**LAWYERS’ FUND FOR CLIENT PROTECTION**

**RULE 1.15**

**Rule 1.15(a)**

**A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated solely for funds held in connection with the practice of law in this jurisdiction. Except as provided in (g) with respect to IOLTA-eligible funds, such funds shall be maintained in the state in which the lawyer’s office is situated or elsewhere with the consent of the client or third person. Funds of the lawyer that are reasonably sufficient to pay financial institution charges may be deposited in the separate account; however, such amount may not exceed $2,000 and must be separately stated and accounted for in the same manner as clients’ funds deposited therein. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the completion of the events that they record.**

* Lawyer must hold property of a client, in connection with a representation, separate from the lawyer’s own property.
* Only Delaware funds may be kept in Rule 1.15A account.
* Non IOLTA trust funds may be kept in state in which lawyer’s office is situated with client’s consent.
* The maximum amount of lawyer’s funds that can be in trust accounts cannot exceed $2,000.
* Lawyer must maintain records of the trust accounts for at least five years after completion of the events they record.

**Rule 1.15(b)**

**Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.**

* Upon receiving client funds or property, lawyer must promptly notify the client. (e.g., personal injury settlement checks, payroll taxes from employees pay).
* Upon request, lawyer must promptly render a full accounting of the funds or property held.

**Rule 1.15(c)**

**When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.**

* If lawyer is in possession of property in which lawyer and third person claim an interest, lawyer must keep property separate until an accounting and severance of interest.

**Rule 1.15(d)**

**A lawyer engaged in the private practice of law must maintain financial books and records on a current basis, and shall preserve the books and records for at least five years following the completion of the year to which they relate, or, as to fiduciary books and records, five years following the completion of that fiduciary obligation. The maintenance of books and records must conform with the following provisions:**

**(1) All bank statements, cancelled checks (or images and/or copies thereof as provided by the bank), records of electronic transfers, and duplicate deposit slips relating to fiduciary and non-fiduciary accounts must be preserved. Records of all electronic transfers from fiduciary accounts shall include the name of the person authorizing transfer, the date of transfer, the name of recipient and confirmation from the banking institution confirming the number of the fiduciary account from which the funds are withdrawn and the date and time the request for transfer was completed**

* Lawyer must preserve (1) statements, (2) cancelled checks (or images and/or copies), (3) records of electronic transfers (shall include name of authorizing party, date of transfer, recipient, bank confirmation and date and time transfer was completed), and (4) duplicate deposit slips for fiduciary and non-fiduciary accounts.

**(2) Bank accounts maintained for fiduciary funds must be specifically designated as “Rule 1.15A Attorney Trust Account” or “1.15A Trust Account” or “Rule 1.15A Attorney Escrow Account” or “1.15A Escrow Account,” and must be used only for funds held in a fiduciary capacity. A designation of the account as a “Rule 1.15A Attorney Trust Account” or “1.15A Trust Account” or “Rule 1.15A Attorney Escrow Account” or “1.15A Escrow Account,” must appear in the account title on the bank statement. Other related statements, checks, deposit slips, and other documents maintained for fiduciary funds, must contain, at a minimum, a designation of the account as “Attorney Trust Account” or “Attorney Escrow Account.”**

* Fiduciary accounts must be designated as
	+ “Rule 1.15A Attorney Trust Account” or “1.15A Trust Account” or “Rule 1.15A Attorney Escrow Account” or “1.15A Escrow Account.”
* This language must appear in the account title on the bank statements. Additional language may be included before or after the above phrases. Checks, deposit slips, and other documents for fiduciary accounts, must contain the following “Attorney Trust Account” or “Attorney Escrow Account.”

**(3) Bank accounts and related statements, checks, deposit slips, and other documents maintained for non-fiduciary funds must be specifically designated as "Attorney Business Account" or "Attorney Operating Account," and must be used only for funds held in a non-fiduciary capacity. A lawyer in the private practice of law shall maintain a nonfiduciary account for general operating purposes, and the account shall be separate from any of the lawyer's personal or other accounts.**

* Non-fiduciary accounts must be designated as

"Attorney Business Account" or "Attorney Operating Account."

