



# A GUIDE TO **BROKERAGE INSPECTIONS**







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This document provides guidance on the books and records you are required to maintain in order to comply with REBBA 2002.

# Welcome



The Real Estate Council of Ontario (RECO) is responsible for the administration of the *Real Estate and Business Brokers Act, 2002* (the Act) and associated regulations, collectively referred to as REBBA 2002, on behalf of the Ontario government.

RECO's mission is to promote a fair, safe and informed real estate market for consumers in Ontario through effective and innovative regulation of the services offered by those who trade in real estate.

One way that RECO regulates the activity of trading in real estate is by conducting inspections of brokerages to ensure compliance with REBBA 2002. The inspection program at RECO is vital to the regulation of the industry, protection of the public interest, and fostering consumer confidence.

Section 20 of the Act details the authority of the Registrar or a designate to conduct inspections for the purpose of ensuring compliance with REBBA 2002, dealing with a complaint, and/or ensuring that a registrant remains entitled to registration. At RECO, inspections are conducted through the

department of Inspections and Investigations. Designated inspectors are given authority by the Registrar to conduct inspections.

Inspectors and other RECO employees have a statutory obligation to preserve secrecy with respect to any information that is obtained while carrying out their duties in relation to the administration of REBBA 2002. Such information can only be disclosed or used for specific purposes as detailed in the Act.

## The Real Estate Council of Ontario is dedicated to the following organizational values:

### **Fairness:**

Act impartially and equitably

### **Accountability:**

Administer the *Real Estate and Business Brokers Act, 2002* competently in accordance with the law

### **Integrity:**

Be truthful and trustworthy

### **Respect:**

Treat all with courtesy



The Act and associated regulations (named below) require registered brokerages to keep a number of books and records relating to their real estate trading activity.

#### **Associated Regulations:**

- Ontario Regulation 567/05 (General)
- Ontario Regulation 579/05 (Education Requirements, Insurance Records and Other Matters)
- Ontario Regulation 580 (Code of Ethics)

This guide will provide information related to compliance with REBBA 2002 as it applies to brokerage inspections. In addition to helping the

brokerage maintain compliance with REBBA 2002, a systematized record keeping and accounting system is critical for maintaining control of trust funds and all financial facets of the business; it is the foundation for a compliant and financially responsible brokerage.

## **Brokerage Inspections and REBBA 2002**

*A Guide to Brokerage Inspections* has three key objectives:

- Provide insight into RECO's inspection program
- Identify records that a brokerage must maintain to comply with REBBA 2002
- Describe common record keeping practices



# Inspections

The primary purpose of conducting an inspection is to ensure that a brokerage is operating in compliance with REBBA 2002.

Real estate brokerages are subject to inspection and held accountable for how they conduct business. This helps RECO to fulfill its mission of promoting a fair, safe and informed real estate market for consumers in Ontario through effective and innovative regulation of the services offered by those who trade in real estate.

An inspection reviews a number of different business practices of a brokerage, but predominantly focuses on the accounts and records that are required to be maintained under REBBA 2002. Inspectors review the statements of **all** accounts held by the brokerage and verify the source of all monies being deposited to and disbursed from these accounts.

In real estate transactions, a brokerage often serves as the trustee of deposits made to secure the trade. For that reason, REBBA 2002 contains a number of requirements that specifically address the maintenance of these trust funds. The inspection process ensures that trust deposits are maintained in accordance with REBBA 2002.

In conjunction with the review of **all** of the accounts of a brokerage, inspectors also review a number of real estate trade files, trade record sheets, the real estate trust ledger, and other accounting records maintained by the brokerage.

In addition to reviewing financial documents, inspectors review registrant and administrative personnel rosters, as well as various advertising materials generated by the brokerage. Once an inspection has been conducted, the inspector will provide a report to the Manager of Inspections and Investigations.

One of the core objectives of the inspection process is education, in that registrants are made aware of the provisions of REBBA 2002 and RECO guidelines in order to help them be compliant. Inspections are conducted for three reasons: to verify compliance with REBBA 2002, to ensure registrants remain entitled to registration, and to deal with a complaint.

Inspections can be conducted in one of two formats, based on the inspector's request: an on-site visit or via reconciliation submission review.

## Inspections are conducted for three reasons:

1. To ensure compliance with REBBA 2002
2. To ensure registrants remain entitled to registration
3. In response to complaints received





For an on-site inspection, an inspector will contact the brokerage and arrange for a date to conduct the inspection, providing correspondence to assist in preparation for the inspector's arrival. The duration of an inspection is dependent on many variables - brokerage size, trading volume, maintenance of books and records, etc. It is expected that the broker of record and administrative personnel will be available to assist with access to books and records during an on-site inspection.

A reconciliation submission review is when an inspector makes a written request for a specific period of real estate trust reconciliations, the applicable bank statements, and any other required documentation to be submitted for review by a specific date.

RECO handles inquiries, concerns and complaints from the real estate industry and consumers. Complaint-initiated inspections are conducted pursuant to REBBA 2002 and there are occasions when an unannounced and/or immediate inspection could be initiated. For example, a complaint may

surface that brings the brokerage's financial stability into question. Section 20 of the Act outlines the authority of the Registrar or a designate to "conduct an inspection...at any reasonable time," with or without prior notice.

There have also been occasions when a broker of record has contacted the Inspections and Investigations Department and requested an inspection of the brokerage. This service is available to all brokerages. An inspector will coordinate a mutually agreeable time and conduct a full inspection of the brokerage, just like a routine inspection. Brokerages may contact the Inspections and Investigations Department for additional information about this option.

In Ontario, under REBBA 2002, all brokerages are subject to inspections; obstruction of the inspection process is a contravention of the Act.

In conducting any inspection, RECO is dedicated to acting with fairness, accountability, integrity, and respect.

# On-Site Inspection Notice

When a brokerage has been selected for a routine inspection, an inspector will contact the broker of record approximately one week before the date that they are to arrive. Notice will come in the form of a phone call, email or fax. Once an appointment

has been made, a follow-up letter/fax/email will be sent. The communication will act as a confirmation notice as well as instructions to prepare for the day of the inspection.



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February 27, 2014

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Dear Mr. Steven Holmes, Broker of Record

## **Real Estate and Business Brokers Act, 2002 Inspection**

This will confirm our recent conversation arranging to conduct an inspection of your brokerage books and records under the Real Estate and Business Brokers Act, 2002 on **Monday, January 20, 2014 at approximately 9:30 a.m.** This appointment will also serve as an educational session. As such, please feel free to use this opportunity to address any questions or concerns that you or your support staff might have.

