



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1305 (10/06/2026)

Topic: Lawyer Acting Solely as Broker in Real Estate Transaction and Holding Funds for Transaction Expenses

Digest: A lawyer who receives funds from a client to cover expenses related to a real estate transaction in which the lawyer is not representing the client cannot hold those funds in an attorney trust account but may place them in a separate account for funds held in a fiduciary capacity. A lawyer who receives such funds is not precluded from acting solely as the broker in the same real estate transaction.

Rules: 1.7(a)(2); 1.15(a), (b), (c) & (d)

FACTS:

1. The inquirer plans to act as a broker in a real estate transaction on behalf of a family located abroad. The inquirer currently serves as general counsel to the family in matters unrelated to the real estate transaction. Separate counsel outside the inquirer's firm will represent the family for purposes of the real estate closing.

QUESTION:

2. The inquirer asks two related questions:
- A. May the inquirer receive funds from the family to cover expenses related to the real estate transaction, such as legal fees and inspection costs, and hold those funds in his Interest on Lawyer Account ("IOLA") trust account for the limited purpose of disbursing them accordingly, despite not acting as counsel in the transaction itself?
 - B. If the inquirer receives such funds, is he precluded from acting as the broker in the transaction?

OPINION:

A. May the inquirer hold transaction expense funds in an attorney trust account?

3. Rule 1.15 of the New York Rules of Professional Conduct sets forth the obligations of a lawyer who receives client funds. Rule 1.15(a) provides that "[a] lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own." Rule 1.15(b)(1) says, in relevant part:

(1) A lawyer who is in possession of funds belonging to another person incident to the lawyer's practice of law shall maintain such funds in a banking institution within New York State...Such funds shall be maintained, in the lawyer's own name or in the name of a firm of lawyers of which the lawyer is a member, or in the name of the lawyer or firm of lawyers by whom the lawyer is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer's firm, and separate from any accounts that the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity into such special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited..."

4. Rule 1.15(b)(2) requires that the "lawyer ... shall identify the special bank account or accounts required by Rule 1.15(b)(1) as an 'Attorney Special Account,' 'Attorney Trust Account,' or 'Attorney Escrow Account...' Rule 1.15(c)(3) requires that a lawyer "maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them." Rule 1.15(c)(4), in turn, requires the lawyer to "promptly pay or deliver to [a] ...third person as requested by the client ... the funds, securities, or other properties in the possession of the lawyer that the ... third person is entitled to receive." See N.Y. State 1127 (2017). Rule 1.15(d) details the bookkeeping records that are required when a lawyer uses a trust account. *See also*, N.Y. State 1114 (2017) (discussing requirements regarding IOLA accounts).

5. This Committee noted in N.Y. State 1188 ¶¶ 4-5 (2020), which interpreted Rule 1.15(b)(1), that "[a]n attorney trust account is solely for funds received 'incident to the lawyer's practice of law' and therefore should not be used to hold funds that an attorney receives in any other capacity." Opinion 1188 interpreted Rule 1.15(b)(1)'s reference to "funds belonging to another person incident to the lawyer's practice of law" as requiring something more than simply a relationship between the depositor and the lawyer. Rather, the provision is applicable only when there is some relationship between the "funds" and the lawyer's representation of the client. Because the inquirer here does not represent the client in the real estate transaction, there is no relationship between the funds and the lawyer's representation of the client. The inquirer therefore cannot deposit the funds to cover real estate transaction expenses into an attorney trust account.

6. Although the inquirer cannot hold the relevant funds in an attorney trust account, Rule 1.15(b)(1) also recognizes that a "lawyer may maintain [accounts] as executor, guardian, trustee or receiver, or in any other fiduciary capacity." Thus, in N.Y. State 1188 ¶ 5, we said that "we acknowledge that lawyers often do receive funds that are not incident to the lawyer's legal practice, and so the Rules recognize this fact." *See also* Rule 1.15, Cmt. [1] ("... Separate trust accounts may be warranted or required when administering estate monies or acting in similar fiduciary capacities."). Therefore, Rule 1.15 does not prohibit the inquirer from receiving funds from the client to cover expenses related to the real estate transaction, such as closing costs and inspection costs, and holding those funds in a separate account that is not an attorney trust account.

7. While questions of law are beyond the purview of this Committee, we note that New York statutes addressing related topics may indicate that the conduct in question is permissible. *See e.g.*, EPTL § 11-1.6(a) and SCPA § 719(7). But if conduct is improper under the Rules of Professional Conduct, a lawyer is prohibited from engaging in that conduct even if a statute would permit it.

B. May the inquirer serve as broker despite holding funds in a fiduciary capacity?

8. The inquirer also wants to know whether a lawyer who receives and holds funds to cover the expenses of a real estate transaction is precluded from acting as the broker in the transaction. We have previously explained that “where the lawyer acts as both broker and a lawyer in the same transaction, ‘the broker's personal and financial interest in closing the transaction interferes with the lawyer's ability to render independent legal advice with respect to the transaction consistent with the principles now embodied in Rule of Professional Conduct 1.7(a) ...’” N.Y. State 1273, ¶ 4 (2024); *see also* N.Y. State 1043 (2015); N.Y. State 1015 (2014); N.Y. State 916 (2012); and N.Y. State 933 (2012). Here, however, the inquirer will not be exercising independent professional judgment regarding the client’s real estate transaction, but will merely be holding and disbursing funds for transaction expenses at the direction of the client.

9. In our view, therefore, holding a client’s funds in connection with a transaction where the lawyer is not representing a client does not create a concurrent conflict of interest under Rule 1.7(a)(2), which provides that “[a] concurrent conflict of interest exists if ... there is a significant risk that (i) the lawyer’s independent professional judgment on behalf of a client will be adversely affected by ...the lawyer’s own financial, business, property or other personal interests.” Therefore, assuming the inquirer receives funds for the limited purpose of disbursing them according to the client’s direction and the inquirer has no discretion to reject or modify the client’s direction (*i.e.*, the inquirer will not be exercising independent professional judgment with respect to disbursing the funds), the inquirer is not precluded from acting as the broker in the real estate transaction.

CONCLUSION:

10. A lawyer who receives funds from a client to cover expenses related to a real estate transaction in which the lawyer is not representing the client cannot hold those funds in an attorney trust account, but may place them in a separate account for funds held in a fiduciary capacity. A lawyer who receives such funds is not precluded from acting solely as the broker in the same real estate transaction.