

Trust Accounting/Financial Rule Changes

by John Allen, CA

At the June 2009 meeting of the Benchers, a number of revisions to financial requirements set out in Parts 13 - 16 of the Rules were approved, effective *September 1, 2009*.

The changes summarized below were kept to a minimum, pending harmonization of accounting Rules with other provinces. A number of these changes have previously been implemented through the year end review process. The revised Rules are on our website under "Publications," "Law Society Rules and amendments."

1. Cash Receipts and Refunds

- a) Rule 909(4)(d) Refund of cash received be made in cash only if the refund is \$1,000 or more. The requirement for larger refunds to be made in cash rather than by cheque is to prevent money laundering. Also, the member is required to obtain a receipt signed by the person receiving the cash.
- b) Members are required to prepare a separate receipt and obtain the signature of the person from whom the cash is received only if the amount received is in excess of \$500.

2. Deposit of Trust Funds

Rules 910(1), 910(2)(a), 912(1), 912(4) and (5), 913(a) and (b), 942(1) and 942(5)

All trust monies received must be deposited directly and firstly to a mixed (pooled) trust account and trust disbursements must be made only from a mixed (pooled) trust account. Deposits to or payments from separate interest bearing accounts (SIBA's), other than to or from a mixed (pooled) trust account, are not permitted.

3. Receipt of Funds by Debit or Credit Card

Rule 910(3) sets out requirements for use of debit and credit cards for receiving trust or general monies. Revisions remove the requirement for charge slips to be signed by the payor or a faxed signature from the payor authorizing credit card charges to be on file.

Members are reminded that if the payor has not signed the credit card slip and the charge is reversed by the credit card company (which can happen up to a year or even longer after the transaction), the member is required to make up the resulting trust shortfall (Rule 971(1)).

4. Members' Personal Trust Transactions

Rule 910(5) provides guidelines to members who handle their own transactions through trust. Money must be handled in the normal course of a legal file and paid out expeditiously.

5. Cheque Images

Rule 911(1)(a) provides for receipt/retention of cheque images, however, receipt/retention of original cancelled cheques, if available, rather than images, is strongly encouraged for both trust and general accounts.

6. Recording Interest on SIBA's

Rule 912(3) requires interest on SIBA accounts to be recorded within 30 days of being paid into or added to the account balance by the financial institution.

7. Deliver a Bill

Rule 921(2) removes the alternative of issuing a receipt instead of a bill, since receipts normally do not include all required information.

8. Delegation and Committee Structure Revisions

Rules 940(1)(h), 1004(4), 1201(1)(a) and (b), 1203(1)(a) and (b), and 1207

These Rules reflect the increased delegation of duties to Law Society administration and revisions to Law Society Committee structure.

9. Reporting to Clients

Rule 941(3) requires members to report to clients in writing upon completion of a matter or upon reasonable request from the client.

10. Timely Payout of Trust Monies

Rule 942(4) requires trust monies to be paid out expeditiously upon conclusion of a matter.

11. Retention of Financial Records

- a) Rule 961(2) requires certain financial records to be printed monthly with other information being maintained electronically, only if it can be printed upon demand.
- b) Rule 961(2)(d) requires backup of electronic accounting system information at least monthly, ensuring the back up is safe and secure (frequency of backup is dependant upon volume).

12. Deadline for Reconciliation of Trust and General Accounts

Rules 963(3), 965(1) and (2), 970(4) and 1220(2) Deadline for reconciling trust and general accounts extended from 20 to 30 days after the month end.

13. Member Responsible for Financial Operations

Rule 970(5) requires a member to review, sign and date bank reconciliations as reinforcement of a member's responsibility for accuracy and completeness of records.

14. Reporting Trust Shortages to the Law Society

Rule 971(2) increases the minimum amount of individual client trust overdraft which must be reported in writing to the Law Society from \$100 to \$1,000.

15. Onsite Storage

Rule 981(1)(a) and (2)(a) reduces the requirement for onsite storage of financial records from 5 years to 2 years.

16. Termination of Practice

- a) Rule 1050(1) requires firms to pay out all trust funds and close all trust accounts within 90 days of withdrawing from or winding up a practice.
- b) Rule 1050(2) requires terminating law firms to make arrangements for storage and preservation of ongoing documents (including Wills) and to advise the Law Society of those arrangements.

17. Extension of Fiscal Year

Rules 1200 and 1203(4) allow for a fiscal year in excess of 12 months upon approval of the Law Society. This change is primarily to prevent new or terminating firms from being required to file annual reports for short fiscal periods.

18. Withdrawal of Practice Certificate

Rule 1208(2) provides for the withdrawal of a member's practice certificate if monthly reports requested by the Law Society are not received on a timely basis.

19. Removal of Ability to Hold Funds in Trust at Client's Request

Changes to Rule 1301(2) removes the ability of a member to hold monies in trust simply at a client's request.

In addition to the above, some minor "housekeeping" changes were made. The revised Rules are available on the Law Society website under "Publications," "Law Society Rules and amendments." For a complete list of the changes, please contact John Allen.