

Trust Account Information

ACT Law Society

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Relevant Legislation

- Legal Profession Act 2006 (the “Act”), in particular Chapter 3 – Part 3.1.
- Legal Profession Regulation 2007 (the “Regulations”), in particular Part 6.

Section 211 of the Act sets out the purposes of the legislation and most importantly explains how the legislation is to ensure trust money is held by law practices in a way that protects the interests of people for or on whose behalf money is held, both inside and outside the ACT.

Trust Accounts

The existence and operation of a trust account is governed in most jurisdictions by legislation that in some manner imposes a duty to account by a solicitor. In general terms the legislation normally provides:

- that a solicitor who receives money in the course of practising as a solicitor
- to be held on behalf of another person
- must account for the money in accordance with the directions of the person on whose behalf the money is held.

The legislation then requires that if the money received has each of the above elements then the solicitor is required to:

- bank it to a general trust account; or
- bank it to an investment/controlled money account; or
- treat it as transit money (that is money passed in the form it is received to a named third party)

The legislation requires a solicitor to maintain appropriate records for trust account transactions and normally requires the records to be maintained in a manner that:

- discloses the true position;
- are convenient to audit;
- are maintained in accordance with regulation or rules.

Definitions

Trust Money – the definition is set out in the dictionary at the end of the Act.

The definition is as follows:

“Trust money” means money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice and includes:

- a) money received by the practice on account of legal costs in advance of providing the services; and
- b) Controlled money received by the practice; and
- c) Transit money received by the practice; and
- d) Money received by the practice that is subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for or on behalf of another person.

“Controlled money” as defined in Section 210(1) of the Act states that Controlled Money is Trust Money which is received or held by a law practice for which the practice has a written direction to deposit the money in an account (other than a general Trust Account) over which the practice has or will have exclusive control.

“Transit Money” as defined in Section 210(1) of the Act states that Transit Money is money received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the practice.

Dealing With Trust Money

Section 222 of the Act directs that a law practice must as soon as practicable after receiving Trust Money, deposit the money into a general trust account.

The trust account must be opened with an Approved ADI (Authorised Deposit Taking Institution).

The ADI's approved by the Law Society of the ACT are:

- Australia & New Zealand Banking Group Limited (ANZ)
- Bendigo Bank
- Commonwealth Bank of Australia (CBA)
- Macquarie Bank
- National Australia Bank (NAB)
- St George Bank
- Westpac

The law firm's trust account is made up of pooled funds which relate to various matters from the firm's clients. A separate trust ledger must be maintained for **each matter** conducted and to which funds are required to be deposited and withdrawn. The trust ledger should contain the name of the client, the name of the matter being conducted on their behalf (eg Criminal Misdemeanour) and details of **each** deposit, withdrawal and/or disbursement.

Trust Account Statements (s57 of the Regulations)

Section 57(6) states:

A trust account statement must be given –

- a) As soon as practicable **after completion** of the matter to which the ledger account or record relates; OR
- b) As soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement **during** the course of the matter; OR
- c) Except as provided by section 57(7), as soon as practicable **after 30 June in each year**.

Section 57(7) states that the law practice is not required to give a trust account statement under subsection 57(6)(c) in relation to a ledger account or record **if** at 30 June –

- a) The ledger account or record has been open for less than 6 months; OR
- b) The balance of the ledger account or record is zero and no transaction affecting the account has taken place with the previous 12 months; OR
- c) A trust account statement has been given within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.

Opening a Trust Account


Checklist to assist when opening a trust account in the ACT:

- ☐ The name of the trust account **must** include the name of the law practice or the business name under which the law practice engages in legal practice AND the expression “law practice trust account”
- ☐ Advise the bank that any bank charges imposed by the bank in connection with the trust account, must be charged to the firm’s office account.
- ☐ Remind the bank that interest earned on the trust account is NOT paid to the trust bank account, but is payable to the Law Society of the ACT.
- ☐ Statements must be provided monthly. (Many firm’s check their trust account daily online)
- ☐ Request that the cheque book has cheques printed with the name of the law practice or the business name under which the law practice engages in legal practice AND the expression “law practice trust account”
- ☐ Notification must be given to the Law Society of the ACT advising the date the account was opened, the name of the bank and branch location, BSB number and Account number, as well as the person(s) who has authority to sign and effect withdrawals on the trust account.

Operating a Trust Account

It may be difficult to accurately gauge the potential volume of transactions in your trust account. You may decide to keep your records simple and use an exercise book as the cash book, recording receipts at one end and payments at the other end. However, many firms and sole traders like to use an automated software package.

