

Operating Trust Accounts

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THIS ARTICLE COVERS SEVERAL ISSUES that have been the source of recent inquiries.

Trust account reconciliations

A law firm operating a trust account must ensure that either the Trust Account Supervisor (TAS) or a staff member, in a trust account administrator role, regularly reconciles the trust account. The frequency of reconciliation is primarily dependent on trust account transaction volumes but must be completed at least monthly. A reconciliation must be completed for each separate trust account or interest bearing account (IBD) held.

The purpose of the reconciliation is to record, at any given date, the nature of any permanent and/or timing differences between the trust account balance at the bank and the trust account cash book or control account.

For the reconciliation to be accurate it must specifically identify all differences. An unknown difference cannot exist in a completed reconciliation. Until the differences are known the reconciliation remains incomplete.

Cash deposits

When a law firm is requested to deposit cash into the firm's trust account there are some matters to consider.

Firstly, recording accurately the amount to be banked and secondly, if required, the identity of the payer and thirdly, whether there is anything suspicious about the transaction.

The Law Society Inspectorate recommends that where trust money is received in cash it is counted out in front of the payer, preferably with another witness present to ensure the amount received is as stated.

However, if the deposits of cash are either large or of a frequent nature then it is reasonable to place the onus back on the payer to bank the money. The law firm may issue a receipt once the direct credit appears in the trust account. Not only does this enable the bank to accurately record the funds deposited using their cash counting technology, but it

also removes any potential risk to the firm and its staff in physically taking the money to the bank to be deposited.

Under the Financial Transactions Reporting Act 1996, if any person deposits NZD\$10,000 or more in cash with a law firm, then the identity of the payer must be verified. Details of the transaction and identity verification records must be retained for a specified period. Currently this is a minimum of five years.

Where a deposit of any amount is involved and there is some suspicion about the transaction, then a suspicious transaction report should be made to the Police Financial Intelligence Unit. This was discussed in *LawTalk* 837 (14 March 2014) page 25.

Reporting to clients

Section 111 of the Lawyers and Conveyancers Act 2006 (LCA) requires every practitioner who holds money or other valuable property on behalf of any person, to account properly for the money or other valuable property held to the person on whose behalf the money or other valuable property is held. Section 112 (1) (b) of the LCA details the records that the practitioner must keep if any valuable property is held.

Regulation 12(7) of the Lawyers and Conveyancers Act (Trust Account Regulations) 2008 (Trust Account Regulations) requires that each practitioner must provide to each client for whom trust money is held, a complete and understandable statement of all trust money handled for the client, all transactions in the client account and the balance of the client's account.

Specifically, this must be:

- in respect of ongoing investment transactions, at intervals of not more than 12 months; and
- in respect of all transactions that are not completed within 12 months, at intervals of not more than 12 months; and
- in respect of all other transactions, promptly after or prior to the completion of the transaction.

Where the only activity for a client is to

hold funds on IBD, then the client should be forwarded an annual withholding tax certificate and this would be a good time to also report to that client. When reporting to the client, the practitioner may also wish to reflect on whether continuing to hold the client's funds on IBD remains appropriate.

In matters where there is more than one client, such as multiple trustees or estate executors, then a copy of the statement should be sent to each executor or trustee. Where a controlled bank account exists then the practitioner must send a comprehensible statement of account to the client at least every 12 months.

Controlled bank accounts

A controlled bank account exists where a practitioner has the authority to operate a client's bank account, usually under a power of attorney or trusteeship. Under both ss 110(3)(b), 110(10), 111(1) and 112(10)(a) of the LCA, and regulation 11 of the Trust Account Regulations, where a practitioner is administering a client's bank account, then the practice must account properly to that client and keep records to the same standard as required in respect of other trust money.

One best practice suggestion for practitioners in partnership is the introduction of a six-monthly or annual declaration to the TAS by all partners in order to disclose/record any client matters where effectively they have, or may have, a controlled bank account authority.

To further mitigate such risks it is suggested that practitioners try and arrange joint power of attorney, two or more trustees or executors and trustees/executors who are independent of each other.

The requirement to undertake monthly reconciliations, as discussed earlier, would also apply to any controlled client bank account.

If anyone has further questions or requires any assistance please contact the Law Society's Inspectorate through the Financial Assurance Manager Jeremy.kennerley@lawsociety.org.nz, phone (04) 463 2936. 