

May 21, 2001

Akron Area Board of Realtors

Re: Earnest Money Deposit Disputes

Dear Realtor:

By now you know that Realtors are not legally permitted to return earnest money deposits without signed releases from buyer and seller or a court order. An interpleader action may be the most inexpensive and expeditious means of resolving an earnest money dispute. Enclosed you will find general forms for Interpleader actions. The forms may be used to confer with your lawyer or you may use them for your own representation. Should you decide to file a complaint in court on your own behalf to resolve an earnest money deposit dispute, you may have to conform this form to your own facts and specific issues. The amount in issue will determine in which court it should be filed. Filing fees range from \$ 35.00 To \$ 86.00

The laws of Ohio restrict the practice of law to those licensed to do so, except an individual may under most circumstances act as his or her own lawyer. You should also note that the court is likely to hold that a corporate officer or representative may not maintain litigation on behalf of a corporation. Should you desire legal assistance in drafting the complaint or in full representation, we recommend an attorney familiar with real estate transactions. Board counsel, Matthew Oby of Oldham & Dowling, is available for individual representation.

As a means of avoiding earnest money deposit disputes in the future, it may help to expressly indicate in the purchase agreement that contingency failure will trigger return of the deposit.

Very truly yours,

Matthew W. Oby
Board Counsel
Akron Area Board of Realtors

MWO/rtd
oby@oldham-dowling.com
Enclosure

DRAFT

IN THE AKRON MUNICIPAL COURT
SUMMIT COUNTY, OHIO

PLAINTIFF (BROKER)	)	CASE NO.
Address	)	JUDGE
)	
vs.	)	<u>COMPLAINT FOR</u>
	)	<u>INTERPLEADER AND</u>
DEFENDANT (BUYER)	)	<u>DECLARATORY RELIEF</u>
Address)	
)	
and)	
)	
DEFENDANT (SELLER))	
Address)	

1. Plaintiff _____, says that it is a real estate broker licensed to do business in the State of Ohio and is the escrow agent of a deposit made according to a certain sales Agreement made between _____, Defendant Buyer, and _____, Defendant Seller, on the ____ day of _____, a copy of which Agreement is attached to this Complaint as Exhibit "A".

2. As part of the Agreement, the sum of \$_____ was deposited with Plaintiff, as earnest money and as a portion of the funds to be used in the sale of the real estate. The Defendants, Buyer and Seller, have indicated their intent not to proceed with the sale of the property.

3. Both Defendant Buyer and Plaintiff Seller now claim a right to the earnest money,

and neither will authorize Plaintiff to pay the deposit to the other.

4. The Ohio real estate licensing law (R.C. §4735.01, et seq.) prohibits Plaintiff from paying the earnest money deposit to either Buyer or Seller in the absence of an agreement of the parties or an order of a court specifying to which party the earnest money should be paid.

WHEREFORE, Plaintiff prays that the Court require Defendant Buyer and Defendant Seller to come forward and set forth the basis of their claims to the earnest money; that the Court issue an Order directing Plaintiff to pay the earnest money to Defendant Buyer or Defendant Seller, and that Plaintiff recover its costs herein expended.

Respectfully submitted,

Matthew W. Oby (0037906)
Oldham & Dowling
195 South Main Street, Suite 300
Akron, Ohio 44308
(330) 762-7377
Attorneys for Plaintiff

DRAFT

IN THE AKRON MUNICIPAL COURT
SUMMIT COUNTY, OHIO

PLAINTIFF (BROKER)	)	CASE NO.
	)	JUDGE
)	
vs.	)	<u>MOTION FOR LEAVE TO</u>
	)	<u>MAKE DEPOSIT IN COURT</u>
DEFENDANT S(BUYER& SELLER))	
ET AL.)	

Plaintiff moves the Court pursuant to Rule 22 of the Ohio Rules of Civil Procedure for leave to deposit with the Court the sum of \$_____ for the reason that this is an action for interpleader as appears from the Complaint, the relief sought being a judgment for a sum of money; and that the Defendants have conflicting claims against the Plaintiff with respect to the sum which came into the Plaintiff's possession, as escrow agent and real estate broker, in order to effect the sale of real estate.

Respectfully submitted,

Matthew W. Oby (0037906)
Oldham & Dowling
195 South Main Street, Suite 300
Akron, Ohio 44308
(330) 762-7377
Attorneys for Plaintiff

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IN THE AKRON MUNICIPAL COURT
SUMMIT COUNTY, OHIO

PLAINTIFF (BROKER))	CASE NO.
	)	JUDGE
)	
vs.	)	<u>ORDER TO MAKE</u>
	)	<u>DEPOSIT IN COURT</u>
DEFENDANT S(BUYER& SELLER))	
ET AL.)	

This matter came on for hearing on Plaintiff's Motion pursuant to Rule 22 of the Ohio Rules of Civil Procedure for leave to deposit with the Court the sum of \$_____ . And it appearing to the Court that said Motion is well taken, that this is an action in interpleader, and that the Plaintiff is holding said sum of money for the benefit of the Defendants and that the Plaintiff has no further interest in the proceedings, it is ordered that the Plaintiff deposit with the Clerk of this Court the sum of \$_____, it is now holding and there being no claims filed against Plaintiff, Plaintiff is dismissed as a party to this action and the matter shall proceed as a Declaratory Judgment between _____ and _____.

JUDGE

DRAFT

IN THE AKRON MUNICIPAL COURT
SUMMIT COUNTY, OHIO

PLAINTIFF (BROKER))	CASE NO.
)	JUDGE
)	
vs.)	<u>ORDER TO MAKE</u>
)	<u>DEPOSIT IN COURT</u>
DEFENDANT S(BUYER& SELLER))	
ET AL.)	

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JUDGE