

The logo for Act Law Society, featuring the word 'act' in orange, 'law' in white, and 'society' in light grey, all in a lowercase sans-serif font, set against a dark blue rounded rectangular background.

actlaw
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Trust Accounting

PRESENTED BY LEA MCLEAN | ACT LAW SOCIETY

LEGAL PRACTICE MANAGEMENT WORKSHOP 18 - 20 JUNE 2024

Trust Accounts

Legal Profession Act 2006: Part 3.1

Legal Profession Regulation 2007: Part 6

Solicitor's Fidelity Fund

Statutory Interest Account (SIA)

Statutory Deposit Account (SDA)

Solicitor's Fidelity Fund

The Fidelity Fund provides a source of compensation for defaults by a law practice where a person has suffered a financial loss.

INCOME

- Interest on Fidelity Fund investments (term deposits)
- Annual contribution of \$208 per UPC holder
- Recovered costs of investigations, receiverships and managements.

EXPENSES

- Random Inspections
- Investigations & Receiverships – Supervisor and Manager appointments
- Compensation to client in the event of a defalcation.

Relationship between a solicitor's trust account and the Society's statutory accounts

Client → Solicitor → Solicitor's Trust Account

- Bank interest on the solicitor's trust account is paid to the Law Society.
- Interest is paid into the Law Society's **Statutory Interest Account (SIA)**
- SIA outgoings are disciplinary legal costs and grants to community legal aid organisations
- Disciplinary costs recovered are returned back into the SIA

Relationship between a solicitor's trust account and the Society's statutory accounts

Solicitor's Trust Account  annual calculation – payment of trust funds to the Society

- Based on a calculation using the lowest balance held in the trust account over a 12-month period, some trust funds may be required to be paid to the Law Society.
- The statutory deposits from law firms are paid into the Law Society's Statutory Deposit Account (SDA).
- The Society invests in term deposits while ensuring there are cash reserves for any refunds required.
- Interest earned on SDA term deposits is paid into the SIA.

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)

Trust Accounts

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:

- money received by the practice on account of legal costs in advance of providing the services; and
- Controlled money received by the practice; and
- Transit money received by the practice; and
- 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.

Definitions

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:

- ANZ
- Bendigo Bank
- CBA
- Macquarie Bank
- NAB
- St George Bank
- Westpac

Important dates in the trust year

8 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.

External Examinations of the trust account

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.

The external examination covers the period 1 April to 31 March.

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 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.

1 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.

Opening a Trust Account

- Name of the account must include the name of the law practice **AND** the expression “law practice trust account”.
- Any bank charges need to be charged to the firm’s office account.
- Remind the bank that it is to be identified as a solicitor’s trust account and therefore is not to receive interest into the account. The bank will pay interest to the Law Society.

Opening a Trust Account (cont.)

- Bank statements must be received monthly to enable the trust account reconciliation to be completed **monthly** or be able to be accessed via online banking monthly.
- Cheque books, if required, must be printed with the name of the law practice AND the expression “law practice trust account”.
- Notification to be provided to the Society of the date the account was opened, and all bank details, along with authorised signatories, within 14 days of the account being opened, regardless of when the firm intends to start using the account.

Trust accounting software systems

A number of software packages have been examined by the Law Society of NSW and have been deemed as suitable. The list below shows some of the software systems used by ACT law firms.

- Actionstep.com
- Cabenet Legal Accounting Version TRX-12
- FilePro version 2.1.6.7
- LawMaster version 10.13
- LEAP Office Accounting Version 10.2, LEAP Cloud Version 1.11
- Lexis Affinity Version 7.1
- Open Practice version 8.2 (GlobalX Legal Solutions Pty Ltd)
- SILQ Solicitor 8 for Mac and PC,
- Smokeball

Trust ledgers

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 Accounts

Separate trust ledgers for each matter



Trust Account Statements (s57 of the Regulations)

Section 57(6) states:

A trust account statement must be given -

- As soon as practicable **after completion** of the matter to which the ledger account or record relates; OR
- 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
- Except as provided by section 57(7), as soon as practicable **after 30 June in each year.**

Reconciling the trust account

- The 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)

Banking trust funds

When funds are receipted into trust, they should be banked as soon as practicable. Ideally this should be the same day as receiving the funds, or if received late in the day, then the next business day.

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 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.

Notification of Trust Account Irregularities

- Notification to the Society needs to come from a person who is an authorised principal of the law firm.
- The letter should include the following details:
 - \$Amount
 - Date the error occurred
 - How and when it was rectified.
- The firm will receive a response from the Society which can be kept on file.

Trust Account Irregularities

- Money banked into the general office account in error.
- Money banked into the trust account in error.
- Amounts transposed resulting in an incorrect amount being debited from the trust account.(client ledger may be correct, but actual bank account has an error).
- Bank errors eg. a charge for bank cheques is debited to the trust account.

Check the trust balance!

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 or authorise electronic withdrawals?

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 be notified but the full list is not required to be provided through-out the year.

How long can funds be kept in a trust account?

As your clients will not earn interest if their funds are kept in the law firm's 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.

Arranging for 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 can be paid either by petty cash funds debited as a disbursement to the matter, or from the office account, or from the trust account if the firm is holding the funds for that purpose also.

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

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.

Power Money

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

- 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).

Power Money – Register

(Refer Section 61 of the Regs)

- 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.

Controlled Money

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

A Controlled Money Account will enable the client to earn interest on their trust funds.

A controlled money account is opened with the bank and the bank must use the tax file number of the client, as the client will need to declare the income in their own tax return.

Separate controlled money accounts are required for each client who wishes to have their funds earning interest.

Controlled Money

Section 51(1) of the Regulations 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.

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 Regulations.

Investment Register

Refer to the Regulations, section 59.

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

Investment money would generally 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.



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