As preparation for this inspection, please have the following items available:

- Any and all bank accounts in the brokerage's name, including Real Estate Trust, Commission Trust, General/Operating, Property Management bank accounts and their accompanying deposit books, bank statements, cheque stubs, cancelled cheques, and reconciliations **for the past two (2) years**
- A detailed bank balance inquiry as at the inspection date for all bank accounts (including term deposits). (An "online" inquiry from the bank will bring the transactions up-to-date from the last physical bank statement on file).
- **Written confirmation from the bank** indicating that the customer/client trust account is designated as a "Real Estate Trust Account" and further, outlining those with signing authority as well as any documented special procedures for the account. (A copy of the documentation originally provided to RECO upon initial registration is acceptable so long as there have been no changes to the account since that time).
- Real estate trust ledger
- Various advertising samples (e.g., newspaper ads, flyers, signs, etc.)
- Pending and closed transaction files
- Cash receipt/disbursement journals and general ledger **for the past two (2) years**
- A complete list of branch offices and registrants, to be dated and signed by the broker of record, on company letterhead, preferably outlined in the following manner, alphabetically:
  1. Officers, Directors, Shareholders RECO Registration#
  2. Branch Office(s) RECO Registration#
  3. Sales Representative(s) RECO Registration#
  4. Broker(s) RECO Registration#
  5. Registered/Unregistered Assistants RECO Registration# (where applicable)  
(outlining their duties and who may assist)

Thank you for your attention to this request. Should you or your support staff have any further questions regarding these requirements, please do not hesitate to contact me at the options noted below.

Sincerely,

Jane Fair, Inspector  
Real Estate Council of Ontario, (416) 207-4800, Fax (416) 207-4820, www.reco.on.ca



Financial responsibility is a requirement of maintaining ongoing registration, as detailed by Section 10 of the Act. This includes being informed about and prepared for the financial needs of your brokerage.

Financially responsible business practices include maintaining accurate and up-to-date accounting

records, undertaking adequate financial planning, and leveraging trustworthy and professional people to assist with administering such practices. Use the above checklist as a proactive tool in the regular operation of your brokerage and in preparation for upcoming inspections.

## Brokerage Inspections Checklist

### Account Statements

- Real Estate Trust
  - Commission Trust
  - General Operating
  - All Other Accounts (in the name of the brokerage, e.g., Property Management, etc.)
- 

### Account Balances (from date of last statement to the date of the inspection)

- Real Estate Trust (including Term Deposits)
  - Commission Trust
  - General Operating
  - All Other Accounts (in the name of the brokerage, e.g., Property Management, etc.)
- 

- Real Estate Trust Ledger
  - Proof of Signing Authority
- 

### Advertising Review

- Print Ads
- Business Cards

### Trade Files

- Pending Trade Files
  - Closed Trade Files
- 

### General Accounting (print or digital records accepted)

- Cash Receipts/Disbursement Journal
  - General Ledger
- 

### Brokerage Personnel with Registrations Numbers

(dated and signed by the Broker of Record, on company letterhead)

- Officers, Directors, Shareholders
- Sales Representative(s)
- Broker(s)
- Registered/Unregistered Assistants (include duties)
- Branch Offices (if applicable)
- Branch Manager(s) (if applicable)

# Inside an Inspection

Every brokerage conducts business, handles and maintains records, and performs accounting functions in their own specific way to meet their needs.

REBBA 2002 allows for this flexibility, so brokerages can manage their operations and still be compliant. Rather than dictate the process for creating and maintaining records and accounting data, REBBA 2002 sets specific requirements that must be met.

## Brokerage Personnel

One of the first things an inspector may review is the brokerage personnel list. By reviewing this list, an inspector can understand how the brokerage operates and identify the key personnel. They can also verify that there are no individuals trading without registration.

A broker of record is responsible and accountable for all registered and non-registered personnel that work in the brokerage, and is liable for their actions. The broker of record's responsibilities include managing registrants to ensure that they are up-to-date with all registration requirements, such as education, renewal, insurance fees, and any other requirement. An up-to-date personnel list is one way a broker of record can monitor his/her personnel.

When an inspector reviews the personnel list, they are ensuring that there are no discrepancies. In the event of a discrepancy, the inspector will provide the broker of record with the appropriate details of the discrepancy as well as directions for how to potentially correct the issue.

### The list should include all brokerage personnel, including:

- broker of record
- officers, directors, shareholders
- brokers
- sales representatives
- registered assistants
- non-registered assistants
- additional staff

### The following details should be included for all personnel:

- legal name
- operating name
- registration number
- supervisor (to whom administrative personnel report)
- duties (all duties of administrative personnel, registered and non-registered)

## Trade Files

For every trade in real estate, a trade file will be created. Each trade should be uniquely identified with a sequential identifier. The identifier is often called a trade number. Regardless of how a brokerage keeps track of its files, it must be in a position to readily find these trade files and the required reports generated with respect to these trades.

Every trade in real estate is unique and has its own set of circumstances; therefore, every trade file will also be unique. Even the most straightforward transactions will differ from property to property. For this reason, there are no minimum requirements with respect to what a trade file will contain. All documents, communications, and details pertaining to a trade in real estate should be included in the trade file. The most common documents include: the representation agreement; the Agreement of Purchase and Sale; amendments; waivers; receipts for deposits; the trade record sheet; and correspondence with the customer/client, the customer/client's lawyer, and the cooperating brokerage.

During the course of an inspection, the inspector will select a number of pending and closed trade files for review. The purpose of inspecting these

trade files is to verify that all required records are present, trades are completed accurately, and persons involved in the trade are duly registered under REBBA 2002. If the trade being inspected references a trust deposit, a crosscheck of the brokerage records will be conducted to ensure that the trust deposit has been received, maintained, disbursed and accounted for in accordance with the requirements of REBBA 2002.

A review of trade files is one of the key ways that RECO can ensure that registrants are conducting real estate trades in accordance with REBBA 2002. If the inspector determines that documents are missing, incomplete or inaccurate, these issues will be addressed with the broker of record.

## O. Reg. 579/05

### Section 17(1)

A brokerage that represents a client who enters into an agreement that deals with the conveyance of an interest in real estate shall complete a trade record sheet that includes the following information::

1. The nature of the trade.
2. A description of the real estate sufficient to identify it.
3. The true consideration for the trade.
4. The names of all parties to the trade.
5. The names and contact information of the lawyers, if any, who are representing parties to the trade.
6. The names and contact information of all registrants who are representing or providing other services to parties to the trade.
7. The following information if a deposit is received:
  - i. the amount of the deposit, if the deposit is money,
  - ii. a description of the deposit sufficient to identify it, if the deposit is not money, and
  - iii. a record of the disbursement or withdrawal of the deposit, as the case may be.
8. The amount of the brokerage's commission or other remuneration and the name of the party paying it.
9. The amount of any commission or other remuneration payable to another brokerage and the name of that brokerage.
10. The scheduled completion date for the conveyance of the interest in real estate and the amended completion date, if any.

The trade record sheet is a document the brokerage is required to produce for each trade, pursuant to O. Reg. 579/05. The trade record sheet provides an overview of the real estate trade. Section 17(1) details the minimum requirements of trade record sheets. Brokerages may choose to use a standardized trade record form, such as one produced by OREA, or they may choose to use a customized version. The format of the document is irrelevant; the trade record sheet must comply with the requirements and procedures described in Section 17.

