

Trust Report

Law Society of British Columbia

Self Report Filing Instructions

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These instructions are for the Trust Report – Self Report. If you are required to file an Accountant’s Report, please refer to the *Accountant’s Report Filing Instructions*. Should you or the individual delegated to file the report have any questions please contact the Law Society’s Trust Assurance department.

1. Introduction

Rule 3-79 requires lawyers to deliver an annual Trust Report to the Law Society. Rule 3-54 (2) allows the firm to fulfill the lawyer’s obligations for their annual trust filings. In the majority of instances, one Trust Report will be completed for the firm that satisfies the filing requirements of all the lawyers of the law firm.

The Benchers set the specific trust accounting rules under the authority of the *Legal Profession Act*. Approved rules form part of the regulations governing the practice of law in British Columbia.

2. The Trust Report: Self Report

The Trust Report - Self Report is comprehensive and divided into the following sections completed by the law firm:

Section A Description of Practice

Section B Financial Profile

Section C Accounting Procedures

Undertaking and Certification

Each individual lawyer of the firm must file an Annual Practice Declaration (APD) in order for the Trust Report to be considered complete.

Filing requirements

1. If the firm did not maintain any trust accounts in the entire reporting period, complete:

- a. Section A,
 - b. the Undertaking and Certification, and
 - c. APD for each lawyer at the firm.
2. If the firm maintained trust account(s)¹ at any time in the entire reporting period, complete:
 - a. all Sections (A, B, and C),
 - b. the Undertaking and Certification, and
 - c. APD for each lawyer at the firm.

3. Filing Deadline

You must file the completed Trust Report with the Law Society within three months of the reporting period end. The due date of the report is noted in the Filing Notice and in the email correspondence sent to the designated representative of the firm.

4. Late Fee Assessment and Possible Suspension

Under Rules 3-80 and 3-81, the following late filing fees and membership conditions will be applied:

- There will be an assessment of \$200 if a Trust Report is late but within 30 days of the due date. A lawyer who does not deliver a Trust Report for 30 days after it is required is liable to an additional assessment of \$400 per month or part of a month. This monthly assessment will continue to be charged until the completed Trust Report is delivered to the Law Society.

Under Rule 3-80 (4), the Executive Director may, on application and their discretion, waive payment of all or part of the assessments provided that there are extraordinary and unforeseen circumstances that prevented the timely preparation and filing of the Trust Report.

- If the Law Society does not receive the completed Trust Report within 60 days after the due date, the lawyer(s) in the firm will be suspended until the completed report is delivered to the Law Society to the satisfaction of the Executive Director.

Under Rule 3-81 (3), the Discipline Committee may, on application and its discretion order that a lawyer not be suspended or a suspension be delayed for a specified period of

¹ Includes accounts that are open or inactive

time provided that there are extraordinary and unforeseen circumstances that prevented the timely preparation and filing of the Trust Report.

5. Criteria for Complete Report

Pursuant to Law Society Rule 3-79 (5) (b), a Trust Report delivered to the Law Society under this rule must be complete to the satisfaction of the Executive Director. The following are the minimum criteria for a complete Trust Report.

1. The online APD must be completed for each lawyer of the firm and submitted with the Trust Report by the filing deadline.
2. If the firm had trust accounts in the reporting period, all trust accounts must be included in the report.
3. The following records must be current:
 - a. Rule 3-67: Accounting records
 - b. Rule 3-68: Trust account records
 - c. Rule 3-69: General account records
 - d. Rule 3-71: Billing records
4. Trust reconciliations, along with supporting documents, must be prepared and current.
5. An explanation for the exceptions noted must be provided with the completed trust report, as required under Rule 3-83 (1).

SECTION A - Description of Practice

All law firms must complete section A, regardless of whether a trust account was maintained.

Reporting period

A “reporting period” is normally 12 months either from the commencement of the law firm or the expiry date of the last reporting period. The Law Society may, pursuant to Rule 3-79 (4), permit a reporting period other than 12 months if a written request is made before the due date of the Trust Report. If you wish to modify the regular reporting period, you should make a written request as soon as possible and email it to trustaccounting@lsbc.org.

