

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2006: No. 2 April

Highlights: Law Society Rules: The definition of “trust funds” now includes funds received by a lawyer as a *joint* personal representative (p.11); insurance-exempt practising members, non-practising members and retired members are all excused from the requirement to file a trust report, provided they have not received or withdrawn trust funds during the preceding 12-month reporting period (Rule 3-72(1), (4) and (6) at p.89 and rescission of Rule 3-73); a trust report will not be considered complete until all exceptions have been explained satisfactorily (Rule 3-74.1(2.1) at p.90); a lawyer who withdraws from practice or becomes a non-practising or retired member must notify all clients for whom the lawyer is a personal representative, executor or trustee of the withdrawal or change in practising status (Rule 3-80(2) at p.92); consequential amendments and housekeeping changes are made to Rules 2-10(3), 2-52(5.1), 3-51(1) to (3), 3-58(3), 3-65(2), 3-74(1) to (3), 3-74.1(1) and (2) and 3-78 (pp. 33, 55, 80, 86, 90 and 92). **Professional Conduct Handbook:** Construction (multiple draw) mortgages are no longer specifically excluded from the definition of “simple conveyances,” making it permissible in appropriate circumstances for one lawyer to act for both borrower and lender (Appendix 3, paragraphs 4 and 5 at pp. 55-57).

Filing: Please file the enclosed sheet in your *Member's Manual* as follows:

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	33 – 34	33 – 34
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Professional Conduct Handbook	55 – 58	55 – 58

After filing, insert this sheet at the front of the *Manual* for reference.

Updates: This amendment package updates the *Member's Manual* to **April 14, 2006**. The previous amendment package was 2006: No. 1 February.

To check that your copy of the *Manual* is up to date, please consult the contents checklist on the back of this filing sheet. If you have further questions about updating your *Manual*, please contact Donna Kokot in the Law Society Communications Department: telephone 604 443-5768 or toll-free in BC 1-800-903-5300, by telefax 604 646-5913 or by email to communications@lsbc.org.

Website: The *Legal Profession Act*, Law Society Rules and *Professional Conduct Handbook* can be accessed in the Publications & Forms section of the Law Society website at www.lawsociety.bc.ca in both HTML (for online use) and in PDF (for printout, including printout of *Member's Manual* replacement pages).

MEMBER'S MANUAL CONTENTS CHECKLIST

Updated to April 14, 2006

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DEFINITIONS

- “Protocol”** means the Inter-Jurisdictional Practice Protocol signed on behalf of the Society on February 18, 1994, as amended from time to time;
- “qualification examination”** means an examination set by the Executive Director for the purposes of Rule 2-58;
- “remedial program”** includes anything that may be recommended by the Practice Standards Committee under Rule 3-14(1)(b);
- “requalification”** means an entitlement to
- (a) a practising certificate after being a non-practising member or a former lawyer,
 - (b) insurance coverage after being exempt from insurance coverage, or
 - (c) insurance coverage on the basis of full-time practice after holding insurance coverage on the basis of part-time practice;
- “respondent”** means a person whose conduct or competence is
- (a) the subject of a citation directed to be issued under Rule 4-13(1), or
 - (b) under review by the Benchers under section 47 of the Act;
- “Rule”** or **“subrule”** means a rule or subrule contained in these Rules;
- “Second Vice-President-elect”** means the Benchers elected under Rule 1-18, from the time of the election until he or she takes office as Second Vice-President;
- “section”** means a section of the *Legal Profession Act*;
- “Society”** means the Law Society of British Columbia continued under section 2(1) of the Act;
- “statement of agreed facts”** means a written statement of facts signed by discipline counsel and by or on behalf of the respondent;
- “suspension”** means temporary disqualification from the practice of law;
- “training course”** includes any assessments, examinations and remedial work taken during or after the training course, or an educational program required by the Credentials Committee;
- “trust funds”** includes funds received in trust by a lawyer acting
- (a) in the capacity of a lawyer, including funds
 - (i) received from a client for services to be performed or for disbursements to be made on behalf of the client, or
 - (ii) 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;
- “vice chair”** means a person appointed to preside at meetings of a committee in the absence of the chair;

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“visiting lawyer” means a member of a governing body who is qualified to practise law in another Canadian jurisdiction.

[amended 09/99; 11/99; 05/00; 06/01; 03/03; amended effective 08/03; amended 12/03; 05/04; 09/04; definition of “firm” amended and definition of “limited liability partnership” added 09/04, effective January 17, 2005; amended 02/06]

Residential address

2-9 A lawyer who ceases to have a place of business separate from the lawyer’s residence must provide the following information to the Executive Director immediately:

- (a) the address of the lawyer’s residence;
- (b) any change in the address of the lawyer’s residence;
- (c) on return to practice, employment or other business, the address of the lawyer’s place of business.

