



Can I use my firm's trust account for my own rental properties?

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QUESTION: I am the owner of a real estate brokerage company organized as an LLC. The company maintains a trust account for holding earnest money deposits for third parties. I also own several rental properties in my own name, which are managed by my brokerage company under a written management agreement. I've always deposited security deposits and rent checks from the tenants in my rental properties into my real estate company's trust account, as it's been my understanding that this is okay since the LLC and I are separate from a legal perspective. However, I've recently hired a new bookkeeper and he tells me that I need to have a separate trust account for the tenant security deposits and rent checks. Who is right?

ANSWER: Your bookkeeper is right. It is true that if the holder/owner of the trust monies and the owner of the trust account are separate legal persons, it is permissible for the trust monies to be deposited into the trust account. However, according to the Real Estate Commission, "[a] limited liability company has not been clearly determined to afford the same legal separation between the entity and its member-owners as a corporation has from its shareholders." Since the Real Estate Commission does not consider there to be the necessary legal separation between you as an individual and your real estate firm, which is organized as an LLC, you will need to establish a separate trust account in which to deposit tenant security deposits. In addition, you should not continue depositing the rents collected on your rental properties into your real estate company's trust account. They should either be deposited into your company's operating account or your personal bank account.

The Real Estate Commission's trust account rules can be very technical, and different ownership scenarios can yield different answers to questions like yours. If you are in doubt, consult the "Broker-Owner Trust Monies" section of the Commission's *Broker-in-Charge Guide*, call the Commission, or maintain a separate trust account in order to assure compliance and avoid commingling

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