



The Law Society of
Upper Canada | Barreau
du Haut-Canada

The Bookkeeping Guide

FOR LAWYERS

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Table of Contents

PREAMBLE.....	3
INTRODUCTION: WHY KEEP BOOKS AND RECORDS?	3
TYPES OF ACCOUNTING SYSTEMS	4
BANK ACCOUNTS IN A LAW PRACTICE	4
General Retainers	5
Cash Receipts.....	5
1. General Account.....	6
2. Trust Accounts.....	6
a) Mixed Trust Account	7
b) Separate Interest Bearing Trust Account.....	8
c) Estate and Power of Attorney Accounts	9
d) E-reg© Trust Account.....	9
FINANCIAL INSTITUTIONS FOR LAWYERS' TRUST ACCOUNTS	10
MAINTAINING FINANCIAL RECORDS	11
1. Six Years	11
2. Ten Years.....	11
DISBURSING TRUST FUNDS	12
1. Cheques vs Bank Drafts	13
2. Internet Trust Disbursements.....	14
3. Internet Trust Disbursements for Real Estate Transactions	15
CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS.....	16
CREDIT AND DEBIT CARD PAYMENTS	16
AUTOMATED BANKING MACHINES	16
CONCLUSION	17
SAMPLE BOOKS & RECORDS	18
1. Trust Receipts Journal.....	18
2. Trust Disbursements Journal	19
3. Clients' Trust Ledger.....	20
4. Trust Transfer Record.....	22
5. General Receipts Journal	22
6. General Disbursements Journal.....	23
7. Clients' General Ledger	24
8. Fees Book	26
9. Trust Bank Reconciliation, Client Trust Listing and Trust Comparison	27
10. a) Detailed Duplicate Trust Account Deposit Slip	30
10. b) Detailed Duplicate General Account Deposit Slip.....	31
11. Duplicate Cash Receipts Book.....	32
12. a) Client Identification and Verification (individual client) - s 23 By-Law 7.1	33
12. b) Client Identification and Verification (organization) - s 23 By-Law 7.1	34
13. Valuable Property Record.....	36

APPENDICES

BY-LAW 9	38
FORM 9A	58
SAMPLE COMPLETED FORM 9A	59
FORM 9B	60
SAMPLE COMPLETED FORM 9B	61
FORM 9C	62
SAMPLE COMPLETED FORM 9C	63
FORM 9D	64
SAMPLE COMPLETED FORM 9D	67
FORM 9E	71
SAMPLE COMPLETED FORM 9E	74
SAMPLE LETTER OF DIRECTION TO THE LAW FOUNDATION OF ONTARIO	77
FORM 2: REPORT ON OPENING A MIXED TRUST ACCOUNT	78
FORM 2: REPORT ON OPENING A MIXED TRUST ACCOUNT	79
PAYMENT OF REGISTRATION FEES AND LAND TRANSFER TAX	80
INTERNAL CONTROL SELF ASSESSMENT GUIDE	86
USE OF CREDIT CARDS IN THE LEGAL PRACTICE	96
PRIVATE MORTGAGES - RECORD KEEPING	99
ESTATES - FINANCIAL RECORD KEEPING	103

The Bookkeeping Guide

PREAMBLE

We have written this Guide to help lawyers of the Law Society of Upper Canada and their staff cope with the more common bookkeeping issues in a law office and also to better understand the Law Society's By-Law 9 (See pages 34-53). While written especially with sole practitioners and small firms in mind, these recommendations can be used in any size law office. **The Guide provides general advice; it does not cover every possible situation that can arise in a law office and it is not legal advice.** If you have questions about the By-Laws, you can call the Law Society Resource Centre at 416-947-3315 or toll free in Ontario 1-800-668-7380 ext. 3315. You can also check the Law Society's Web site: www.lsuc.on.ca. If you have specific bookkeeping, accounting or tax questions, we suggest that you consult an accountant or lawyer who practices in these areas.

INTRODUCTION: Why Keep Books and Records?

There are several reasons to keep books and records:

The Law Society sets out in By-Law 9, the *minimum* requirements for books and records to be maintained in a law practice. The minimum requirements are aimed at protection of the public and therefore focus on trust records.

General trust law requires trustees, including lawyers holding client funds, to be able to account to beneficiaries at any time. In order to do this, you have to have recorded the money you received from each client, what money you disbursed for each client, and what the unexpended balance is for each client. You also have to keep your bank statements as an independent record (source document) of your trust transactions.

But the most important reason to keep books and records is because it is in *your* best interest. By maintaining complete, accurate and up to date records, you will have current financial information available so you can make sound financial decisions about your practice. Proper accounting records also help you to meet your statutory obligations in filing reports on time to the Canada Revenue Agency for income tax and HST, to the Lawyers Professional Indemnity Company for transaction levies, and to the Law Society and The Law Foundation of Ontario for your Annual Report.

TYPES OF ACCOUNTING SYSTEMS

There are several different kinds of accounting systems: manual double entry, one write, spreadsheet software, general accounting software, and law firm accounting software. When choosing an accounting system you should consider what will work best in your practice - the number of transactions you have, whether you maintain your records yourself or hire someone to do them for you, what you can afford, and how well you understand bookkeeping and computer programs. Please note that the Law Society cannot make this decision for you. You must determine what system is right for you and your practice.

TYPE OF SYSTEM	ADVANTAGES	DISADVANTAGES
manual double entry	<ul style="list-style-type: none"> - simple - inexpensive 	<ul style="list-style-type: none"> - time consuming if large number of transactions - does not automatically post to subledgers - arithmetic errors more common
one write	<ul style="list-style-type: none"> - simple - inexpensive - posts to subledgers 	<ul style="list-style-type: none"> - time consuming if large number of transactions - arithmetic errors more common
spreadsheet software	<ul style="list-style-type: none"> - inexpensive - automatic calculations 	<ul style="list-style-type: none"> - time consuming if large number of transactions - requires training - errors due to incorrect formulae are more difficult to detect
general accounting software	<ul style="list-style-type: none"> - automatic calculations - posts to subledgers - produces financial reports 	<ul style="list-style-type: none"> - reports not designed for trust accounting - requires training
legal accounting software	<ul style="list-style-type: none"> - designed for trust accounting - automatic calculations - posts to subledgers - produces financial reports 	<ul style="list-style-type: none"> - expensive - requires training

BANK ACCOUNTS IN A LAW PRACTICE

You may have as many bank accounts as you need to operate your practice, but keep in mind that each bank account increases your record keeping obligations.

Most law firms will have at least one general account and one mixed trust account. It is important to understand what money goes into your trust account and what money goes into your general account.

Whenever you receive money:

- on behalf of a client
- for future disbursements
- for future or unbilled legal services
- an overpayment of your billed services

you are to pay it immediately into a trust account. Once you receive trust funds you should deposit them by the end of the next banking day. In the case of an overpayment of your billed services, you must transfer the amount that belongs to you to your general account as soon as practical. Depending on the client's instructions, you could either hold the overpayment in trust for the client for future fees and disbursements or return it to the client.

Whenever you receive money that is entirely:

- payment for completed legal services for which you have sent the client a bill
- reimbursement for proper expenses you have made on behalf of a client
- your or your firm's money
- a general monetary retainer

you are *not* to pay it into your trust account. This money would normally be deposited into your general account.

A WORD ABOUT GENERAL MONETARY RETAINERS

Before deciding that a payment is a general retainer, you should be aware that the Law Society has established the following criteria for general monetary retainers:

1. the onus is on you to establish that the retainer is a *bona fide* general retainer;
2. a written agreement between you and your client which describes the payment as a general retainer, will not be accepted as conclusive, and the circumstances surrounding the payment will be scrutinized carefully;
3. it will be concluded that a retainer is a specific retainer which must be deposited in your trust account where your client does not understand the nature of the general retainer agreement and intended the payment to cover specific legal services to be provided, and where the total amount paid by the client, including the general retainer, is comparable to your usual fee for the services provided.

General monetary retainers are extremely rare as clients are likely to expect that any payment to their lawyer is intended to go toward payment of their legal fees.

CASH RECEIPTS

When you receive cash, whether in trust or for your general account, you must prepare a duplicate cash receipt that identifies:

- the date of receipt
- the person from whom the cash is received
- the amount of cash received
- the client for whom the cash is received and any related file number

and containing:

- your signature or the signature of a person authorized by you to accept cash
- the signature of the person from whom the cash is received

There is a sample duplicate cash receipt in the Sample Books and Records section of this Guide: document #11.

Please note that you may not accept cash equivalent to \$7,500 Cdn or more, from a person with respect to any one client file except as permitted by section 6 of By-Law 9.

1. General Account

The general account is your firm's operating account. This is the account you use to:

- deposit payments from clients you have billed for completed legal services
- pay your firm's expenses: rent, office supplies, staff salaries, bank charges, etc.
- pay disbursements on behalf of your clients
- pay yourself

No money belonging to clients should be in this account.

Try to avoid using a personal account as your firm's general account. Whatever accounts you use for your practice must be produced on an audit. Personal accounts may not have the bank statements, returned cheques and duplicate deposit slips you are required to keep. For convenience it is usually best to have your general bank account at the same financial institution as your trust account.

2. Trust Accounts

The trust account is for your clients' money, so if you do not receive trust funds in your practice you do not need to open a trust account. Trust accounts are only to be used for the provision of legal services: Rules of Professional Conduct 5.0.2

Trust accounts are the accounts you use, for purposes related to the provision of legal services, to:

- deposit money you receive from your clients to be paid to another party
- deposit money you receive from other parties on behalf of your clients
- deposit money you receive from clients for future legal services and disbursements
- disburse money as directed by your clients
- reimburse your firm for proper expenses you have made on behalf of your clients
- transfer money to your general account for fees *after* you have sent a bill to your client for completed legal services

Avoid trust funds languishing in trust accounts. You should review your client trust ledger accounts monthly. Any amounts that can be billed and transferred to the general account or refunded to the client should be done promptly. If the trust reconciliation shows cheques that have been outstanding for more than a few months, follow up with the payees to find out whether they received the cheques. Once a cheque is stale dated, (*i.e.* has not been cashed within six months from the date of the cheque), you should stop payment on the cheque, re-establish the liability in the client trust ledger account for the applicable client, and reissue the cheque if appropriate. If you are unable to locate the client, despite having made reasonable efforts to do so throughout a period of two years, you can apply to pay the money to the Law Society's Unclaimed Trust Fund. Information on the fund and the Application Form can be found on the Law Society website.

There are different kinds of trust accounts:

2. *a) Mixed Trust Account*

The most common type of trust account in a law office is called a "mixed" or "pooled" trust account. These trust accounts are any accounts that hold money for more than one client. When opening a mixed trust account, you must give a written direction to your financial institution to pay any interest on the account directly to The Law Foundation of Ontario. You should send a copy of this letter to the LFO. Also, within 30 days of opening a mixed trust account, you must send Form 2 to the Foundation. Within 30 days of closing a mixed trust account you must send Form 3. There are a sample letter of direction, Form 2, and Form 3 in the Appendices.

Make sure that the agreement you sign when opening a mixed trust account directs the institution to deduct any service charges for your trust account from your general account and does not allow the financial institution to remove any money from your trust account on its

own. However, if you deposit a cheque to your trust account and it is returned “not sufficient funds” or NSF, your financial institution will deduct that amount from your account because your financial institution never received the money. Be careful not to disburse funds from your trust account on behalf of a client until the cheques for that client have cleared, that is, your financial institution has received the money from your client’s financial institution. You should check with your financial institution to find out how many days it requires to clear a cheque.

Whenever you receive trust funds, you must immediately deposit them into a trust account that is in your name or in the name of the firm where you are either a partner or an employee. You should deposit any trust money you receive by the end of the next banking day. If you are a sole practitioner practising in association with other lawyers, you must have your own separate trust account and separate books and records for your trust transactions. Your trust account should be clearly identified as “trust” on your bank statement and cheques.

By May 30 each year, you should contact your bank branch to update the information on the beneficiaries of any mixed trust accounts as of April 30 of that year, for Canada Deposit Insurance Corporation (CDIC) purposes; eligible deposits are insured up to a maximum of \$100,000 per beneficiary (*i.e.* client) of the trust account. Please contact your bank branch or the CDIC for details or consult the CDIC website for specific information about solicitors’ trust accounts and The Joint and Trust Disclosure By-Law:

http://www.cdic.ca/e/Joint_and_Trust_Account_Disclosure_By-law.html

2. b) Separate Interest Bearing Trust Account

This type of trust account holds trust funds for only one client. Typical separate interest bearing accounts are passbook accounts, GICs, and Term Deposits. The interest on these accounts belongs to the client and should be recorded in your trust receipt records as it is earned for each client. Similarly, any service charges are charged to the clients and recorded as disbursements for those clients. You should ensure that the account is set up in your or your firm’s name in trust for [client name].

Whenever you are going to be holding large sums of money for a client for an extended period of time, you should discuss with the client whether he or she wants interest on the money. You should get the client’s instructions in writing, taking care that the client is not looking to you for investment or financial advice.

If the client does instruct you to put his or her money in a separate interest bearing account, consider whether the money will be required on short notice since some investments have reduced or no interest on early redemption. Also, decide how interest will be handled and record the client's S.I.N. and/or corporate number for allocation of interest income for income tax.

Be careful when funds are in dispute; for instance, the proceeds of the sale of a matrimonial home following a separation or divorce. Some lawyers end up holding these funds for years while the parties negotiate. When you are asked to hold funds in an interest bearing account, consider getting written instructions from all parties that allow you to charge a monthly fee for administering the funds if the parties have not agreed on the disposition of the funds within a reasonable time, for example, three to six months.

2. c) Estate and Power of Attorney Accounts

If you exercise a power of attorney, or have sole signing authority over estate assets as a sole estate trustee or as a solicitor with control of the estate assets, you must keep proper trust accounting records. You should consider placing the estate funds in a separate bank account in the name of the estate, if you are the estate trustee, or in the name of your firm in trust for the estate, if you are the solicitor controlling the estate funds. If you are a co-estate trustee and are not maintaining the estate books and records, you should ensure that proper trust accounting records are kept, that you receive a copy of these records, and that you review them for accuracy at least monthly, since estate accounts are a responsibility of the estate trustee. Similarly, if you exercise a power of attorney over a client's bank account, you should keep complete trust accounting records of all transactions for which you are responsible and reconcile these accounts monthly. See the Appendices for more information on estate financial record keeping.

