



Trust Money Information

Power Money

Power money is trust money

A law practice must ensure that trust money that is the subject of a power given to the practice or an associate of the practice is dealt with by the practice or associate, only in accordance with the power relating to the money.

One example is when a legal practitioner has been appointed as a sole executor. The funds may be held in a bank account of the deceased estate and not form part of the trust account funds that the firm holds for other clients.

General information

Power Money accounts are:

- Bank accounts maintained in the client name.
- Example of account name, e.g. “legal practitioner” ITF “beneficiary 1” and “beneficiary 2”, where the law practice associate is a signatory to the clients account. The account name should not reference the law practice.
- The account is one that a law practice associate (principal or employee of law practice) has

authority to withdraw funds from (possibly in addition to the account owner e.g. client).

- There is a requirement to maintain records in relation to transactions that are undertaken.
- Although the regulations are not specific as to what these records should be, it is suggested that the law practice maintain copies of any invoices or other documentation that supports the payment authorised by the law practice associate.
- It should be noted that the law practice may not be capable of maintaining a ledger in respect to power money as the client may also operate the bank account.
- The law practice is required to provide a trust account statement in relation to all payments made on behalf of the client at least once a year (the same as any other trust account statement).

Cash

Trust money that is received in the form of cash and subject of a power must be deposited in a general trust account (or a controlled money account) of the practice before being dealt with in

accordance with the power. (Refer to section 226A of the LPA.)

Pursuant to section 60(2) of the LPR, if a law practice or an associate of the practice is given a power to deal with trust money for or on behalf of another person, the practice must keep:

- a record of all dealings with the money to which the practitioner or associate is a party; and
- all supporting information in relation to the dealings,

in a manner that enables the dealings to be clearly understood; and which must be kept as part of the trust records.

Deceased estate

In relation to a deceased estate, often the Will gives the executor the power to invest the funds held. In relation to large estates, investing the funds would then allow the beneficiaries to earn additional interest. If there is no mention in the Will, then refer to the Trustee Act which can give the executor power to invest.

If a legal practitioner was to invest power money, then that information would need to be recorded in the law firm’s Investment Register (refer to section 59 of the LPR).

Example of trust money subject to a power

Mr P is a lawyer at P & G Lawyers. He is the sole executor in one of the estates administered by the firm. The estate is large and contains many bank accounts which will take some time to ingather. Probate has been granted meaning Mr P has direct control of those bank accounts. **The bank accounts are now regarded as trust money.**

Power Money — Register

A law practice must maintain a register of powers and estates in relation to which the law practice or an associate of the practice is acting or entitled to act, alone or jointly with the law practice or one or more associates of the practice in relation to trust money. (Refer to section 61 of the LPR.)

There is no requirement to record powers in the register where the law practice or associate is also required to act jointly with one or more persons who are not associates of the practice, but it is best practice to do so.

The register of powers and estates must record:

- the name and address of the donor and date of each power; and
- the name and date of death of the deceased in relation to each estate of which the law practice of the associate is executor or administrator.

Note: The register relates to powers from the date the legal practitioner begins to operate under the power/ have dealings with the accounts.

References

This document refers to section 226 of the *Legal Profession Act 2006* ('LPA'), and sections 60 and 61 of the *Legal Profession Regulation 2007* ('LPR').

Questions?

If you have any questions about this topic, please contact the Law Society on (02) 6274 0300 or email lea.mclean@actlawsociety.asn.au