Practice history

2-9.1 (1) In this Rule “**practice history**” means a record of

- (a) the dates and places that a lawyer or former lawyer has practised law or been enrolled in the admission program, including the name of the firms through which the lawyer or former lawyer practised law, and
 - (b) dates of any periods since call and admission during which the lawyer or former lawyer has been a non-practising or retired member or a former member.
- (2) On request by any person, the Executive Director may disclose all or part of the practice history of any member or former member of the Society.

[added 10/04]

Unauthorized practice

Unauthorized practice of law

2-10 (1) A lawyer must not knowingly facilitate by any means the practice of law by a person who is not a practising lawyer or otherwise permitted to practise law under sections 15 to 17 of the Act.

- (2) Without limiting subrule (1), a lawyer must not knowingly do any of the following:
- (a) act as an agent or permit his or her name to be used or held out in any way that enables a person to engage in the unauthorized practice of law;
 - (b) send a process or other document to a person or do any other act that enables a person to engage in the unauthorized practice of law;
 - (c) open or maintain an office for the practice of law unless the office is under the personal and actual control and management of a practising lawyer.
- (3) When the Society obtains a court order or an agreement restraining a person who is not a practising lawyer from the practice of law, the Executive Director may publish generally a summary of the circumstances and of the order or agreement, in a form that appears appropriate to the Executive Director.

[(3) amended 02/06]

Inter-jurisdictional practice

Definitions

2-10.1 In Rules 2-10.1 to 2-17.1,

“business day” means any calendar day or part of a calendar day in which a lawyer provides legal services;

“disciplinary record” includes any of the following, unless reversed on appeal or review:

- (a) any action taken by a governing body as a result of
 - (i) professional misconduct,
 - (ii) incompetence,
 - (iii) conduct unbecoming a lawyer,
 - (iv) lack of physical or mental capacity to engage in the practice of law,
 - (v) any other breach of a lawyer’s professional responsibilities;
- (b) disbarment;
- (c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;
- (d) restrictions or limits on a lawyer’s entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;
- (e) any interim suspension or restriction or limits on a lawyer’s entitlement to practise imposed pending the outcome of a disciplinary hearing.

“entitled to practise law” means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

“legal matter” includes any activity or transaction that constitutes the practice of law and any other activity or transaction ordinarily conducted by lawyers in British Columbia in the course of practising law, whether or not persons other than lawyers are legally capable of conducting it;

“National Mobility Agreement” means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

“National Registry” means the National Registry of Practising Lawyers established under the National Mobility Agreement;

“permit” means an inter-jurisdictional practice permit issued under Rule 2-11;

“provide legal services” means to engage in the practice of law

- (a) physically in British Columbia, except with respect to the law of a home jurisdiction, or
- (b) with respect to the law of British Columbia physically in any jurisdiction, and includes to provide legal services respecting federal jurisdiction in British Columbia;

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- (b) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-25;
 - (c) the prorated Special Compensation Fund assessment specified in Schedule 2;
 - (d) any surcharge for which the lawyer is liable under Rule 3-26(2).
- (4) On reinstatement, an applicant under subrule (2)(b) or (c) may be issued a non-practising or retired member certificate on payment of the appropriate prorated fee specified in Schedule 3.
- (5) Subject to subrule (5.1), the Executive Director must consider an application for reinstatement of a former lawyer and may conduct or authorize any person to conduct an investigation concerning the application.
- (5.1) The Executive Director must not consider the application of a former lawyer for reinstatement unless the former lawyer has
 - (a) submitted all trust reports required under Rules 3-72 and 3-78(1),
 - (b) [rescinded]
 - (c) paid all assessments accrued under Rule 3-74 before and after the former lawyer ceased to be a member of the Society unless the Discipline Committee orders the assessments need not be paid under Rule 3-74(3), and
 - (d) paid all costs of trust reports ordered under Rule 3-74.1(6).
- (6) If an applicant for reinstatement is a disbarred lawyer, the Executive Director must refer the application to the Credentials Committee.
- (7) On any application for reinstatement to which subrules (5.1) and (6) do not apply, the Executive Director may
 - (a) reinstate the applicant without conditions or limitations, or
 - (b) refer the application to the Credentials Committee for consideration.
- (8) Subject to subrule (9), when an application for reinstatement is referred to the Credentials Committee under subrule (7), the Committee may
 - (a) reinstate the applicant without conditions or limitations,
 - (b) reinstate the applicant with conditions or limitations on the practice of the applicant if the applicant consents in writing to those conditions or limitations, or
 - (c) order a hearing.
- (9) The Credentials Committee must order a hearing in the following circumstances:
 - (a) section 19(3) of the Act requires that a hearing be ordered;
 - (b) the Committee cannot reach another disposition of the matter under subrule (8);
 - (c) the Committee resolves by simple majority to order a hearing.
- (10) An applicant for reinstatement must give written notice of the application to those persons that the Executive Director may direct, and the persons notified may appear in person or by counsel at the hearing and be heard on the application.

