



LAW SOCIETY OF SASKATCHEWAN

COMMON QUESTIONS

Maintenance

1. Q. May I use my personal bank account for non-trust transactions?

- A. This practice is discouraged, but not prohibited by the Rules. You should note that there are record keeping requirements relating to non-trust accounts, including:
- Rule 963(1)(a) requires members to maintain books of original entry for non-trust receipts and disbursements (e.g. General Receipts Journal and General Disbursements Journal).
 - Rule 963(1)(b) requires members to maintain an Accounts Receivable Ledger and Rule 963(1)(c) requires members to maintain a chronological file of copies of billings showing all fees and other billings charged to each client.
 - Rule 963(1)(d) requires members to retain bank statements/passbooks, cashed cheques, including certified cheques, and detailed deposit slips for all general accounts.

It is highly recommended that a general account be maintained for non-trust business transactions and a separate personal account be maintained for other financial requirements.

2. Q. What can I do if my bank does not return my cashed or certified cheques?

A. Rules 962(f) and 963(d) require that members maintain “bank statements, passbooks, cancelled cheques and detailed duplicate deposit slips for all trust and general accounts”. You should advise the financial institution with which you deal of the regulatory requirement in this regard and ask for arrangements to be made so that you can meet the requirements of the Rules. If your financial institution cannot or will not oblige, you may have to change your financial institution in order to comply with the Rules.

3. Q. What are the record keeping requirements if I have control of estate assets or I exercise a power of attorney?

A. If you have control of estate assets, either as an estate trustee or estate solicitor, or have control of a client’s property through the exercise of a power of attorney, you should keep proper records as you would for any trust funds. (See Rules 960 and 962)

Your obligations as a trustee and as a solicitor require that you be able to account promptly to clients or beneficiaries. When handling estate assets, it is prudent to keep the records in court passing form, listing original assets, capital receipts and disbursements, revenue receipts and disbursements, investments and compensation claimed.

If you are both solicitor and estate trustee, you must distinguish between your services as solicitor and as estate trustee to avoid double charging the estate for the same services.

4. Q. Do I have to open a trust account?

A. No. Rule 910 requires that members who receive money in trust for clients must forthwith deposit the money into a trust account. If you do not receive funds from, or for, clients for any reason except as payment for your billed and delivered fees and disbursements, you need not maintain a trust account.

5. Q. How many trust accounts may I open?

A. The Rules do not limit the number of trust accounts one may have. Usually, lawyers have one mixed client trust account into which retainers and other sums held for clients are to be deposited. Additionally, lawyers may be called upon to handle in trust, more sizable amounts of funds for extended periods of time. In order to fulfill their duties as prudent fiduciaries, lawyers holding large amounts in trust for clients should discuss with their clients opening separate interest bearing trust accounts. The interest on these separate interest bearing accounts accrues to the benefit of the clients.

Note that under Rule 912(1)(b) and (c), the interest bearing separate trust account shall be identified by “client” and therefore, the implication is that a separate interest bearing trust account cannot hold trust money for more than one client, otherwise it would be a mixed trust account and the interest on the account would have to be paid to the Law Foundation. (See the following question “What do I do if my clients want interest on the money I hold in trust for them?” for further information on separate interest bearing trust accounts.)

Interest

6. Q. What do I do if my clients want interest on their money I hold in trust for them?

A. To fulfill your obligations as a trustee, as well as to avoid misunderstandings and complaints from your clients, you should ensure that all clients for whom you hold trust funds are aware that they will not receive any interest on funds held in your mixed trust account.

If a client wants interest on the trust funds you hold for that client, you must deposit that client's funds in a separate interest bearing account in your firm's name in trust for that client. Separate interest bearing trust accounts must be reconciled and included in the monthly trust comparison required by Rule 970.

If you expect to hold client funds for an extended period of time, or if the amount is significant, or if you discover such large amounts on your monthly review of the client trust list, you should discuss the issue of interest with the client and let the client make the decision where the funds are to be held. In these circumstances, it would be prudent to either obtain written instructions from the client or confirm the client's instructions in writing to avoid being put in the position of financial advisor. If the client instructs you to put the funds in an interest bearing account, you should obtain the client's Social Insurance Number or corporate number. The member should also advise the client that the T5 Supplementary Income slip pertaining to this account is his/her responsibility and will be forwarded to the client for tax purposes.

Use

7. Q. When may I share a trust account with another lawyer?

A. Rules 911 and 912 state that trust accounts are to be kept in the name of an individual member, the firm of which the individual member is a partner or the member or firm by which the individual member is employed whereas Rule 900 indicates “member” includes a firm or “an association of members who carry on the practice of law together other than as a firm”. Therefore, although there is some ambiguity, the Law Society does allow office sharing (non-partner) lawyers to share a trust account.