## Bank Accounts

When it comes to bank accounts connected to a brokerage, there are several sections of REBBA 2002 that specify how trust monies must be handled and maintained. Section 27(1) of the Act requires a brokerage to maintain a real estate trust account in the Province of Ontario for deposits received. O. Reg. 567/05 includes specific details about the maintenance of trust accounts. It is recommended that you review the relevant sections of REBBA 2002. You can do so by visiting [www.reco.on.ca](http://www.reco.on.ca).

Three key sections of O. Reg. 567/05:

- **Section 15** - the trust account must be designated as a real estate trust account (the designation of the account should appear on all cheques, deposit slips and bank statements)
- **Section 17** - monies to be held in trust must be deposited within 5 business days of receipt
- **Section 19** - all transactions must be authorized by the broker of record, limiting signing authority on the trust account to the broker of record

In maintaining trust monies, there is a specific requirement that a brokerage keep the monies separate and apart from monies belonging to the brokerage. For this reason, a brokerage will also maintain a general operating account, which contains the monies belonging to the brokerage. A third account that most brokerages maintain is a commission trust account, which is used to process commission payments owing to registrants of the brokerage and to co-operating brokerages.

During an inspection, an inspector will review all bank accounts maintained by the brokerage. It is necessary to review all accounts to ensure that the requirements of REBBA 2002 are being followed. In looking at these accounts, the inspector will

ensure, amongst other things, that trust monies are placed and maintained in the proper accounts. Furthermore, Section 30 of the Act requires that a brokerage pay only registrants for services related to trading in real estate. The brokerage is also required to be financially responsible in the conduct of its business. A review of all of the accounts of a brokerage is necessary for determining whether that is the case.

### REBBA 2002

#### Section 27(1)

Every brokerage shall,

- a) maintain in Ontario an account designated as a trust account, in,
  - i. a bank, or an authorized foreign bank, within the meaning of section 2 of the Bank Act (Canada),
  - ii. a corporation registered under the Loan and Trust Corporations Act, or
  - iii. a credit union within the meaning of the Credit Unions and Caisses Populaires Act, 1994;
- b) deposit into the account all money that comes into the brokerage's hands in trust for other persons in connection with the brokerage's business;
- c) at all times keep the money separate and apart from money belonging to the brokerage; and
- d) disburse the money only in accordance with the terms of the trust.

### REBBA 2002

#### Section 30

No brokerage shall,

- a) employ another brokerage's broker or salesperson to trade in real estate or permit such broker or salesperson to act on the brokerage's behalf;
- b) employ an unregistered person to perform a function for which registration is required; or
- c) pay any commission or other remuneration to a person referred to in clause a) or b).



The minimum recommended books and records, or electronic equivalent, required in order to adequately control brokerage trust funds are as follows:

#### **Real Estate Trust Accounts**

- a. Duplicate deposit book (or slips);
- b. Cheque book with stubs attached or duplicate cheque book;
- c. Monthly statements with cancelled cheques;
- d. Real estate trust ledger;
- e. Monthly written reconciliation (signed and dated by the broker of record; and
- f. Monthly written list of trust liability.

#### **Commission Trust Accounts**

- a. Duplicate deposit book (or slips);
- b. Cheque book with stubs attached or duplicate cheque book;
- c. Monthly statements with cancelled cheques; and
- d. Monthly written reconciliations.

All accounting entries must be identified with the respective trade to which they pertain. Identification

should include the trade number. This includes all trust account activity as well as commissions earned and disbursements to co-operating brokerages.

#### **Real Estate General Accounts**

A brokerage, including a sole proprietorship, a partnership, or a corporation, shall keep all monies not related to trust monies in separate accounts. The minimum books and records required to adequately control financial transactions other than trust are as follows:

- a. Duplicate deposit book (or slips);
- b. Cheque book with stubs attached or duplicate cheque book;
- c. Monthly statements with cancelled cheques;
- d. Cash receipts and disbursements journal;
- e. Monthly written reconciliations; and
- f. General ledger.

**Any reference to the term *bank accounts* includes accounts held with a bank, trust company, credit union, or caisse populaire as provided in REBBA 2002.**



# Real Estate Trust Ledger

The primary focus of most brokerage inspections is to ensure that trust monies have been appropriately handled and maintained. There are several sections of REBBA 2002 that describe how monies held in trust must be handled and disbursed. Section 12 of O. Reg. 579/05 specifically details how trust monies transactions must be recorded.

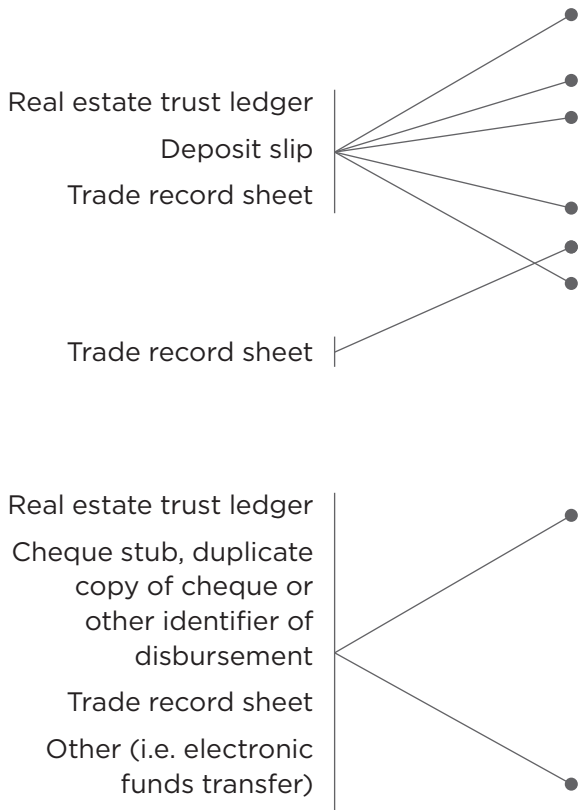
The boxes below indicate some common places where the requirements of Section 12 can be located within a trade file.

## O. Reg. 579/05

### Section 12

A brokerage shall make a written record of the receipt of any money that comes into the brokerage's hands in trust for other persons in connection with the brokerage's business, and of every transaction relating to that money, including the following information:

1. The amount of money that came into the brokerage's hands in trust for another person in connection with the brokerage's business.
2. The date the money came into the brokerage's hands.
3. The name of the person from whom the money was received and, if the money was received on another person's behalf, the name of the person on whose behalf the money was received.
4. The purpose of receiving the money.
5. The name of the broker or salesperson who received the money.
6. With respect to every deposit into the trust account maintained under section 27 of the Act,
  - i. a way of identifying the money that came into the brokerage's hands in trust to which the deposit relates, including,
    - a) the name of the person from whom the money was received, and
    - b) the real estate, if any, to which the money relates,
  - ii. the amount of the deposit, and
  - iii. the date the deposit was made.
7. With respect to every disbursement from the trust account maintained under section 27 of the Act,
  - i. the amount of the disbursement,
  - ii. the date the disbursement was made,
  - iii. the name of the person to whom the money was disbursed,
  - iv. the real estate, if any, to which the disbursement relates,
  - v. the purpose of the disbursement, and
  - vi. the name of the person who authorized the disbursement under section 19 of Ontario Regulation 567/05 (General) made under the Act.
8. With respect to every payment of interest on money held in the trust account maintained under section 27 of the Act,
  - i. a way of identifying the money that came into the brokerage's hands in trust to which the payment relates,
  - ii. the amount of the payment,
  - iii. the date the payment was made, and
  - iv. the name of the person who authorized the payment of interest under section 19 of Ontario Regulation 567/05 (General) made under the Act.