* This language must appear in the account title on the bank statements, checks, deposit slips, and other documents.
* Nonfiduciary accounts must be maintained for general operating purposes of the law practice and shall be kept separate from the lawyer's personal or other accounts.

**(4) All records relating to property other than cash received by a lawyer in a fiduciary capacity shall be maintained and preserved. The records must describe with specificity the identity and location of such property.**

* If a lawyer receives property other than cash in a fiduciary capacity the lawyer must preserve all records relating to that property. The records must describe with specificity the identity and location of such property.

**(5) All billing records reflecting fees charged and other billings to clients or other parties must be maintained and preserved.**

* Lawyer must save all billing records reflecting fees charged and other billings to clients for at least 5 years (see 1.15(a)).

**(6) Cash receipts and cash disbursement journals must be maintained and preserved for each bank account for the purpose of recording fiduciary and non-fiduciary transactions. A lawyer using a manual system for such purposes must total and balance the transaction columns on a monthly basis.**

* A lawyer must maintain cash journals identifying money received and money disbursed for fiduciary and non-fiduciary transactions for at least 5 years (see 1.15(a)).

**(7) A monthly reconciliation for each bank account, matching totals from the cash receipts and cash disbursement journals with the ending check register balance, must be performed. The reconciliation procedures, however, shall not be required for lawyers using a computer accounting system or a general ledger.**

* Each bank account must be reconciled on a monthly basis.

**(8) The check register balance for each bank account must be reconciled monthly to the bank statement balance.**

* Check registers for each account must be reconciled monthly.

**(9) Copies of retainer and compensation agreements with clients shall be maintained and preserved as required by Rule 1.5.**

* Lawyer must maintain and preserve copies of those retainer and compensation agreements as required by Rule 1.5 for at least 5 years (see 1.15(a))

**(10)** **Copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf shall be maintained and preserved.**

* Lawyer must maintain and preserve copies of the accountings to clients or third persons reflecting the disbursement of funds for at least 5 years (see 1.15(a)).

**(11)** **Copies of records showing disbursements on behalf of clients shall be maintained and preserved.**

* Lawyer must maintain and preserve copies of records, e.g., checks, showing the disbursement of funds for at least 5 years (see 1.15(a)).

**(12)** **With respect to all fiduciary accounts:**

 **(A) A subsidiary ledger must be maintained and preserved with a separate account for each client or third party in which cash receipts and cash disbursement transactions and monthly balances are recorded.**

 **(B) Monthly listings of client or third party balances must be prepared showing the name and balance of each client or third party, and the total of all balances.**

 **(C) No funds disbursed for a client or third party must be in excess of funds received from that client or third party. If, however, through error funds disbursed for a client or third party exceed funds received from that client or third party, the lawyer shall transfer funds from the non-fiduciary account in a timely manner to cover the excess disbursement.**

 **(D) The reconciled total cash balance must agree with the total of the client or third party balance listing. There shall be no unidentified client or third party funds. The bank reconciliation for a fiduciary account is not complete unless there is agreement with the total of client or third party accounts.**

 **(E) If a check has been issued in an attempt to disburse funds, but remains outstanding (that is, the check has not cleared the trust or escrow bank account) six months or more from the date it was issued, a lawyer shall promptly take steps to contact the payee to determine the reason the check was not deposited by the payee, and shall issue a replacement check, as necessary and appropriate. With regard to abandoned or unclaimed trust funds, a lawyer shall comply with requirements of Supreme Court Rule 73.**

 **(F) No funds of the lawyer shall be placed in or left in the account except as provided in Rule 1.15(a).**

 **(G) No funds which should have been disbursed shall remain in the account, including, but not limited to, earned legal fees, which must be transferred to the lawyer’s non-fiduciary account on a prompt and timely basis when earned.**

