ambiguities existing currently in the real estate rules and regulations and interpretations, especially as they relate to demand accounts, require resolution by the S. C. Real Estate Commission before interest bearing escrow and trust accounts would be generally appropriate.

BY: George C. Beighley
Assistant Attorney General

Footnotes

- ¹ The term 'demand account' is used to refer to checking accounts. Savings accounts usually reserve to the savings institution the right to delay withdrawals for 30 days, although such right is rarely exercised.
1976 S.C. Op. Atty. Gen. 95 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4281, 1976 WL 22902