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- (11) If a disbarred lawyer is reinstated after a hearing, the Executive Director must publish and circulate to the profession a summary of the circumstances and the panel's reasons for the reinstatement.

[(5) and (7) amended, (5.1) added effective 08/03; (5.1) amended 12/03; (2.1) added 07/04;
(5.1) amended 02/06]

Subsequent application for reinstatement

2-53 A person whose application for reinstatement is rejected under section 22(3) of the Act may not make a new application for reinstatement until the earlier of the following:

- (a) 2 years after the date on which the application was rejected;
- (b) the date set by the panel when the application was rejected or by the Benchers on a review under Part 5.

Reinstatement of former judge or master

2-54 (1) Subject to subrules (2) and (3) a reinstated lawyer who was a judge or a master must restrict his or her practice of law as follows:

- (a) a former judge of a federally appointed court in British Columbia, the Supreme Court of Canada or the Federal Court of Canada must not appear as counsel in any court in British Columbia without first obtaining the approval of the Credentials Committee;
 - (b) a former judge of the Provincial Court of British Columbia must not appear as counsel in that Court for 3 years after ceasing to be a judge;
 - (c) a former master of the Supreme Court of British Columbia must not appear as counsel before a master, a registrar, a district registrar or a deputy district registrar of the Supreme Court of British Columbia for 3 years after ceasing to be a master.
- (2) The Credentials Committee may impose conditions respecting the practice of a former judge when giving approval for that lawyer to appear as counsel under subrule (1)(a).
- (3) The Credentials Committee may at any time relieve a lawyer of a practice restriction referred to in subrule (1) and may impose conditions respecting the practice of the lawyer concerned.

Requalification

Application and definition

2-55 (1) Rules 2-55 to 2-60 apply to

- (a) a former lawyer who applies for reinstatement as a practising lawyer,
- (b) a non-practising or retired member who applies to be released from an undertaking given under Rule 2-3 or 2-4,

- (5) The Discipline Committee may remove the suspension or vary or remove conditions and limitations imposed under subrule (4).
- (6) The Discipline Committee must not suspend a lawyer or impose conditions and limitations on the practice of a lawyer under subrule (4) until it has notified the lawyer of the reasons for the proposed action and given the lawyer a reasonable opportunity to make representations about those reasons.
- (7) When conditions or limitations are imposed on the practice of a lawyer under subrule (4), the Executive Director may disclose the fact that the conditions or limitations apply and the nature of the conditions or limitations.
- (8) If the Executive Director discloses the existence of conditions or limitations under subrule (7) by means of the Society’s website, the Executive Director must remove the information from the website within a reasonable time after the conditions or limitations cease to be in force.

[(1) amended 12/03; heading, (1), (3) and (6) amended 05/05; (7) and (8) added 06/05]

Division 7 – Trust Accounts and Other Client Property

Definitions

3-47 In this Division,

“**cash**” means

- (a) coins referred to in section 7 of the *Currency Act* (Canada),
- (b) notes intended for circulation in Canada issued by the Bank of Canada under the *Bank of Canada Act*, and
- (c) coins or bank notes of countries other than Canada;

“**cash receipt book**” means the book of duplicate receipts referred to in Rule 3-61.1(1);

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

“**public body**” means

- (a) a ministry or department of the government of Canada or of a province or territory, or
- (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.

[heading and rule amended 12/03; amended effective 05/04; amended 06/05]

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.

[(1) amended 12/03]

Designated savings institutions

- 3-49** Subject to Rule 3-50, a savings institution is a designated savings institution within the meaning of section 33(3)(b) of the Act if it has an office in British Columbia accepting demand deposits and is insured by
- (a) the Canada Deposit Insurance Corporation, or
 - (b) the Credit Union Deposit Insurance Corporation of British Columbia.

[amended, (2) and (3) rescinded 12/03]

Removal of designation

- 3-50** (1) The Executive Committee may declare, by resolution, that a savings institution is not or ceases to be a designated savings institution within the meaning of section 33(3)(b) of the Act.
- (2) A lawyer who holds trust funds in a savings institution that is not or ceases to be a designated savings institution must immediately transfer those funds into a designated savings institution.
- (3) Subrule (2) does not apply if the lawyer has written instructions from the client to the contrary.

Deposit of trust funds

- 3-51** (1) Subject to subrule (3) and Rule 3-54, a lawyer who receives trust funds must deposit the funds in a pooled trust account as soon as practicable.
- (2) [rescinded]
- (3) Despite subrule (1), a lawyer who receives trust funds with instructions to place the funds otherwise than in a pooled trust account may place the funds in a separate trust account in accordance with section 62(5) of the Act and Rule 3-53.
- (4) Unless the client instructs otherwise in writing, a lawyer must deposit all trust funds in an account in a designated savings institution.

[(1) and (3) amended, (2) rescinded 02/06]

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- (5) A transfer of funds from a pooled trust account to a separate trust account must be authorized by the client and approved in writing signed by a lawyer.

