

LEGAL PRACTITIONERS' TRUST ACCOUNT South Australia

Presented By:

Steven Russo, Audit and Assurance Partner

PKF Adelaide

Disclaimer

Please note – this presentation is for general information only. It contains brief comments not intended to be the basis for decision making, is general in nature and should not be taken as a substitute for specific advice. Please contact this firm to discuss any matters that may be relevant to your individual situation.

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INTRODUCTION

Trust monies handled by practitioners on behalf of their clients to whom they owe fiduciary duties.

The requirements and obligations for handling trust money and maintaining trust records are governed by:

- Legal Practitioners Act SA 1981 – Trust money and trust accounts
- Legal Practitioners Regulations 2014

Please keep up to date copies of the Act and Regulations with your trust records for ease of reference.

The Legal Practitioners' Registry is responsible for issuing practicing certificates, receiving audit reports, accepting notifications, etc.

GOING INTO AND OUT OF AND CHANGING PRACTICE

Who do I have to notify? And of what?

You must within 1 month notify the registry in writing of details of any of the following events:

- Commencement or recommencement
- Cessation of practice
- New place of business
- Amalgamation of practice
- Entry into partnership
- Dissolution
- Death

GOING INTO AND OUT OF AND CHANGING PRACTICE

- Retirement
- Addition of new partner
- Opening or closing of a trust account (14 days exception)
- Appointment of auditor
- Death, resignation, removal from office or incapacity of your auditor

Appointing an auditor:

- You must appoint an approved auditor within two months of Trust Account establishment and notify the Registrar within one month of the appointment.
- The Registrar has a list of auditors who are approved auditors for this purpose.

GOING INTO AND OUT OF AND CHANGING PRACTICE

Leaving Practice

- If you cease practicing you must notify the Registrar.
- If you die while still in practice (not in a partnership) generally your LPR must notify the Registrar within 1 month of your death.

TRUST MONEY AND TRUST ACCOUNTS

What is trust money?

Trust money is defined by the Act as:

money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice to which the practice is not wholly entitled, and includes:

- (a) money received by the practice on account of legal costs in advance of providing the services (other than money paid to the practice as a retainer); 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 the 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, but does not include money received by a practitioner in the course of mortgage financing (ie acting as intermediary to matching lender to borrower and arranging a loan);

What is a trust account?

Trust account defined by the Act as:

“an account maintained at an ADI by a legal practitioner under section 5 of the Act.”

Effectively, a statutory account maintained at an ADI.

TRUST MONEY AND TRUST ACCOUNTS

What is controlled money?

Money received or held by a law practice in respect of 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;

What is a controlled money account?

An account maintained by a law practice with an ADI for the holding of controlled money received by the practice;

What is transit money?

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

TRUST MONEY AND TRUST ACCOUNTS

Can I have more than one trust account?

There is no restriction on the number of trust accounts which may be held in the name of the practitioner.

What about investment accounts?

On occasion you may be required to invest funds on behalf of a client.

If you invest these funds in an investment which does not provide financial institution facilities, the investment is to be recorded in the Register of Investments.

REQUIREMENTS TO MAINTAIN TRUST RECORDS

What records must be maintained?

Detailed accounts of all trust money must:

- Accurately disclose the state of the trust accounts.
- Enable receipt and disposition of trust money to be conveniently and properly audited.

How long must I keep the records?

You must retain all trust records for at least 7 years after the last entry was made.

ACCOUNTING RECORDS

- Source or primary records
- Books of prime entry
- Book of summary
- Reconciliations
- Records of trust account
- Additional source records

RECEIPTS

Must I make out a receipt?

You must always make out a receipt for all trust monies received that is to be paid into a trust account immediately when the money is received.

Where trust money is received by way of direct deposit a trust receipt must be made out immediately after you receive official confirmation that the payment has been made.

A receipt must:

- Be legibly written on a form.
- Be consecutively numbered.
- Be in duplicate.
- Be marked with the name of the practitioner or firm and the words “Trust Account”.

DEPOSITING TRUST MONEY

Trust money must be deposited as soon as practicable. This generally means same day as the money is received or the next business day.

There are no specific regulations dealing with bank deposit records.

As a matter of internal control the bank deposit record should show the bank's acknowledgement of receipt of the funds.

PAYMENTS FROM THE TRUST ACCOUNT

The only method by which you are allowed to make payments from the trust account are by cheque or by EFT transfer to another bank account.

You must not make a trust account payment in cash or draw a trust cheque payable to “cash”.

Although persons other than practitioners may be signatories to the trust account, a practitioner signatory should sign or countersign each trust cheque and authority to transfer funds electronically.

Cheque stub or voucher must be kept and contain the following information:

- Date and reference number of the cheque.
- The name of the payee.
- The client name or reference and brief particulars for the purpose of the payment.
- The amount of the cheque.