 **(H) When a separate real estate bank account is maintained for settlement transactions, and when client or third party funds are received but not yet disbursed, a listing must be prepared on a monthly basis showing the name of the client or third party, the balance due to each client or third party, and the total of all such balances. The total must agree with the reconciled cash balance.**

 **(I) Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account.**

 **(J) Withdrawals from a client trust account shall be made only by check payable to a named payee and not to cash, or by authorized electronic transfer.**

* For fiduciary accounts, a lawyer must:
	+ Maintain a subsidiary ledger which provides a detailed accounting of each client’s funds deposited, funds withdrawn, and balance at the end of each month.
	+ Prepare monthly listing of each client’s balance and also the total balance in the account.
	+ Cannot disburse more money to client than is in the account for client. If excess money is disbursed, lawyer **MUST** transfer funds from operating account immediately to cover excess disbursement.
	+ The cash balance from the reconciliation must agree with the total of client listing balance. There should not be any unidentified funds in account.
	+ If a check has been outstanding for more than 6 months, lawyer shall investigate why check has not been deposited and reissue check. If lawyer is unable to direct funds to appropriate party, lawyer shall comply with Supreme Court Rule 73 regarding abandoned trust funds.
	+ Lawyer may not have more than $2000 of lawyer’s funds in account.
	+ All funds must be disbursed in a timely manner including the lawyer’s fee.
	+ If a separate trust account is maintained for real estate settlement transactions, and if funds are received by lawyer but not immediately disbursed, lawyer must prepare monthly a list identifying client, balance due to client, and a total of all funds due to clients. The total must agree with reconciled cash balance.

**(13)** **If a lawyer maintains financial books and records using a computer system, the lawyer must cause to be printed each month a hard copy of all monthly journals, ledgers, reports, and reconciliations, and/or cause to be created each month an electronic backup of these documents to be stored in such a manner as to make them accessible for review by the lawyer and/or the auditor for the Lawyers’ Fund for Client Protection.**

* Lawyer must on monthly basis either print out copy of accounting for firm accounting or create electronic backup that is accessible for review by LFCP auditor.

**Rule 1.15(e)**

**A lawyer's financial books and records must be subject to examination by the auditor for the Lawyers' Fund for Client Protection, for the purpose of verifying the accuracy of a certificate of compliance filed each year by the lawyer pursuant to Supreme Court Rule 69. The examination must be conducted so as to preserve, insofar as is consistent with these Rules, the confidential nature of the lawyer's books and records. If the lawyer's books and records are not located in Delaware, the lawyer may have the option either to produce the books and records at the lawyer's office in Delaware or to produce the books and records at the location outside of Delaware where they are ordinarily located. If the production occurs outside of Delaware, the lawyer shall pay any additional expenses incurred by the auditor for the purposes of an examination.**

* A lawyer’s financial books and records are subject to examination by an auditor for the Lawyers’ Fund for Client Protection. If the records are not located or produced for inspection in Delaware lawyer must pay the auditor’s travel expenses.

**Rule 1.15(f)**

**A lawyer holding client or third-person funds must initially and reasonably determine whether the funds should or should not be placed in an interest or dividend-bearing account for the benefit of the client or third person. In making such a determination, the lawyer must consider the financial interests of the client or third person, the costs of establishing and maintaining the account, any tax reporting procedures or requirements, the nature of the transaction involved, the likelihood of delay in the relevant proceedings, and whether the funds are of a nominal amount or are expected to be held by the lawyer for a short period of time such that the costs incurred to secure income for the client or third person would exceed such income. A lawyer must at reasonable intervals consider whether changed circumstances would warrant a new determination with respect to the deposit of client or third-person funds. Except as provided in these Rules, interest or dividends earned on client or third-person funds placed into an interest or dividend-bearing account for the benefit of the client or third person (less any deductions for service charges or other fees of the depository institution) shall belong to the client or third person whose funds are deposited, and the lawyer shall have no right or claim to such interest or dividends, and may not otherwise receive any financial benefit or other economic concessions relating to a banking relationship with the institution where any account is maintained pursuant to this Rule.**

* Upon receipt of fiduciary funds a lawyer shall determine whether a separate, interest-bearing account needs to be established for the funds. In doing so, the lawyer must consider whether the cost of creating and administering the account exceeds the income earned, the length of time the funds will be held, and the amount of funds to be deposited.

