



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES

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**MORTGAGE BROKER PRACTICES ACT**

**INTERIM REGULATORY GUIDANCE**

**DATE:** October 31, 2018  
**TO:** Licensees under the Act using a trust account  
**FROM:** Charles Clark, Director, Division of Consumer Services *CEC*  
**RE:** Interim Regulatory Guidance on the use of trust accounts

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**Purpose**

This Interim Guidance expresses Consumer Services' interpretation of the Washington Mortgage Broker Practices Act, chapter 19.146 RCW (Act)<sup>1</sup>, as it applies to use of trust accounts.

This Interim Guidance does not amend chapter 19.146 RCW or chapter 208-660 WAC. It only interprets those sections of chapter 208-660 WAC as indicated. This Interim Guidance is subject to change or withdrawal. Specifically, it is subject to withdrawal when chapter 208-660 WAC is amended via a notice and rulemaking to incorporate this interim guidance.

**Statutory Requirements for the Trust Account**

RCW 19.146.050 provides that: All moneys received by a mortgage broker from a borrower for payment of third-party provider services shall be deemed as held in trust immediately upon receipt by the mortgage broker. A mortgage broker shall deposit, prior to the end of the third business day following receipt of such trust funds, all such trust funds in a trust account of a federally insured financial institution located in this state. All

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<sup>1</sup> <http://app.leg.wa.gov/RCW/default.aspx?cite=19.146&full=true>  
Interim Guidance on the use of trust accounts

trust account funds collected under this chapter must remain on deposit in a trust account in the state of Washington until disbursement.

That same section also provides that: Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers.

### **Rules Interpreting the Act**

The agency has written significant rules to carry out the statutory requirements. Over time, industry practices have changed and the department now determines that consumers can be protected and the regulatory burden eased for industry by providing this Interim Guidance prior to rulemaking.

### **Interim Guidance**

1. Funds received by a broker from or on behalf of a borrower for payment to third-party providers prior to closing are considered trust funds. WAC 208-660-410(1).
2. Funds received by a broker from a settlement agent or lender, on or after closing, for reimbursement to the broker solely for payment to third-party service providers, are not trust funds. WAC 208-660-410(1).

Prepared by: Cindy Fazio, Chief of Regulatory Affairs, Consumer Services. Contact Cindy at 360-902-8800 or [cfazio@dfi.wa.gov](mailto:cfazio@dfi.wa.gov) if you have questions.

Statutes and rules relied upon: Chapter 19.146 RCW and chapter 208-660 WAC.