In this example of a real estate trust ledger, each of the requirements under Section 12 of O. Reg. 579/05 is identified with the corresponding subsection number.

Real Estate Trust Ledger (October-December 2012)					
Dates	Description	Trade	Deposits	Cheques	Explanation
Oct-03	J.R. Smith - buyer - re: 64 Pearl St.		\$7,500.00		Transaction closed. Commission transferred to Comm. Acct.
Dec-02	Interest on deposit		\$37.50		
Dec-02	Cheque #6 - to WM. Gordon (seller)			\$2,500.00	Balance to seller, authorized by John Doe, Broker of Record.
<b>Dec-02</b>	<b>Cheque #7 - to J.R. Smith (buyer)</b>	#1		<b>\$37.50</b>	<b>Interest on deposit to buyer, authorized by John Doe, Broker of Record.</b>
Dec-02	Transferred as full commission to Comm. Account Ch#8			\$5,000.00	Authorized by John Doe, Broker of Record.
Nov-13	E.R. Holway - buyer - re: 1270 Bloor St.	#2	\$12,000.00		Pending (open) transaction.
Nov-14	R. Hall - buyer - 17 Floral Dr. Deposit of \$1,000.00 is held by seller (H.J. Valley)	#3			No accounting entry is required. Deposit is held by seller.
<b>Dec-01</b>	<b>H. Thompson - purchase re: 70 Shield Ave.</b>	<b>#4</b>	<b>\$15,000.00</b>		Pending (open) transaction December 2, 2000.
Dec-02	D. Jones - buyer - re: 29 Craven Rd.		\$50,000.00		Transaction closed. Deposit as part of commission transferred to Comm. Acct.
<b>Dec-02</b>	Purchase of GIC as per buyers instructions. Ch#9			\$50,000.00	Deposit placed in term certificate. <b>Authorized by John Doe, Broker of Record.</b>
Jan-26	GIC proceeds	#5			
	Term interest paid to buyer Ch#14		\$50,215.00	\$215.00	Interest to buyer, authorized by John Doe, Broker of Record.
Jan-26	Transferred as part of commissions to Comm. Acct. Ch#15			\$50,000.00	Authorized by John Doe, Broker of Record.
Dec-12	G. Peters - buyer - re: 2 Taylor Dr.		\$6,000.00		Transaction aborted.
Dec-20	Ch#10 - mutual release - deposit returned to buyer	#6		\$6,000.00	Release obtained and deposit returned to buyer.
Dec-15	<b>A. Davey - buyer - re: 27 Nomad St.</b>	#7	\$12,000.00		Pending (open) transaction.
Dec-31	Additional deposit from buyer		\$10,000.00		Note additional deposit.
Dec-21	C.A. King - buyer - re: 276 Queen St.		\$10,000.00		Transaction closed. Full commission transferred to Comm. Acct.
<b>Dec-28</b>	<b>Ch#11 to seller (K. Patterson)</b>	<b>#8</b>		<b>\$2,000.00</b>	<b>Balance to seller, authorized by John Doe, Broker of Record.</b>
Dec-28	Transferred as full commission to Comm. Acct. Ch#12			\$8,000.00	Authorized by John Doe, Broker of Record.
Dec-25	W.P. Edward - buyer - re: "Gold" Beauty Shop - deposit of \$2,000.00 is held by Doe Realty Estate Ltd.	#9			No accounting entry is required. Deposit held by co-broker.

A brokerage's real estate trust ledger will contain most of the information required by Section 12 of O. Reg. 579/05. Any additional required information not contained in the real estate trust ledger must be readily available in other documentation maintained by the brokerage. For example, one brokerage uses a computer program for record keeping purposes. Within the computer program, all data required under

Section 12 can be found in the real estate trust ledger. A different brokerage manually tracks its records; although the majority of required information can be found in their real estate trust ledger, trade record sheets are also used to record additional data. When inspectors review the real estate trust ledger, they should be able to easily identify the pertinent details of all transactions.

**Note on O. Reg. 579/05, Section 12(3)** | Trust deposits are generally received directly from the buyer. However, on occasion, the deposit might be provided by a third party, such as a parent. In that case, the name of the individual who is providing the deposit and the name of the party that the deposit is provided for must be indicated as per Section 12 of O. Reg. 579/05.

## Trust Monies

Monies held in trust do not belong to the brokerage. In these cases, the brokerage is acting as a trustee of the monies until the trade is completed and the monies are appropriately distributed. Monies in the real estate trust account are not permitted to be used for any purposes other than those agreed to by the beneficial owner. Throughout REBBA 2002, there are several requirements that address the handling of trust monies.

### Allowable Disbursements

Disbursements from the real estate trust account cannot be made unless they are lawful. In addition, no disbursements may be made unless authorized by the broker of record as per Section 19 of O. Reg. 567/05. In situations where the broker of record is absent or unable to act, a brokerage that is not a sole proprietorship is required to designate another broker under its employ to exercise signing authority for trust transactions, and the brokerage must immediately notify the Registrar in writing of any such designations. For brokerages that are sole proprietorships, the broker of record must authorize trust account transactions at all times.

The following are common lawful disbursements from the designated real estate trust account:

- To the brokerage's general account/commission trust account, representing commissions earned in a completed transaction, upon written notification of successful completion from the seller's lawyer
- To the seller of any excess of deposit above the amount of commission earned in a completed transaction, upon written notification of successful completion from the seller's lawyer
- To the person entitled to the deposit under the terms of the contract in an aborted transaction, after obtaining a mutual release or written direction signed by all parties to the transaction (in any event, the recipient of the funds must be clearly indicated)
- To RECO under circumstances described in Sections 27(4) and 27(5) of the Act:
  - If, after one year, the person "entitled" to the funds cannot be located, or
  - If, after two years, entitlement to trust monies has not been determined or is unclear
- Where any court having lawful jurisdiction shall order such disbursement

### O. Reg. 567/05

#### Section 19

A brokerage shall not engage in any transaction involving money that comes into the brokerage's hands in trust for other persons in connection with the brokerage's business unless the transaction is authorized by the brokerage's broker of record.





## Improper Disbursements

Monies held in trust may not be used for any reason other than their designated purpose.