1. Practice name

If during the reporting period you have changed your practice’s name, please update accordingly.

2. Practice address

This address should be the main office practice location, where the majority of work is conducted, where you normally receive mail and where you keep the accounting records required by Part 3, Division 7 – Trust Accounts and Other Client Property.

3. Practice arrangement

Does the law practice consist of two or more lawyers practising from the same premises, sharing a common letterhead, common overhead expenses? Do you hold yourself out to clients as a single business but otherwise practise as independent practitioners? If so, please include apparent partnership in the selection.

4. Other practice locations in BC

You need not provide practice addresses for out of province or international locations.

5. Contact information

The Law Society may require the firm to provide further information and/or explanations regarding this report.

6. Lawyers at the practice

Include all lawyers at the practice at any time during the reporting period. This includes all partners, apparent partners, associates, term employees and associate counsel. In instances where

the practice operates nationally or internationally, only British Columbia lawyers need be included. Please include all contract/term employees who do not file their own trust report.

7. Trust accounts

You must disclose whether the law firm conducted trust transactions through trust bank accounts in the reporting period. You must answer “yes” to the question, if the firm:

- continued to hold trust funds from the previous reporting period in one or more trust bank accounts, even if there was no trust activity, and
- received, disbursed or held client property/valuables during the reporting period.

8. Use of another lawyer’s trust account

Under Rule 3-58.1 a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.

9. System for logging and opening files

Answer “yes” as long as there is a suitable system, whether manual or electronic form for recording the opening of new client matters.

10. Computer software

A manual system may be adequate for a practice with limited trust and general account activity.

11. Computer back-up system

It is vital to the firm that the accounting data is backed up on a regular basis and properly maintained in order to protect the interest of clients and to comply with Law Society requirements. Under Rule 3-49, a minimum standard of financial responsibility requires that the firm maintain the ability to produce and/or copy accounting records at all times.

12. Accounting records available on demand

The Law Society Rules 3-67, 3-68, 3-69 and 3-75 identify the trust and general account records each law firm must maintain. While it is not specifically required that all the accounting records be printed to “hard copy”, it is required that every firm be able to produce records on demand in accordance with Rule 10-3 (2).

13. Off-site storage

Please refer to Rules 3-75 [*Retention of records*] and 3-76 [*Executive Director's modification*].

14. Borrowing from clients

Rule 3-58.1, 3-60 (4) and Rule 3-61 (3) prohibit lawyers from depositing into a trust account any funds other than trust funds. Section 3.4 of the *Code of Professional Conduct for British Columbia (BC Code)* sets forth general principles to guide a lawyer who may be considering entering into a business transaction with a client. Borrowing from lending institutions, financial institutions, insurance companies, trust companies or any similar corporation whose business includes lending money to members of the public is acceptable. If this was the only form of borrowing, the answer to this question should be “no”.

If you require further information regarding this question, please contact a Practice Advisor.

15. Funds received and disbursed on behalf of clients

Under Rule 3-58.1 the firm is only permitted to deposit funds in trust that are directly related to legal services provided.

Should you have any questions please contact a Practice Advisor.

16. General cheque not honoured

This question applies to the general account and any cheques that the firm has issued on the general account that were not processed by the financial institution or were returned as non-sufficient funds (NSF).

17. PST, GST/HST and payroll remittances

Government remittances for all PST, GST/HST, and payroll deductions, are required to be paid when due. We recommend that you have a system in place to ensure that these requirements are met on a timely basis. If the nature of the firm does not require you to make these remittances, answer “no” to this question and provide an explanation.

If you have additional questions on tax filing obligations please contact the appropriate government agency.

18. PST audit

Please disclose if the firm was audited by the Ministry of Finance during the reporting period and disclose if the audit is ongoing or complete. If complete, disclose if the audit resulted in any assessments, penalties or interest and whether or not the firm has paid in full these amounts.