[(1), (2) and (5) amended, (1.1), (1.2) and (3.1) added 02/03; (2) and (4) amended, (1.3) and (3.2) added 03/04; (3.2) amended 05/04; (1.3) amended 06/05]

Payment of fees from trust

- 3-57** (1) In this Rule, “fees” means fees for services performed by a lawyer and taxes on those fees.
- (2) A lawyer who withdraws or authorizes the withdrawal of trust funds under Rule 3-56 in payment for the lawyer’s fees must first prepare a bill for those fees and immediately deliver the bill to the client.
- (3) A bill or letter is delivered within the meaning of this Rule if it is
- (a) mailed by regular or registered mail 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, or
 - (d) transmitted by electronic mail to the client at the client’s last known electronic mail address.
- (4) As an exception to subrule (2), a lawyer need not deliver a bill if the client instructs the lawyer otherwise in writing.
- (5) A lawyer must not take fees from trust funds when the lawyer knows that the client disputes the right of the lawyer to receive payment from trust funds, unless
- (a) the client has agreed that the lawyer may take funds from trust to satisfy the lawyer’s account and the client has acknowledged that agreement in writing or the lawyer has confirmed the client’s agreement in a letter delivered to the client,
 - (b) a bill has been delivered under subrule (3), whether or not the client has directed otherwise under subrule (4),
 - (c) the lawyer has given the client written notice that the fees will be taken from trust unless, within one month, the client commences a fee review under section 70 of the Act or an action disputing the lawyer’s right to the funds, and
 - (d) the client has not commenced a fee review under section 70 of the Act or an action at least one month after written notice is given under paragraph (c).
- (6) Despite subrule (5), if a lawyer knows that the client disputes a part of the lawyer’s account, the lawyer may take from trust funds fees that are not disputed.
- (7) A lawyer must not take fees from trust funds impressed with a specific purpose, if the object of the trust has not been fulfilled, without the express consent of the client or another person authorized to give direction on the application of the trust funds.

[(3) amended 03/02]

Withdrawal from separate trust account

- 3-58** (1) A lawyer who makes or authorizes the withdrawal of funds from a separate trust account in respect of which cancelled cheques and bank statements are not received from the savings institution monthly and kept in the lawyer's records must first transfer the funds into his or her pooled trust account.
- (2) Rules 3-56 and 3-57 apply to funds that have been transferred into a pooled trust account in accordance with subrule (1).
- (3) A lawyer who disburses trust funds received with instructions under Rule 3-51(3) must keep a written record of the transaction.

[(3) amended 02/06]

Accounting records

- 3-59** (1) A lawyer must record all funds received and disbursed in connection with his or her law practice by maintaining the records required under this Division.
- (2) A lawyer must maintain accounting records in
- (a) legibly handwritten form, in ink or other duplicated or permanent form,
 - (b) printed form, or
 - (c) an electronic form that can readily be transferred to printed form on demand.
- (3) A lawyer must record transactions in accounting records in chronological order and in an easily traceable form.
- (4) A lawyer must retain all supporting documents for both trust and general accounts, including but not limited to the following:
- (a) validated deposit receipts;
 - (b) periodic bank statements;
 - (c) passbooks;
 - (d) cancelled and voided cheques;
 - (e) bank vouchers and similar documents and invoices.

[heading and rule amended, (4) added 12/03; (4) amended 05/04]

Trust account records

- 3-60** A lawyer must maintain at least the following trust account records:
- (a) a book of entry or data source showing all trust transactions, including the following:
 - (i) the date and amount of receipt or disbursements of all funds;
 - (ii) the source and form of the funds received;
 - (iii) the identity of the client on whose behalf trust funds are received or disbursed;
 - (iv) the cheque or voucher number for each payment out of trust;
 - (v) the name of each recipient of money out of trust;
 - (b) a trust ledger, or other suitable system, showing separately for each client on whose behalf trust funds have been received, all trust funds received and disbursed, and the unexpended balance;

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- (3) A lawyer who receives funds to which subrule (2) applies must immediately deliver a bill or issue to the client a receipt for the funds received, containing sufficient particulars to identify the services performed and disbursements incurred.
- (4) As an exception to subrule (1), a lawyer must record the receipt of interest on a separate trust account within 30 days of payment or of notice that funds have been credited to the account.

[(3) amended, (4) added 12/03; (2) amended 05/04]

3-64 [rescinded 12/03]

Monthly trust reconciliation

- 3-65** (1) A lawyer must prepare a monthly trust reconciliation of the total of all unexpended balances of funds held in trust for clients as they appear in the trust ledgers, with the total of balances held in the trust bank account or accounts, together with the reasons for any differences between the totals.
- (2) The monthly trust reconciliation must be supported by
 - (a) a detailed monthly listing showing the unexpended balance of trust funds held for each client, and identifying each client for whom trust funds are held,
 - (b) a detailed monthly bank reconciliation for each pooled trust account,
 - (c) a listing of balances of each separate trust account or savings, deposit, investment or similar form of account, identifying the client for whom each is held,
 - (d) a listing of balances of all other trust funds received pursuant to Rule 3-51(3), and
 - (e) a listing of valuables received and delivered and the undelivered portion of valuables held for each client.
 - (3) A lawyer must retain the detailed listings described in subrule (2) as records supporting the monthly trust reconciliations.
 - (4) A lawyer must make the trust reconciliation required by this Rule not more than 30 days after the effective date of the reconciliation.