**Rule 1.15(g)**

**A lawyer holding client or third person funds who has reasonably determined, pursuant to subsection (f) of this Rule, that such funds need not be deposited into an interest or dividend-bearing account for the benefit of the client or third-person must establish and maintain one or more pooled trust/escrow accounts in a financial institution in Delaware for the deposit of all client or third person funds held in connection with the practice of law in this jurisdiction that are nominal in amount or to be held by the lawyer for a short period such that the costs incurred to secure income for the client or third person would exceed such income (IOLTA-eligible funds). This requirement shall not apply to a lawyer who either has obtained inactive status pursuant to Supreme Court Rule 69(d) or has obtained a Certificate of Retirement pursuant to Supreme Court Rule 69(f). Each pooled trust/escrow account must be established as a pooled interest or dividend-bearing account (IOLTA Account) in compliance with the provisions of this Rule, except those accounts exempted under section (h)(7) below. The lawyer shall have no right or claim to such interest or dividends, and may not otherwise receive any financial benefit or other economic concessions relating to a banking relationship with the institution where any account is maintained pursuant to this Rule.**

* All pooled trust accounts must be kept in a bank in Delaware and maintained in accordance with IOLTA provisions of **Rule 1.15(h)**.

**Rule 1.15 (h)**

**Lawyers may maintain IOLTA Accounts only in financial institutions that are approved by the Lawyers’ Fund for Client Protection pursuant to Rule 1.15A of these Rules, and are determined by the Delaware Bar Foundation (the Foundation) to be “eligible institutions”. Eligible institutions are defined as those institutions that voluntarily offer a comparable interest rate on IOLTA Accounts and meet the other requirements of this Rule. A comparable interest on IOLTA Accounts means a rate that is no less than the highest rate of interest or dividends generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the comparable interest rate or dividend, an eligible institution may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting rates of interest or dividends for its customers, provided that such factors do not discriminate against IOLTA Accounts.**

**(1) An eligible institution may satisfy the comparable interest rate requirement by electing one of the following three options:**

**(A) establish the IOLTA Account as the comparable interest rate product;**

**(B) pay the comparable interest rate on the IOLTA Account in lieu of actually establishing the IOLTA Account as the comparable interest rate product; or**

**(C) pay the “Safe Harbor Rate” on the IOLTA Account (as posted on the Foundation’s website). Until redetermined by the Foundation, the Safe Harbor Rate is the higher of 0.65% per annum or 65% of the Federal Funds Target Rate as of the first day of the IOLTA Account earnings period, net of Allowable Reasonable Service Charges and Fees (as defined in section (h)(5) below). The Safe Harbor Rate shall be reevaluated periodically, but no more frequently than every six months, by the Foundation to reflect an overall comparable interest rate offered by financial institutions in Delaware and may be redetermined by the Foundation following such reevaluation. Upon any such redetermination, the Foundation shall give at least 90 days advance written notice of the effective date of such redetermination to all eligible institutions maintaining any IOLTA Accounts and by posting on its website. Election of the Safe Harbor Rate is optional and eligible institutions may instead choose to satisfy compliance with this Rule by electing instead either option (A) or (B) above.**