19. CRA audit

Please disclose if the firm was audited by the Canada Revenue Agency during the reporting period and disclose if the audit is ongoing or complete. If complete, disclose if the audit resulted in any assessments, penalties or interest and whether or not the firm has paid in full these amounts.

20. Winding up caretaker

In the event that you are unable to manage or operate your law firm unexpectedly due to unforeseen circumstances, it is prudent to identify a person capable of carrying on the day-to-day operation of your firm.

The Law Society is requesting that lawyers put their minds to such a potential occurrence. In most multi-lawyer firms, this question can be answered “yes” where there is a current partnership agreement in place.

21. Excess professional liability insurance

Answer “yes” to this question if you have professional liability insurance coverage in excess of the mandatory Law Society limits covering this reporting period.

22. Client identification and verification

Law Society Rules 3-98 to 3-110 cover the client identification and verification (CIV) rules, requiring every firm to have a system in place to ensure compliance with their CIV obligations.

If you are unsure whether your particular system meets your obligations, please contact a Practice Advisor.

23. Appointments

Include all lawyers of the firm who acted in a representative or fiduciary capacity to manage funds on behalf of a beneficiary or other third party, when the appointment was derived from a solicitor-client relationship.

Some examples of when a lawyer may be handling fiduciary property include lawyers who are:

- a. acting solely or jointly as an executor or administrator of a will;
- b. an administrator of an estate;
- c. a Committee;
- d. a representative authorized under a representation agreement to make financial or legal decisions;
- e. an attorney under any power of attorney (but only if the lawyer has actually taken control of or dealt with the funds); or
- f. a trustee.

Please ensure that there is a current list of all appointments kept at the firm's chief place of practice.

24. Fiduciary property books and records

Where the lawyer has a duty over handling fiduciary property in any one of these capacities, the lawyer is required to keep, and be able to produce on demand, proper records to account for fiduciary property that the lawyer responsible for. Trust Assurance Auditors will expect to see as a minimum, records that will provide a full accounting of the receipts and disbursements of the fiduciary property and any capital or income associated with the fiduciary property.

SECTION B – Financial Profile

Section B must be completed if the firm maintained a trust account, even if the account was inactive during the reporting period.

1. Banking information

Do not list term deposits or guaranteed investment certificates (GIC) held at the same financial institution and linked to the pooled trust account.

A complete listing of accounts including all term deposit and GIC account numbers should be retained as supporting documentation to the monthly trust reconciliations and for future review by a Trust Assurance Auditor.

2. Pooled trust account requirements

Refer to Law Society Rule 3-60, which sets out the provisions that apply to pooled trust accounts.

3. Interest to the Law Foundation

Please refer to Law Society Rule 3-60 (3) (a). If the firm opens or maintains a pooled trust account, you are required to instruct the savings institution in writing to pay net interest earned on the account to the Law Foundation. A sample instruction letter is available on the Law Society website.

4. Separate trust account requirements

Refer to Law Society Rule 3-61 and 3-72 (4), which set out the provisions that apply to separate trust accounts. All receipts of interest on a separate trust account must be recorded within 30 days of payment or of notice that funds have been credited to the account. All withdrawals from separate trust accounts, in respect of which cancelled cheques are not received, must first be deposited to the pooled trust account.

5. Total trust funds deposited

Please provide the total amount of “new” funds deposited into all trust accounts for the reporting period. Funds that have moved in and out of trust for the purpose of investments, separate interest-bearing trust accounts, and / or moving funds to another pooled trust account of the firm should not be included.

6. Trust cheques not honoured

This question applies to the trust accounts and any cheques that the firm has issued that were not processed by the firm's financial institution or was returned as NSF.

In the event that you reported these incidents previously under Rule 3-74 (2), you may refer to earlier correspondence to the Law Society.

7. Outstanding stale-dated cheques

Review the trust bank reconciliations for the entire reporting period to identify trust account cheques that remained outstanding for periods in excess of six months from date of issue. You may be required to provide full particulars of such stale-dated cheques at a later date.

