

## Trust Fund Placement Proposal

### AMEND ARTICLE 15 TO READ:

#### **Sec. 2830. Broker Placement of Trust Funds Account with Financial Institutions.**

The relationship between a real estate broker and a client for whom the broker holds funds in trust is an agency relationship. As an agent, the broker owes a fiduciary duty to the client regarding the handling of the trust. Any benefit received by the broker relating to the broker's handling of client funds in trust belongs to the client by law, and the broker must pass that benefit along to the client.

(a) Unless in possession of written permission from the client, it is unlawful for any real estate broker, including any corporate broker, to receive, directly or indirectly, any commission, compensation, or other consideration, whether personal or professional, from any person or institution other than the client as an inducement for the placement of a trust fund account in accordance with Section 10145 of the Business and Professions Code. Actual placement of a trust fund account is not a precondition to a violation of this section, whether the violation is or is not a per se violation pursuant to subsection (c), below.

(b) For purposes of this section, a "compensating balance" is a balance maintained in a checking account or other account in a bank or other recognized depository in the name of a real estate broker for the purpose of paying bank fees on a separate trust fund account.

(c) Unless in possession of written permission from the client as described in subsection (a), the following activities, whether performed directly or indirectly, are deemed per se receipt of inducements for the placement of trust account business by any person and are unlawful:

(1) Receiving or requesting payment for, accepting or requesting provision of, or accepting or requesting assistance with business expenses, including, but not limited to, rent, employee salaries, furniture, copiers, facsimile machines, automobiles, telephone services or equipment, or computers.

(2) Receiving or requesting receipt of any form of consideration intended for the benefit of the broker, rather than the trust account itself, including cash, below market rate loans, automobile charges, or merchandise or merchandise credits.

(3) Receiving or requesting to receive on behalf of the broker or corporation, compensating balances or benefits in the pricing or fees for the maintenance of a compensating balance account.

(4) Receiving or requesting provision of all, or any part, of the time or productive effort of any employee of the bank or other recognized depository for any service unrelated to the trust account.

(5) Receiving or requesting expenditures for food, beverages, and entertainment.

(d) Receipt or request of receipt of the following are not deemed to be unlawful or in violation of this section:

(1) Promotional items with a permanently affixed company logo of the bank or other recognized depository with a value of not more than ten dollars (\$10) each. "Promotional item" does not include a gift certificate, gift card, or other item that has a specific monetary value on its face, or that may be exchanged for any other item having a specific monetary value.

(2) Receipt or requested receipt of education or educational materials exclusively related to the business of trust fund management if continuing education credits are not provided.

(e) The receipt or requested receipt of any form of consideration as an inducement for the placement of a trust account not specifically set forth in this section shall not be presumed lawful merely because it is not specifically prohibited.

NOTE: Authority-cited: Section 10080 and ~~10145(f)~~, Business and Professions Code. Reference: Sections 10145 and 10176, Business and Professions Code.