

“TRUST ACCOUNT” IN THE TITLE OF A BANK ACCOUNT

NRS **645.310**(4) requires that when a real estate broker receives money “which belongs to others,” the broker shall “promptly deposit the money in a separate checking account located in a bank or credit union in this State which must be *designated a trust account*” (emphasis added). Further, NAC **645.655**(8) requires that “A real estate broker who is engaged in property management for one or more clients shall maintain two separate property management trust accounts.”

What is a trust account and why do some banks have difficulty establishing trust accounts for real estate brokerages?

A trust account is an account that is managed by one party for the benefit of another. The person managing an account in trust is a fiduciary to the ultimate owner or beneficiary of the account. The term can be used generically for any trust account, regardless of whether there is a formal trust agreement.

A “formal trust agreement” is often where the conflict with the bank begins. It is common today for individuals performing estate management to create trusts for family or other beneficiaries so that assets will be distributed upon the individual’s death according to the individual’s wishes and with minimum tax impact. A written trust agreement is usually prepared by an attorney and properly defines the trust assets, management and distribution. It is this formal trust agreement that the bank will ask for if a licensee, who wishes to open a broker trust account or the property management trust accounts, approaches with a request to “open a trust account”.

To avoid this miscommunication, the licensee should simply state that he or she would like to “open two business accounts” and, when completing the paperwork for the title of the accounts, make sure that the words “trust account” appear in the title. No separate trust agreement is required. The trust account provisions of NRS and NAC 645, along with the property management agreement, define the assets, management and distribution of the funds in these accounts. The main purpose for using the trust account designation is to make it clear to the bank and others that the funds in these accounts are not brokerage funds, but belong to others.

As trustee, in the broad sense of the word, of the funds which belong to others in the accounts, “The real estate broker is personally responsible and liable for such deposit at all times.” NRS **645.310**(4)

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