8. Insolvent lawyer

Refer to Rules 3-47 and 3-51.

This information will ensure compliance by lawyers who cannot operate a trust account without a second signatory approved by the Executive Director.

9. List of trust account signatories

This listing includes all practising lawyers who are signatories for the pooled and separate interest bearing trust accounts, operated by the firm.

10. Co-signatories

Disclose whether the firm has granted signing authority to any other individual not disclosed in question 9 of this section. Provide the name and position of the individual.

A trust cheque should not be released without the signature of at least one practising lawyer. If a non-lawyer is granted signing authority on a trust account it must be as a co-signatory only and the non-lawyer's signature must be accompanied by a practising lawyer's signature.

11. Cash received

Please refer to Rule 3-59.

A lawyer must not receive or accept cash in an aggregate amount greater than \$7,500 for any one client matter. A lawyer may accept an amount of \$7,500 or more in cash for professional fees, disbursements, expenses or bail.

12. Cash receipt book

Please refer to Rule 3-70.

Any amount of cash received by the firm for a client must be recorded in the cash receipt book in accordance with this rule.

13. Cash refunds

If a lawyer receives an aggregate amount of more than \$7,500 in cash for a client matter and subsequently refunds all or part of it, the refund must be in the form of cash and a cash receipt must be issued for the return of the funds.

14. Internal controls

We recommend all lawyers establish a system of internal controls to ensure the integrity of financial data. A proper internal control system reduces the risk of unauthorized transactions, undetected financial errors and plays a key role in safeguarding client trust funds.

Every firm should create procedures that restrict access to trust funds and ensure the reliability of accounting records. A firm should also conduct a regular review of the segregation of duties and provide education and training to anyone to whom the lawyer delegates duties and responsibilities under Rule 3-54 (3) (b).

15. Online banking

Please refer to Rule 3-64.1.

Online payments, transfers between bank accounts, and debit card “point of sale” transactions are not permitted. Should you wish to conduct online electronic funds transfers (EFT) please ensure you use a banking platform that requires a dual password / access code authentication procedure to authorize the transaction.

16. Maintenance of records

Include all individuals/firms that are wholly or partially responsible for maintenance of the trust and general account records.

17. Location of accounting procedures

The Law Society is aware that some firms must rely on outside resources to complete some aspects of the day-to-day accounting and/or month end procedures. Identify the locations (other than your chief place of practice) that are used to carry out these procedures.

18. Monthly trust reconciliations

Rule 3-73 (5) requires that the monthly trust reconciliation be prepared for each trust account not more than 30 days after the effective date of the reconciliation. Rule 3-54 (3) (b) states that a lawyer is personally responsible to ensure that the duties and responsibilities under the Division 7 Rules are carried out, including when the lawyer delegates to another person any of the duties or responsibilities assigned to a lawyer under this division.

As a best practice, trust bank reconciliations should be reviewed, signed and dated by the member responsible for the trust records.

19. Handling trust funds on behalf of another lawyer

Indicate if you handled trust funds for another lawyer or law firm during the reporting period. Please be reminded of Rule 3-58.1.

20. Practice billing information

Indicate if the firm has a client or a related group to which more than 20% of the billings (dollar totals) can be attributed in the reporting period. Do not provide client information. “Group” means a group of related clients such as an extended family or within one corporate structure of related companies. The information for this question relates to the firm as a whole.

21. Trust administration fee

Please refer to Rule 2-110.

The Trust Administration Fee (TAF) is a \$15 charge for each distinct client matter in which trust funds are deposited into the trust account for other than the payment of legal fees or retainers. The TAF must be remitted to the Law Society quarterly. If you answer, “yes” to this question, you are indicating that you have made the quarterly TAF remittances when due.

22. CDIC insurance

Please refer to Rule 3-77.