Under no circumstances can payments be made from the designated real estate trust account for:

- Payment of bank service charges (such charges are to be deducted from the general account)
- Payment of commission to co-operating brokerages, brokers and/or salespersons (such payment is typically made from the commission trust account and/or the general account)

## Interest Earned on Deposits

Interest on trust monies will accrue to the beneficial owner of the trust monies, unless otherwise directed by contract terms. In the case of a typical transaction, the buyer would be the beneficial owner of the trust monies until closing.

Section 27(2) of the Act requires that a brokerage disclose in writing to persons depositing trust monies the terms under which the brokerage is holding the monies, including whether the monies will be placed in an interest-bearing account and, if so, the interest rate that the brokerage will receive on the monies. Section 27(3) stipulates that all interest on trust monies must be paid to the beneficial owner of the trust monies unless otherwise provided by contract.

Sections 27(2) and 27(3) require a brokerage to be clear to clients and customers about the terms under which their trust monies are held. The brokerage needs to disclose not only the interest rate that will be paid out to the beneficial owner, but the interest rate that the account generates. If there is no contractual agreement regarding the terms of interest payments, then all interest generated by the trust monies must be paid out to the beneficial owner of the monies.

## Example

- The brokerage deposits trust monies in an interest-bearing account with a 2% interest rate
- The rate paid to the beneficial owner is 1%
- The brokerage must disclose to the beneficial owner that the interest rate of the account is 2% and that his/her contractual consent is required to the 1% interest payment

When a brokerage is depositing trust monies in accounts with variable interest rates, they must comply with disclosure requirements by informing the customer/client of the current rate applied to the account as well as the interest rate that will be paid out to the beneficial owner.

To minimize issues associated with disbursement of interest related to trust deposits, a brokerage should ensure that its contracts are clear about interest terms and payments related to trust monies. The determination of interest payment should be clearly described in the Agreement of Purchase and Sale to minimize potential misunderstandings. Contracts should be clear about how any interest received on trust monies will be paid (e.g. directly to the buyer, directly to the seller, used to increase the value of the deposit to a like amount, or something similar).

There is absolutely no requirement for the real estate trust account of a brokerage to be interest-bearing. If a brokerage uses an interest-bearing account, the broker of record must be aware of the additional administrative responsibilities imposed on the brokerage by Sections 27(2) and 27(3) of the Act.

On occasion, the Agreement of Purchase and Sale will contain specific directions for the brokerage to place the deposit in an interest-bearing term certificate. If this is the case, the beneficial owner of the trust monies must be clearly identified. The term certificate should be endorsed as follows:

**Example:**

**Professional Real Estate Ltd. - in trust for  
A. Adams and B. Brown  
re: purchase and sale of 100 Main Avenue,  
Toronto, Ontario.**

When purchasing term certificates, the brokerage shall adhere to the following process:

1. Deposit the buyer's cheque into the real estate trust account;
2. Prepare a cheque from the real estate trust account to purchase the term certificate in accordance with any instructions;
3. Upon maturity of the term certificate, transfer the original deposit and accrued interest back into the real estate trust account;
4. Make the payment of interest from the real estate trust account to the beneficial owner of the trust money.

The payment of interest will require the brokerage to issue a T-5 slip reporting the amount of interest paid to the beneficial owner, as required by the Canada Revenue Agency.

Where interest is earned on a real estate trust account, the brokerage must realize that this interest is trust money. The brokerage must at all times be ready to account for any interest earned on trust deposits. The Act creates certain legal rights related to interest for the beneficial owners of the trust monies. These rights apply regardless of whether the parties to the agreement had originally requested payment of interest. If the brokerage intends to do anything with interest other than pay it to the beneficial owner, then the parties to the transaction must have contractually agreed to those payments.

## Handling Dormant Trust Monies

REBBA 2002 requires that monies in a brokerage's real estate trust account be disbursed only in accordance with the terms of the trust. Sections 27(4) and 27(5) of the Act identify two situations when a brokerage is required to pay unclaimed trust monies to RECO.

Under Section 27(4) of the Act, if a brokerage "holds money in trust for a period of two years and entitlement to the money has not been determined or is unclear, the brokerage shall pay the money to [RECO]."

Under Section 27(5) of the Act, "if a brokerage holds money in trust for a period of one year after the person for whom it is held first became entitled to payment of the money and the person cannot be located, the brokerage shall pay the money to [RECO]." REBBA 2002 requires brokerages to "use reasonable efforts to locate the person" entitled to the money before making a payment under Section 27(5).

REBBA 2002 requires brokerages, when paying monies under Sections 27(4) and 27(5), to provide "as much information as the brokerage has in order to determine who is entitled to the trust money."

In order to assist registrants in complying with these requirements, the Registrar's office has developed the following instructions to be followed by brokerages before unclaimed trust monies will be accepted by RECO:

### Entitlement Unclear (Section 27(4) of the Act):

If parties to an aborted transaction have not taken steps to clarify entitlement to the trust monies, after two years, the brokerage must forward the following to RECO:

- A cheque representing the amount of the deposit, payable to RECO;
- A copy of the relevant Agreement of Purchase and Sale and any related documents;

- A copy of the trade record sheet related to the transaction;
  - A copy of the relevant trust account transaction record or records; and
  - Any additional information the brokerage is aware of regarding why entitlement to the trust monies has not been determined or is unclear.
- Proof of unsuccessful attempts to contact the entitled person(s) during the 12 months following the determination of the entitlement to the trust money, usually indicated by two postmarked, returned envelopes.

**Entitlement Clear: Person cannot be Located (Section 27(5) of the Act):**

Where entitlement to trust monies is clear but the brokerage cannot locate the person, it must take reasonable steps to find the person. If the person entitled to the monies cannot be located after one year, the brokerage must forward the following to RECO:

- A cheque representing the amount of the deposit, payable to RECO;
- A copy of the Agreement of Purchase and Sale and any related documents;
- A copy of the trade record sheet related to the transaction;
- A copy of the relevant trust account transaction record or records; and