PAYMENTS FROM THE TRUST ACCOUNT

Purchasing bank cheques

- Must show particulars of the bank cheque.

Cancelled cheques

- Cross the cheque with the word “cancelled”.
- Retain the original cheque.

Reversal of cheque

- Contact the person.
- Contact the bank.
- Enter the reversal correctly in the ledger.
- Ensure no fee is deducted from Trust account.

Stale cheques

- Not presented for payment within 15 months.

CASH BOOKS

Cash books are used in the accounting system to record all financial transactions:

- Receipts
- Reversed receipts
- Cancelled receipts
- Cheques
- Reversed cheques
- Cancelled cheques
- Electronic transfer of funds

TRUST LEDGER ACCOUNTS

Requirements for individual trust ledgers:

- Must have a **separate ledger** for each matter for each person.
- Ledger must contain the name and address and a brief description of the service provided (“Re Advice”)
- Each transaction must contain the following details:
 - Date and reference number
 - Name of the person from whom the money is received or paid
 - Brief particulars of the purpose of the receipt/payment
 - Amount received.

The account must **never** be overdrawn.

If an account is overdrawn, the Law Society and Auditors must be notified and how the issue has been rectified.

Trust account records must be kept for a minimum of 7 years.

TRANSFER JOURNAL

Is used to:

- Correct an incorrect posting.
- Transfer money from one matter to another.

Any transfer must be clearly recorded with sufficient evidence supporting the reason for the transfer.

It is a good practice for a partner to review and duly authorise the journal.

DRAWING FROM THE TRUST ACCOUNT FOR COSTS AND DISBURSEMENTS

Money paid in advance to a practitioner for anticipated costs or disbursements must remain in the trust account until:

- A bill for services rendered has been issued and is delivered/received by the client. (Minimum 24 hours)
- The disbursement has actually been paid on the client's behalf.

In accordance with the Regulations, a trust account statement must be issued and sent to the client as soon as practicable:

- After completion of the matter
- Upon reasonable request from the client
- After 30 June in each year, except for less than 6-month-old matters, nil balance or no movements for the year

A duplicated copy of this statement must be kept on file.

You must keep trust account statements for a minimum of 7 years.

RECONCILING THE TRUST ACCOUNT

Reconciliations between the trust account ledger and the bank statement must be performed monthly.

The purpose of this is to identify any potential errors which may have occurred during the month.

It also identifies dormant balances or unclaimed monies.

If unclaimed amounts are discovered, the client should be duly notified to clear the balance.

If a client cannot be contact, all funds must be forwarded to the state treasurer.

You cannot charge for the cost of processing unclaimed monies.

OTHER TRUST RECORDS

You may be required to keep certain registers if there are transactions recorded within them.

The registers are as follows:

- Register of Direct Payments
- Register of Investments
- Register of Securities

The requirements for the information kept within these registers can be found within the Regulations

THE LEGAL PRACTITIONERS COMBINED TRUST ACCOUNT

Is required to be maintained under Section 53 of the Act.

Deposits must be made twice a year, at the end of May and at the end of November.

The amount required to be deposited is calculated by means of a formula provided in the act.

A deposit is not required when your lowest aggregate balance is less than **\$10,000**, or if you know you need to use the funds for an immediate claim.

Failure to make a required deposit by the last date (14th of the following month) may result in penalty interest being applied against the outstanding amount. (However, there is 7 days grace).

The law society may remit this interest in special circumstances.

THE ANNUAL AUDIT

An audit must be completed annually by an auditor approved by the Legal Practitioners Register.

The audited period covers 1 July to 30 June of the respective year.

The audit must be completed and the auditor's report must be lodged with Legal Practitioners Register by 31 October in the year of the audit.

The costs of the audit must be borne by the practitioner.

The auditor can inspect any of your trust accounts and records.

They may also inspect your office accounts and records and require information and/or records from your bank, or other financial institution and any person who was formally your partner, employer, employee or agent.

TRUST ACCOUNT INSPECTORS

Purpose of the inspection is to:

- Monitor and report on compliance with the legislation
- Improve the standard of trust accounting through the process of education and training.

Inspectors have the right to inspect:

- All accounts and records
- Take copies of records
- Obtain information in relation of the trust account from banks, insurance bodies, trustee companies, broker or other investment related bodies
- Obtain information from the auditor

During an inspection, the inspector may review a sample of client files and ledgers.

Upon completion, the inspector must detail all their findings in the form of a report to the inspected firm.

REDUCING THE RISK

Risk may be reduced through the following mechanisms:

- Implement accounting controls
- Separation of individual responsibilities
- Supervision of individuals
- Incorporate internal controls in the record keeping
- Use external controls (auditors, inspectors)
- Train multiple users in case of employees going on leave, made redundant, terminated

QUESTIONS?