2. d) E-reg© Trust Account

These are special trust accounts you set up to authorize Teranet to withdraw the registration fees and land transfer tax for electronic registrations in Ontario's land registry system.

These accounts are mixed trust accounts, and you must direct your financial institution to pay the interest on these accounts to The Law Foundation of Ontario.

E-reg© trust accounts also have very specific rules:

- direct deposits or transfers from your regular mixed trust account must be the exact amounts for land transfer tax and registration fees

- you must transfer the funds deposited to this account for any one transaction back to your regular mixed trust account if you do not register the documents within five days
- you must complete a separate Form 9B before each Teranet withdrawal from this account (For a sample completed Form 9B see page 57)
- you must print the confirmation of the Teranet withdrawal from this account, compare it to the corresponding Form 9B for accuracy, and sign and date the confirmation.

See sections 15, 16, and 17 of By-Law 9 in the Appendices.

Note: You do not have to use a trust account for your e-reg© account; you may use a general account. None of the restrictions described in sections 15, 16, and 17 of By-Law 9 apply to a general e-reg© account, but you must complete the electronic registration *before* you transfer the client's funds from your regular mixed trust account to your general e-reg© account to *reimburse* your firm for the registration fees and land transfer tax. It is a good idea to arrange adequate overdraft protection on this account.

For a more detailed discussion of the use of trust and general accounts as e-reg© accounts, see *Payment of Registration Fees and Land Transfer Tax* in the Appendices.

FINANCIAL INSTITUTIONS FOR LAWYERS' TRUST ACCOUNTS

Your trust accounts must be kept at one of the following institutions:

- chartered bank
- provincial savings office
- credit union or league subject to the *Credit Unions and Caisse Populaires Act, 1994*
- registered trust corporation

When opening a trust account, check with the financial institution to make sure

- it has an agreement with The Law Foundation of Ontario for the payment of interest on mixed trust accounts
- it can provide you with the monthly bank statements and returned cheques, including certified cheques, as required by By-Law 9 (imaged cheques, clearly showing front and back of cashed cheques, are acceptable)

A client might ask you to hold trust funds in an account that is not at one of the above-noted institutions. For example, the client could ask you to hold the trust funds in Treasury Bills or a money market fund. In these situations, section 8 of By-Law 9 requires you to get written instructions from your client to pay the money into a non guaranteed trust investment. This money, however, must be recorded in your trust records as it is still your client's money and considered trust funds for the purposes of By-Law 9.

The same precautions that apply to separate interest bearing trust accounts also apply to these types of investments. These kinds of investments are generally not guaranteed, so you will want to be sure your client understands the nature of the investment and whether there will be sufficient funds available when the client needs them before accepting your client's written instructions.

MAINTAINING FINANCIAL RECORDS

You must keep your financial records available for the time periods set out in section 23 of By-Law 9. This means you must keep the records described in section 18 of By-Law 9 for:

1. *The most recent six (6) full years plus the current year:*

- record of transfers between clients' trust ledger accounts
- General account receipts and disbursements journals
- fees book or chronological file of bills to clients
- signed authorizations of withdrawals by Teranet (Form 9B)
- signed paper copies of confirmations of Teranet withdrawals
- book of duplicate cash receipts

2. *The most recent ten (10) full years plus the current year:*

- Trust account receipts and disbursements journals
- client trust ledger
- monthly trust comparisons for all trust accounts supported by trust account reconciliations and client trust listings
- valuable property record
- bank statements, including GIC, term deposit or other bank confirmations; pass books; cashed cheques, including certified cheques and any imaged cheques if provided by your financial institutions in place of the actual cheques; detailed duplicate deposit slips
- signed requisitions for electronic transfers of trust funds (Form 9A)
- signed printed confirmations of electronic transfers of trust funds

While By-Law 9 obliges you to keep your records current at all times, ensuring your financial records are accurate, legible, detailed, and up to date will help you to run your law practice more efficiently. It can be very costly both in time and money and can damage your client relationships to let your records fall into arrears. See the "Sample Books and Records" in this booklet for some examples of financial records required by section 18 of By-Law 9.

While section 21 of By-Law 9 permits you to keep your financial records electronically, you must be able to produce paper copies of your records for the Law Society for the time periods described above. We suggest you print your journals and records monthly to avoid the all too common problems with computer crashes, data corruption and software update incompatibility. If you prepare any of your financial records by hand they must be permanent, *i.e.* in ink.

Keep in mind that whether you do your own record keeping, assign it to a staff member or retain a bookkeeper or accountant to maintain it, *you*, (and your partners if any), are responsible for ensuring that your firm maintains the required records and follows the money handling requirements in By-Law 9. You should ensure that whoever is maintaining your accounting records is familiar with the Law Society's By-Law 9. Some items you and your staff should be vigilant about are:

- overdrawn or inactive client trust ledger accounts
- uncorrected or unexplained reconciling items on the trust bank reconciliations
- trust receipts and deposits outstanding beyond the following banking day
- review of the trust comparison for accuracy by the 25th of the following month

You should ensure that you have control of your accounting records at all times and that they are kept secure and confidential.

Consult the sample Internal Control Self Assessment Guide in the Appendices for these and other internal controls appropriate for your office, especially if your firm handles client trust funds, to ensure you and your staff are following the correct record keeping and money handling procedures.

DISBURSING TRUST FUNDS

It is important to have an audit trail, recording each step and preserving original and supporting documentation (source documents), for all transactions in a business, but especially if you handle client trust funds. A licensee of the Law Society who is permitted to handle trust funds must always initiate a trust disbursement and do so in writing, which then becomes part of the accounting records. Undischarged bankrupt licensees are not permitted to handle or have trust accounts in their names (section 2 of By-Law 9).

Section 9 of By-law 9 allows you to withdraw trust funds you are holding for a client for the following reasons *only*:

- to make a proper payment to or on behalf of the client
- to reimburse your firm for proper expenses incurred on behalf of the client
- to pay your firm fees for completed legal services for which you have sent a fee bill to the client
- to transfer funds to another trust account for a client
- to withdraw funds that according to By-Law 9 should not have been deposited to the trust account

You may disburse trust funds by cheque, bank draft and wiring funds through your bank. You may disburse trust funds by internet banking only if you follow the requirements of section 12 of By-Law 9. If you withdraw trust funds to pay your fees and/or disbursements, section 10 of By-Law 9 limits you to the follow methods: a cheque payable to you or your law firm, transfer to a non trust account in your or your firm's name, electronic transfer. Withdrawing trust funds in cash is risky and should only be done on the client's written instructions; but note that if you received fees, disbursements, expenses, or bail in cash, Section 6(e) of By-Law 9 requires that you make any refund of those payments in cash. You should always get a detailed receipt signed by the payee for any cash disbursement.

Do not disburse trust funds from an automated teller machine, as you will not have an adequate audit trail. Always check your clients' trust ledger to ensure you hold sufficient funds in trust for a particular client before disbursing funds for that client. You should confirm your financial institution's holding periods on funds to be sure cheques you have deposited from clients have cleared and will not be returned NSF (not sufficient funds).

1. Cheques vs Bank Drafts

You should be aware that cheques leave a better audit trail than bank drafts. Cashed cheques, including certified cheques, are your records and you must arrange for your financial institution to return them to you with your bank statements each month. Some financial institutions provide imaged cheques which are sent to your firm electronically. Bank drafts are the financial institution's records. Financial institutions do not usually retain their original records for the ten year time period that you are required to keep your bank records. Returned cheques confirm that the funds have cleared and have the endorsement details on the back. Your copy of a bank draft will not confirm any of this information and you may have to spend time and money to obtain a copy of the bank draft from your financial institution to prove payment.

If you have any doubts about the validity of a cheque, certified cheque, money order, bank draft, or other receipt to be deposited to your mixed trust account, you might want to consider depositing it to a separate trust account; if the instrument does turn out to be fraudulent, your mixed trust account will not be affected. Be vigilant not disburse any trust funds until your financial institution can assure you that the funds have cleared. Different institutions have different clearing periods depending on the source of the funds. For time sensitive disbursements, consider the Large Value Transactions System: see the FAQs on the Canadian Payments association web site and LVTS article on the LawPRO website.

You must not issue trust cheques or bank drafts payable to “cash” or “bearer” (section 11 of By-law 9) and you should withdraw cash from the trust account only when necessary (e.g. refunds of fees, disbursements, expenses, or bail paid in cash as per section 6(e) of By-Law 9), or on the client’s written direction, and always obtain a detailed receipt for your audit trail.

2. *Internet Trust Disbursements*

If you disburse any funds by Internet banking, you must follow the procedure set out in section 12 of By-Law 9:

- complete a Form 9A for each client transaction (See the Appendices for a sample completed Form 9A)

(This Form must be signed by a person who has signing authority on your trust account. Except for exceptional circumstances, this must be a licensee of the Law Society who is entitled to hold trust funds.)

- one person using a password, enters the transfer data as set out in the Form 9A
- another person with a separate password, authorizes the transfer

(A sole practitioner without employees may both enter the data and authorize the transaction.)

- print the electronic confirmation of the transaction that must include:
 - i. your trust account number
 - ii. name, branch, and address of the account to which the funds have been transferred
 - iii. name of the account to which the funds have been transferred
 - iv. number of the account to which funds have been transferred
 - v. time and date the transaction details and authorization were received by your financial institution
 - vi. time and date the confirmation of the transaction is sent to you from the financial institution

(While this confirmation must be obtained by the end of the next banking day, realistically it may not be available unless it is printed immediately.)

- no later than the close of the second banking day after the transaction,
 - i. compare the Form 9A with the printed confirmation and verify that the money was withdrawn as specified in the Form 9A
 - ii. write the client name, client matter and any file number on the printed confirmation
 - iii. sign and date the printed confirmation.

Both the Form 9A and printed confirmation should be kept in numerical order by requisition number with your financial records. You may want to keep a copy in the client's file as well.

3. *Internet Trust Disbursements for Real Estate Transactions*

Section 13 of By-Law 9 has a specific procedure for electronically disbursing "closing funds", which are defined as "money necessary to complete or close a transaction in real estate". The procedure requires that you:

- complete and sign a Form 9C for each client transaction prior to the transfer (see the Appendices for a sample completed Form 9C) *(This Form must be signed by a person who has signing authority on your trust account.)*
- use an electronic transfer system that requires a password
- use an electronic transfer system that immediately produces a confirmation of the transfer
- print the confirmation which must have the following information:
 - i. the name of your account
 - ii. the number of your account
 - iii. the name of the account to which the closing funds are transferred
 - iv. the number of the account to which the closing funds are transferred
 - v. the date of the transfer

By 5:00 p.m. on the day after the transfer, you must compare the printed confirmation with the Form 9C and satisfy yourself that the transfer was completed in accordance with your directions in the Form 9C. You must then write the name of the client, the subject matter, and number of the file on the confirmation; then sign and date the confirmation. The Form 9C and confirmations should be kept in numerical order by requisition number with your accounting records. You may also want to keep copies in the client file. As noted above in the section on

Cheques vs Bank Drafts, you might want to consider the LVTS system and/or the Teranet Closure service for time sensitive money transfers.

CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS - BY-LAW 7.1 PART III

As of December 31, 2008, subsection 22(1) of By-Law 7.1 requires that you obtain specific details identifying your clients for all new client matters; and if you receive, pay or transfer funds, or if you give instructions to receive, pay or transfer funds, then you are also required to obtain verification of the client's identification. You should review section 23 of By-Law 7.1 for the specific identification and verification requirements and subsections 22(2), (3) and (4) for exemptions for certain licensees, types of funds, and certain clients. You should familiarize yourself with the definitions in section 20 and also for how long you must keep the client identification and verification information as set out in subsection 23(14) of the By-Law. There are sample completed identification forms for individuals and organizations in the Sample Books and Records and you can find more Law Society resources and further information on the Society web site at: <http://rc.lsuc.on.ca/pdf/kt/clientIDLawyers.pdf>

CREDIT AND DEBIT CARD PAYMENTS

If you accept credit or debit card payments from clients, you must make arrangements with your financial institution to have retainers for future fees and disbursements paid directly into your trust account and payments for your fee bills to clients paid directly into your general account. You will likely need two merchant accounts to accomplish this. You cannot deposit both retainers and payments into one account then immediately transfer the funds that do not belong in that account to your other account. If you accept both types of payment by debit card, you will have to use two machines, one for your trust account and one for your general account. See the Appendices for "*Use of Credit Cards in The Legal Practice*".

AUTOMATED BANKING MACHINES

If your financial institution offers ABM access to your trust account, you may use it for deposits only. Ensure that your bank card is encoded for deposit only. Read the agreement carefully and make sure you understand the risks involved in using this method of deposit. In some agreements the depositor is responsible for the funds until they are received by a bank representative. You should always print a receipt of an ABM deposit and write the source of the funds and the client reference on the receipt, and keep the receipts in date order with your deposit slips.

CONCLUSION

We hope you find the information provided in this Guide assists you in maintaining the books and records of your practice. Remember it is *your* responsibility as a Licensee of the Law Society to ensure your law firm is in compliance with the *Rules of Professional Conduct* and the Law Society's By-Laws. Keeping clear, complete, and current financial records not only helps you to stay in compliance with the Law Society's Rules and By-Laws, it will also make your practice operate more efficiently and allow you to provide better service to your clients. If you have any questions or comments on this Guide, please contact the Resource Centre at 416-947-3315, toll free in Ontario 1-800-668-7380 ext. 3315, or visit the Law Society's website at www.lsuc.on.ca.

SAMPLE BOOKS & RECORDS

The following are examples of financial records described in By-law 9, showing how you can manually record the typical kinds of trust transactions that occur in a law office.

