

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date November 29, 1976

To Paul Sawyer

Dept. Real Estate Commission

From David P. Cluchey

Dept. Attorney General

Subject Interest Earned on Earnest Money Deposits

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In your memorandum of October 26, 1976, you inquire as to whether the Commission's position that title to money in a real estate trust account remains with the purchaser of the property until the sale closes is correct. Specifically, you are concerned in light of recent banking law changes which now permit banks to pay interest on checking accounts. As most trust accounts are checking accounts, this will result in a question as to who shall receive the interest on monies deposited in a trust account.

The Real Estate Commission's interpretation of the title to money placed in a trust account with a real estate broker is correct. The ordinary rule is that title to money held in escrow pending the occurrence of a specific contingency does not pass until that contingency occurs, 28 Am. Jur. 2d at 15. An example cited in the above reference is that of stock placed in escrow. The title of such stock does not pass until the occurrence of a contingency and any dividends declared prior to the occurrence of that contingency are the property of the entity which placed the stock into escrow. This rule finds further support in Hastings v. Bank of America National Trust and Savings Association, 180 P. 2d 358 (Cal. 1947). The court in that case stated, "a title to money deposited in escrow to be paid to the vendor of property does not pass until all conditions of the escrow have been fulfilled." at 359.

In light of these authorities, the Commission is correct in taking the position that any interest earned on money between the deposit of the money into the trust account and the closing on the property or the breach of the contract would belong to the purchaser. If you have further questions concerning this, please contact me.

DPC:JS