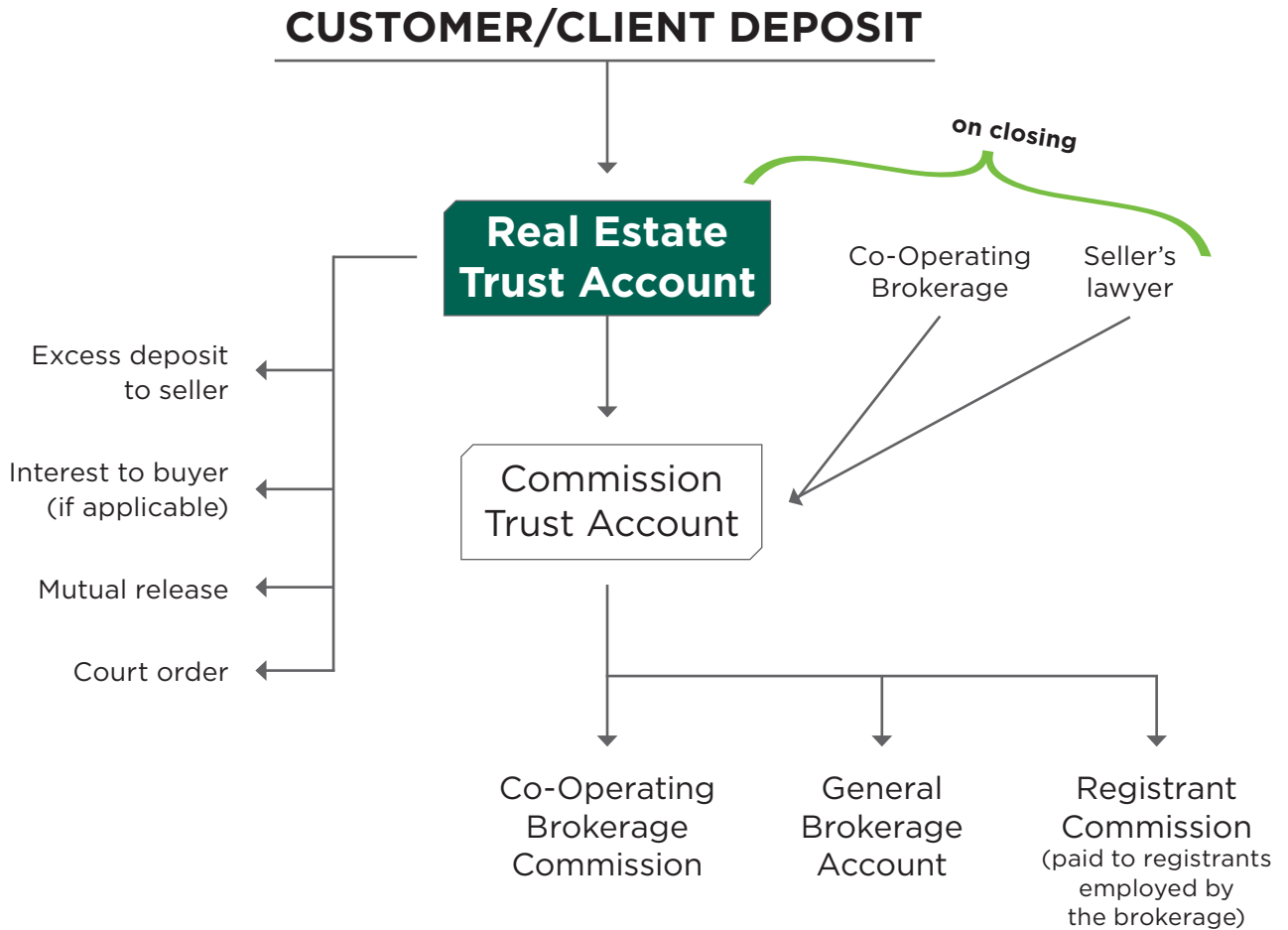
**Please note:**

If the trust monies in question were held in an interest-bearing account, the unclaimed monies paid to RECO will include both the original trust deposit and any interest accrued to the original trust monies up until the time those monies are paid out to RECO.

Secondly, Section 39 of O. Reg. 567/05 indicates that if the amount of unclaimed trust monies in question is less than \$25.00, then the brokerage is not required to forward it to RECO. The brokerage, however, may choose to forward it in accordance with the provisions of the Act, Section 27, even though it is not required to do so.



## Typical Flow of Funds at a Brokerage



The above diagram represents the typical flow of funds at a real estate brokerage.

Once a deposit is received at the brokerage it must be deposited into the real estate trust account within five business days. After deposit the monies may be withdrawn only under two circumstances:

- the transaction has been successfully completed, as verified in writing by the seller's lawyer; or
- the transaction is aborted, where there is either a completed mutual release or court order directive.



## Reconciliations

Part of a brokerage's requirement for monitoring trust monies is to complete a monthly reconciliation of the real estate trust account. The reconciliation looks at the account statement and compares it to the deposits being held for pending real estate trades, as noted in the real estate trust ledger. When in balance, the two amounts will be the same. If the amounts do not balance (reconcile), it must be determined why this is the case. If there is a shortfall, the brokerage must immediately deposit sufficient funds to eliminate the shortfall. The most common reason for a shortfall would be as a result of fees being charged by the financial institution to operate the account. These fees are part of a brokerage's operating costs and need to be replaced immediately.

Reconciliations can be completed in any number of ways, and the formality of the reconciliation usually depends on the size of the brokerage and the number of trades a brokerage processes. Larger brokerages with higher trade volumes will typically use a formal report to ensure that all pending trades can be noted for the real estate trust account liability. Smaller brokerages with lower trading volumes may use a less formal method and complete a reconciliation on the real estate trust account statement itself. No matter how formally the reconciliation is presented, the process of completing the reconciliation is done in the same way.

Total real estate trust liability is a list of all customer/clients that the brokerage was holding deposits for as of the last day of the applicable month. List individually all trust account liabilities from pending trades.

When the total real estate trust liability is subtracted from the reconciled real estate trust account balance, it must equal zero (\$0). Any other value must include a detailed explanation to validate the misbalanced account.

The reconciliation must be verified and signed by the broker of record.

Real Estate Trust Reconciliation Formula	
	Real Estate Trust Account Balance
Less -	Outstanding Cheques
Plus +	Outstanding Deposits
Plus +	Interest-Bearing Term Certificate Value
	<hr/> Reconciled Real Estate Trust Account Balance
	Real Estate Trust Account Liability
Plus +	Real Estate Interest-Bearing Account Liability
Plus +	Interest Liability
	<hr/> Total Real Estate Account Liability
	Reconciled Real Estate Trust Account Balance
Less -	Total Real Estate Account Liability
	<hr/> Reconciled Amount
	<i>John Doe</i>
	_____ Broker of Record
	<i>March 6, 2013</i>
	_____ Date

# Real Estate Trust Account Reconciliation

## A Step-By-Step Approach

There are two basic principles to remember when preparing reconciliation statements.

- 1 The reconciliation of the account is prepared for a fixed point in time. Brokerages are required to prepare reconciliation statements each month and these reconciliations must be completed within 30 days of the date the brokerage receives their monthly bank account statement.
- 2 The reconciliation does not need to detail all of the activity that occurs on the statement. In other words, the brokerage does not need to list every deposit and every cheque on the reconciliation.