1. Trust Receipts Journal - ss 18(1)

For each amount you receive in trust for a client, you must record:

- date you received the money
- method by which you received the money, for example: cheque, certified cheque, bank draft, money order, wire transfer, LVTS, cash, etc
- person from whom you received the money
- amount you received
- purpose for which you received the money (*By-Law amendment 28Apr11*)
- name of the client for whom you received the money

Leslie Lawyer Barrister & Solicitor TRUST RECEIPTS JOURNAL				
Date 2010	Received from: (Source of funds)	Client Purpose of funds	Amount	Method
Jul 5	Peter Piper	Piper re Corporate Retainer re: fees	565.00	Chq
Jul 7	Susan Silver	Silver re Adoption Retainer re: fees	750.00	Chq
Jul 16	Peter Piper	Piper re Matrimonial Retainer re: fees	1,500.00	Chq
Jul 30	Peter Piper	Piper re Matrimonial Retainer re: fees	250.00	Cash
Aug 6	Peter Piper	Piper re Matrimonial Retainer re: fees	250.00	Cash
Aug 30	Kim Kirby	Kirby re Loan to Taylor Re: mortgage advance	40,000.00	Cert chq
Aug 31	Peter Piper	Piper re Matrimonial Retainer re: fees	250.00	Cash

2. Trust Disbursements Journal – ss 18(2)

For every payment you make from the trust account, you must record:

- date you made the payment
- method you used to make the payment, for example: cheque, certified cheque, bank draft, electronic trust transfer, etc
- number of the document you used to make the payment, for example: cheque number, bank draft number, electronic trust transfer requisition number
- person to whom you made the payment
- amount of the payment
- purpose for which you disbursed the money (*By-Law amendment 28Apr11*)
- name of the client on whose behalf you made the payment

Leslie Lawyer Barrister & Solicitor TRUST DISBURSEMENTS JOURNAL				
Date 2010	Method / #	Paid To: (Person money paid to)	Client & Purpose of payment	Amount
Jul 14	Chq #001	Leslie Lawyer	Piper re Corporate Re: legal fees - Inv #002	565.00
Aug 12	Chq #002	Leslie Lawyer	Piper re Matrimonial Re: legal fees - Inv #004	1,130.00
Aug 12	Chq #003	Leslie Lawyer	Silver re Adoption Re: fees - Inv #005	678.00
Aug 31	Chq #004	Treasurer of Anytown	Taylor re Mortgage Re: Realty tax arrears	5,500.00
Aug 31	Chq #005	Metro Mortgage Co.	Taylor re Mortgage Re: Payout existing mtg	33,742.83
Aug 31	Chq #006	Terry Taylor	Taylor re Mortgage Re: balance of mtg advance to mtgor	233.87
Sep 7	Chq #007	Leslie Lawyer	Taylor re Mortgage: 523.30 Re: fees & disb - Inv #006 Piper re Matrimonial: 1,120.00 Re : fees - Inv #007	1,643.30

Note: The trust receipts journal and trust disbursement journal can be combined into one journal, often called the “Trust Bank Journal”.

3. Clients' Trust Ledger – ss 18(3)

Every time you record a trust receipt or payment in the trust receipts journal or trust disbursements journal, you must also record the receipt or payment for the specific client in the clients' trust ledger, and calculate the unexpended balance for that client. This way you always know exactly how much you have in trust for each client.

Record every deposit to your trust account in the name of the client on whose behalf you received it. The mixed trust account is for your clients' money. Do not put any of your, or your firm's money, such as a float to cover bank charges, in your trust account. There should be no trust ledger accounts in your name, your firm name, or any other name such as "miscellaneous", "suspense", or "unknown", that is not a client's name. Each client's receipts, disbursements and balance are listed separately so you know how much you have in trust for each client. For convenience, most firms set up separate client trust ledger accounts for each separate matter for the same client so there will be a separate card or account for each client matter. Together, these accounts make the clients' trust ledger. You may keep copies of individual client trust ledger accounts for each client in the client files, but you must keep the entire ledger as part of your accounting records.

Leslie Lawyer Barrister & Solicitor CLIENTS' TRUST LEDGER				
Account: KIRBY, Kim re Loan to Taylor				
Date 2010	Particulars	Receipts	Disbursements	Balance
Aug 30	Mortgage advance	40,000.00		40,000.00
Aug 31	Transfer to Taylor		40,000.00	0

Account: PIPER, Peter re Corporate				
Date 2010	Particulars	Receipts	Disbursements	Balance
Jul 5	Retainer re corporate	565.00		565.00
Jul 14	Transfer to general Invoice #002		565.00	0

Account: PIPER, Peter re Matrimonial				
Date 2010	Particulars	Receipts	Disbursements	Balance
Jul 16	Retainer re matrimonial	1,500.00		1,500.00
Jul 30	Retainer re matrimonial	250.00		1,750.00
Aug 6	Retainer re matrimonial	250.00		2,000.00
Aug 12	Transfer to general Invoice #004		1,130.00	870.00
Aug 31	Retainer re matrimonial	250.00		1,120.00
Sep 7	Transfer to general Invoice #007		1,120.00	0

Account: SILVER, Susan re Adoption				
Date 2010	Particulars	Receipts	Disbursements	Balance
Jul 7	Retainer	750.00		750.00
Aug 11	Transfer to general Invoice #005		678.00	72.00

Account: TAYLOR, Terry re mortgage				
Date 2010	Particulars	Receipts	Disbursements	Balance
Aug 31	Transfer from Kirby	40,000.00		40,000.00
Aug 31	Pay tax arrears		5,500.00	34,500.00
Aug 31	Pay out existing mortgage		33,742.83	757.17
Aug 31	Balance of mortgage loan		233.87	523.30
Sep 7	Transfer to general Invoice #006		523.30	0

4. Trust Transfer Record – ss 18(4)

Whenever trust funds are moved from one client’s trust ledger account to another client’s trust ledger account you must record the transfer and explain the purpose of the transfer.

Leslie Lawyer Barrister & Solicitor TRUST TRANSFER RECORD				
Date 2010	From client	To client	Amount	Reason
Jul 31	Kirby, Kim	Taylor, Terry	40,000.00	Mortgage Loan

5. General Receipts Journal – ss 18(5)

For each amount you receive in your practice that is not trust money, record:

- date you received the money
- method by which you received the money, for example: cheque, certified cheque, bank draft, money order, wire transfer, LVTS, cash, etc
- person from whom you received the money
- amount you received

Leslie Lawyer Barrister and Solicitor GENERAL RECEIPTS JOURNAL			
Date 2010	Received from: (Source of funds)	Amount	Method
Jun 30	Leslie Lawyer	1,000.00	Bank Draft
Jul 14	Transfer from trust re Piper Invoice #002	565.00	Trust Chq #001
Jul 22	Jackie Jones re Invoice #001	113.00	Chq
Aug 11	Transfer from trust re Piper Invoice #004	1,130.00	Trust Chq #002
Aug12	Transfer from trust re Silver Invoice #005	678.00	Trust Chq #003
Aug13	Ricky Ricardo re Invoice #003	339.00	Cash
Sep 7	Transfer from trust re Taylor Invoice #006 - 523.30 Transfer from trust re Piper Invoice #007 - 1,120.00	1,643.30	Trust Chq #007

6. General Disbursements Journal – ss 18(6)

For every payment you make in your practice that is not a trust payment, record:

- date you made the payment
- method you used to make the payment, for example: cheque, certified cheque, bank draft, electronic trust transfer, etc
- number of the document you used to make the payment, for example: cheque number, bank draft number
- amount of the payment
- person to whom you made the payment

Leslie Lawyer Barrister and Solicitor GENERAL DISBURSEMENTS JOURNAL						
Date 2010	Method / number	Paid To: (Person to whom money is paid)	Particulars	Amount	HST² paid	Total paid
Jul 1	Chq #001	Larry Landlord	Rent	500.00	65.00	565.00
Jul 9	Chq #002	Acme Office Supplies	Stationery	200.00	26.00	226.00
Aug 1	Chq #003	Larry Landlord	Rent	500.00	65.00	565.00
Aug 31	PAD #AB123456	Teraview	Client Disb: Taylor, Terry	70.00	1.30	71.30
Sep1	Chq #004	Larry Landlord	Rent	500.00	65.00	565.00
Oct1	Chq #005	Larry Landlord	Rent	565.00	65.00	565.00

7. Clients' General Ledger

By-Law 9 does not require this record, but it is good business practice to do so, since it is useful for keeping track of all the expenses, invoices and payments for each client in one convenient record so you know how much each client owes you. As with the client trust ledger, the details of each separate client matter are usually posted to a separate card or account. We also recommend that you reconcile your general account(s) monthly.

Leslie Lawyer Barrister & Solicitor CLIENTS' GENERAL LEDGER						
Account: JONES Jackie re Legal Advice						
Date 2010	Particulars	Expenses <i>(on behalf of client)</i>	Fees <i>(billed to client)</i>	HST <i>(billed to client)</i>	Payments on Account	Balance owed
Jul 2	Fees - Inv #001		100.00	13.00		113.00
Jul 22	Client re Inv #001				113.00	0

Account: PIPER, Peter re Corporate						
Date 2010	Particulars	Expenses <i>(on behalf of client)</i>	Fees <i>(billed to client)</i>	HST <i>(billed to client)</i>	Payments on Account	Balance owed
Jul 12	Fees - Inv #002		500.00	65.00		565.00
Jul 14	Trust transfer re Inv #002				565.00	0

Account: PIPER, Peter re Matrimonial						
Date 2010	Particulars	Expenses <i>(on behalf of client)</i>	Fees <i>(billed to client)</i>	HST <i>(billed to client)</i>	Payments on Account	Balance owed
Aug 9	Fees - Inv #004		1,000.00	130.00		1,130.00
Aug 12	Trust transfer re Inv #004				1,130.00	0
Sep 7	Fees - Inv #007		1,000.00	130.00		1,300.00
Sep 7	Trust transfer re Inv #007				1,120.00	10.00

Account: RICARDO, Ricky re Contract						
Date 2010	Particulars	Expense <i>(on behalf of client)</i>	Fees <i>(billed to client)</i>	HST <i>(billed to client)</i>	Payments on Account	Balance owed
Jul 30	Fees - Inv #003		300.00	39.00		339.00
Jul 13	Client re Inv #003				339.00	0

Account: SILVER, Susan re Adoption						
Date 2010	Particulars	Expenses (on behalf of client)	Fees (billed to client)	HST (billed to client)	Payments from client	Balance owed
Aug 10	Fees - Inv #005		600.00	78.00		678.00
Aug 12	Trust transfer re Inv #005				678.00	0

Account: TAYLOR, Terry re Mortgage						
Date 2010	Particulars	Expenses (on behalf of client)	Fees (billed to client)	HST (billed to client)	Payments from client	Balance owed
Aug 31	Registration	70.00		1.30		71.30
Sep 7	Fees - Inv #006		400.00	52.00		523.30
Sep 7	Trust transfer re Inv #006				523.30	0

8. Fees Book – ss 18(7)

When you invoice your clients, you can either record the information in a Fees Book or keep a copy of each invoice in chronological (date) order in a billings file. Many law firms keep both records as well as a third copy in the client file. A ringed binder with tab dividers for each month works well for the billings file. If you keep a Fees Book, record the following information:

- fees charged to the client
- other billings charged to the client
- date of billing
- client who is billed

Leslie Lawyer Barrister & Solicitor FEES BOOK						
Date 2010	Inv #	Client	Fees Billed	Disbursements Billed	HST Billed	Total Billed
Jul 2	001	Jackie Jones	100.00		13.00	113.00
Jul 12	002	Peter Piper	500.00		65.00	565.00
Jul 30	003	Ricky Ricardo	300.00		39.00	339.00
Aug 9	004	Peter Piper	1,000.00		130.00	1,130.00
Aug 10	005	Susan Silver	600.00		78.00	678.00
Sep 7	006	Terry Taylor	400.00	70.00	53.30	523.30
Sep 7	007	Peter Piper	1,000.00		130.00	1,130.00

9. Trust Bank Reconciliation, Client Trust Listing, and Trust Comparison – ss 18(8)

Each month, for your trust comparison, you must compare:

- a) your reconciled trust bank balance and
- b) your client trust listing total

These two amounts must be the same. This is one of the most important trust records and you must complete it by the 25th of each month for all trust funds you held at the previous month's end. You should correct any trust shortages immediately and correct any bank or posting errors before the next month end.

For the trust reconciliation:

- check off all of the returned (or imaged) cheques on the trust bank statement for the previous month, noting any discrepancies in the amounts
- from your trust disbursement journal, identify any cheques you have issued that have not yet cleared the bank
- list the outstanding cheques by cheque number, date of issue and amount and total the amount
- from your deposit book, check off all deposits on the bank statement noting any discrepancies in the amounts
- list any deposits for the previous month, by date and amount, that are not recorded on the bank statement; these are your outstanding deposits
- list any bank errors and/or posting errors individually by date of occurrence and provide a brief explanation; a copy of any supporting documentation, such as a bank memo, should be attached to your reconciliation
- from the balance on the trust bank statement, subtract the amount of the outstanding cheques, add any outstanding deposits and adjust for any bank and posting errors to calculate your reconciled trust bank balance

For the client trust listing:

- from the clients' trust ledger, identify any client for whom you held trust funds at the previous month end
- list the client names in a logical order, with the unexpended trust balance for each client as at the previous month end
- include the last activity date for each client's trust balance on the client trust listing to help you to monitor inactive or dormant amounts
- total the client trust listing

Compare your reconciled trust bank balance with the client trust listing total. If these two amounts are not the same, you must find and correct the discrepancy.