**(2) IOLTA Accounts may be established as:**

 **(A) a business checking account with an automated investment feature in overnight daily financial institution repurchase agreements or money market funds. A daily financial institution repurchase agreement shall be fully collateralized by U.S. Government Securities (meaning U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States Government), and may be established only with an eligible institution that is “well-capitalized” or “adequately capitalized” as those terms are defined by applicable federal statutes and regulations. A “money market fund” is an investment company registered under the Investment Company Act of 1940, as amended, that is qualified to hold itself out to investors as a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act. A money market fund shall be invested solely in U.S. Government Securities, or repurchase agreements fully collateralized by U.S. Government Securities, and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars ($250,000.000).**

 **(B) a checking account paying preferred interest rates, such as market based or indexed rates;**

 **(C) a public funds interest-bearing checking account such as an account used for governmental agencies and other non-profit organizations;**

 **(D) an interest-bearing checking account such as a negotiable order of withdrawal (NOW) account; or business checking with interest; or**

 **(E) any other interest or dividend-bearing account offered by the eligible institution to its non-IOLTA customers, which is commercially reasonable to use for a pooled account of short term or nominal amount funds.**

**(3) Nothing in this Rule shall preclude an eligible institution from paying a higher rate of interest or dividends on IOLTA Accounts than described above or electing to waive service charges or fees on IOLTA Accounts.**

**(4) Interest and dividends on IOLTA Accounts shall be calculated in accordance with the eligible institution’s standard practice for non-IOLTA customers.**

**(5) “Allowable Reasonable Service Charges or Fees” for IOLTA Accounts are defined as per check charges, per deposit charges, an account maintenance fee, automated transfer (“sweep”) fees, FDIC insurance fees, and a reasonable IOLTA administrative fee for the direct costs of complying with the reporting and payment requirements of this Rule. Allowable Reasonable Service Charges or Fees may only be deducted from interest or dividends on an IOLTA Account at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No service charges or fees other than Allowable Reasonable Service Charges and Fees may be assessed against or deducted from the interest or dividends on an IOLTA Account. No Allowable Reasonable Service Charges or Fees on an IOLTA Account for any reporting period shall be taken from interest or dividends earned on other IOLTA Accounts, or from the principal balance of any IOLTA Account. Any fees and service charges (other than Allowable Reasonable Service Charges and Fees deducted from interest on an IOLTA Account), including but not limited to bank overdraft fees, wire transfer fees, remote deposit fees and fees for checks returned for insufficient funds, shall be the sole responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Nothing in this Rule shall prohibit a lawyer or law firm maintaining an IOLTA Account from recouping fees charged to their IOLTA Account from the appropriate client on whose behalf the fee was incurred and as otherwise provided for in the Rules of Professional Conduct.**

**(6) Lawyers or law firms depositing client or third party funds in an IOLTA Account under this paragraph (h) shall direct the eligible institution:**

 **(A) to remit interest monthly, or, with the consent of the Foundation, quarterly (net of any Allowable Reasonable Service Charges or Fees), computed on the average monthly balance in the account or otherwise computed in accordance with the institution’s standard practices, provided that the eligible institution may elect to waive any or all such charges and fees;**

 **(B) to transmit with each remittance to the Foundation a report in a form and through any reasonable manner of transmission approved by the Foundation showing the name of the lawyer or law firm on each IOLTA Account whose remittance is sent, the IOLTA Account number for each account, the amount of interest attributable to each IOLTA Account, the time period covered by the report, the rate of interest or dividend applied, the amount and type of Allowable Reasonable Service Charges or Fees deducted, if any, the average account balance for the period for which the report was made, the net amount of interest remitted for the period and such other information as may be reasonably required by the Foundation; and**

 **(C) to transmit to the depositing lawyer or law firm a statement in accordance with normal procedures for reporting to depositors of the eligible institution.**