The Law Society of the ACT does not recommend any particular programme, but it is important to ensure whichever software chosen complies with legislation. Whilst MYOB is one of many excellent accounting software packages on the market, the general MYOB accounting package does not conform to parts of section 35 of the Regulations.



The following software packages have been examined by the Law Society of NSW and have been deemed as suitable.

- LEAP Office Accounting Version 10.2
- LEAP Cloud Version 1.11
- Cabenet Legal Accounting Version TRX-12
- BHL Insight
- B Series Version W5 (B & C Legal Software Solutions Pty Ltd)
- Open Practice version 8.2 (GlobalX Legal Solutions Pty Ltd)
- SILQ Solicitor 8 for Mac and PC
- FilePro version 2.1.6.7
- Absolute Trust & Office Management (ATOM)
- Actionstep.com
- Lexis Affinity Version 7.1
- Wise Owl Legal Practice Management Software

Reconciling the trust account

- Be aware that your trust account must be reconciled monthly, regardless of whether there have been any transactions in that month or not.
- Monthly reconciliation must be completed within 15 working days after the month just ended. (s48(3) of the Regulations)
- If a trust account irregularity occurs, you must notify the Society in writing, including details of the date of the error, the amount involved, the date the error was detected and the date upon which the error was rectified. This notification needs to be signed by a person who has authority to effect withdrawals from the trust account. The law firm will then receive a response from the Society. A copy of the irregularity notice to the Society and the response will need to be filed and provided to the external examiner on request.

Example of trust account reconciliation

Bank reconciliation statement for the month ended / /

BANK: _____ ACCOUNT NUMBER: _____

Bank statement balance as at / /	\$
ADD outstanding deposits	\$
Add any bank fees charged in error	\$

	\$

LESS unpresented cheques

<u>Cheque No.</u>	<u>Date</u>	<u>Amount</u>	
-----	-----	-----	
-----	-----	-----	SUB-TOTAL (\$)
LESS unidentified deposits			(\$)

CASH BOOK BALANCE	_____	\$
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CASH BOOK CHECK

Reconciled cash book balance as at / / \$
(last day of previous month)

ADD receipts for the month of _____ \$

LESS payments for the month of _____ \$

CASH BOOK BALANCE	_____	\$	**
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LEDGER CHECK

Total of client ledger cards \$

LESS Statutory Deposit with Law Society \$

CASH BOOK BALANCE	_____	\$	**
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****These amounts should all agree.**

_____ Signed _____ Date

Banking Trust Monies

When funds are receipted into trust, they should be banked as soon as practicable. Ideally this should be the following day. However, monies receipted into trust must be banked as soon as practicable after the date of receipt of the funds.

Where funds are deposited directly into the trust account online, the funds should be receipted as soon as practicable after becoming aware of the deposit. Remembering that receipts must include the date that the receipt was made out AND, if different, the date of receipt of the money. Refer to section 38(5) of the Regulations for all the required particulars the receipt must contain.

It is very important to remember that receipts must NOT be back-dated. Receipts need to be issued in chronological and numerical order. If you miss receipting a transaction, you still receipt it with the date that the error was discovered and make sure a note is included on the receipt of when the funds were received and/or identified.

How Long Trust Money Can be Kept in a Trust Account

As your clients will not earn interest if their funds are kept in your trust account, they may provide instructions to you to invest the funds which will then earn interest on their behalf. There is no time limit for funds to be moved out of a trust account and then invested (although in the former Act “Legal Practitioners Act 1970” there was a requirement for the solicitor to seek instructions from their client if \$5,000 or more was held for more than three months). Many firms still believe it is good practice to discuss all options with their clients.

If you move money into a controlled money account it is important that the client’s Tax File Number is reported to the Bank, as the law firm is only the trustee and does not want to be paying tax on interest earned. The interest earned is something the client needs to declare on their tax return.

Checking Trust Balances

The balance of the trust account should be checked prior to drawing any funds for any matter. This will ensure there are sufficient funds in the trust account for the purpose required. It is most important to check the client's individual trust account ledger, not just the overall trust account balance held with the bank.

Although the balance of the bank trust account may not become overdrawn, if an incorrect amount is withdrawn from trust which in doing so overdraws the client's trust ledger, this is still a reportable irregularity to the Society.

Who Can Sign Cheques?

A firm can authorise an "associate" to sign on the trust account. The associate does not need to be a solicitor, however would only be able to sign cheques jointly with another authorised signatory. Refer to section 41(3)(b) for information as to who may sign cheques.

The Act requires law firms to notify the Society of the names of all authorised signatories as at 1 July each year. If any changes are made at other times through-out the year the Society must also be notified. The Society does not need to provide approval, however must hold notification on file.