**Leslie Lawyer
Barrister and Solicitor**

**TRUST BANK RECONCILIATION
AS AT AUGUST 31, 2010**

Mixed Trust Account:

Balance Per Bank Statement	\$40,933.00
Less: Outstanding Cheques <i>(See list below)</i>	39,476.70
Plus: Outstanding Deposits – Aug 31/10 <i>(Deposited Sep 1/10)</i>	250.00
Plus bank error - Aug 12/10: Chq #003 cleared as \$687.00 s/b \$678.00 <i>(Corrected Sep 17/10 by bank credit memo)</i>	9.00
Reconciled Mixed Trust Bank balance at Aug 31, 2010	<u>\$1,715.30</u>

Outstanding Cheques:

<u>Cheque Number</u>	<u>Date</u>	<u>Amount</u>
004	Aug 31/10	5,500.00
005	Aug 31/10	33,742.83
006	Aug 31/10	<u>233.87</u>
<i>Total Outstanding Cheques</i>		<u>\$39,476.70</u>

CLIENT TRUST LISTING
(from clients' trust ledger balances)
AS AT AUGUST 31, 2010

<u>File Name</u>	<u>Last Activity Date</u>	<u>Amount</u>
Piper, Peter	Aug 31/10	\$1,120.00
Silver, Susan	Aug 11/10	72.00
Taylor, Terry	Aug 31/07	<u>523.30</u>
<i>Total:</i>		<u>\$1,715.30</u>

Total trust liabilities to clients at August 31, 2010 **\$1,715.30**

**TRUST COMPARISON
AS AT AUGUST 31, 2010**

Total Reconciled Trust Bank Balance <i>(See Trust reconciliation above)</i>	\$1,715.30
Total of unexpended balances per Clients' Trust Ledger <i>(See Client Trust Listing above)</i>	\$1,715.30

Regardless of who prepares the trust comparison, you should make it a habit to review it and all supporting documentation by the 25th of each month to make sure:

- the comparison has been completed on time
- all client trust funds are included: mixed, pass book, GICs, term deposits, e-reg©, estate, power of attorney, etc.
- bank statement, passbook, estate account, GIC, term deposit etc. balances are correct
- the arithmetic is correct
- reconciling items, e.g. bank errors, posting errors, are cleared each month and are explained and supported by documentation
- stale dated cheques, *i.e.* cheques that have been outstanding for more than 6 months, are reversed, the client liability reinstated in the clients' trust ledger and the cheque reissued if appropriate (*Note that clearing rules state that a cheque more than six months old may be cashed so check your financial institution's policy to determine whether you should put a stop payment on a trust cheque before reissuing it.*)
- there are no overdrawn client trust ledger accounts
- the amounts in trust for each client are correct
- any client trust ledger accounts that have not had any activity in the previous 12 months are followed up

10. a) Detailed Duplicate Trust Account Deposit Slip – ss 18(10)

By-Law 9 requires you to deposit any trust money you receive immediately into your trust account. You should record the following information on all your copies of trust deposit slips:

- date you deposit the funds
- your firm’s name if it is not preprinted
- your bank account number if it is not preprinted
- source of each receipt
- related client
- amount

You should also ensure that the teller stamps each deposit slip. If you use an automated teller machine, attach the ATM receipt to the corresponding deposit slip, or add the source and client reference to the ATM receipt and keep it with your deposit slips.

DEPOSIT SLIP
Current Account

CREDIT ACCOUNT OF:
Leslie Lawyer
Barrister and Solicitor
Trust Account

BANK OF ONTARIO

Date:

2	0	1	0	0	8	3	0
---	---	---	---	---	---	---	---

Transit

5	4	3	2	1
---	---	---	---	---

Teller Stamp

Depositor's LL Initials
Teller's ABC Initials

Account Number

1	2	3	4	5	6	7	8	9	0
---	---	---	---	---	---	---	---	---	---

Cheques and Credit Card Vouchers			Details	Cash	
Kim Kirby			x \$5		
re loan to Taylor	40,000	00	x \$10		
			x \$20		
			x \$50		
			x \$100		
			x		
			x		
			coin		
			Cdn Cash Total	nil	
Total ►	40,000	00	Credit Card Vouchers and Cheques Forwarded ►	40,000	00

10. b) Detailed Duplicate General Account Deposit Slip – ss 18(10)

You should record the following information on all your copies of general deposit slips:

- date you deposit the funds
- your firm’s name if it is not preprinted
- your bank account number if it is not preprinted
- source of each receipt
- related client, if applicable
- amount

You should also ensure that the teller stamps each deposit slip. If you use an automated teller machine, attach the ATM receipt to the corresponding deposit slip, or add the source and client reference to the ATM receipt and keep it with your deposit slips.

DEPOSIT SLIP
Current Account

CREDIT ACCOUNT OF:
Leslie Lawyer
Barrister and Solicitor
General Account

BANK OF ONTARIO

Date:

2	0	1	0	0	9	0	7
---	---	---	---	---	---	---	---

Transit

5	4	3	2	1
---	---	---	---	---

Teller Stamp

Account Number

2	3	4	5	6	7	8	9	0	1
---	---	---	---	---	---	---	---	---	---

Depositor's LL Initials
Teller's ABC Initials

Cheques and Credit Card Vouchers			Details	Cash	
From Trust Account, chq #007			x \$5		
re Piper \$1,120.00			x \$10		
re Taylor \$523.30	1,643	30	x \$20		
			x \$50		
			x \$100		
			x		
			x		
			coin		
			Cdn Cash Total	nil	
Total ►	1,643	30	Credit Card Vouchers and Cheques Forwarded ►	1,643	30

11. Duplicate Cash Receipts Book – s 19

For each cash receipt you receive in your practice, in addition to recording it in either the trust or general receipts journal and either the client trust or general ledger, prepare a duplicate cash receipt with:

- the date you received the cash
- the name of the person who gave you the cash
- the amount of cash received
- the name of the client for whom you received the cash
- the file number if any
- your signature or that of your authorized designate
- the signature of the person who gave you the cash

It is always advisable to sequentially number any accounting documents, so your cash receipts should be numbered.

Give one copy of the receipt to the person who gave you the cash, and keep one copy with your accounting records. You may also want to prepare the receipt in triplicate and keep the third copy in the client file.

By-Law 9 requires you to use reasonable efforts to obtain the signature of the person who gives you the cash. You should be wary of accepting cash from someone who does not want to sign a receipt.

Keep in mind that your staff may be reluctant to accept responsibility for receipt of cash payments. If you decide to make it a policy of your firm not to accept cash or cash over a certain amount, be sure to notify potential clients in writing before accepting their retainers.

Sample:

DUPLICATE CASH RECEIPT		#0001
Date _____		
Received from _____	the amount of \$ _____	
On behalf of _____	for file # _____	
_____ Signature of payor [<i>person paying cash</i>]	_____ Authorized signature on behalf of [<i>name of law firm</i>]	

12a) Client Identification and Verification (individual client) - s 23 By-Law 7.1

Leslie Lawyer
Barrister & Solicitor

VERIFICATION OF IDENTITY

(For use where the client or the third party is an individual)

Name: Kim Kirby
Address: 456 Avenue Rd Anytown ON Z9Y 4V3
Phone No: (789) 456-0123
Business Address: N/A (retired)
Business Phone No: N/A (retired)
Occupation(s) Retired real estate agent

Original Document Reviewed – Copy Attached

- Driver's Licence
- Birth Certificate
- Passport
- Other (specify type) _____

Meeting Date Identity Verified: Aug 30, 2010
Identity Verified By (Name of Person): Sandy Secretary
Date File Reviewed by Lawyer: Aug 30, 2010
Name of Lawyer: Leslie Lawyer

12b) Client Identification and Verification (organization) - s 23 By-Law 7.1

Leslie Lawyer
Barrister & Solicitor

VERIFICATION OF IDENTITY

(For use where the client or the third party is an organization)

Name: Peter Piper Pickles

Business Address: 456 Avenue Rd Anytown ON Z9Y 4V3

Business Phone No: (321) 654-0987

Incorporation or Business Identification No.: 12131415 Ontario Inc

Place of Issue of No: Ontario

Type of business or Activity: Produce wholesaler and retailer

Person Authorized to Instruct

Name: Peter Piper

Position: President

Phone No.: (321) 654-0987 ext 1

Original Document Reviewed – Copy Attached

- Driver's Licence
- Birth Certificate
- Passport
- Other (specify type) _____

Names and Occupation(s) of Directors

Peter Piper, farmer

Jackie Jones, electrician

Ricky Ricardo, musician

Names, Addresses and Occupation(s) of Owners or Shareholders owning a 25% interest or more of the organization or shares in the organization

Peter Piper, 456 County Rd Anytown ON Z9Y 4V3, farmer, 51%

Peter Piper Jr, 456 County Rd Anytown ON Z9Y 4V3, farmer, 49%

Original Document Reviewed – Copy Attached

- Certificate of Corporate Status
- Annual Filings of the Organization (specify type) _____
- Partnership Agreement
- Trust Agreement
- Articles of Association
- Other (specify type) Business Names Registration

Meeting Date Identity Verified: Aug 30, 2010

Identity Verified By (Name of Person): Sandy Secretary

Date File Reviewed by Lawyer: Aug 30, 2010

Name of Lawyer: Leslie Lawyer

VALUABLE PROPERTY RECORD

This record is required by section 18(9) of By-Law 9 to record trust assets other than money. The record should show, as a minimum, the following details:

- the name of the beneficial owner or owners;
- a description of the property;
- the date the property came into the Licensee's possession or trust control;
- the name of the person who had control of the property immediately before the Licensee took possession;
- the value of the property;
- the date that the trust was terminated by delivery or transfer of the property to, or on the direction of, the beneficial owner or owners;
- the person to whom possession of property given.

Properties to be included:

Mortgages, transfers or other instruments registered in the Licensee's name in trust.

This includes mortgages, or other investment securities, held in trust by a Corporation or other business entity controlled by a Licensee, Licensees of a firm and/or the spouse(s) of the Licensee(s).

- Stocks, bonds or other securities in bearer form.
- Jewellery, paintings, furs, collector's items or any variety of saleable valuables.
- Any property that a Licensee can convert, on his/her own authority to cash.

Properties not to be included:

- Term deposits, deposit receipts, savings accounts or similar deposit accounts maintained for individual clients at chartered banks or registered trust companies. These are trust monies and must be recorded in the financial accounting records.
- Wills, securities registered in the name of the client, corporate records, corporate seals, etc. These properties have value to the clients and Licensees must exercise care in keeping the properties, but they are not properties that can be sold or negotiated by Licensees. Licensees may maintain lists of these properties but this list must be separate from the record required by subsection 18(9) of By-Law 9.

VALUABLE PROPERTY RECORD

Section 18(9) By-Law 9 made pursuant to the Law Society Act, 1990 as amended:

A record showing all property, other than money, held in trust for clients, and describing each property and identifying the date on which the licensee took possession of each property, the person who had possession of each property immediately before the licensee took possession of the property, the value of each property, the client for whom each property is held in trust, the date on which possession of each property is given away and the person to whom possession of each property is given.

Client	Description of Property	Date Received	Received From	Value of Property	Given To	Date Given Away

BY-LAW 9

Made: May 1, 2007
Amended: June 28, 2007
January 24, 2008
February 21, 2008
March 20, 2009 (editorial changes)
September 29, 2009 (editorial changes)
April 28, 2011
May 3, 2011 (editorial changes)

FINANCIAL TRANSACTIONS AND RECORDS

PART I

INTERPRETATION

Interpretation

1. (1) In this By-Law,

“arm’s length” has the same meaning given it in the *Income Tax Act* (Canada);

“cash” means current coin within the meaning of the *Currency Act* (Canada), notes intended for circulation in Canada issued by the Bank of Canada pursuant to the *Bank of Canada Act* and current coin or banks notes of countries other than Canada;

“charge” has the same meaning given it in the *Land Registration Reform Act*;

“client” means a person or group of persons from whom or on whose behalf a licensee receives money or other property;

“firm of licensees” means,

- (a) a partnership of licensees and all licensees employed by the partnership,
- (b) a professional corporation established for the purpose of practising law in Ontario and all licensees employed by the professional corporation,
- (c) a professional corporation established for the purpose of providing legal services in Ontario and all licensees employed by the professional corporation, or
- (d) a professional corporation established for the purpose of practising law and providing legal services in Ontario and all licensees employed by the professional corporation;

“holiday” means,

- (a) any Saturday or Sunday;
- (b) New Year’s Day, and where New Year’s Day falls on a Saturday or Sunday, the following Monday;
- (c) Family Day;
- (d) Good Friday;
- (e) Easter Monday;

- (f) Victoria Day;
- (g) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday;
- (h) Civic Holiday;
- (i) Labour Day;
- (j) Thanksgiving Day;
- (k) Remembrance Day, and where Remembrance Day falls on a Saturday or Sunday, the following Monday;
- (l) Christmas Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday, and where Christmas Day falls on a Friday, the following Monday;
- (m) Boxing Day; and
- (n) any special holiday proclaimed by the Governor General or the Lieutenant Governor;

“lender” means a person who is making a loan that is secured or to be secured by a charge, including a charge to be held in trust directly or indirectly through a related person or corporation;

“licensee” includes a firm of licensees;

“money” includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders;

“related” has the same meaning given it in the *Income Tax Act* (Canada);

“Teranet” means Teranet Inc., a corporation incorporated under the *Business Corporations Act*, acting as agent for the Ministry of Consumer and Business Services.

Time for doing an act expires on a holiday

(2) Except where a contrary intention appears, if the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

When deemed in trust

(3) For the purposes of subsections 9 (1), (2) and (3) and section 14, cash, cheques negotiable by the licensee, cheques drawn by the licensee on the licensee’s trust account and credit card sales slips in the possession and control of the licensee shall be deemed from the time the licensee receives such possession and control to be money held in a trust account if the cash, cheques or credit card sales slips, as the case may be, are deposited in the trust account not later than the following banking day.

PART II

HANDLING OF MONEY BY BANKRUPT LICENSEE

Handling of money by bankrupt licensee

2. (1) Subject to subsections (2) and (3), a licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) shall not receive from or on behalf of a person or group of persons any money or other property and shall not

otherwise handle money or other property that is held in trust for a person or group of persons.

Exception

(2) A licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may receive from or on behalf of a person or group of persons money,

- (a) in payment of fees for services performed by the licensee for the person or group; or
- (b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

Same

(3) A licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may apply in writing to the Society for permission to receive from or on behalf of a person or group of persons any money or other property, other than as permitted under subsection (2), or for permission to handle money or other property that is held in trust for a person or group of persons, and the Society may permit the licensee to do so, subject to such terms and conditions as the Society may impose.

