




LEGALfuel
The Practice Resource Center
of The Florida Bar

Trust Accounts by the Book


Key Concepts

- ▶ You are a Fiduciary
- ▶ No Commingling
- ▶ Tasks can be delegated, but the responsibility remains with the lawyer



Fiduciary

- ▶ A fiduciary is a person or organization that owes to another the duties of good faith and trust. The highest legal duty of one party to another, it also involves being bound ethically to act in the other's best interests.



Delegation of Tasks

- ▶ Lawyers may delegate specific tasks, including trust accounting tasks, but the ultimate responsibility for compliance remains with the lawyer.



Commingling Prohibited

A lawyer must hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation.

All funds, including advances for fees, costs, and expenses, must be kept in a separate account.



Trust Accounts Types



IOTA

Non-IOTA



Interest On Trust Accounts (IOTA)

An IOTA account is an interest bearing trust account benefiting The Florida Bar Foundation established at an eligible institution (which now includes credit unions) for the deposit of nominal or short-term funds of clients or third persons.



Interest On Trust Accounts (IOTA)

Eligible institutions calculate and remit interest on the balance of the deposited funds, at least quarterly, to The Florida Bar Foundation.

These funds are used to promote access to justice and help address the civil legal needs of the poor.



Non-IOTA Trust Accounts

Interest on the funds accrues to the benefit of the client or third party for whom the lawyer is holding funds



Opening a Trust Account

Titling Rule 5-1.2 (b)(1)

- A correct trust account title is the name of the attorney or law firm and the words "trust account." E.g., Trust Account of Law Firm Smith and Doe.
- The Florida Bar Foundation's name should not be in the account title for IOTA trust accounts.



Opening a Trust Account

- Overdraft protection is prohibited.
- No debit or ATM cards linked to account.
- Attorney must authorize and request that the bank notify The Florida Bar of any trust check that is returned or if the account is overdrawn, absent bank error.



Opening a Trust Account

Forms to open a trust account: LegalFuel.com

- Notice to Bar Foundation Form
- Notice to Eligible Institution Form
- Trust Account Bank Notification Letter

THE FLORIDA BAR FOUNDATION

Membership in The Florida Bar, whether in sole practice or in a law firm, who maintains an CLE account automatically receives membership in The Foundation, unless waived. Waiver of all the current membership benefits must be requested by the member.

For Foundation membership records, please write the full name and Florida Bar address number of The Florida Bar member in sole practice or in law firm to the member in the bar file. (See additional sheets as necessary) List in sole practice or in law firm to the member in the bar file.

MEMBER INFORMATION

LAST NAME FIRST NAME MIDDLE INITIAL

ADDRESS

CITY STATE ZIP

CONTRIBUTION

CHECK ONE
 BY CHECK
 BY CREDIT CARD

FOUNDATION MEMBERSHIP

FOR THE YEAR ENDING

2013
 2014
 2015
 2016
 2017
 2018
 2019
 2020
 2021

THE FLORIDA BAR FOUNDATION

MEMBER CONTRIBUTION ACCEPTANCE

Signature Required: _____ Date: _____

Form W-9: _____ Request for Taxpayer Identification Number and Certification: _____ Date Sent to the IRS: _____

Account Number: _____ Tax Paper ID Number: 50-1004004

FAVOR: _____ Order number of copies I would like: _____

The person has US Residency
 Foreign (For tax reporting purposes)

DATE: The Florida Bar Foundation
CFL Foundation 6800 North US Highway 90
Burlington Florida 32507

Signature of U.S. person: _____

THE FLORIDA BAR FOUNDATION
MAINTAINING ETHICS COUNSEL AND FIDELITY
ADOPTED JUNE 21, 1997

This Foundation supports and promotes the highest quality of the Florida Bar membership. It is committed to the highest standards of the Florida Bar and the Florida Bar Foundation. It is committed to the highest standards of the Florida Bar and the Florida Bar Foundation. It is committed to the highest standards of the Florida Bar and the Florida Bar Foundation.

TRUST ACCOUNT
(Sample) Bank Notification Letter

Date: _____

Your Name of Settlement:
Address: _____

To: _____

Trust Specialties/Details:

Please refer to The Florida Bar Foundation for all members of The Florida Bar who require a trust account. The Florida Bar Foundation will assist you in setting up a trust account and will provide you with the necessary forms and instructions. The Florida Bar Foundation will also provide you with the necessary forms and instructions.

By the Florida Bar:
The Florida Bar
6800 North US Highway 90
Burlington Florida 32507

By the Trust Bank:
Trust Bank
6800 North US Highway 90
Burlington Florida 32507

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Opening a Trust Account

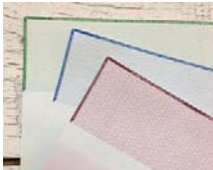

Funds to open account
Rule 5-1.1(a)(1)(A)

A lawyer may maintain funds belonging to the lawyer in the trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account.

(Post on a "Firm Admin Money" ledger)

Opening a Trust Account

► Tip: Order your trust account checks in a different color than your operating account checks.

Opening a Trust Account

The best protection is prevention.
Stop one bad item that will help your home office/business save money and become more efficient.



Tip: High security checks decrease your odds of becoming a victim of check fraud.



Written Trust Account Plan Rule 5-1.2(c) (as of June 1, 2014)

- ▶ Requires all firms with more than one attorney to have a written trust account plan in place for each of the firm's trust accounts.
- ▶ It must include the names of all individuals, not just attorneys, who sign trust account checks and review all trust account checks and the names of the lawyers who are responsible for oversight of reconciliation of the law firm's trust account or accounts.



