



# Monthly Newsletter

March 2014

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## California West complies with BRE trust fund rules.

The Bureau of Real Estate ("BRE") recently published a pamphlet on handling client trust funds. Part of the pamphlet includes useful question and answers, as follows:

### NSF Checks

**BRE Q:** Am I permitted to wait until checks deposited to my trust account have cleared before I issue a trust check to fund a customer's check?

**BRE A:** Although the Real Estate Law is silent on this, good business practice dictates that you wait until a customer's check deposited to your trust account has cleared prior to the issuing of your trust check as a refund.

**California West Policy:** We sometimes have tenants pay us in error but always wait until the bank tells us that the check has cleared before issuing any refund.

### Maintaining records

**BRE Q:** How long must I keep deposit receipts?

**BRE A:** Deposit receipts must be maintained for three years.

**California West Policy:** We maintain copies of all receipts for a minimum of three years, often longer.

### Trust Accounts

**BRE Q:** As a broker-owner of rentals, do I have to put security deposits in a trust account?

**BRE A:** Money you receive on your own property is received as a principal, not as an agent. As such, these are not trust funds and should not be placed in the trust account.

**California West Policy:** We maintain a general trust account for our clients' funds that is separate from any accounts for our employee and broker owned properties.

*California West continues to investigate options for accepting electronic payments without incurring unnecessary fees and risking regulatory problems.*

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## **The complications of accepting electronic payments from tenants.**

An increasingly common question by tenants is whether California West accepts rent payments electronically.

Under California law, property owners cannot **require** electronic payments of rent, but owners and management companies **may** offer such an option if both the tenant and property owner agree to that arrangement.

Our response to tenants, though, is that the best option for them is to use an automatic bill-pay service. These services are often easy to setup with banks and do not incur any fees.

Some of the problems with accepting pure electronic payments are that they incur transaction fees and also create additional regulatory requirements that do not exist with ordinary checks.

The way that most electronic payment services work is that a merchant account provider accepts payments and then forwards the money to the management company or property owner.

A big regulatory problem with this approach was recently explained by the Bureau of Real Estate ("BRE") in their quarterly newsletter. According to the BRE, if the payment processor actually receives rents or other trust fund payments for deposit into one of the processor's accounts, not only does the processor need a real estate license, but the account needs to be designated as a trust account and contractual agreements with clients need to be in place.

Another difficulty arises when a tenant pays electronically and has insufficient funds to make such payment. If the payment processor credits the management company or property owner for those funds and later learns that such funds are not available - which does happen - the processor then has to reverse the transaction.

The way the payment processor reverses this is by pulling money from the management company's trust account. If the management company has already forwarded that money to the property owner then that creates a shortage in the management company's trust account, which is obviously a big problem.

For now, California West continues to investigate options for accepting electronic payments without these disadvantages.