PART II.1

HANDLING OF MONEY BY LICENSEE WHOSE LICENCE IS SUSPENDED

Interpretation

2.1 In this Part,

“suspended licensee” means a licensee who is the subject of a suspension order;

“suspension order” means an order made under the Act suspending a licensee’s licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

Handling of money by suspended licensee

2.2 (1) Subject to subsection (2) and section 2.3, a suspended licensee shall not, during the suspension receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

Exception

(2) A suspended licensee may receive from or on behalf of a person or group of persons money,

- (a) in payment of fees for services performed by the suspended licensee for the person or group; or
- (b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

Trust account

- 2.3 (1) A suspended licensee shall, within 30 days of the beginning of the suspension,
- (a) withdraw from every trust account kept in the name of the suspended licensee, or in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed, and, as required, pay to the appropriate person,
 - (i) money properly required for payment to a person on behalf of a client,
 - (ii) money required to reimburse the suspended licensee for money properly expended, or for expenses properly incurred, on behalf of a client,
 - (iii) money required for or toward payment of fees for services performed by the suspended licensee, and
 - (iv) all other money that belongs to the suspended licensee or to a person other than a client;
 - (b) after complying with clause (a), withdraw from every trust account kept in the name of the suspended licensee, or in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed, all money belonging to a client and pay the money to,
 - (i) the client,
 - (ii) another licensee to whom the client has directed the suspended licensee to make payment, or
 - (iii) another licensee who has agreed with the suspended licensee to accept payment in the event that the suspended licensee is unable to comply with subclause (i) or (ii); and
 - (c) after complying with clauses (a) and (b),
 - (i) close every trust account that was kept in the name of the suspended licensee, and
 - (ii) cancel or cause to be cancelled the suspended licensee's signing authority on every trust account that was kept in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed.

Compliance with clause (1) (b) not required

(2) A suspended licensee is not required to comply with clause (1) (b) if the client's file is transferred, in accordance with Part IV of By-Law 7.1, to another licensee in the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed.

Application of sections of Part IV

(3) Subsection 9 (3) and sections 10, 11 and 12 apply to the withdrawal of money from a trust account under this section.

Report to Society on compliance

(4) A suspended licensee shall, not later than thirty days after the suspension begins, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the suspended licensee's compliance with this section.

Permission to be exempt from requirement

2.4 A suspended licensee may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Part, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

PART III CASH TRANSACTIONS

Definition

3. In this Part,

"funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or interest in them;

"public body" means,

- (a) a department or agent of Her Majesty in right of Canada or of a province;
- (b) an incorporated city, metropolitan authority, town, township, village, county, district, rural municipality or other incorporated municipal body or an agent of any of them; and
- (c) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or agent of the organization.

Cash received

4. (1) A licensee shall not receive or accept from a person, in respect of any one client file, cash in an aggregate amount of 7,500 or more Canadian dollars.

Foreign currency

(2) For the purposes of this section, when a licensee receives or accepts from a person cash in a foreign currency the licensee shall be deemed to have received or accepted the cash converted into Canadian dollars at,

- (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the licensee receives or accepts the cash; or
- (b) if the day on which the licensee receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the licensee receives or accepts the cash.

Application

5. Section 4 applies when, in respect of a client file, a licensee engages in or gives instructions in respect of the following activities:

1. The licensee receives or pays funds.
2. The licensee purchases or sells securities, real properties or business assets or entities.
3. The licensee transfers funds by any means.

Exceptions

6. Despite section 5, section 4 does not apply when the licensee,
- (a) receives cash from a public body, an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* (Canada) applies, a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act, an association that is regulated by the *Cooperative Credit Associations Act* (Canada), a company to which the *Trust and Loan Companies Act* (Canada) applies, a trust company or loan company regulated by a provincial Act or a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public;
 - (b) receives cash from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;
 - (c) receives cash pursuant to an order of a tribunal;
 - (d) receives cash to pay a fine or penalty; or
 - (e) receives cash for fees, disbursements, expenses or bail provided that any refund out of such receipts is also made in cash.

PART IV TRUST ACCOUNT

TRUST ACCOUNT TRANSACTIONS

Money received in trust for client

7. (1) Subject to section 8, every licensee who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or registered trust corporation, to be kept in the name of the licensee, or in the name of the firm of licensees of which the licensee is a partner, through which the licensee practises law or provides legal services or by which the licensee is employed, and designated as a trust account.

Interpretation

(2) For the purposes of subsection (1), a licensee receives money in trust for a client if the licensee receives from a person,

- (a) money that belongs in whole or in part to a client;
- (b) money that is to be held on behalf of a client;
- (c) money that is to be held on a client's direction or order;
- (d) money that is advanced to the licensee on account of fees for services not yet rendered; or
- (e) money that is advanced to the licensee on account of disbursements not yet made.

Money to be paid into trust account

(3) In addition to the money required under subsection (1) to be paid into a trust account, a licensee shall pay the following money into a trust account:

- 1. Money that may by inadvertence have been drawn from a trust account in contravention of section 9.
- 2. Money paid to a licensee that belongs in part to a client and in part to the licensee where it is not practical to split the payment of the money.

Money to be paid into trust account: money received before licence issued

(3.1) If a licensee who holds a Class P1 licence receives from a person, prior to being issued the licence, money for services yet to be rendered to a client and the licensee does not perform the services for the client by May 2, 2010, the licensee shall on May 3, 2010 pay the money into a trust account.

Withdrawal of money from trust account

(4) A licensee who pays into a trust account money described in paragraph 2 of subsection (3) shall as soon as practical withdraw from the trust account the amount of the money that belongs to him or her.

One or more trust accounts

(5) A licensee may keep one or more trust accounts.

Money not to be paid into trust account

8. (1) A licensee is not required to pay into a trust account money which he or she receives in trust for a client if,
- (a) the client requests the licensee in writing not to pay the money into a trust account;
 - (b) the licensee pays the money into an account to be kept in the name of the client, a person named by the client or an agent of the client; or
 - (c) the licensee pays the money immediately upon receiving it to the client or to a person on behalf of the client in accordance with ordinary business practices.

Same

(2) A licensee shall not pay into a trust account the following money:

1. Money that belongs entirely to the licensee or to another licensee of the firm of licensees of which the licensee is a partner, through which the licensee practices law or provides legal services or by which the licensee is employed, including an amount received as a general retainer for which the licensee is not required either to account or to provide services.
2. Money that is received by the licensee as payment of fees for services for which a billing has been delivered, as payment of fees for services already performed for which a billing will be delivered immediately after the money is received or as reimbursement for disbursements made or expenses incurred by the licensee on behalf of a client.

Record keeping requirements

(3) A licensee who, in accordance with subsection (1), does not pay into a trust account money which he or she receives in trust for a client shall include all handling of such money in the records required to be maintained under Part V.

Withdrawal of money from trust account

9. (1) A licensee may withdraw from a trust account only the following money:
 1. Money properly required for payment to a client or to a person on behalf of a client.
 2. Money required to reimburse the licensee for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client.
 3. Money properly required for or toward payment of fees for services performed by the licensee for which a billing has been delivered.
 4. Money that is directly transferred into another trust account and held on behalf of a client.
 5. Money that under this Part should not have been paid into a trust account but was through inadvertence paid into a trust account.

Permission to withdraw other money

(2) A licensee may withdraw from a trust account money other than the money mentioned in subsection (1) if he or she has been authorized to do so by the Society.

Limit on amount withdrawn from trust account

(3) A licensee shall not at any time with respect to a client withdraw from a trust account under this section more money than is held on behalf of that client in that trust account at that time.

Manner in which certain money may be withdrawn from trust account

10. A licensee shall withdraw money from a trust account under paragraph 2 or 3 of subsection 9 (1) only,
 - (a) by a cheque drawn in favour of the licensee;
 - (b) by a transfer to a bank account that is kept in the name of the licensee and is not a trust account; or
 - (c) by electronic transfer.

Withdrawal by cheque

11. A cheque drawn on a trust account shall not be,
- (a) made payable either to cash or to bearer; or
 - (b) signed by a person who is not a licensee except in exceptional circumstances and except when the person has signing authority on the trust account on which a cheque will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all the trust accounts on which signing authority has been delegated to the person.

Withdrawal by electronic transfer

12. (1) Money withdrawn from a trust account by electronic transfer shall be withdrawn only in accordance with this section.

When money may be withdrawn

- (2) Money shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the licensee must be one that does not permit an electronic transfer of funds unless,
 - i. one person, using a password or access code, enters into the system the data describing the details of the transfer, and
 - ii. another person, using another password or access code, enters into the system the data authorizing the financial institution to carry out the transfer.
2. The electronic transfer system used by the licensee must be one that will produce, not later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received.
3. The confirmation required by paragraph 2 must contain,
 - i. the number of the trust account from which money is drawn,
 - ii. the name, branch name and address of the financial institution where the account to which money is transferred is kept,
 - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
 - iv. the number of the account to which money is transferred,
 - v. the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and
 - vi. the time and date that the confirmation from the financial institution is sent to the licensee.
4. Before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic

trust transfer system, an electronic trust transfer requisition must be signed by,

- i. a licensee, or
 - ii. in exceptional circumstances, a person who is not a licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.
5. The data entered into the electronic trust transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the electronic trust transfer requisition.

Application of para. 1 of subs. (2) to sole practitioner

(3) Paragraph 1 of subsection (2) does not apply to a licensee who practises law or provides legal services without another licensee as a partner, if the licensee practices law or provides legal services through a professional corporation, without another licensee practicing law or providing legal services through the professional corporation and without another licensee or person as an employee, if the licensee himself or herself enters into the electronic trust transfer system both the data describing the details of the transfer and the data authorizing the financial institution to carry out the transfer.

Same

(4) In exceptional circumstances, the data referred to in subsection (3) may be entered by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Additional requirements relating to confirmation

(5) Not later than the close of the banking day immediately after the day on which the confirmation required by paragraph 2 of subsection (2) is sent to a licensee, the licensee shall,

- (a) produce a printed copy of the confirmation;
- (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
- (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and
- (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(6) In exceptional circumstances, the tasks required by subsection (5) may be performed by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition

(7) The electronic trust transfer requisition required under paragraph 4 of subsection (2) shall be in Form 9A.

Definitions

13. (1) In this section,

“closing funds” means the money necessary to complete or close a transaction in real estate;

“transaction in real estate” means,

- (a) a charge on land given for the purpose of securing the payment of a debt or the performance of an obligation, including a charge under the *Land Titles Act* and a mortgage, but excluding a rent charge, or
- (b) a conveyance of freehold or leasehold land, including a deed and a transfer under the *Land Titles Act*, but excluding a lease.

Withdrawal by electronic transfer: closing funds

(2) Despite section 12, closing funds may be withdrawn from a trust account by electronic transfer in accordance with this section.

When closing funds may be withdrawn

(3) Closing funds shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the licensee must be one to which access is restricted by the use of at least one password or access code.
2. The electronic transfer system used by the licensee must be one that will produce immediately after the electronic transfer of funds a confirmation of the transfer.
3. The confirmation required by paragraph 2 must contain,
 - i. the name of the person or entity in whose name the account from which money is drawn is kept,
 - ii. the number of the trust account from which money is drawn,
 - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
 - iv. the number of the account to which money is transferred, and
 - v. the date the transfer is carried out.

4. Before the electronic transfer system used by the licensee is accessed to carry out an electronic transfer of funds, an electronic trust transfer requisition must be signed by,
 - i. the licensee, or
 - ii. in exceptional circumstances, a person who is not the licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.
5. The data entered into the electronic transfer system describing the details of the electronic transfer of funds must be as specified in the electronic trust transfer requisition.

Additional requirements relating to confirmation

- (4) Not later than 5 p.m. on the day immediately after the day on which the electronic transfer of funds is carried out, the licensee shall,
 - (a) produce a printed copy of the confirmation required by paragraph 2 of subsection (3);
 - (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
 - (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and
 - (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(5) In exceptional circumstances, the tasks required by subsection (4) may be performed by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition: closing funds

(6) The electronic trust transfer requisition required under paragraph 4 of subsection (3) shall be in Form 9C.

Requirement to maintain sufficient balance in trust account

14. Despite any other provision in this Part, a licensee shall at all times maintain sufficient balances on deposit in his or her trust accounts to meet all his or her obligations with respect to money held in trust for clients.

AUTOMATIC WITHDRAWALS FROM TRUST ACCOUNTS

Authorizing Teranet to withdraw money from trust account

15. (1) Subject to subsection (2), a licensee may authorize Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Conditions

(2) A licensee shall not authorize Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction unless Teranet agrees to provide to the licensee in accordance with subsection (3) a confirmation of the withdrawal that contains the information mentioned in subsection (4).

Time of receipt of confirmation

(3) The confirmation required under subsection (2) must be received by the licensee not later than 5 p.m. on the day immediately after the day on which the withdrawal is authorized by the licensee.

Contents of confirmation

- (4) The confirmation required under subsection (2) must contain,
- (a) the amount of money withdrawn from the trust account;
 - (b) the time and date that the authorization to withdraw money is received by Teranet; and
 - (c) the time and date that the confirmation from Teranet is sent to the licensee.

Written record of authorization

(5) A licensee who authorizes Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction shall record the authorization in writing.

Same

(6) The written record of the authorization required under subsection (5) shall be in Form 9B and shall be completed by the licensee before he or she authorizes Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Additional requirements relating to confirmation

- (7) Not later than 5 p.m. on the day immediately after the day on which the confirmation required under subsection (2) is sent to a licensee, the licensee shall,
- (a) produce a paper copy of the confirmation, if the confirmation is sent to the licensee by electronic means;
 - (b) compare the paper copy of the confirmation and the written record of the authorization relating to the withdrawal to verify whether money was

withdrawn from the trust account by Teranet as authorized by the licensee;

- (c) indicate on the paper copy of the confirmation the name of the client and any file number in respect of which money was withdrawn from the trust account, if the confirmation does not already contain such information; and
- (d) after complying with clauses (a) to (c), sign and date the paper copy of the confirmation.

Special trust account

- 16 (1) The trust account from which Teranet may be authorized by a licensee to withdraw money shall be,
- (a) an account at a chartered bank, provincial savings office, credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or a registered trust corporation kept in the name of the licensee or in the name of the firm of licensees of which the licensee is a partner, through which the licensee practices law or by which the licensee is employed, and designated as a trust account; and
 - (b) an account into which a licensee shall pay only,
 - (i) money received in trust for a client for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction; and
 - (ii) money properly withdrawn from another trust account for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction.