## O. Reg. 579/05

### Section 13

1. A brokerage shall prepare a trust account reconciliation statement in accordance with this section for each trust account maintained under section 27 of the Act not later than,
  - a) in the case of a brokerage that receives a monthly account statement from the financial institution where the account is maintained, 30 days after the date the monthly account statement is received; and
  - b) in any other case, 30 days after the last day of each month. O. Reg. 579/05, s. 13 (1).
2. The reconciliation statement shall,
  - a) identify the differences, if any, between the brokerage's records and the records of the financial institution where the account is maintained, as of,
    - i. the date of the account statement from the financial institution, if clause (1) (a) applies, and
    - ii. the last day of the month to which the reconciliation statement relates, if clause (1) (b) applies; and
  - b) identify the balances in the trust account that are owing to each person as of,
    - i. the date of the account statement from the financial institution, if clause (1) (a) applies, and
    - ii. the last day of the month to which the reconciliation statement relates, if clause (1) (b) applies. O. Reg. 579/05, s. 13 (2).
3. The brokerage's broker of record shall, within the time referred to in subsection (1),
  - a) review the reconciliation statement; and
  - b) sign and date the reconciliation statement to indicate that he or she has reviewed it. O. Reg. 579/05, s. 13 (3).
4. When the broker of record is absent or unable to act, the broker designated under subsection 30 (2) of Ontario Regulation 567/05 (General) made under the Act shall exercise and perform the powers and duties of the broker of record under subsection (3).

# Reconciliation Overview

## Step-By-Step

### Reconciled Bank Account Balance

Bank Balance as at March 31, 2014 (closing date) \$23,553.33 **1**

LESS: Outstanding cheques

Date	Cheque #	Trade #	Payee	Amount	
Feb 15, 2014	187	38	John Doe	\$2,000.00	
Mar 28, 2014	210	41	General Acct.	\$1,000.00	
<b>Total Outstanding Disbursements</b>				<b>\$3,000.00</b>	(3,000.00) <b>2</b>

ADD: Outstanding deposits

Date	Buyer	Trade #	Amount	
March 31	Joan Smith	58	\$5,000.00	
<b>Total Outstanding Deposits</b>			<b>\$5,000.00</b>	5,000.00 <b>3</b>

ADD: Total Term Certificates as at month ending March 31, 2014 40,000.00 **4**

**Reconciled Real Estate Trust Account Bank Balance** **\$65,553.33** **5**

### Total Real Estate Trust Liability

Real Estate Trust Account Liability

Trade #	Type	Property	Amount	
45	Bank	12 Any Street	\$20,000.00	
47	Bank	78 Happy Street	\$500.00	
58	Bank	14 Kind Path	\$5,000.00	
<b>Total Real Estate Trust Account Deposits</b>			<b>\$25,500.00</b>	\$25,500.00 <b>6</b>

Real Estate Trust Term Certificate Liability

Trade #	Type	Property	Amount	
56	Term	29 Good Avenue	\$15,000.00	
57	Term	34 Neighbour Boulevard	\$5,000.00	
59	Term	18 Pleasant Avenue	\$20,000.00	
<b>Total Real Estate Trust Term Certificate Deposits</b>			<b>\$40,000.00</b>	40,000.00 <b>7</b>

PLUS: Interest Liability:  
Total Interest Accrued 53.33 **8**

**Total Real Estate Trust Liability as at March 31, 2014** **\$65,553.33** **9**

**Difference** **nil** **10**

Explanation of Discrepancies (if any):

\_\_\_\_\_ Dated: April 30, 2014 **11**

Broker of Record's Signature

## Reconciled Bank Balance

Reconciliations are always prepared for a fixed point in time. This fixed point in time is usually at the end of the month, as most bank statements detail transactions from the first to the last day of the month.

Reconciled Bank Account Balance					
Bank Balance as at March 31, 2014 (closing date)				\$23,553.33	1
LESS: Outstanding cheques					
Date	Cheque #	Trade #	Payee	Amount	
Feb 15, 2014	187	38	John Doe	\$2,000.00	
Mar 28, 2014	210	41	General Acct.	\$1,000.00	
<b>Total Outstanding Disbursements</b>				<b>\$3,000.00</b>	(3,000.00) 2
ADD: Outstanding deposits					
Date	Buyer	Trade #		Amount	
March 31	Joan Smith	58		\$5,000.00	
<b>Total Outstanding Deposits</b>				<b>\$5,000.00</b>	5,000.00 3
ADD: Total Term Certificates as at month ending March 31, 2014				40,000.00	4
<b>Reconciled Real Estate Trust Account Bank Balance</b>				<b>\$65,553.33</b>	5

- 1 Locate the real estate trust account bank balance. This will be the last balance entry on the bank statement for the month you are reconciling. In this example, it is mid-April and you are completing the reconciliation for the previous month. The bank statement for the previous month reports the activity from March 1 - March 31. Therefore, you must identify what the balance in the real estate trust account was on March 31.

**Bank Balance as at March 31, 2014 (closing date)**

**\$23,553.33**

- 2 Identify any outstanding disbursements (cheques written at or before the end of the month being reconciled which did not clear the account by the end of that month). List outstanding cheques by date written; reference the cheque number, the appropriate trade record number, the payee, and the amount of the cheque. The total amount of these cheques is the sum of your outstanding disbursements.

Date	Cheque #	Trade #	Payee	Amount
Feb 15, 2014	187	38	John Doe	\$2,000.00
Mar 28, 2014	210	41	General Acct.	\$1,000.00
<b>Total Outstanding Disbursements</b>				<b>\$3,000.00</b>

**3** Identify any outstanding deposits of trust monies that have been received and deposited, but not yet processed by the bank. **Typically, outstanding deposits are rare.** They may occur if a brokerage makes a deposit on the last business day of the month and after the financial institution's recording time. List them by date received, as you did the outstanding disbursements; reference the cheque number, the appropriate trade record number, the name of the individual who issued the cheque, and the amount of the cheque. Do not include any amounts that were received but not deposited. The total amount of these cheques is the sum of your outstanding deposits.

Date	Buyer	Trade #	Amount
March 31	Joan Smith	58	\$5,000.00
<b>Total Outstanding Deposits</b>			<b>\$5,000.00</b>

**4** If you are using interest-bearing term certificates, identify their value on the reconciliation date (in this example, March 31).

You should consider establishing online view access and/or request a month-end statement of the term certificates from your bank, just like your regular monthly bank statements. The term certificate statements should be attached to your monthly reconciliation as supporting documentation. They will also help you to catch redemption errors, which are common. Otherwise, it can be extremely difficult and very costly to attempt to retrieve this information for past periods should RECO request a reconciliation submission review from your brokerage.

**ADD: Total Term Certificates as at month ending March 31, 2014** **\$40,000.00**

**5** Subtract the sum of any outstanding disbursements (calculated in step 2) from the bank balance on the reconciliation date (identified in step 1).

To this new sum, add the sum of any outstanding deposits (calculated in step 3). Remember, **these are rare.**

Then add the total value of any term certificates (identified in step 4).

The final total here is the reconciled real estate trust account bank balance.

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**Reconciled Real Estate Trust Account Bank Balance** **\$65,553.33**



## Total Real Estate Trust Liability

The second part is the calculation of the total real estate trust liability. This is simply a list of all customers/clients the brokerage was holding deposits for as of the end of the month. Remember, do not include customers/clients from whom the brokerage has taken deposits after the last day of the month.