All institutions named in Part B, Question 1 that are covered by Canada Deposit Insurance Corporation (CDIC) protection should be provided with a list of trust beneficiaries for each pooled trust account on an annual basis. CDIC requires this list on an annual basis. Submit a trust listing as at April 30 to the trust bank(s) by May 30. A sample CDIC reporting letter is available on the Law Society website. Please note that credit unions, except Coast Capital Savings Federal Credit Union, do not require the filing of this report.

23. Estate files

Provide details including: file reference number, date file opened, the amount held in trust at the end of the reporting period and date of the last trust transaction.

24. Areas of practice

This question relates to the firm as whole. Indicate all applicable areas.

SECTION C – Accounting Procedures

Section C must be completed if the firm maintained a trust account, even if the account was inactive during the reporting period.

1. Recording trust and general transactions

Refer to Law Society Rules 3-54 to 3-77.

You must keep financial records available for the time required in Rule 3-75. You must have the following trust account records:

- trust book of entry with all receipts into and disbursements from trust;
- client trust ledgers;
- trust transfer journal;
- monthly trust reconciliations;
- valuable property record;
- cash receipt book of duplicate receipts; and
- all supporting documentation.

You must have the following general account records:

- general book of entry with all receipts into and disbursements from general;
- accounts receivable sub-ledger;
- billings delivered to clients filed in a centralized location in chronological, alphabetical or numerical order;
- cash receipt book of duplicate receipts; and
- all supporting documentation.

If you answer “yes” to this question, you are indicating that you have properly recorded all trust and general funds received and disbursed in the above-noted accounting records, as applicable.

2. Maintenance of books and records

Please refer to Law Society Rules 3-67 (3) and 3-67 (4).

You may maintain accounting records manually or electronically.

If you record transactions by hand, they must be chronologically entered and recorded in ink in an easily traceable form.

If you record transactions into a computerized system, you must be able to produce a paper copy of any record promptly upon request by a Trust Assurance Auditor. As with a manual system, the computerized system must be recorded in an easily traceable form.

3. Storage of books and records

Please refer to Law Society Rules 3-75 and 3-76.

The current and prior two years accounting records must be kept at your chief place of practice in British Columbia for as long as records apply to money held in trust and, in any case, for at least 3 years.

4. Retention of books and records

Please refer to Law Society Rule 3-75 (2).

The firm must keep records for as long as the records apply to money held as trust funds or to valuables held in trust for a client and for at least 10 years from the final accounting transaction or disposition of valuables.

5. Loss of custody or control of books and records

Please refer to Law Society Rule 10-4.

You must immediately notify the Executive Director in writing of all the relevant circumstances if you have reason to believe that:

- a. you have lost custody or control of any of the books or records of the firm for any reason,
- b. anyone has improperly accessed or copied any of the books or records, or
- c. a third party has failed to destroy records completely and permanently despite instructions from you to do so.

Examples may include loss of records due to fire, theft or loss of computer hardware or computerized data back-up files.

6. Trust records

Please refer to Law Society Rules 3-68, 3-69, 3-73, section 3.5 of the *BC Code* 3.5 and specifically:

- Trust book of entry Rule 3-68 (a)
- Client trust ledgers Rule 3-68 (b)
- Trust transfer journal Rule 3-68 (c)
- Monthly trust reconciliation Rule 3-73
- Valuable property record Rule 3-68 (e); *BC Code 3.5*
- Cash receipt book of duplicate receipts Rule 3-70

If you answer, “yes” to any part of this question, you are indicating that trust records have been recorded in such a manner to provide all the information set out in the provisions of the above-noted rules.

7. General records

Please refer to Law Society Rules 3-69 and 3-70, and specifically:

- General book of original entry: Rule 3-69 (1) (a)
- Accounts receivable ledger: Rule 3-69 (1) (b), 3-69 (2)
- Cash receipt book of duplicate receipts: Rule 3-70

If you answer, “yes” to any part of this question, you are indicating that general records have been recorded in such a manner to provide all the information set out in the provisions of the above-noted rules.

8. Supporting documents

Please refer to Law Society Rule 3-67 (6).

You are required to retain all supporting documents for both the trust and general accounts.