[(2) amended 12/03; 04/06]

Trust shortage

- 3-66** (1) A lawyer who discovers a trust shortage must immediately pay enough funds into the account to eliminate the shortage.
- (2) A lawyer must immediately make a written report to the Executive Director, including all relevant facts and circumstances, if the lawyer
 - (a) discovers a trust shortage greater than \$2,500, or
 - (b) is or will be unable to deliver up, when due, any trust funds held by the lawyer.

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- (3) A trust shortage referred to in this Rule includes a shortage caused by service charges, credit card discounts and bank errors.

[(2) amended, (3) added 12/03]

3-67 [rescinded 12/03]

Retention and security of records

3-68 (0.1) In this Rule, “**records**” means the records referred to in Rules 3-60 to 3-62.

- (1) A lawyer must keep his or her records for as long as the records apply to money held in trust and, in any case, for at least 10 years.
- (2) A lawyer must keep his or her 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.
- (3) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.
- (4) A lawyer who loses custody or control of his or her records for any reasons must immediately notify the Executive Director in writing of all the relevant circumstances.

[heading and rule amended, (0.1), (3) and (4) added 12/03]

Executive Director’s modification

- 3-69** (1) Having regard to the accounting and storage systems employed by a specific lawyer, the Executive Director may modify the requirements of that lawyer under Rules 3-60 to 3-62 or 3-68.
- (2) The Executive Director may, at any time, cancel or amend a modification under subrule (1).

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- (3) The Executive Director must make a modification under subrule (1) or a cancellation or amendment of a modification under subrule (2) in writing.
- (4) A lawyer who receives a written modification from the Executive Director under subrule (1) must retain it and any amendment under subrule (2) for as long as
 - (a) the books, records and accounts to which it relates are retained, or
 - (b) the lawyer would have been required to retain the books, records and accounts to which it relates, but for the modification and any amendment.

[(1) amended 12/03]

Annual CDIC report

- 3-70** A lawyer who holds pooled trusts funds in a designated savings institution insured by the Canada Deposit Insurance Corporation must file an annual report for each account maintained by the lawyer with that institution in accordance with section 3(3) of the Schedule to the *Canada Deposit Insurance Corporation Act*, so that each client's funds, rather than the account itself, are insured up to the limit of CDIC insurance.

Lawyer's right to claim funds

- 3-71** Nothing in this Division deprives a lawyer of any recourse or right, whether by way of lien, set-off, counterclaim, charge or otherwise, against
 - (a) funds standing to the credit of a client in a trust account, or
 - (b) valuables held for a client.

[amended 12/03]

Trust report

- 3-72** (1) Subject to subrules (4) and (6), a lawyer must deliver to the Executive Director completed trust reports for reporting periods of 12 months covering all the time that the lawyer is a member of the Society.
- (2) The date on which a firm ceases to practise law is the end of a reporting period.
 - (3) A lawyer must deliver a completed trust report to the Executive Director within 3 months of the end of each reporting period.
 - (4) On a written request made before the due date of a trust report, the Executive Director may allow a lawyer to submit a trust report covering a time period other than 12 months.
 - (5) A trust report delivered to the Executive Director under this Rule must
 - (a) be in a form approved by the Discipline Committee,
 - (b) be complete to the satisfaction of the Executive Director, and
 - (c) include all signatures required in the form.
 - (6) A non-practising or retired lawyer or a practising lawyer who is exempt under Rule 3-25 from the requirement to maintain professional liability insurance and pay the insurance fee, is not required to file a trust report for a reporting period of 12 months during which the lawyer has
 - (a) not received any funds in trust,

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- (b) not withdrawn any funds held in trust, and
- (c) complied with this Division.

[(1), (3) and (5) amended effective 08/03; heading, (1) and (3) to (5) amended 12/03;
(1) and (4) amended, (6) added 02/06]

3-73 [rescinded 02/06]

Late filing of trust report

- 3-74** (1) A lawyer who does not deliver a trust report as required under Rule 3-72 or 3-75(4) is in breach of these Rules.
- (2) A lawyer who fails to deliver a trust report by the date required under Rule 3-72 or 3-75(4) is deemed to have been in compliance with the Rules during the period of time that the lawyer was late in delivering the report if the lawyer delivers the following to the Executive Director within 30 days of the due date:
- (a) the required report;
 - (b) the late fee specified in Schedule 1.
- (3) A lawyer who does not deliver a trust report for 30 days after it is required under Rule 3-72 or 3-75(4) is liable to an assessment of \$400 per month or part of a month until the report is delivered.
- (4) When there are special circumstances, the Discipline Committee may, in its discretion, waive payment of all or part of an assessment made under this Rule.