<b>Total Real Estate Trust Liability</b>			
Real Estate Trust Account Liability			
Trade #	Type	Property	Amount
45	Bank	12 Any Street	\$20,000.00
47	Bank	78 Happy Street	\$500.00
58	Bank	14 Kind Path	\$5,000.00
<b>Total Real Estate Trust Account Deposits</b>			<b>\$25,500.00</b>
			\$25,500.00 <b>6</b>
Real Estate Trust Term Certificate Liability			
Trade #	Type	Property	Amount
56	Term	29 Good Avenue	\$15,000.00
57	Term	34 Neighbour Boulevard	\$5,000.00
59	Term	18 Pleasant Avenue	\$20,000.00
<b>Total Real Estate Trust Term Certificate Deposits</b>			<b>\$40,000.00</b>
			40,000.00 <b>7</b>
PLUS: Interest Liability:			
Total Interest Accrued			53.33 <b>8</b>
<b>Total Real Estate Trust Liability as at March 31, 2014</b>			<b>\$65,553.33</b> <b>9</b>

**6** Identify all real estate trust account deposits being held by the brokerage as at the reconciliation date (in this example, March 31). List them by trade number and include the type of deposit (bank) as well as the property address and the amount of the deposit.

The total of these amounts is the real estate trust account liability.

**7** Identify all real estate trust account deposits being held by the brokerage in interest-bearing term certificates as at the reconciliation date (in this example, March 31). List them by trade number and include the type of deposit (term) as well as the property address and the amount of the deposit.

The total of these amounts is the real estate trust term certificate liability.

**8** Identify the total interest accrued in the real estate trust account (the interest liability of the brokerage) on the last day of the month you are reconciling (in this example, March 31).

**9** Add the sum of the real estate trust account liability (calculated in step 6) to the sum of the real estate trust term certificate liability (calculated in step 7), plus the sum of the interest liability (calculated in step 8). The total here is the real estate trust account liability.

## Reconciled Amount

**10** Subtract the total real estate trust liability from the reconciled real estate trust account bank balance. **The result should equal zero (\$0).**

**11** If the result of step 10 does not equal zero, any discrepancies must be explained on the reconciliation and must be addressed immediately. The final reconciliation must be reviewed, signed and dated by the broker of record.

<b>Difference</b>	<b>nil</b>	<b>10</b>
Explanation of Discrepancies (if any):		
_____ Dated April 30, 2014		<b>11</b>
Broker of Record's Signature		

6,573	2	157	6,732	3,340
9,768	582	701	11,051	11,615
6,271	1,037	943	8,251	7,274
23,522	938	557	25,017	27,091
26,603	8,446	8,838	43,887	40,687
1,275	542	950	2,767	2,645
26,767	6,559	5,970	39,296	32,899
19,542	2,055	49,287	70,884	65,286
11,537	3,783	12,602	27,922	26,323
3,175	4,410	6,633	14,218	13,909
1,308	104	85	1,497	1,250
136,341	28,458	86,723	251,522	232,319
64,558	2,450	2,234	69,242	52,234
200,899	30,908	88,957	320,764	284,553
38,706	20,481	32,979	92,166	90,606
27,832	10,266	19,798	896	45,951
66,538	30,747	52,777	52	136,557
267,437	61,655	141,734	4,000	421,110
customers – gross				
nsions			(3,884)	(3,884)
o customers – net			466,000	417,226
				719

## Simplified Reconciliation

Some brokerages may not need sophisticated accounting procedures. In this example, the broker of record completed the monthly reconciliation on their monthly bank statement. This is a perfectly acceptable format, considering that this brokerage

has a small volume of transactions. During an inspection, an inspector can verify the data presented by cross-referencing the information provided with the real estate trust ledger and trade files of the brokerage.



### Your Place Bank

Monthly Account Statement: March 2014  
 Account Number: 123456789  
 Previous Balance: \$50,425.00

Date	Transactions	Debit	Credit	Balance
	Previous Balance			\$50,425.00
05/03/2014	Deposit 589456		\$20,000.00	\$70,425.00
15/03/2014	Cheque No. 25	\$15,000.00		\$55,425.00
15/03/2014	Transfer to account 51479547	\$5,000.00		\$50,425.00
19/03/2014	Deposit 231547		\$65,000.00	\$115,425.00
20/03/2014	Cheque No. 26	\$20,000.00		\$95,425.00
20/03/2014	Transfer to account 51479547	\$10,000.00		\$85,425.00
<b>Totals</b>		<b>\$50,000.00</b>	<b>\$85,000.00</b>	

Bank Account Balance	\$85,425
Outstanding Cheques (cheque #21)	- \$425
Outstanding Deposits <sup>o</sup>	+ \$0
Reconciled Bank Balance	<u>\$85,000</u>

Real Estate Trust Accounting Liability	
Trade 0041	\$20,000
Trade 0042	+ \$65,000
Total Real Estate Trust Accounting Liability	<u>\$85,000</u>

Reconciled Bank Balance	\$85,000
Total Real Estate Trust Accounting Liability	- <u>\$85,000</u>
Difference	\$0

Peter Tran, BOR

signed

April 12, 2014

Reconciliations do not have to be complicated.

They need to be completed diligently and accurately.

## Advertising

Inspectors will review a cross-section of advertising during an on-site inspection. This includes both media advertising and business cards. For additional information on advertising, please see the Advertising Guidelines, Social Media for Real Estate Professionals Guidelines, and other resources available on the RECO website ([www.reco.on.ca](http://www.reco.on.ca)).

### Brokerages have two key requirements that must be included in all forms of advertising.

- 1 The name of the brokerage as registered with RECO must be clearly and prominently identified (personnel, registered and non-registered)
- 2 The registered name must be described as either a “brokerage” or “real estate brokerage.”

### Individual registrants have four key elements that must be included in all forms of advertising.

- 1 The name of the registrant as registered with RECO must be clearly and prominently disclosed.
- 2 The registrant must identify their role with one of the approved descriptions such as “salesperson,” “broker,” or “broker of record.”
- 3 The name of the brokerage the registrant works for must be clearly and prominently identified.
- 4 The brokerage name must be described as either a “brokerage” or “real estate brokerage.”

As described in the Advertising Guidelines, RECO considers advertising to be “...any notice, announcement or representation directed at the public that is authorized, made by or on behalf of a registrant and that is intended to promote a registrant or the business, services or real estate trades of a registrant in any medium including ... electronic media or publication on the internet (including websites and social media sites).”



# Contact RECO



3300 Bloor Street West  
Suite 1400, West Tower  
Toronto, Ontario M8X 2X2



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[www.reco.on.ca](http://www.reco.on.ca)



**Telephone:** (416) 207-4800  
**Toll-free:** 1-800-245-6910  
**Fax:** (416) 207-4820



**Monday to Friday:**  
8:30 a.m. to 4:30 p.m.

**Disclaimer:** Registrant and brokerage names used in these guidelines are fictitious and for demonstrative purposes only. They do not reflect past, current or potential registrants and brokerages registered under REBBA 2002.