One or more special trust accounts

(2) A licensee may keep one or more trust accounts of the kind described in subsection (1).

Payment of money into special trust account

(3) A licensee shall not pay into a trust account described in subsection (1) more money than is required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction, and if more money is, through inadvertence, paid into the trust account, the licensee shall transfer from the trust account described in subsection (1) into another trust account that is not a trust account described in subsection (1) the excess money.

Time limit on holding money in special trust account

(4) A licensee who pays money into a trust account described in subsection (1) shall not keep the money in that account for more than five days, and if the money is not properly withdrawn from that account by Teranet within five days after the day on which it is paid into that account, the licensee shall transfer the money from that account into another trust account that is not a trust account described in subsection (1).

Interpretation: counting days

(5) In subsection 16 (4), holidays shall not be counted in determining if money has been kept in a trust account described in subsection 16 (1) for more than five days.

Application of ss. 9, 11, 12 and 14

17. Sections 9, 11, 12 and 14 apply, with necessary modifications, to a trust account described in subsection 16 (1).

**PART V
RECORD KEEPING REQUIREMENTS**

REQUIREMENTS

Requirement to maintain financial records

18. Every licensee shall maintain financial records to record all money and other property received and disbursed in connection with the licensee's professional business, and, as a minimum requirement, every licensee shall maintain, in accordance with sections 21, 22 and 23, the following records:

1. A book of original entry identifying each date on which money is received in trust for a client, the method by which money is received, the person from whom money is received, the amount of money received, the purpose for which money is received and the client for whom money is received in trust.
2. A book of original entry showing all disbursements out of money held in trust for a client and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the person to whom money is disbursed, the amount of money which is disbursed, the purpose for which money is disbursed and the client on whose behalf money is disbursed.
3. A clients' trust ledger showing separately for each client for whom money is received in trust all money received and disbursed and any unexpended balance.
4. A record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made.
5. A book of original entry showing all money received, other than money received in trust for a client, and identifying each date on which money is received, the method by which money is received, the amount of money which is received and the person from whom money is received.
6. A book of original entry showing all disbursements of money, other than money held in trust for a client, and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money,

the amount of money which is disbursed and the person to whom money is disbursed.

7. A fees book or a chronological file of copies of billings, showing all fees charged and other billings made to clients and the dates on which fees are charged and other billings are made to clients and identifying the clients charged and billed.
8. A record showing a comparison made monthly of the total of balances held in the trust account or accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparisons:
 - i. A detailed listing made monthly showing the amount of money held in trust for each client and identifying each client for whom money is held in trust.
 - ii. A detailed reconciliation made monthly of each trust bank account.
9. A record showing all property, other than money, held in trust for clients, and describing each property and identifying the date on which the licensee took possession of each property, the person who had possession of each property immediately before the licensee took possession of the property, the value of each property, the client for whom each property is held in trust, the date on which possession of each property is given away and the person to whom possession of each property is given.
10. Bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and general accounts.
11. Signed electronic trust transfer requisitions and signed printed confirmations of electronic transfers of trust funds.
12. Signed authorizations of withdrawals by Teranet and signed paper copies of confirmations of withdrawals by Teranet.

Record keeping requirements if cash received

19. (1) Every licensee who receives cash shall maintain financial records in addition to those required under section 18 and, as a minimum additional requirement, shall maintain, in accordance with sections 21, 22 and 23, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received and any file number in respect of which cash is received and containing the signature of the licensee or the person authorized by the licensee to receive cash and of the person from whom cash is received.

No breach

(2) A licensee does not breach subsection (1) if a receipt does not contain the signature of the person from whom cash is received provided that the licensee has made reasonable efforts to obtain the signature of the person from whom cash is received.

Record keeping requirements if mortgages and other charges held in trust for clients

20. Every licensee who holds in trust mortgages or other charges on real property, either directly or indirectly through a related person or corporation, shall maintain financial records in addition to those required under section 18 and, as a minimum additional requirement, shall maintain, in accordance with sections 21, 22 and 23, the following records:

1. A mortgage asset ledger showing separately for each mortgage or charge,
 - i. all funds received and disbursed on account of the mortgage or charge,
 - ii. the balance of the principal amount outstanding for each mortgage or charge,
 - iii. an abbreviated legal description or the municipal address of the real property, and
 - iv. the particulars of registration of the mortgage or charge.
2. A mortgage liability ledger showing separately for each person on whose behalf a mortgage or charge is held in trust,
 - i. all funds received and disbursed on account of each mortgage or charge held in trust for the person,
 - ii. the balance of the principal amount invested in each mortgage or charge,
 - iii. an abbreviated legal description or the municipal address for each mortgaged or charged real property, and
 - iv. the particulars of registration of each mortgage or charge.
3. A record showing a comparison made monthly of the total of the principal balances outstanding on the mortgages or charges held in trust and the total of all principal balances held on behalf of the investors as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparison:
 - i. A detailed listing made monthly identifying each mortgage or charge and showing for each the balance of the principal amount outstanding.
 - ii. A detailed listing made monthly identifying each investor and showing the balance of the principal invested in each mortgage or charge.

Financial records to be permanent

21. (1) The financial records required to be maintained under sections 18, 19 and 20 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.

Paper copies of financial records

(2) If a financial record is entered and posted by mechanical or electronic means, a licensee shall ensure that a paper copy of the record may be produced promptly on the Society's request.

Financial records to be current

22. (1) Subject to subsection (2), the financial records required to be maintained under sections 18, 19 and 20 shall be entered and posted so as to be current at all times.

Exceptions

(2) The record required under paragraph 8 of section 18 and the record required under paragraph 3 of section 20 shall be created within twenty-five days after the last day of the month in respect of which the record is being created.

Preservation of financial records required under ss. 18 and 19

23. (1) Subject to subsection (2), a licensee shall keep the financial records required to be maintained under sections 18 and 19 for at least the six year period immediately preceding the licensee's most recent fiscal year end.

Same

(2) A licensee shall keep the financial records required to be maintained under paragraphs 1, 2, 3, 8, 9, 10 and 11 of section 18 for at least the ten year period immediately preceding the licensee's most recent fiscal year end.

Preservation of financial records required under s. 20

(3) A licensee shall keep the financial records required to be maintained under section 20 for at least the ten year period immediately preceding the licensee's most recent fiscal year end.

Record keeping requirements when acting for lender

24. (1) Every licensee who acts for or receives money from a lender shall, in addition to maintaining the financial records required under sections 18 and 20, maintain a file for each charge, containing,

- (a) a completed investment authority, signed by each lender before the first advance of money to or on behalf of the borrower;
- (b) a copy of a completed report on the investment;
- (c) if the charge is not held in the name of all the lenders, an original declaration of trust;
- (d) a copy of the registered charge; and
- (e) any supporting documents supplied by the lender.

Exceptions

(2) Clauses (1) (a) and (b) do not apply with respect to a lender if,

- (a) the lender,
 - (i) is a bank listed in Schedule I or II to the *Bank Act* (Canada), a licensed insurer, a registered loan or trust corporation, a

- subsidiary of any of them, a pension fund, or any other entity that lends money in the ordinary course of its business,
- (ii) has entered a loan agreement with the borrower and has signed a written commitment setting out the terms of the prospective charge, and
 - (iii) has given the licensee a copy of the written commitment before the advance of money to or on behalf of the borrower;
- (b) the lender and borrower are not at arm's length;
 - (c) the borrower is an employee of the lender or of a corporate entity related to the lender;
 - (d) the lender has executed the Investor/Lender Disclosure Statement for Brokered Transactions, approved by the Superintendent under subsection 54(1) of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, and has given the licensee written instructions, relating to the particular transaction, to accept the executed disclosure statement as proof of the loan agreement;
 - (e) the total amount advanced by the lender does not exceed \$6,000; or
 - (f) the lender is selling real property to the borrower and the charge represents part of the purchase price.

Requirement to provide documents to lender

- (3) Forthwith after the first advance of money to or on behalf of the borrower, the licensee shall deliver to each lender,
 - (a) if clause (1) (b) applies, an original of the report referred to therein; and
 - (b) if clause (1) (c) applies, a copy of the declaration of trust.

Requirement to add to file maintained under subs. (1)

(4) Each time the licensee or any licensee of the same firm of licensees does an act described in subsection (5), the licensee shall add to the file maintained for the charge the investment authority referred to in clause (1) (a), completed anew and signed by each lender before the act is done, and a copy of the report on the investment referred to in clause (1) (b), also completed anew.

Application of subs. (4)

- (5) Subsection (4) applies in respect of the following acts:
 1. Making a change in the priority of the charge that results in a reduction of the amount of security available to it.
 2. Making a change to another charge of higher priority that results in a reduction of the amount of security available to the lender's charge.
 3. Releasing collateral or other security held for the loan.
 4. Releasing a person who is liable under a covenant with respect to an obligation in connection with the loan.

New requirement to provide documents to lender

(6) Forthwith after completing anew the report on the investment under subsection (4), the licensee shall deliver an original of it to each lender.

Requirement to add to file maintained under subs. (1): substitution

(7) Each time the licensee or any other licensee of the same firm of licensees substitutes for the charge another security or a financial instrument that is an acknowledgment of indebtedness, the licensee shall add to the file maintained for the charge the lender's written consent to the substitution, obtained before the substitution is made.

Exceptions

(8) The licensee need not comply with subsection (4) or (7) with respect to a lender if clause (2) (a), (b), (c), (e) or (f) applied to the lender in the original loan transaction.

Investment authority: Form 9D

(9) The investment authority required under clause (1) (a) shall be in Form 9D.

Report on investment: Form 9E

(10) Subject to subsection (11), the report on the investment required under clause (1) (b) shall be in Form 9E.

Report on investment: alternative to Form 9E

(11) The report on the investment required under clause (1) (b) may be contained in a reporting letter addressed to the lender or lenders which answers every question on Form 9E.

Form 9A
ELECTRONIC TRUST TRANSFER REQUISITION

Requisition *(number)*

Amount of funds to be transferred: *(Specify amount.)*

Re: *(Specify name of client.)*
(Specify file reference number.)

Reason for payment: *(Give reason for payment.)*

Trust account to be debited:

Name of financial institution: *(Specify name.)*

Account number: *(Specify number.)*

Name of recipient: *(Specify name.)*

Account to be credited:

Name of financial institution: *(Specify name.)*

Branch name and address: *(Specify name and address.)*

Account number: *(Specify number.)*

Person requisitioning electronic trust transfer: *(Print the person's name.)*

(Date) *(Signature of person requisitioning electronic trust transfer)*

Additional transaction particulars:

(This section should be completed by the person entering the details of the transfer, after he or she has entered the details of the transfer, and by the person authorizing the transfer at the computer terminal, after he or she has authorized the transfer.)

Person entering details of transfer:

Name: *(Print person's name.)*

(Signature of person entering details of transfer.)

Person authorizing transfer at computer terminal:

Name: *(Print person's name.)*

Signature of person authorizing transfer at computer terminal.)

[SAMPLE]
FORM 9A

ELECTRONIC TRUST TRANSFER REQUISITION

Requisition #ET001

Amount of funds to be transferred: **\$626.30**

Re: **Noir purchase from Blanc, 123 Main St., Anytown**

Client: **Nicky Noir**

File No.: **10-43**

Reason for payment: **Fees (\$500) disbursements (\$54.25) and HST (\$72.05) billed to client**

Trust account to be debited:

Name of financial institution: **Bank of Ontario**

Account number: **123456789**

Name of recipient: **Leslie Lawyer, General Account**

Account to be credited:

Name of financial institution: **Bank of Ontario**

Branch name and address: **20 Downtown St., Anytown, ON Z9Y 2T2**

Account number: **987654321**

Person requisitioning electronic trust transfer: **Leslie Lawyer**

August 31, 2010

Leslie Lawyer

Additional transaction particulars:

Person entering details of transfer:

Name: **Sandy Secretary**

Sandy Secretary

Person authorizing transfer at computer terminal:

Name: **Bobby Bookkeeper**

Bobby Bookkeeper

FORM 9B
AUTHORIZATION OF WITHDRAWAL BY TERANET

Authorization *(number)*

Amount of funds to be withdrawn: *(Specify amount.)*

Re:

(Specify name of client.)

(Specify file reference number.)

Reason for withdrawal: *(Give reason for withdrawal, e.g., payment of land transfer tax, document registration fees.)*

Trust account to be debited:

Name of financial institution: *(Specify name.)*

Account number: *(Specify number.)*

Person authorizing withdrawal: *(Print the person's name.)*

(Date)

(Signature of person authorizing withdrawal)

[SAMPLE]
FORM 9B

AUTHORIZATION OF WITHDRAWAL BY TERANET

Authorization **TW001**

Amount of funds to be withdrawn: **\$2,367.60**

Re: **Noir purchase from Blanc, 456 Route St., Anytown**

Client: **Nicky Noir**

File No. **10-43**

Reason for withdrawal: **LTT (\$2,225.00), Reg'n fees - Transfer/Charge (\$71.30 x 2)**

Trust account to be debited:

Name of financial institution: **Bank of Ontario**

Account number: **456789123**

Person authorizing withdrawal: **Leslie Lawyer**

August 30, 2010

Leslie Lawyer

FORM 9C
ELECTRONIC TRUST TRANSFER REQUISITION: CLOSING FUNDS

Requisition (*number*)

Amount of funds to be transferred: (*Specify amount.*)

Re:
(*Specify name of client.*)

(*Specify file reference number.*)

Reason for payment: (*Give reason for payment.*)

Trust account to be debited:

Name of financial institution: (*Specify name.*)

Account number: (*Specify number.*)

Name of recipient: (*Specify name.*)

Account to be credited:

Name of financial institution: (*Specify name.*)

Branch name and address: (*Specify name and address.*)

Account number: (*Specify number.*)

Person requisitioning electronic trust transfer: (*Print the person's name.*)

(*Date*) (*Signature of person requisitioning electronic trust transfer*)

Person carrying out electronic trust transfer:

Name: (*Print person's name.*)

(*Signature of person carrying out electronic trust transfer.*)

**[SAMPLE]
FORM 9C
ELECTRONIC TRUST TRANSFER REQUISITION: CLOSING FUNDS**

Requisition #ETCR001

Amount of funds to be transferred: \$134,716.83

Re: **Noir purchase from Blanc, 456 Route St., Anytown**

Client: **Nicky Noir**

File No.: **10-43**

Reason for payment: **Balance due on closing payable to solicitor for vendor**

Trust account to be debited:

Name of financial institution: **Bank of Ontario**

Account number: **123456789**

Name of recipient: **Sydney Solicitor, Barrister & Solicitor**

Account to be credited:

Name of financial institution: **Bank of Ontario**

Branch name and address: **Pine & Cedar, 32 Pine St., Anytown**

Account number: **987654321**

Person requisitioning electronic trust transfer: **Leslie Lawyer**

August 30, 2010

Leslie Lawyer

Person carrying out electronic trust transfer:

Name: **Sandy Secretary**

Sandy Secretary

FORM 9D
INVESTMENT AUTHORITY

(Note to lawyer: This form is required in a private mortgage transaction whether or not the mortgage was arranged by you. Please have your client complete every point on this form, with "n/a" being noted if the point is not applicable. This form may be entered on a word processor. For the definition of mortgage broker and other terms found in the clause of the Lawyers' Professional Indemnity Company Policy found at the bottom of this form, please refer to the policy.)