Note, however, in Ontario in a ruling in June 1985, the Law Society Discipline Policy Committee ruled that lawyers may not hold a trust account in the name of a “firm” or entity which is not a true partnership. The ruling was based on the decision in *Re: Ontario Securities Commission and Greymac Credit Corp.* (1985), 51 O.R. (2d) 212 (H.C.J.), affirmed (1986), 55 O.R. (2d) 673 (C.A.), affirmed (1988), 65 O.R. (2d) 479 (S.C.C.) which held that shortages in pooled funds are to be pro-rated amongst the persons beneficially entitled to funds from the account. The *Greymac* case was affirmed by the Ontario Court of Appeal in *The Law Society of Upper Canada v. The Toronto Dominion Bank* (1998) 169 D.L.R. (4th) 353 which held that co-mingled trust funds in a mixed trust account lose their identity with respect to a particular client.

Sharing of trust accounts increases the member’s exposure to risk and also places clients at risk of misapplications or misappropriations of trust funds by a lawyer with whom the client may not have any solicitor/client relationship.

8. Q. Can I give a non-lawyer signing authority over my trust account?

A. No, although Rule 942(3) does allow a request to be made to the Law Society giving a non-lawyer signing authority in very exceptional circumstances.

However, if you are the only lawyer with signing authority on your trust accounts, it would be prudent for you to make arrangements for another lawyer who is an insured member of the Law Society of Saskatchewan to have signing authority over your trust accounts to allow for unexpected emergencies such as serious illness or accident as well as planned absences such as vacations. You can arrange this through your financial institution by means of a power of attorney.

9. Q. Is it permissible for me to sign blank trust cheques when I am going to be away?

A. No. This is an inherently unsafe practice. By signing blank trust cheques, you have effectively given control over the trust account to a non-lawyer. Arguably, you have breached your fiduciary obligation as a trustee to protect the trust.

10. Q. May I deposit my clients' retainers into the firm's general account?

A. No. If the client is providing a retainer for fees and/or disbursements for which you have not yet provided a billing, the definition of "trust funds" in Rule 900 require that you pay the funds into your trust account. A retainer for fees and/or disbursements is money held for future legal services or disbursements on behalf of a client or for legal services performed but not yet billed. Note that we are distinguishing "retainers" from other types of payments. Client payments of your accounts for services rendered and billed, or reimbursement of disbursements which you have paid on behalf of the client, must be deposited directly into your general account and not your trust account.

11. Q. What do I do if my bank informs me that a client's cheque has been returned "NSF?"

A. The bank will debit your trust account to reflect the amount of the NSF cheque. This is acceptable. However, you should ensure that any service charges that result are not deducted from the trust account. As with other service charges, they should come from your general account. Ensure that you record the reversal of funds in your books and records and that there is a detailed explanation for the reversal. You need not report the transaction to the Law Society.

If you have drawn a trust cheque based on a client's cheque that you learn subsequently was returned NSF, you will need to discuss the matter with the payee and arrange for a deferral of the payment or, in the event that the cheque has been negotiated, you will need to make up the funds from your own money and recoup the payment from your client. Otherwise, the trust account will be short and you will have, in essence, misused or misapplied funds belonging to your other clients. The Law Society must be advised of any shortages over \$100.00 whether or not that shortage is made up from your own funds (Rule 971(2)). Be careful not to draw on a client's funds in your trust account until you know the client's cheque or credit card payment has cleared the bank (see Rule 940(3)).

12. Q. My bank will not issue certified cheques, only bank drafts. Does this meet the record keeping requirements in Rule 942?

A. No. Originals of bank drafts are the property of the financial institution and will not be returned to your firm. You may never know when, or if, or by whom the bank draft is negotiated. Also, financial institutions often do not retain their documents for the required 6 years. The Law Society should be contacted if this situation is encountered.

Technology**13. Q. Can I use automated bank machines in operating my trust account?**

A. You may not use automated bank machines to withdraw or transfer funds from trust. Funds drawn from trust should only be by cheque (Rule 942).

In regards to deposits, teller services or night depository systems should be used rather than automated bank machines.

14. Q. Can I store my financial records on computer without printing paper records?

A. Yes, but only once the Law Society has approved the electronic form, in writing, as per Rule 961. Such a system must be able to provide a printed copy “on demand”. However, the Law Society recommends printing monthly reports and retaining paper copies for the required retention periods set out in Rule 980 to avoid the problems of data inaccessibility due to incompatible hardware and software upgrades or data corruption. You should also be aware of proper backup and purging problems.

15. Q. Can I use my bank’s PC banking software to transfer funds from my trust account?

A. No. Rule 942(1) requires all withdrawals to be made by cheque signed by a member.

16. **Q. Can clients pay trust monies to the lawyer using credit cards (i.e. Visa, MasterCard, etc.)?**

A. Yes, as long as trust monies get deposited to the trust account and general monies get deposited to the general account. This requires two separate systems. Any associated service charges are the responsibility of the member.