



South Carolina  
Department of Labor, Licensing and Regulation



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## **Confirmation of Delivery of Trust Funds**

The Commission has seen several cases recently involving trust funds held outside a brokerage. One of the consistent issues that has come up in these cases is a failure of licensees to ensure trust funds are timely and properly delivered to the trust fund agent as stated in the contract.

S.C. Code §40-57-136(H) requires licensees to “ensure that the trust funds are timely and properly delivered to the trust fund agent as stated in the contract” when those funds are held outside of a licensee’s brokerage. The Commission recommends licensees receive confirmation of timely and proper delivery of trust funds to the trust fund agent in writing from the trust fund agent. In writing could mean e-mail, formal letter, text message, or any other written form of communication. The purpose of receiving this confirmation in writing is to provide the licensee with a written record, created at the time of the events, that demonstrates the licensee complied with the requirement of S.C. Code §40-57-136(H). Therefore, the Commission recommends licensees request this information in a format they are willing to retain for an extended period of time, as set forth in S.C. Code §40-57-136(F)(1) for records required to be maintained under the Real Estate Practice Act.<sup>1</sup>

Further, the Commission advises that such written communications should be written in a clear enough manner so as to ensure that the trust funds referenced can be clearly identified as associated with a particular real estate transaction. For example, an e-mail of “trust funds received” with no other information could apply to any trust funds. Conversely, an e-mail identifying the parties to the real estate transaction, the address of the transaction, the date the trust funds were received, and the amount of trust funds received, would be sufficiently detailed to tie the communication back to a particular real estate transaction.

**Disclaimer: This guidance document is not intended as legal advice. The Commission is providing this guidance document to educate licensees on this area of the law with practical, everyday examples. This guidance document is only a high-level overview and may not take into consideration all the intricacies that may be present in a real-life event.**

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<sup>1</sup> Please note that this confirmation documentation is not one of the records listed as being required to be maintained for a minimum of five years. Thus, this is merely a recommendation from the Commission.