To: *(Specify name of lawyer or law firm)*

I *(or we)* instruct you to act on my *(or our)* behalf, on my *(or our)* mortgage investment *(or investments)* of *(specify amount)*, the details, conditions and disclosures of which are set out below.

A. DETAILS ABOUT THE INVESTMENT:

1. Name and address of borrower *(or borrowers)*: *(specify)*
2. Name and address of guarantor *(or guarantors)* *(if any)*: *(specify)*
3. Legal description and municipal address of real property: *(specify)*
4. Type of property: *(specify, e.g., residence, vacant land, etc.)*
5. (a) Principal amount of mortgage or charge: *(specify)*
(b) Amount of loan to be advanced by me *(or us)*: *(specify)*
6. Rank of mortgage or charge is first *(or specify other rank)*.
7. My *(or our)* investment of *(specify amount)* represents *(specify percentage)* of the total loan to the borrower *(or borrowers)*.
8. (a) I am *(or we are)* satisfied that the approximate value of the property is *(specify amount)*.
(b) I *(or we)* used the following means to determine the approximate value of the property: *(specify)*.
(c) Including my *(or our)* mortgage amount, the percentage of the value of the property that is mortgaged *(or /encumbered)* is *(specify percentage)*.
9. (a) The term of loan is *(specify term of loan in months, years, etc.)*.
(b) The due date of loan is *(specify date)*.
(c) The loan is amortized over *(specify number of years)*.

10. The interest rate is *(specify interest rate)* calculated semi annually, not in advance *(or specify how interest rate is calculated)*.
11. Particulars of amounts and due dates *(monthly, quarterly, etc.)* of payments of principal and interest: *(specify)*
12. Particulars and amounts of any bonus or holdback or any other special terms: *(specify)*
13. (a) The mortgage is to be registered in the name *(or names)* of *(specify name or names)*.
 (b) After completion of the mortgage transaction, a collection or administration fee of *(specify amount)* per instalment is payable by the investor *(or investors)* *(or borrower)* *(or borrowers)* to *(specify recipient of fee)*.
 (c) If the mortgage is held in trust, the dates on which payments are to be made by the trustee *(if applicable)* to me *(or us)* are: *(specify dates)*
14. Particulars of disbursements made for legal, brokerage or other fees or commissions in connection with the placement of the loan, including the names of recipients and amounts paid, are: *(specify)*

B. CONDITIONS:

1. *(Instructions: Clauses (a) and (b) below refer to information which each investor may require from the lawyer. If you require the information referred to in a clause, initial the clause.)*

The information which I *(or we)* require from you as my *(or our)* lawyer before you complete the transaction and make the advance is as follows:

- (a) If my *(or our)* investment will be in a position other than a first mortgage or charge, details, including amounts, of all existing encumbrances outstanding.
 - (b) If the mortgage or charge is a syndicated mortgage, and a prospectus is necessary, a copy of the prospectus. We acknowledge and accept that you as my *(or our)* lawyer express no opinion as to the necessity for or validity of a prospectus.
2. *(Instructions: Each investor to complete and initial clause (a) and, if clause (a) is answered in the affirmative, to complete (if necessary) and initial clause (b) and to initial clause (c).)*
 - (a) I *(or we)* instruct you to obtain a current and independent appraisal of the subject property and provide it to me *(or us)* before you complete this mortgage transaction. *(Specify yes or no.)*
 - (b) The appraisal is to be paid by me *(or us)* or *(specify name of person who is to pay for appraisal)*.
 - (c) I *(or we)* have been advised and accept that you as my *(or our)* lawyer do not express an opinion as to the validity of the appraisal.

C. DISCLOSURE:

1. I (or we) acknowledge being advised by you as my (or our) lawyer that you do not have any direct or indirect interest in the borrower (or borrowers). *(Specify yes or no and indicate the date on which the lawyer advised you that he or she has no direct or indirect interest in the borrower or borrowers.)*

(If the lawyer has an interest in the borrower or borrowers, he or she is unable to act for you on this loan (Rule 7, Rules of Professional Conduct).)

(Warning:

1. *You are cautioned that the responsibility for assessing the financial merits of the mortgage investment rests with the investor or investors at all times. The lawyer's responsibility is limited to ensuring the mortgage is legally registered on title in accordance with the investor's or investors' instructions. The lawyer is not permitted to personally guarantee the obligations of the borrower or borrowers nor the suitability of the property as security for the mortgage investment.*
2. *Any loss you may suffer on this mortgage investment will not be insured under the lawyer's professional liability policy if the lawyer has acted as a mortgage broker or has helped to arrange it.*)*

I (or we) hereby acknowledge receipt of a copy of this form prior to the advance of funds to or on behalf of the borrower (or borrowers). I (or we) further acknowledge having read and understood the above warnings.

Investor (or Investors):

(Specify full name of the investor (or full names of the investors) and specify the investor's (or each investor's) address.)

(Signature of the investor (or of each investor))

(Date of signature)

**(Pursuant to clause (g) of Part III of the Professional Liability Insurance Policy for Lawyers, the policy does not apply "to any CLAIM directly or indirectly arising as a result of the INSURED acting as a MORTGAGE BROKER or as an intermediary arranging any financial transaction usual to mortgage lending; or to any CLAIM arising from circumstances where the INSURED has provided PROFESSIONAL SERVICES in conjunction with the above.")*

[SAMPLE]

FORM 9D

INVESTMENT AUTHORITY

(Note to lawyer: This form is required in a private mortgage transaction whether or not the mortgage was arranged by you. Please have your client complete every point on this form, with "n/a" being noted if the point is not applicable. This form may be entered on a word processor. For the definition of mortgage broker and other terms found in the clause of the Lawyers' Professional Indemnity Company Policy found at the bottom of this form, please refer to the policy.)

To: *(Specify name of lawyer or law firm)* **Leslie Lawyer**

I *(or we)* instruct you to act on my *(or our)* behalf, on my *(or our)* mortgage investment *(or investments)* of *(specify amount)* **\$40,000.00**, the details, conditions and disclosures of which are set out below.

A. DETAILS ABOUT THE INVESTMENT:

1. Name and address of borrower *(or borrowers)*: *(specify)*
Terry Taylor, 123 Main St., Anytown, ON Z9Y 8X7
2. Name and address of guarantor *(or guarantors)* *(if any)*: *(specify)*
Kerry Taylor, 987 Townline Rd., Anytown, ON Z9Y 6W5
3. Legal description and municipal address of real property: *(specify)*
**Lot 10, Plan 20, Town of Anytown, County of Plenty
123 Main St., Anytown, ON, Z9Y 8X7**
4. Type of property: *(specify, e.g., residence, vacant land, etc.)* **Residence**
5. (a) Principal amount of mortgage or charge: *(specify)* **\$40,000.00**
(b) Amount of loan to be advanced by me *(or us)*: *(specify)* **\$40,000.00**
6. Rank of mortgage or charge is first *(or specify other rank)* **2nd (after payout and discharge of existing second mortgage)**
7. My *(or our)* investment of *(specify amount)* **\$40,000.00** represents *(specify percentage)* **100%** of the total loan to the borrower *(or borrowers)*.
8. (a) I am *(or we are)* satisfied that the approximate value of the property is *(specify amount)* **\$250,000.00**
(b) I *(or we)* used the following means to determine the approximate value of the property: *(specify)* **Arm's length sale of property for \$250,000 in February 2010**

- (c) Including my (or our) mortgage amount, the percentage of the value of the property that is mortgaged (or /encumbered) is (specify percentage) **66% (after payout of existing second mortgage)**
9. (a) The term of loan is (specify term of loan in months, years, etc.) **1 Year.**
 (b) The due date of loan is (specify date) **September 1, 2011.**
 (c) The loan is amortized over (specify number of years) **15 Years.**
10. The interest rate is (specify interest rate) **5.5%** calculated semi annually, not in advance (or specify how interest rate is calculated).
11. Particulars of amounts and due dates (monthly, quarterly, etc.) of payments of principal and interest: (specify) **\$370.80 on the first day of each month**
12. Particulars and amounts of any bonus or holdback or any other special terms: (specify) **N/A**
13. (a) The mortgage is to be registered in the name (or names) of (specify name or names).
Kim Kirby
 (b) After completion of the mortgage transaction, a collection or administration fee of (specify amount) **N/A** per instalment is payable by the investor (or investors) (or borrower) (or borrowers) to (specify recipient of fee) **N/A.**
 (c) If the mortgage is held in trust, the dates on which payments are to be made by the trustee (if applicable) to me (or us) are: (specify dates) **N/A**
14. Particulars of disbursements made for legal, brokerage or other fees or commissions in connection with the placement of the loan, including the names of recipients and amounts paid, are: (specify) **Legal fees \$400.00, Disbursements \$70.00, HST \$53.30, payable to Leslie Lawyer**

B. CONDITIONS:

1. (Instructions: Clauses (a) and (b) below refer to information which each investor may require from the lawyer. If you require the information referred to in a clause, initial the clause.)

The information which I (or we) require from you as my (or our) lawyer before you complete the transaction and make the advance is as follows:

- (a) If my (or our) investment will be in a position other than a first mortgage or charge, details, including amounts, of all existing encumbrances outstanding.
“KK”
- (b) If the mortgage or charge is a syndicated mortgage, and a prospectus is necessary, a copy of the prospectus. We acknowledge and accept that you as my (or our) lawyer express no opinion as to the necessity for or validity of a prospectus.

2. *(Instructions: Each investor to complete and initial clause (a) and, if clause (a) is answered in the affirmative, to complete (if necessary) and initial clause (b) and to initial clause (c).)*
- (a) I (or we) instruct you to obtain a current and independent appraisal of the subject property and provide it to me (or us) before you complete this mortgage transaction. *(Specify yes or no.)* **No “KK”**
 - (b) The appraisal is to be paid by me (or us) or *(specify name of person who is to pay for appraisal).* **N/A**
 - (c) I (or we) have been advised and accept that you as my (or our) lawyer do not express an opinion as to the validity of the appraisal. **N/A**

C. DISCLOSURE:

1. I (or we) acknowledge being advised by you as my (or our) lawyer that you do not have any direct or indirect interest in the borrower (or borrowers). *(Specify yes or no and indicate the date on which the lawyer advised you that he or she has no direct or indirect interest in the borrower or borrowers.)* **Yes, Aug 8, 2010**
- (If the lawyer has an interest in the borrower or borrowers, he or she is unable to act for you on this loan (Rule 7, Rules of Professional Conduct).)*

(Warning:

- 1. *You are cautioned that the responsibility for assessing the financial merits of the mortgage investment rests with the investor or investors at all times. The lawyer's responsibility is limited to ensuring the mortgage is legally registered on title in accordance with the investor's or investors' instructions. The lawyer is not permitted to personally guarantee the obligations of the borrower or borrowers nor the suitability of the property as security for the mortgage investment.*
- 2. *Any loss you may suffer on this mortgage investment will not be insured under the lawyer's professional liability policy if the lawyer has acted as a mortgage broker or has helped to arrange it.)**

I (or we) hereby acknowledge receipt of a copy of this form prior to the advance of funds to or on behalf of the borrower (or borrowers). I (or we) further acknowledge having read and understood the above warnings.

Investor (or Investors): **Kim Kirby**
456 Avenue Rd., Anytown, ON Z9Y 4V3

(Specify full name of the investor (or full names of the investors) and specify the investor's (or each investor's) address.)

(Signature of the investor (or of each investor)) **Kim Kirby**

(Date of signature) **August 30, 2010**

**(Pursuant to clause (g) of Part III of the Professional Liability Insurance Policy for Lawyers, the policy does not apply “to any CLAIM directly or indirectly arising as a result of the INSURED acting as a MORTGAGE BROKER or as an intermediary arranging any financial transaction usual to mortgage lending; or to any CLAIM arising from circumstances where the INSURED has provided PROFESSIONAL SERVICES in conjunction with the above.”)*

FORM 9E
REPORT ON THE INVESTMENT

(Note to lawyer: In all private mortgage transactions, whether or not the mortgage was arranged by you, you must complete this form, or, alternatively, you must complete a reporting letter which includes responses to all numbered items in this form. If you complete this form, you must complete every numbered item on this form, with "n/a" being entered if the numbered item is not applicable. If you complete a reporting letter, you must respond to all numbered items in this form in your reporting letter. If a numbered item is not applicable, you must include it in your reporting letter and indicate that it is not applicable. After completion, an original of this form, or the reporting letter, must be delivered forthwith to each lender. This form may be entered on a word processor. For the definition of mortgage broker and other terms found in the clause of the Lawyers' Professional Indemnity Company Policy found at the bottom of this form, please refer to the policy.)

