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## TITLE 876 INDIANA REAL ESTATE COMMISSION

### **Proposed Rule** LSA Document #05-47

#### DIGEST

Amends 876 IAC 1-1-23 to allow for the voluntary transfer of any interest earned on the broker's escrow/trust account to a fund established for the sole purpose of providing affordable housing opportunities in Indiana. Effective 30 days after filing with the secretary of state.

#### **876 IAC 1-1-23**

SECTION 1. 876 IAC 1-1-23 IS AMENDED TO READ AS FOLLOWS:

#### **876 IAC 1-1-23 Written offers to purchase; disposition of money received**

**Authority:** IC 25-34.1-2-5

**Affected:** IC 25-34.1-2-5

Sec. 23. (a) Any and all written offers to purchase or authorization to purchase shall be communicated to the seller for his or her formal acceptance or rejection immediately upon receipt of ~~such the~~ offer, and ~~such the~~ offers or authorizations shall be made in quadruplicate, one (1) copy to the prospective purchasers at the time of signing, one (1) copy for the principal broker's files, one (1) copy to the sellers, and one (1) copy to be returned to the purchasers after acceptance or rejection. The listing principal broker shall, on or before the next two (2) banking days after acceptance of the offer to purchase by the seller, do one (1) of the following:

(1) Deposit all money received in connection with a transaction in his or her escrow/trust account.

(2) Delegate the responsibility to the selling principal broker to deposit the money in the selling broker's escrow/trust account.

In any event, the commission shall hold the listing principal broker responsible for the money. In the event the earnest money deposit is other than cash, this fact shall be communicated to the seller ~~prior to~~ **before** his or her acceptance of the offer to purchase, and ~~such the~~ fact shall be shown in the earnest money receipt. All money shall be retained in the escrow/trust account so designated until disbursement thereof is properly authorized. **Provided the beneficiary agrees in writing, the listing or selling principal broker holding the earnest money may voluntarily transfer any interest earned on the broker's escrow/trust account to a fund established for the sole purpose of providing affordable housing opportunities in Indiana that meets the requirements of Internal Revenue Service Code 501C3.** The listing or selling principal brokers holding any earnest money are not required to make payment to the purchasers or sellers when a real estate transaction is not consummated unless the parties enter into a mutual release of the funds or a court issues an order for payment, except as permitted in subsection (b).

(b) Upon being notified that one (1) or more parties to an offer to purchase ~~intends~~ **intend** not to perform, the listing or selling principal broker, holding the earnest money, may release the earnest money deposit as provided in the offer to purchase or, if no provision is made in the offer to purchase, the selling or listing principal, holding the earnest money, may initiate the release process. The release process shall require the selling or listing principal broker to notify all parties at their last known address by certified mail that the earnest money deposit shall be distributed to the parties specified in the letter unless:

(1) all parties enter into a mutual release; or

(2) one (1) or more of the parties initiate litigation;

within sixty (60) days of the mailing date of the certified letter. If neither ~~the~~ buyer ~~or~~ **nor** the seller initiates litigation or enters into a written release within sixty (60) days of the mailing date of the certified letter, the broker may release the earnest money deposit to the party identified in the certified letter. (*Indiana Real Estate Commission; Rule 24; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 800; filed Dec 11, 1986, 10:40 a.m.: 10 IR 878; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:50 a.m.: 25 IR 102; filed Oct 28, 2002, 12:01 p.m.: 26 IR 789*)

#### ***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on June 23, 2005 at 10:10 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W064, Indianapolis, Indiana the Indiana Real Estate Commission will hold a public hearing on proposed amendments to allow for the voluntary transfer of any interest earned on the broker's escrow/trust account to a fund established for the sole purpose of providing affordable housing opportunities in Indiana. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W072 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Frances L. Kelly  
Acting Executive Director  
Indiana Professional Licensing Agency