[(3) and (4) amended effective 08/03; heading and (1) to (3) amended 12/03;
(1) to (3) amended 02/06]

Failure to file trust report

- 3-74.1** (1) A lawyer who does not deliver a trust report as required under Rule 3-72 or 3-75(4) has not met an acceptable standard of financial responsibility relating to the integrity and financial viability of the lawyer's professional practice.
- (2) A lawyer who does not deliver a trust report under Rule 3-72 or 3-75(4) for 60 days after it is required, is suspended until the report is completed to the satisfaction of the Executive Director and delivered as required.
- (2.1) A trust report is not delivered for the purposes of subrules (1) and (2) unless all explanations of exceptions required by the Executive Director are delivered to the Executive Director.
- (3) When there are special circumstances, the Discipline Committee may, in its discretion, order that
- (a) a lawyer not be suspended under subrule (2), or
 - (b) a suspension under subrule (2) be delayed for a specified period of time.
- (4) At least 30 days before a suspension under subrule (2) can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;

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- (c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (3) and the deadline for making such an application before the suspension is to take effect.
- (5) If a lawyer has not delivered a trust report after it is required, the Executive Director may do either or both of the following:
 - (a) engage or assign a qualified accountant to complete the trust report;
 - (b) order an examination of the lawyer's books, records and accounts under Rule 3-79.
- (6) The Discipline Committee may order that a lawyer pay to the Society all or part of the costs associated with the trust report referred to in subrule (5)(a).
- (7) A lawyer who is ordered by the Discipline Committee, under subrule (6), to pay costs must pay those costs in full by the date set or extended by the Committee.
- (8) A lawyer who has not paid the amount owing under subrule (6) by the date set or extended by the Discipline Committee is in breach of these Rules, and if any part of the amount owing remains unpaid by the date set in Rule 2-70, must not engage in the practice of law unless the Benchers order otherwise.

[added effective 08/03; heading, (1), (2), (5) and (6) amended 12/03; (1) and (2) amended, (2.1) added 02/06]

Qualifications of accountant

- 3-75** (1) A trust report must be completed and signed by a person in public accounting practice who is permitted to perform audit engagements by
- (a) the Institute of Chartered Accountants of British Columbia, or
 - (b) the Certified General Accountants Association of British Columbia.
- (2) Despite subrule (1), a trust report may not be completed and signed by any person determined by the Executive Director to be ineligible to do so.
- (3) Despite subrule (1), on application by the lawyer, the Executive Director may allow a person without the credentials referred to in subrule (1) to complete and sign a trust report if the Executive Director is satisfied that
- (a) the person has adequate accounting credentials, and
 - (b) no person qualified under subrule (1) is reasonably available to the lawyer.
- (4) The Executive Director may at any time require a lawyer whose trust report was completed and signed by a person without the credentials referred to in subrule (1) or ineligible under subrule (2) to deliver a new trust report completed and signed by a person who has the qualifications specified by the Executive Director.
- (5) If the Executive Director requires a new trust report under subrule (4), the lawyer must deliver the report within 3 months of notice of the requirement being sent by the Executive Director.

[amended 12/03]

3-76 [rescinded 12/03]

Exceptions and qualifications

- 3-77** (1) The trust report of a lawyer who has not complied with this Division must state the exceptions and qualifications, together with an explanation of the circumstances of and reasons for them.
- (2) The Executive Director may, following a review of a trust report with exceptions and qualifications, accept the lawyer's explanation and reasons
- (a) without condition, in which case the lawyer is deemed to have complied with Rule 3-72, or
 - (b) subject to the lawyer fulfilling accounting conditions specified by the Executive Director, in which case, on fulfilment of those conditions, the lawyer is deemed to have complied with Rule 3-72.

[amended 12/03]

Former lawyers

- 3-78** (1) A former lawyer must deliver a trust report as required under Rule 3-72 for any period during which the former lawyer was a member of the Society.
- (2) If a former lawyer does not deliver a trust report as required under subrule (1), an assessment under Rule 3-74 applies.

[(3) rescinded effective 08/03; amended 12/03; 02/06]

Examination of books, records and accounts

- 3-79** (1) The Executive Director may at any time order an examination of the books, records and accounts of a lawyer for the purpose of determining whether the lawyer is maintaining and has been maintaining books, records and accounts in accordance with this Division and designate a chartered accountant or a certified general accountant to conduct the audit.
- (2) When an order is made under subrule (1), the lawyer concerned must immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence and must provide any explanations that the person designated by the Executive Director requires for the purpose of the audit.