If you answer, “yes” to this question, you are indicating that you have retained at minimum, all of the documents listed in the question to support the trust and general account transactions during the reporting period.

9. Third party transactions

Please refer to Law Society Rule 3-62.

Does the firm maintain a written record and a copy of any cheque payable to the lawyer or law firm in trust that was not deposited to trust bank account but paid to a client or a third party in the form in which it was received? This means that an authorized signatory to the trust account has endorsed the back of the incoming cheque (normally deposited to trust account) and endorsed it over to another payee such as the client or another third party.

If you answer, “yes” to this question, you are indicating that this type of trust transaction has occurred during the reporting period.

10. Recording trust transactions

Please refer to Law Society Rule 3-72 (1) (a).

All trust deposits received and trust cheques issued must be recorded in the accounting records not more than 7 days after the transaction.

Receipts of interest on a separate trust account are referred to later in this section.

11. Recording general transactions

Please refer to Law Society Rule 3-72 (1) (b).

All general deposits received and general cheques issued must be recorded in the accounting records not more than 30 days after the general transaction.

12. Lawyer’s funds in trust

Please refer to Law Society Rule 3-60 (5) and 3-74 (1), (3).

A lawyer may maintain in a pooled trust account up to \$300 of the lawyer’s own funds to offset any inadvertent bank service charges, cheque printing charges etc. Rule 3-74 (1) requires a lawyer to eliminate all trust shortages immediately. It is not acceptable to wait until third parties issue replacement cheques or until banks reverse charges.

13. Funds deposited as soon as practicable

Please refer to Rules 3-58, 3-61, and section 62 (5) of *Legal Professions Act*.

Trust funds are required to be deposited to a pooled trust account in a designated savings institution as soon as practicable, or as directed with written client instructions.

14. Monies in trust

Please refer to Law Society Rules 3-58.1, 3-60 and Rule 1 - Definition of trust funds.

These rules prohibit lawyers from depositing to a trust account any funds other than trust funds, with exception to the \$300 that is permitted under Rule 3-60 (5).

Rule 3-58.1 requires all funds deposited into trust to be directly related to the legal services provided by the lawyer or law firm.

If you answer, “no” to this question, provide a detailed explanation.

15. Client authorization

Please refer to Law Society Rules 3-56 and 3-58.

Client authorizations are required for trust deposits that do not comply with the provisions of these rules. It is the responsibility of the firm to account to the client for the handling of all trust funds received.

Client authorizations form part of the permanent accounting records and you may be required to produce these documents.

16. Method of withdrawing trust funds

Please refer to Law Society Rule 3-64.

All withdrawals of trust funds must be made by way of trust cheque signed by a practising lawyer, except in the following circumstances:

- Electronic funds transfers and property transfer tax, under Rule 3-64.1 (1)
- Cash as required under Rule 3-59 (5) & (6), and
- Interest paid to the Law Foundation.

If you answer, “yes” to this question, you are indicating that all trust withdrawals during the reporting period were done by way of trust cheque signed by a practising lawyer except for the above-noted exceptions.

17. Cheques payable to cash or bearer

Please refer to Law Society Rule 3-64 (5) (b) and 3-59 (5) & (6).

A lawyer who makes or authorizes the withdrawal of funds from a pooled or separate trust account by cheque must not make the trust cheque payable to “cash” or “bearer”.

If you answer “no” to this question, you are indicating that you have not issued any trust cheque payable to “cash” or “bearer”.

18. Current records and sufficient funds for payments

Please refer to Law Society Rules 3-63 and 3-64 (3).

A lawyer may not make any payment from trust funds unless trust accounting records are current and there are sufficient funds held to the credit of the client.

If you answer “yes” to this question, you are indicating that at all times during the reporting period the firm maintained the trust records on a current basis and that all payments from trust occurred only when there were sufficient funds held to the credit of the client on whose behalf the trust funds were paid.

19. Electronic funds transfers

Please refer to Law Society Rule 3-64.1.

