

**61J2-14.008 Definitions.**

(1)(a) A "deposit" is a sum of money, or its equivalent, delivered to a real estate licensee, as earnest money, or a payment, or a part payment, in connection with any real estate transaction named or described in Section 475.01(1)(a), F.S., or for the purpose of obtaining satisfaction, release, or assignment of mortgages, or quit claim or other deeds deemed necessary or desirable in acquiring or perfecting the title to real estate, or assembling interest therein, or such sum delivered in escrow, trust or on condition, in connection with any transaction conducted, or being conducted, by such licensee within the scope of Chapter 475, F.S.

(b) A deposit, as so defined, shall extend to and include not only cash, or currency, but any medium of exchange, or any securities to be converted into money, delivered for any of the purposes aforesaid, to be held or converted into cash or bank credits. A broker shall not be responsible for the payment of any check or draft, unless the broker, through culpable negligence, fails to deposit the same in the regular course of business, and the check or draft is not paid due to such culpable negligence, and damage results to some party entitled to complain of said culpable negligence.

(2)(a) "Trust" or "escrow" account means an account in a bank or trust company, title company having trust powers, credit union, or a savings and loan association within the State of Florida. Only funds described in this rule shall be deposited in trust or escrow accounts. No personal funds of any licensee shall be deposited or intermingled with any funds being held in escrow, trust or on condition except as provided in subsection 61J2-14.010(2), F.A.C.

(b) When a deposit is placed or to be placed with a title company or an attorney, the licensee who prepared or presented the sales contract ("Licensee"), shall indicate on that contract the name, address, and telephone number of such title company or attorney. Within ten (10) business days after each deposit is due under the sales contract, the Licensee's broker shall make written request to the title company or attorney to provide written verification of receipt of the deposit, unless the deposit is held by a title company or by an attorney nominated in writing by a seller or seller's agent. Within ten (10) business days of the date the Licensee's broker made the written request for verification of the deposit, the Licensee's broker shall provide Seller's broker with either a copy of the written verification, or, if no verification is received by Licensee's broker, written notice that Licensee's broker did not receive verification of the deposit. If Seller is not represented by a broker, then Licensee's broker shall notify the Seller directly in the same manner indicated herein.

(3) "Immediately" means the placement of a deposit in an escrow account no later than the end of the third business day following receipt of the item to be deposited. Saturdays, Sundays and legal holidays shall not be considered as business days.

*Rulemaking Authority 475.05, 475.25(1)(k) FS. Law Implemented 475.25(1)(k) FS. History—New 1-1-80, Formerly 21V-14.08, Amended 10-13-88, 12-29-91, 7-20-93, Formerly 21V-14.008, Amended 7-5-95, 7-4-06, 12-6-07, 6-21-10.*

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**Subject:** 61J2

Regarding the 61J2 Rule as it applies to the delivery of funds into escrow I believe the Rule is flawed and needs revision. The Real Estate Commission was created to be a consumer protection agency in the real estate profession. Properly handling earnest money deposits is a high priority and therefore must insure the public is not in harms way of misconduct. Currently brokers are required to deliver ALL deposits into escrow within 3 business days excluding weekends and federal holidays. This includes banks, credit unions, savings association, and TITLE COMPANIES/ATTORNEYS. When a broker delivers a deposit into a bank, credit union or savings association a receipt of deposit is received at that time. The question is this, why are title companies and attorneys treated differently as it relates to obtaining receipts of deposit? The Rule only requires a broker to ask for verification of deposit 10 business days after it was "supposed" to be delivered. And title companies and attorneys are not required to comply. Is the public's best interest being served? In addition, once the deposit is delivered to a title company or attorney the broker no longer has control over its whereabouts or ultimate disposition. If there is a dispute the broker is helpless in the resolution process. Do buyers and sellers understand this? Here is my proposal:

1. Immediate should remain 3 business days for all delivery into escrow.
2. Brokers should be required to have a pre-prepared receipt signed and dated at the time any deposit is delivered to either a title company or an attorney to show the deposit has been made in a timely manner. How much trouble can that be?
3. The request for verification should be removed from the rule.
4. A disclosure should be required to be delivered no later that entering into a contract that explains to buyers and sellers that in the event the deposit is delivered to a title company or attorney the deposit is no longer under the control of the broker.

The way the rule is now there is no paper trail to establish the broker delivered deposits into title company/attorney escrow in a timely manner. Therefore an audit would be difficult determine if the broker was complying with Statutes and Rules. These changes are reasonable and workable for any broker. Thanks in advance for your consideration in this most important matter.

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