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:
- (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.
- (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

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- (a) the documents and property referred to in subrule (1)(a) to (d) have been disposed of, and any way in which the disposition differs from that reported under subrule (1),
 - (b) all trust accounts referred to in subrule (1)(e) have been closed and that
 - (i) all the balances have been
 - (A) remitted to the clients or other persons on whose behalf they were held,
 - (B) transferred to another lawyer with written instructions concerning the conditions attaching to them, or
 - (C) paid to the Society under Rule 3-82, and
 - (ii) any net interest earned on a pooled trust account has been remitted to the Foundation in accordance with this Division, and
 - (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 regarding the lawyer or former lawyer's withdrawal from practice and any change in his or her membership status.
- (2.1) A law corporation must confirm to the Executive Director as required under subrule (2) within 30 days of
- (a) cancellation of its permit under Part 9, and
 - (b) ceasing to provide legal services.
- (3) The Executive Director may, on application in writing by the lawyer, former lawyer or law corporation, extend the time limit referred to in subrule (1), (2) or (2.1) or, if in the opinion of the Executive Director it is in the public interest, relieve the lawyer, former lawyer or law corporation of any of the requirements of those subrules.
- (4) [rescinded 12/03]
- (5) On an enquiry, the Executive Director may disclose information collected under this Rule if satisfied that
- (a) the person enquiring has a bona fide reason to obtain the information, and
 - (b) disclosure of the information would not be an unreasonable invasion of anyone's privacy.
- [(2) and (3) amended, (2.1) added, (4) rescinded 12/03; (2) amended 02/06]

Division 8 – Unclaimed Trust Money

Definition

- 3-81** In this Division, “efforts to locate” means steps that are reasonable and adequate in all the circumstances, including the amount of money involved.

Payment of unclaimed trust funds to the Society

- 3-82** (1) A lawyer who has held funds 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 of the Act.

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- (2) A lawyer must make the application referred to in subrule (1) in writing containing all of the following information that is available to the lawyer:
 - (a) the full name and last known mailing address of each person on whose behalf the funds were held;
 - (b) the exact amount to be paid to the Society in respect of each such person;
 - (c) the efforts made by the lawyer to locate each such person;
 - (d) any unfulfilled undertakings given by the lawyer in relation to the funds;
 - (e) the details of the transaction in respect of which the funds were deposited with the lawyer.
- (3) A lawyer who cannot provide all the information described in subrule (2) must advise the Executive Director of the reasons why the lawyer does not have that information and deliver to the Executive Director copies of all records in the lawyer's power or possession that relate to the ownership and source of the funds.
- (4) If the Executive Director is satisfied that the lawyer has made appropriate efforts to locate the owner of the funds, the Executive Director may accept the funds under section 34 of the Act.
- (5) The Executive Director must account for funds received by the Society under subrule (4) separately from the other funds of the Society.

Investigation of claims

- 3-83** (1) A person may make a claim under section 34 of the Act in writing, in the form approved by the Executive Committee by delivering it to the Executive Director.
- (2) A claimant must provide the Executive Director with information and documents that the Executive Director reasonably requires.
- (3) In order to determine the validity of a claim, the Executive Director may make or authorize inquiries or further investigations that he or she considers desirable.

[(3) amended 05/04]

Adjudication of claims

- 3-84** (1) The Executive Director may
- (a) approve a claim if satisfied that the claim is valid, or
 - (b) refer the claim to the Executive Committee.
- (2) When the Executive Director refers a claim to the Executive Committee, it may, in its discretion
- (a) approve or reject a claim based on the information received under Rule 3-83, or
 - (b) order a hearing to determine the validity of a claim.
- (3) If a hearing is ordered, the Executive Director must give the claimant reasonable notice in writing of the date, time and place of the hearing.

APPENDIX 3

REAL PROPERTY TRANSACTIONS

[Chapter 6, Rule 10]

Application

1. This Appendix does not apply to a real property transaction between corporations, societies, partnerships, trusts, or any of them, that are effectively controlled by the same person or persons or between any of them and such person or persons.

[amended 11/99]

Acting for parties with different interests

2. A lawyer must not act for more than one party with different interests in a real property transaction unless:
 - (a) because of the remoteness of the location of the lawyer's practice, it is impracticable for the parties to be separately represented,
 - (b) the transaction is a simple conveyance, or
 - (c) paragraph 10 of this Appendix applies.

[renumbered 11/99]

- 2.1 When a lawyer acts jointly for more than one client in a real property transaction, the lawyer must comply with the obligations set out in Chapter 6, Rules 4, 5 and 6.

[added 05/05]

Simple conveyance

3. In determining whether or not a transaction is a simple conveyance, a lawyer should consider:
 - (a) the value of the property or the amount of money involved,
 - (b) the existence of non-financial charges, and
 - (c) the existence of liens, holdbacks for uncompleted construction and vendor's obligations to complete construction.