Electronic funds transfers (EFT) requires a dual password or access code authentication procedure with a practising lawyer authorizing and releasing the EFT. The EFT system usually requires an online commercial banking platform with the financial institution.

If you answer “yes” then you are indicating you are completing EFTs using methods that do not meet the rule requirements.

20. Bills prepared before withdrawal of trust funds

Please refer to Law Society Rule 3-64 and 3-65.

A lawyer who withdraws trust funds in payment for lawyer’s fees must first prepare a bill for those fees and immediately deliver the bill to the client. Rule 3-65 (3) sets out the meaning of “delivered”. Before any payment of fees can be received into the lawyer’s general account the legal services must be performed and the bill delivered to the client.

21. Fees in dispute

Please refer to Rule 3-65.

A lawyer must not take any fees from trust funds when the lawyer knows that the client disputes the right of the lawyer to receive payment from trust funds except as permitted by Rule 3-65 (5) (6).

22. Review of accounts receivable

Please refer to Rule 1 – Definition of trust funds and Rule 3-58 (4).

When a lawyer receives monies belonging partly to a client and partly to a lawyer, these funds must first be deposited to a pooled trust account, not to the lawyer's general account. As part of internal control procedures, we recommend that you review the balances in the accounts receivable sub-ledger regularly to identify overpayments and duplicate payments. These payments are considered trust funds and should be deposited into the trust account immediately upon discovery.

23. Withdrawing funds for payment of fees

Please refer to Law Society Rule 3-64 (6).

A lawyer who authorizes the withdrawal of trust funds for the payment of fees must withdraw the funds to the lawyer's general account.

If any payments have been deposited to a lawyer's personal account you must answer "no" to this question and provide an explanation.

24. Trust and general account reconciliations

Rule 3-73 (5) requires that the monthly trust reconciliation be prepared for each trust account not more than 30 days after the effective date of the reconciliation. As a best practice, trust bank reconciliations should be reviewed, signed and dated by the lawyer responsible for the trust records.

If you answer "yes" to part a of this question you are indicating that all trust reconciliations and all supporting documentation as required under Rule 3-73 (2) have been prepared within 30 days of month end and stored in paper form or in an electronic format readily printable upon demand.

If you answer, "yes" to part b of this question, you are indicating that you reconcile the general account monthly. Best practices encourage lawyers to reconcile the general account regularly to provide early detection of errors that may have occurred between the bank accounts of the firm.

25. Monthly trust reconciliation

Please refer to Rule 3-73 that sets out the requirements for monthly trust reconciliations.

A proper monthly trust reconciliation compares the following:

- a. total of all unexpended balances of trust funds held for each client commonly referred to as client trust liability listing;
- b. total of all reconciled balances held in all pooled and separate trust bank accounts;
- c. balance per the trust book of entry; and

- d. reasons for any differences between the totals (e.g., trust assets do not equal trust liabilities).

26. Supporting documentation for reconciliations

Refer to Law Society Rules 3-73 (2) and 3-67 (6).

Please note that you must retain all supporting documentation in accordance with the rules and for future review by the Law Society.

27. Components of trust reconciliation

Please refer to Law Society Rule 3-73.

The trust reconciliation consists of three components:

- the trust assets - the bank balance;
- the trust liabilities - a listing of individual client trust ledger balances; and
- the book of entry - the ending balance held in trust as derived from the book of entry.

The three components must be reconciled to each other and shown to be in agreement on the monthly trust reconciliation.

28. Other client valuables

Please refer to Law Society Rule 3-68 (e) and 3-73 (2) (e) and *BC Code 3.5*.

You may be requested by a client to hold valuable property other than trust monies in safekeeping. Examples of these items may be of a personal nature such as jewellery, paintings, or may have fixed monetary value such as original bonds or stock certificates.

A receipt should be given to the client giving sufficient details to identify the property concerned. The property should be immediately secured. Valuable paper and original documents should not be stored in the client file.

Rule 3-68 (e) and Rule 3-73 (2) (e) require that a listing of client valuables received and delivered and the undelivered portion of valuables held for each client be maintained and form part the month end trust reconciliation (see sample below).