**(7) Any IOLTA Account which has not or cannot reasonably be expected to generate interest or dividends in excess of Allowable Reasonable Service Charges or Fees, may, under criteria established by the Foundation, be exempted by the Foundation from required participation in the IOLTA program. Exemption of an IOLTA account from the IOLTA program revokes the permission to use the Foundation’s tax identification number for that account. The lawyer or law firm whose account has been exempted will annually certify to the Supreme Court, as part of its Annual Certificate of Compliance, that the lawyer or law firm expects no material increase in activity in its exempted trust/escrow account during the 12 months following the date of the filing of the Certificate. The Foundation will review exempted accounts and may revoke the exemption if it determines that the account can generate interest or dividends in excess of Allowable Reasonable Services Charges and Fees.**

**(8) In order for the Foundation to be able to determine that all pooled trust/escrow accounts are properly identified by the eligible institutions, each lawyer or law firm that maintains a pooled trust/escrow account is deemed to have authorized the Foundation to have access to the pooled trust/escrow account-related information contained within its Annual Certificate of Compliance, filed annually with the Supreme Court. In addition, when a lawyer or law firm requests an eligible institution to open an IOLTA Account, the lawyer or law firm will submit the request in writing to the institution, using the designated form letter located on the Foundation’s website, with a copy of said letter to be sent to the Foundation by the lawyer or law firm.**

**(9) Should the Foundation determine that an IOLTA Account of a financial institution has failed to comply with the provisions of this Rule, the Foundation shall notify the affected lawyer or law firm and the financial institution of such failure to comply, specifying the corrective action needed, with a reasonable time specified by the Foundation for the compliance to be achieved, but no longer than 90 days. Should compliance not be achieved within the time specified, the Foundation shall notify the affected lawyer or law firm, the financial institution and the Office of Disciplinary Counsel.**

**Rule 1.15(i)**

**The funds transmitted to the Foundation shall be available for distribution for the following purposes:**

 **(1) To improve the administration of justice;**

 **(2) To provide and to enhance the delivery of legal services to the poor;**

 **(3) To support law related education;**

 **(4) For such other purposes that serve the public interest;**

**The Delaware Bar Foundation shall recommend for the approval of the Supreme Court of the State of Delaware, such distributions as it may deem appropriate. Distributions shall be made only upon the Court’s approval.**

* IOLTA accounts may only be kept in banks approved by the LFCP. LFCP maintains a list of approved banks.
* See **Rule 1.15(h)(1)-(9)** for specific regulations as to what constitutes an IOLTA account and/or acceptable IOLTA institution.
* The Delaware Bar Foundation may distribute IOLTA funds as outlined.

**Rule 1.15 (j)**

**Lawyers or law firms, depositing client or third party funds in a pooled trust/escrow account under this paragraph shall not be required to advise the client or third party of such deposit or of the purposes to which the interest accumulated by reason of such deposits is to be directed.**

* Lawyers are not required to tell clients their trust funds are maintained in an IOLTA account.

**Rule 1.15 (k)**

**A lawyer shall not disburse fiduciary funds from a bank account unless the funds deposited in the lawyer’s fiduciary account to be disbursed, or the funds which are in the lawyer’s unrestricted possession and control and are or will be timely deposited, are good funds as hereinafter defined. "Good funds" shall mean:**

 **(1) cash;**

 **(2) electronic fund ("wire") transfer;**

 **(3) certified check;**

 **(4) bank cashier's check or treasurer's check;**

 **(5) U.S. Treasury or State of Delaware Treasury check;**

**(6) Check drawn on a separate trust or escrow account of an attorney engaged in the private practice of law in the State of Delaware held in a fiduciary capacity, including his or her client's funds;**

**(7) Check of an insurance company that is authorized by the Insurance Commissioner of Delaware to transact insurance business in Delaware;**

 **(8) Check in an amount no greater than $ 10,000.00;**

**(9) Check greater than $ 10,000.00, which has been actually and finally collected and may be drawn against under federal or state banking regulations then in effect;**

**(10) Check drawn on an escrow account of a real estate broker licensed by the state of Delaware up to the limit of guarantee provided per transaction by statute.**

* Lawyer shall not disburse funds from account unless they are “Good funds” as identified in 1.15(k).