[renumbered 11/99]

4. The following are examples of transactions that may be treated as simple conveyances when paragraph 5 does not apply to exclude them:
 - (a) the payment of all cash for clear title,
 - (b) the discharge of one or more encumbrances and payment of the balance, if any, in cash,

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- (c) the assumption of one or more existing mortgages or agreements for sale and the payment of the balance, if any, in cash,
- (d) a mortgage that does not contain any commercial element, given by a mortgagor to an institutional lender to be registered against the mortgagor's residence, including a mortgage that is
 - (i) a revolving mortgage that can be advanced and re-advanced,
 - (ii) to be advanced in stages, or
 - (iii) given to secure a line of credit.
- (e) transfer of a leasehold interest if there are no changes to the terms of the lease,
- (f) the sale by a developer of a completed residential building lot at any time after the statutory time period for filing claims of builders' liens has expired, or
- (g) any combination of the foregoing.

[amended 11/99; 05/01; 03/06]

5. The following are examples of transactions that must not be treated as simple conveyances:

- (a) a transaction in which there is any commercial element,¹ such as
 - (i) a conveyance included in a sale and purchase of a business,
 - (ii) a transaction involving a building containing more than three residential units, or
 - (iii) a transaction for a commercial purpose involving either a revolving mortgage that can be advanced and re-advanced or a mortgage given to secure a line of credit,
- (b) a lease or transfer of a lease, other than as set out in paragraph 4(e),
- (c) a transaction in which there is a mortgage back from the purchaser to the vendor,
- (d) an agreement for sale,
- (e) a transaction in which the lawyer's client is a vendor who:
 - (i) advertises or holds out directly or by inference through representations of sales staff or otherwise as an inducement to purchasers that a registered transfer or other legal services are included in the purchase price of the property,
 - (ii) to the lawyer's knowledge, directly or indirectly leads purchasers to believe that it is unnecessary for them to be separately represented in the transaction, or

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- (iii) is or was the developer of property being sold, unless paragraph 4(f) applies, or
- (f) a conveyance of residential property with substantial improvements under construction at the time the agreement for purchase and sale was signed, unless the lawyer's clients are a purchaser and a mortgagee and construction is completed before funds are advanced under the mortgage.

[amended 11/99; 05/01; 03/06]

Advice and consent

6. If a lawyer acts for more than one party in the circumstances as set out in paragraph 2 of this Appendix, then the lawyer must, as soon as is practicable,
 - (a) advise each party in writing that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned and that, if a conflict of interest arises, the lawyer cannot continue to act for any of them in the transaction,
 - (b) obtain the consent in writing of all such parties, and
 - (c) raise and explain the legal effect of issues relevant to the transaction that may be of importance to each such party.

If a written communication is not practicable at the beginning of the transaction, the advice may be given and the consent obtained orally, but the lawyer must confirm that advice to the parties in writing as soon as possible, and the lawyer must obtain consent in writing prior to completion.

The consent in writing may be set out in the documentation of the transaction or may be a blanket consent covering an indefinite number of transactions.

[amended 11/99]

Foreclosure proceedings

7. In this paragraph, "mortgagor" includes "purchaser," and "mortgagee" includes "vendor" under an agreement for sale, and "foreclosure proceeding" includes a proceeding for cancellation of an agreement for sale.

If a lawyer acts for both a mortgagor and a mortgagee in the circumstances set out in paragraph 2 of this Appendix, the lawyer must not act in any foreclosure proceeding relating to that transaction for either the mortgagor or the mortgagee.

This prohibition does not apply if

- (a) the lawyer acted for a mortgagee and attended on the mortgagor only for the purposes of executing the mortgage documentation,
- (b) the mortgagor for whom the lawyer acted is not made a party to the foreclosure proceeding, or

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- (c) the mortgagor has no beneficial interest in the mortgaged property and no claim is being made against the mortgagor personally.

[amended 11/99]

Unrepresented parties in a real property transaction

- 8. If one party to a real property transaction does not want or refuses to obtain independent legal representation, the lawyer acting for the other party may allow the unrepresented party to execute the necessary documents in the lawyer's presence as a witness if the lawyer advises that party in writing that:
 - (a) the party is entitled to obtain independent legal representation but has chosen not to do so,
 - (b) the lawyer does not act for or represent the party with respect to the transaction, and
 - (c) the lawyer has not advised that party with respect to the transaction but has only attended to the execution and attestation of documents.

[amended 11/99]

- 9. If the lawyer witnesses the execution of the necessary documents as set out in paragraph 8, it is not necessary for the lawyer to obtain the consent of the party or parties for whom the lawyer acts.

[amended 11/99]

- 10. If one party to the real property transaction is otherwise unrepresented but wants the lawyer representing another party to the transaction to act for him or her to remove existing encumbrances, the lawyer may act for that party for those purposes only and may allow that party to execute the necessary documents in the lawyer's presence as witness if the lawyer advises the party in writing that:
 - (a) the lawyer's engagement is of a limited nature, and
 - (b) if a conflict arises between the parties, the lawyer will be unable to continue to act for that party.

[amended 11/99]

FOOTNOTE:

- 1. A transaction is not considered to have a commercial element merely because one of the parties is a corporation.

[added 05/05]