

LAW SOCIETY RULES

Definitions

1 In these Rules, unless the context indicates otherwise:

“fiduciary property” means

(a) funds, other than trust funds, and valuables for which a lawyer is responsible in a representative capacity or as a trustee, if the lawyer’s appointment is derived from a solicitor-client relationship,

but does not include

(b) any funds and valuables that are subject to a power of attorney granted to the lawyer if the lawyer has not taken control of or otherwise dealt with the funds or valuables;

“funds” includes current coin, government or bank notes, bills of exchange, cheques, drafts, money orders, charge card sales slips, credit slips and electronic transfers;

“general funds” means funds ~~other than trust funds,~~ received by a lawyer in relation to the practice of law, but does not include

(a) trust funds, or

(b) fiduciary property;

“trust funds” includes funds received in trust by a lawyer acting

~~— (a) —~~ in the capacity of a lawyer, including funds

~~(a)~~ received from a client for services to be performed or for disbursements to be made on behalf of the client, or

~~(b)~~ belonging partly to a client and partly to the lawyer if it is not practicable to split the funds, and;

~~— (b) as a personal representative of a person or at the request of a person, or as a trustee under a trust established by a person, if the lawyer’s appointment derived from a solicitor-client relationship;~~

“valuables” means anything of value that can be negotiated or transferred, including but not limited to

(a) securities,

(b) bonds,

(c) treasury bills, and

(d) personal or real property.;

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PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Definitions

3-47 In this Division,

“**client**” includes any beneficial owner of funds or valuables received by a lawyer in connection with the lawyer’s practice;

“**public body**” means

(b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*;

~~“**valuables**” means anything of value that can be negotiated or transferred, including but not limited to~~

- ~~===== (a) securities,~~
- ~~===== (b) bonds,~~
- ~~===== (c) treasury bills, and~~
- ~~===== (d) personal or real property.~~

Personal responsibility

- 3-48 (1) A lawyer must account in writing to a client for all funds and valuables received on behalf of the client.
- (2) In this Division, the responsibilities of a lawyer may be fulfilled by the lawyer’s firm.
- (3) A lawyer is personally responsible to ensure that the duties and responsibilities under this Division are carried out, including when the lawyer
- (a) is authorized by the firm or lawyer through which the lawyer practises law to open, maintain, or deal with funds in a trust or general account, or
 - (b) delegates to another person any of the duties or responsibilities assigned to a lawyer under this Division.

Fiduciary property

3-48.1 (1) In addition to any other obligations required by law and equity, this rule applies to lawyers who are responsible for fiduciary property.

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- (2) A lawyer must make all reasonable efforts to determine the extent of the fiduciary property for which the lawyer is responsible and must maintain a list of that fiduciary property.
- (3) A lawyer must produce on demand the following records for any period for which the lawyer is responsible for fiduciary property:
 - (a) a current list of valuables, with a reasonable estimate of the value of each;
 - (b) accounts and other records respecting the fiduciary property;
 - (c) all invoices, bank statements, cancelled cheques or images, and other records necessary to create a full accounting of the receipt or disbursement of the fiduciary property and any capital or income associated with the fiduciary property.
- (4) The records required under subrule (3) form part of the books, records and accounts of a lawyer, and the lawyer must produce them and permit them to be copied as required under these Rules.
- (5) Subrules (3) and (4) continue to apply for 10 years from the final accounting transaction or disposition of valuables.

Pooled trust account

- 3-52** (3) Subject to subrule (4) and Rule 3-66 [*Trust shortage*], a lawyer must not deposit to a pooled trust account any funds other than trust funds.

Separate trust account

- 3-53** (3) Subject to Rule 3-66 [*Trust shortage*], a lawyer must not deposit to a separate trust account any funds other than trust funds.

Payment of fees from trust

- 3-57** (3) A bill or letter is delivered within the meaning of this Rule if it is
- (a) mailed to the client at the client's last known address,
 - (b) delivered personally to the client,
 - (c) transmitted by electronic facsimile to the client at the client's last known electronic facsimile number,
 - (d) transmitted by electronic mail to the client at the client's last known electronic mail address, or

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(e) made available to the client

~~(i) by means that allow the client to review the content of the document and save or print a copy, or~~

~~(ii) by other means agreed to in writing by the client.~~

Retention and security of records

3-68 (0.1) This Rule applies to records referred to in Rules 3-59 to 3-62.

- (1) A lawyer must keep his or her records for as long as the records apply to money held ~~in 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.
- (2) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia ~~for as long as the records apply to money held in trust and, in any case,~~ for at least 3 years from the final accounting transaction or disposition of valuables.

Disposition of files, trust money and other documents and valuables

3-80 (1) Before leaving a firm in British Columbia, a lawyer must advise the Executive Director in writing of his or her intended disposition of all of the following that relate to the lawyer's practice in British Columbia and are in the lawyer's possession or power control:

- (a) open and closed files;
- (b) wills and wills indices;
- (c) titles and other important documents and records;
- (d) other valuables;
- (e) trust accounts and trust funds;
- (f) fiduciary property.

(2) Within 30 days after withdrawing from the practice of law in British Columbia, a lawyer or former lawyer must confirm to the Executive Director in writing that

- (c) the lawyer or former lawyer has notified all clients and other persons for whom the lawyer is or potentially may become a personal representative, executor, ~~or trustee~~ or other fiduciary regarding the lawyer or former lawyer's withdrawal from practice and any change in his or her membership status.

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Division 8 – Unclaimed Trust Money

Payment of unclaimed ~~trust funds~~money to the Society

- 3-82 (1) A lawyer who has held ~~funds~~money in ~~his or her~~ trust ~~account~~ on behalf of a person whom the lawyer has been unable to locate for 2 years may apply to the Executive Director to pay those funds to the Society under section 34 [*Unclaimed trust money*] of the Act.
- (4) If the Executive Director is satisfied that the lawyer has made appropriate efforts to locate the owner of the ~~funds~~money, the Executive Director may accept the ~~funds~~money under section 34 of the Act.
- (5) The Executive Director must account for ~~funds~~money received by the Society under subrule (4) separately from the other funds of the Society.

Adjudication of claims

- 3-84 (9) Following the hearing of the evidence and submissions, the Executive Committee must determine whether the claimant is entitled to the ~~funds~~money held in trust by the Society.

Calculation of interest

- 3-85 (2) Interest calculated under subrule (1) is payable from the first day of the month following receipt of the unclaimed ~~trust funds~~money by the Society, until the last day of the month before payment out by the Society.

Efforts to locate the owner of ~~money~~funds

- 3-86 From time to time, the Executive Director must conduct or authorize efforts to locate the owner of ~~funds~~money held under this Part.

Payment to the Law Foundation

- 3-87 Before paying the principal amount received under Rule 3-82 [*Payment of unclaimed trust money to the Society*] to the Foundation under section 34 of the Act, the Executive Director must be satisfied that the owner of the ~~funds~~money cannot be located following efforts to locate the owner.

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(a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or

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