

# MAINE STATE LEGISLATURE

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January 7, 1974

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Real Estate Commission

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Attorney General

Earnest money deposits

All earnest money deposited with a broker or his salesman must be put into the broker's trust account. This is specifically required by the first sentence of 32 M.R.S.A. § 4004-A. I can think of no circumstances that would create an exception to this requirement.

In the example you cite the offer made through the broker and accompanied by earnest money is neither accepted nor rejected at first by the seller, and may remain simply an offer for several hours or for several weeks. Such earnest money must go into the broker's trust account at the first opportunity. There is no basis in the statute for saying that earnest money deposits need only be placed in trust accounts if the offer is accepted by the seller. To the contrary, the statute says all earnest money deposits and all other money the broker holds as a broker in which his client or other persons with whom he is dealing (e.g. offerors; prospective purchasers) have an interest shall be accounted for by the broker through the method of trust accounting required by every broker.

You note that earnest money turned over to the broker is often in the form of check or money order. It seems to be contemplated by § 4004-A that all checks or money orders accepted by the broker as earnest money for a transaction should be made payable to the broker (ideally "\_\_\_\_\_ (broker), Trust Account") rather than being made payable to the seller. If checks or money orders are made payable to the seller, and accepted in this form by the broker, the broker obviously could not immediately deposit it in his trust account and the statute could not be complied with.

JK/mf

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