Drawing Bank Cheques

When arranging for a bank cheque to be issued from trust funds, the recommended method is to draw the cheque out to "The Bank (*insert name of bank*) for bank cheque in favour of (*insert payee name*)". The trust cheque will then be taken to the bank and replaced with a bank cheque. Any bank fees for issuing the bank cheque need to be paid either by petty cash funds debited as a disbursement to the matter, or by cheque drawn from the office account, or by direct debit from the firm's office account.

It is good practice to take a copy of the bank cheque for the file prior to handing over or mailing out the cheque.

External Examinations

Section 241 of the Act requires all firms with trust accounts to have them externally examined (audited) each trust year. The trust year ends on 31 March each year. Therefore, the external examination covers the period 1 April to 31 March. An external examiner must be appointed no later than 8 April each year pursuant to section 66 of the Regulations and the Society must be notified within 1 month of the appointment being made. External examinations need to be completed by 31 May of that year and a copy of the report needs to be sent to the Society along with an explanation of anomalies which may have been reported. The Society will then review the report and advise whether any further action is required.



Important Dates in the Trust Account Year (01 April – 31 March)

08 April

A law firm must engage an external examiner not later than 8 April each calendar year. Only a designated person on the list of designated external examiners may be appointed.

Notification to the Society is required each year in writing within one month of engaging the external examiner. You may notify the Society in writing by letter or use the form provided.

31 May

The external examination report needs to be received at the Society by 31 May immediately following the end of the trust account year.

30 June

Statutory Deposit – any payment required to be made to the Society needs to be made by 30 June, immediately following the end of the trust account year.

The Statutory Deposit calculation as at 31 March is to be completed on the required form and sent to the Society even if no payment is required.

01 July

During July each year, a law practice must provide the licensing body written notice of the associates and Australian legal practitioners who are authorised as at 1 July of that year to sign cheques drawn on a general trust account of the practice; or otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice.

Power Money

Refer to Legal Profession Act 2006 (LPA), section 226 and Legal Profession Regulation 2007 (LPR), section 60 and section 61.

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, eg “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 eg 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 also operates 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).

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.

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 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.

Power Money - Register (Refer Section 61, LPR)

- 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 1 or more associates of the practice in relation to trust money.
- No requirement to record powers in the register where the law practice or associate is also required to act jointly with 1 or more persons who are not associates of the practice, but 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 or the associate is executor or administrator.

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

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 Section 59 of the LPR).

Controlled Money

Refer to Legal Profession Act 2006 (LPA), section 224 and Legal Profession Regulation 2007 (LPR), sections 51 - 55.

Section 51(1) of the LPR states that a controlled money account must be kept under the name that includes the following particulars:

- The name of the law practice concerned;
- The expression “controlled money account” or the abbreviation “CMA” or “CMA/c”;
- other particulars sufficient to identify the purpose of the account and to distinguish the account from any other account maintained by the law practice.

Receipting Controlled Money

- The law practice must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- A receipt is not required to be made out for interest received, although best practice to do so.

Controlled Money Register

A law practice that receives controlled money must maintain a register of controlled money consisting of the separate records of controlled money movements for the CMAs of the practice.

The controlled money movement record must record details of the CMA and its transactions in accordance with section 55 of the LPR.

Not later than 15 working days after each named month, the law practice must prepare and keep as permanent record a statement (showing the date the statement was prepared) as at the end of the named month –

- Containing a list of the practice’s controlled money accounts showing:
 - The name, number and balance of each account in the register
 - The name of the person on whose behalf the controlled money in each account was held; and
 - A short description of the matter to which each account relates; and
 - Showing the date the statement was prepared.

Investment Register

Refer to Legal Profession Regulation 2007 (LPR), section 59.

A register must be kept if the practitioner invests trust money on behalf of a client.

Investment money is likely to have been receipted into the law firm general trust account and then at some stage invested in a fixed term investment account to enable interest to be earned by the client. At maturity the funds are returned to the general trust account prior to disbursement.

Information required in the Register:

- name in which the investment is held;
- name of the person on whose behalf the investment is made;
- the person's address;
- particulars sufficient to identify the investment;
- the amount invested;
- the date the investment was made
- particulars sufficient to identify the source of the investment, including, for example:
 - a reference to the relevant trust ledger; and
 - a reference to the written authority to make the investment; and
 - the number of the cheque for the amount to be invested;
- details of any document evidencing the investment;
- details of interest received;
- details of the repayment of the investment and any interest on maturity or otherwise.

Relationship between a solicitor's trust account and the Society's Statutory Accounts