Written Trust Account Plan Rule 5-1.2(c)

- ▶ A firm manager or CPA may be authorized to sign trust account checks, but that person's actions are always to be reviewed by a lawyer responsible for the trust accounts.
- ▶ The firm manager or CPA's title would be written in the plan along with the name of the partner who is responsible for overseeing and reviewing the nonlawyers' work.



Nonrefundable Flat Fees

- ▶ Nonrefundable flat fees are earned on receipt and are deposited into the operating account, not the trust account. Rule 4-1.5(e)(2)(B).
- ▶ Nonrefundable flat fees must be designated nonrefundable to be earned on receipt.
- ▶ Nonrefundable flat fees must be in writing. 4-1.5(e)(1).



Retainers

Retainers are not funds against which future services are billed. Rule 4-1.5(e)(2)(A)

Retainers are funds paid to guarantee the future availability of the lawyer's legal services and are earned by the lawyer on receipt.

Retainers, being funds of the lawyer, may not be placed in the client's trust account.



Advanced Fees and Costs

Advances for fees and costs (funds against which costs and fees are billed) are the property of the client or third party paying same on a client's behalf and are required to be maintained in trust, separate from the lawyer's property.



Determination of Nominal or Short-Term Funds

- ▶ The amount of a client's or third person's funds to be held
- ▶ The period of time funds are expected to be held
- ▶ The likelihood of delay in the relevant transaction
- ▶ The cost to the firm of establishing an interest-bearing account for the benefit of the client or third person
- ▶ The minimum balance requirements and/or service charges or fees imposed by the eligible institution



Disbursement Against Uncollected Funds

A lawyer may not disburse funds held for a client unless the funds held are collected funds.

"Collected funds" means funds deposited, finally settled, and credited (released) to the lawyer's trust account by the financial institution.



Disbursement Against Uncollected Funds

Certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits.



Disbursement Against Uncollected Funds

A lawyer may not disburse funds held for a client unless the deposit is made:

- ▶ by certified check or cashier's check
- ▶ by a check or draft representing loan proceeds issued by a federally or state-chartered bank
- ▶ by a bank check, official check, treasurer's check, or money order



Disbursement Against Uncollected Funds

A lawyer may not disburse funds held for a client unless the deposit is made:

- ▶ by a check drawn on the trust account of a licensed Florida lawyer or on the trust account of a real estate broker
- ▶ by a check issued by the United States, the State of Florida, or any agency or political subdivision of the State of Florida
- ▶ by a check issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the state of Florida



Disbursement Against Uncollected Funds

Although permissible in the above circumstances, disbursement against uncollected funds is

- ▶ Not required; and
- ▶ At the lawyer's own risk.



Disbursement Against Uncollected Funds

Disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those set forth above may be grounds for a finding of professional misconduct. Other client's funds will always be used to cover the disbursement.



Trust Account Shortages

If any of the deposits fail, the lawyer must immediately act to protect the property of the other clients.

If the lawyer personally pays the amount of any failed deposit, other than with trust account funds of other clients, the lawyer shall not be considered guilty of professional misconduct.



Trust Account Shortages

A lawyer may deposit funds into trust to replenish a shortage in the trust account.

Any deposits to cover shortages must be no more than the amount of the trust account shortage.

The lawyer must notify The Florida Bar's lawyer regulation department immediately of the shortage in the trust account, the cause of the shortage, and the amount of the replenishment (ACAPTrust@floridabar.org).



Monthly Reconciliation Required



The monthly reconciliation form should show the totals of the following balances:

- Trust Account Journal
- Monthly Bank Statement of the Trust Account
- Total of All Client Ledger Cards

Monthly Reconciliation Required



Reconciliations should list all deposits in transit and outstanding checks with specific descriptions to explain any differences between the totals.









Records Required (Original or Digital)

- Deposit slips (date, amount, client, source)
- Canceled checks for all funds disbursed (front & back)
- Detailed records of all electronic transfers
- Detailed records of all wire transfers
- Cash receipts and disbursements Journal
- Ledger card or page for each client
- Bank statements



Trust Account Record Retention

A lawyer or firm must maintain trust records for 6 years after the final conclusion of representation in which the trust funds or property were received.

On dissolution of a law firm the partners shall make reasonable arrangements for the maintenance and retention of client trust account records.


On the sale of a law practice, the seller must make reasonable arrangements for the maintenance and retention of trust account records.



Funds Held in Trust for a Missing Owner

Requires:

- That the funds be designated on the trust account records as being held for a missing owner,
- That the attorney make a diligent attempt to contact the clients, and, if unable to,
- That the funds be disposed of pursuant to applicable law (Chapter 717 Florida Statutes)



Unclaimed Funds

Report unclaimed funds to the Florida Department of Financial Services


Division of Unclaimed Property (850) 413-5522

www.FLTreasurehunt.org



Trust Account Certificate

- All lawyers must certify annually to The Bar whether the lawyer complied with trust accounting rules
- Certification is with payment of membership fees (either on-line or paper)
- Lawyers who did not comply, may send a written explanation of non-compliance to:
ACAPTrust@floridabar.org



Closing a Trust Account

The Florida Bar Foundation

1. Account number
2. Financial institution name & address
3. Name & address of lawyer or firm
4. Date account was closed.

IOTA Manager
The Florida Bar Foundation
875 Concourse Parkway South,
Suite 195
Maitland, FL 32751



Ethics Hotline
800-235-8619

Practice Resource Center
866-730-2020

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Course #1806863N