29. Reviewing trust reconciliations

Please refer to Law Society Rule 3-54 (3).

A lawyer is personally responsible to ensure that all the duties under Part 3 – Division 7 of the rules are carried out.

30. Individual client trust ledgers

Please refer to Law Society Rules 3-63 and 3-74 (1).

Please review the listings of individual client ledgers that form part of the monthly trust reconciliations to determine if there were any overdrawn client trust ledger balances during the reporting period. The overdrawn balances are trust shortages.

If the shortages remained uncorrected for periods greater than one month you must answer “yes” and provide a detailed listing of such shortages, the amounts and circumstances.

31. Outstanding trust deposits

Please refer to Law Society Rule 3-58, which requires that trust funds be deposited as soon as practicable.

Please review the monthly trust reconciliations for the entire reporting period. Any outstanding trust deposits listed as reconciling items must be corrected by making the necessary bank deposit as soon as practicable. These trust bank deposits are required to be supported by a validated deposit slip providing confirmation that the trust deposit has been made.

32. Reporting trust shortages

Please refer to Law Society Rule 3-74 (2) (a).

Rule 3-74 (2) (a) requires all trust shortages over \$2,500 to be reported immediately in writing to the Law Society. Examples of shortages include:

- Funds are on deposit in one trust bank account but trust cheques are issued from another trust bank account.
- Bank errors including delays or incorrect postings of trust deposits.
- Trust deposits that are returned by the financial institution as non-sufficient funds after the funds have already been disbursed.
- Trust deposits are deposited into a lawyer’s general or personal bank account.

33. Delivering trust funds

Please refer to Law Society Rule 3-74 (2) (b).

Rule 3-74 (2) (b) requires that a lawyer must make a written report to the Executive Director including all the relevant facts and circumstances if the lawyer is or will be unable to deliver up, when due, any trust funds held by the lawyer.

34. Review of all monthly trust account bank statements

Please refer to Law Society Rule 3-54 and 3-74 (2) (a).

A lawyer is personally responsible to ensure that all the duties and responsibilities of Part 3, Division 7 Rules are carried out. All monthly trust bank statements must be reviewed to identify possible overdrawn bank balances, unauthorized debit memos or other peculiar transactions that warrant attention. Overdrawn bank balances may require that you submit a written report to the Law Society as required by Rule 3-74 (2) (a).

If you answer, “yes” to this question, you are indicating that you or a delegated person reviews the monthly bank statements for unusual or unsupported transactions.

35. Inactive client trust ledger accounts

Refer to Rule 3-58.1, 3-89 and *BC Code* 3.5-6.

Inactive client trust ledger accounts ought to be reviewed on a regular basis to ensure that proper instructions can be given to disburse and close the client trust liability account by either paying the remaining funds back to the client, by billing and transferring trust funds to the general account, or by paying the trust funds to the Law Society as permitted by Rule 3-89.

If you answer, “yes” to this question, you are indicating that the firm reviews all trust liability listings on a regular basis to identify any client trust obligations that remained unchanged for periods greater than one year.

36. Unclaimed trust funds

Refer to Rule 3-58.1, 3-89 and *BC Code* 3.5-6.

Once a client matter has been completed, you are required to return any funds held in trust to the client, provided it is appropriate to do so. The funds should not remain in the trust account.

The *Payment of Unclaimed Trust Money to the Law Society* form can be downloaded from the Law Society’s website.

37. Private mortgages

A private mortgage involves the advance of funds by an individual, a corporate client or a group of clients, rather than funds advanced by a financial institution.

The following questions may help you determine if the firm has been involved in a private mortgage transaction:

- Did the firm act for private lenders?
- Did the firm receive monies from private lenders?
- Did the firm act for mortgages arranged through third parties?
- Did the firm act for lenders on mortgages where the lender is not a financial institution?

If you answer “yes” to this question, you may be required by the Trust Assurance Department to provide additional information at a later date.