To: *(Specify name and address of investor.)*

A. Details about the investment:

1. Name and address of borrower *(or borrowers)*: *(specify)*
2. Name and address of guarantor *(or guarantors)* *(if any)*: *(specify)*
3. Legal description and municipal address of real property: *(specify)*
4. Type of property: *(specify, e.g., residence, vacant land, etc.)*
5. (a) Principal amount of mortgage or charge: *(specify)*
(b) Amount of loan advanced by you: *(specify)*
6. Rank of mortgage or charge is first *(or specify other rank)*.
7. Your investment of *(specify amount)* represents *(specify percentage)* of the total of this loan to the borrower *(or borrowers)*.
8. Date principal advanced: *(specify)*
9. (a) The term of loan is *(specify term of loan in months, years, etc.)*.
(b) The due date of the loan is *(specify date)*.
(c) The loan is amortized over *(specify number of years)*.
10. The interest rate is *(specify interest rate)* calculated semi annually, not in advance *(or specify how interest rate is calculated)*.
11. Particulars of amounts and due dates *(monthly, quarterly, etc.)* of payments of principal and interest: *(specify)*

12. Particulars and amounts of any bonus or holdback or any other special terms:
(specify)
13. Details of any existing encumbrances, including rank on title, balances outstanding, mortgagee name and maturity dates: *(specify)*
14. In those instances in which the mortgage or charge is a collateral security, or if the mortgage or charge is collaterally secured, the details of other security are:
(specify)
15. (a) Particulars of disbursements made for legal, brokerage or other fees or commissions in connection with the placement of the loan, including the names of recipients and amounts paid, are: *(specify)*

(b) Alternatively, I have advised I cannot confirm what independent commissions or fees are being charged to the borrower.
16. Registration number, date of registration and land registry office location: *(specify)*
17. Insurance particulars *(where relevant)*: *(specify)*

B. CONDITIONS AND DISCLOSURE:

In accordance with your Form 18A [Investment Authority] request for information and disclosures prior to the advance of your money, I advise that I have previously provided you with the requested information and disclosures as follows:

1. Particulars of existing encumbrances outstanding: *(Specify yes or no, and if yes, specify date on which particulars were provided.)*
2. In the case of a syndicated mortgage where a prospectus was required, a copy of the prospectus: *(Specify yes or no, and if yes, specify date on which prospectus was provided.)*

I advised and you acknowledged that I gave no opinion as to the necessity or validity of a prospectus.
3. Independent appraisal: *(Specify yes or no, and if yes, specify date on which independent appraisal was provided.)*

I advised and you acknowledged that I gave no opinion as to the necessity or validity of an appraisal.
4. Any loss you may suffer on this mortgage investment will not be insured under the lawyers' professional liability policy if the lawyer has acted as a mortgage broker or has helped to arrange it.*

I advised and you acknowledged having read and understood this warning.

(Warning: You are cautioned that the responsibility for assessing the financial merits of the mortgage investment rests with the investor at all times. The lawyer's responsibility is limited to ensuring the mortgage is legally registered on title in accordance with the investor's instructions. The lawyer is not permitted to personally guarantee the obligations of the borrower or borrowers nor the suitability of the property as security for the mortgage investment.

(Name of lawyer or law firm)

(Address of lawyer or law firm)

(Signature of lawyer)

(Date of signature)

**(Pursuant to clause (g) of Part III of the Professional Liability Insurance Policy for Lawyers, the policy does not apply "to any CLAIM directly or indirectly arising as a result of the INSURED acting as a MORTGAGE BROKER or as an intermediary arranging any financial transaction usual to mortgage lending; or to any CLAIM arising from circumstances where the INSURED has provided PROFESSIONAL SERVICES in conjunction with the above".)*

[SAMPLE]
FORM 9E
REPORT ON THE INVESTMENT

(Note to lawyer: In all private mortgage transactions, whether or not the mortgage was arranged by you, you must complete this form, or, alternatively, you must complete a reporting letter which includes responses to all numbered items in this form. If you complete this form, you must complete every numbered item on this form, with "n/a" being entered if the numbered item is not applicable. If you complete a reporting letter, you must respond to all numbered items in this form in your reporting letter. If a numbered item is not applicable, you must include it in your reporting letter and indicate that it is not applicable. After completion, an original of this form, or the reporting letter, must be delivered forthwith to each lender. This form may be entered on a word processor. For the definition of mortgage broker and other terms found in the clause of the Lawyers' Professional Indemnity Company Policy found at the bottom of this form, please refer to the policy.)

To: *(Specify name and address of investor.)*

Kim Kirby
456 Avenue Rd., Anytown, ON Z9Y 4V3

A. DETAILS ABOUT THE INVESTMENT:

1. Name and address of borrower *(or borrowers): (specify)*
Terry Taylor, 123 Main St., Anytown, ON Z9Y 8X7
2. Name and address of guarantor *(or guarantors) (if any): (specify)*
Kerry Taylor, 987 Townline Rd., Anytown, ON Z9Y 6W5
3. Legal description and municipal address of real property: *(specify)*
Lot 10, Plan 20, Town of Anytown, County of Plenty
123 Main St., Anytown, ON, Z9Y 8X7
4. Type of property: *(specify, e.g., residence, vacant land, etc.)* **Residence**
5. (a) Principal amount of mortgage or charge: *(specify)* **\$40,000.00**
(b) Amount of loan advanced by you: *(specify)* **\$40,000.00**
6. Rank of mortgage or charge is first *(or specify other rank)*. **2nd (after payout and discharge of existing second mortgage)**
7. Your investment of *(specify amount)* **\$40,000.00** represents *(specify percentage)* of the total of this loan to the borrower *(or borrowers)*. **100%**
8. Date principal advanced: *(specify)* **September 1, 2010**

9. (a) The term of loan is *(specify term of loan in months, years, etc.)*. **1 Year**
 (b) The due date of the loan is *(specify date)*. **September 1, 2011**
 (c) The loan is amortized over *(specify number of years)*. **15 Years**
10. The interest rate is *(specify interest rate) calculated semi annually, not in advance (or specify how interest rate is calculated)*. **5.5%**
11. Particulars of amounts and due dates *(monthly, quarterly, etc.)* of payments of principal and interest: *(specify)* **\$370.80 on the first day of each month.**
12. Particulars and amounts of any bonus or holdback or any other special terms:
(specify) **N/A**
13. Details of any existing encumbrances, including rank on title, balances outstanding, mortgagee name and maturity dates: *(specify)* **Existing first mortgage, balance of \$121,945.74 at August 1, 2010, payable to Ontario Bank, Maturing February 1, 2011. Existing second mortgage to be paid out from mortgage advance, balance owing at September 1, 2010 is \$33,742.83.**
14. In those instances in which the mortgage or charge is a collateral security, or if the mortgage or charge is collaterally secured, the details of other security are:
(specify) **N/A**
15. (a) Particulars of disbursements made for legal, brokerage or other fees or commissions in connection with the placement of the loan, including the names of recipients and amounts paid, are: *(specify)* **Legal fees \$400.00, disbursements \$70.00, HST \$53.30, payable to Leslie Lawyer.**
 (b) Alternatively, I have advised I cannot confirm what independent commissions or fees are being charged to the borrower. **N/A**
16. Registration number, date of registration and land registry office location: *(specify)*
Registration No. 987321, September 1, 2010, LRO for County of Plenty, Anytown
17. Insurance particulars *(where relevant)*: *(specify)* **Ontario Insurance Company, Homeowners Policy No. 789123**

B. CONDITIONS AND DISCLOSURE:

In accordance with your Form 18A [Investment Authority] request for information and disclosures prior to the advance of your money, I advise that I have previously provided you with the requested information and disclosures as follows:

1. Particulars of existing encumbrances outstanding: *(Specify yes or no, and if yes, specify date on which particulars were provided.)* **Yes, August 9, 2010**

2. In the case of a syndicated mortgage where a prospectus was required, a copy of the prospectus: *(Specify yes or no, and if yes, specify date on which prospectus was provided.)* **No, N/A**

I advised and you acknowledged that I gave no opinion as to the necessity or validity of a prospectus.

3. Independent appraisal: *(Specify yes or no, and if yes, specify date on which independent appraisal was provided.)* **No, N/A**

I advised and you acknowledged that I gave no opinion as to the necessity or validity of an appraisal.

4. Any loss you may suffer on this mortgage investment will not be insured under the lawyers' professional liability policy if the lawyer has acted as a mortgage broker or has helped to arrange it.*

I advised and you acknowledged having read and understood this warning.

(Warning: You are cautioned that the responsibility for assessing the financial merits of the mortgage investment rests with the investor at all times. The lawyer's responsibility is limited to ensuring the mortgage is legally registered on title in accordance with the investor's instructions. The lawyer is not permitted to personally guarantee the obligations of the borrower or borrowers nor the suitability of the property as security for the mortgage investment.)

(Name of lawyer or law firm)

Leslie Lawyer

(Address of lawyer or law firm)

**10 Downtown St.
Anytown, ON Z9Y 2T1**

(Signature of lawyer)

Leslie Lawyer

(Date of signature)

September 3, 2010

**(Pursuant to clause (g) of Part III of the Professional Liability Insurance Policy for Lawyers, the policy does not apply "to any CLAIM directly or indirectly arising as a result of the INSURED acting as a MORTGAGE BROKER or as an intermediary arranging any financial transaction usual to mortgage lending; or to any CLAIM arising from circumstances where the INSURED has provided PROFESSIONAL SERVICES in conjunction with the above".)*

LETTER OF DIRECTION

To: The Manager,

Name of Bank:

(Name of chartered bank, provincial savings office, registered trust company, credit union or
caisse populaire)

Branch: _____

Address: _____

Re: The Law Foundation of Ontario and Account No.

The above account is ___ in my name

___ in the name of the firm with which I am associated

In accordance with Section 57 of the Law Society Act, I direct you, until further notice, to compute the amount earned by applying to the balance in the above account the rate of interest approved from time to time by the Trustees of The Law Foundation of Ontario. Please pay into an account held in your main office in Ontario in the name of The Law Foundation of Ontario amounts so calculated and give written notice to me at the address shown on the above account and to The Law Foundation of Ontario, 20 Queen Street West, Suite 3002, Box #19, Toronto, Ontario, M5H 3R3, when each such payment is made. This notice should show, as applicable as per the terms of the interest agreement between the LFO and your financial institution, the amount of the payment, the amounts of the daily/monthly balances, and the rates of interest used in computing the payment.

Dated: the day of _____ , _____ , 20

(Signed)

Firm Name:

Address:

Form 2: Report on Opening a Mixed Trust Account

Version date: February 1, 2008 (effective January 1, 2009)

To be completed by all licensees (lawyers and paralegals) responsible for client trust monies in a mixed trust account.

I advise that I have directed my bank to pay to The Law Foundation of Ontario, in accordance with section 57 of the *Law Society Act*, interest on the following account:

Name of Financial Institution where mixed trust account was opened: _____

Branch Address of Financial Institution: _____

Transit number: _____

Account number: _____

Name in which account is held: _____

Name and address of Firm: _____

Date on which the account was opened: _____

Signature

Date

Licensee's Name (in print)

--	--	--	--	--	--	--	--

Law Society licensee number

Notes:

- 1. This Form must be submitted to the LFO within 30 days of opening a mixed trust account. This completed Form may be submitted by mail, email (filings@lawfoundation.on.ca) or by fax (416-598-1526).**
- 2. Submission of this Form does not substitute for submission of the Form 1: Annual Report to The Law Foundation of Ontario.**

PAYMENT OF REGISTRATION FEES AND LAND TRANSFER TAX

Background

The Teraview Electronic Registration Systems Agreement (“the Teraview agreement”) requires an account holder to designate an account from which Teranet is authorized to withdraw registration fees and land transfer tax which are incurred when the account holder uses Teraview to submit documents for registration. The Teraview agreement refers to this account as “the electronic registration bank account” or “ERBA”.

The Teraview agreement provides that the submission of instructions for registration of documents on-line in electronic format is deemed to be an authorization to Teranet to debit predetermined sums representing registration fees and land transfer tax from the electronic registration bank account.

With the roll-out of the Teraview Electronic Registration System (“Teraview”), the Law Society had to consider payment methods which adhered to our regulatory and statutory scheme for the payment of land transfer tax and registration fees.

Designation of a trust account as the Electronic Registration Bank Account

The Law Society By-laws have always permitted the payment of registration fees and land transfer tax from a lawyer's *general* account. With the roll-out of e-reg., the Law Society was asked to consider how these payments could be made from a lawyer's *trust* account.

Designation of Mixed Trust Account

The designation of the lawyer's existing mixed trust account as the electronic registration bank account was determined not to be a viable alternative for two reasons:

- (1) The Law Society By-laws (except in exceptional circumstances) do not permit non-lawyers to transact trust funds. In electronic registration, non-lawyers would be registering documents and thereby would be transacting trust funds; and
- (2) The Law Society By-laws prohibit a third party from having unilateral access to a lawyer's trust account. In electronic registration, Teranet would have the authorization to debit the electronic registration bank account.

The Law Society was faced with the task of determining a method that would both preserve a comparable degree of protection and integrity over client funds in the trust account and provide flexibility for lawyers.

In 1999, Convocation approved amendments to the By-Laws to permit the use of a special trust account for the payment of registration fees and land transfer taxes.

Special Trust Account

What is a special trust account?

The special trust account acts as a clearing account. From a banking perspective, this account resembles the mixed trust account commonly operated by lawyers. All the requirements and restrictions applicable to lawyers' trust accounts apply to this account.

This account, however, has some special features. These features are contained in sections 15 and 16 of By-Law 9.

Requirements and Restrictions of the Special Trust Account

The following are some of the requirements and restrictions of the special trust account:

Deposit of Monies

- (1) A lawyer shall only deposit into the special trust account money received in trust for a client for the purposes of paying the document registration fees and land transfer tax - section 16 (1)(b)(i) of By-Law 9;
- (2) A lawyer shall only deposit into the special trust account exact sums of money required to pay the document registration fees and land transfer tax related to the client's real estate transaction - section 16 (3), By-Law 9;
- (3) The money deposited into the special trust account must relate to a particular client(s) and his, her or their real estate transaction - section 16 (1)(b)(i), By-Law 9;

Length of Time that Monies may Remain on Deposit

- (1) Money that is deposited into the special trust account shall not be kept in the account for more than five days - section 16 (4), By-Law 9;
- (2) If the money is not properly withdrawn from the account by Teranet within five days after the day on which it is paid into the account, the lawyer shall transfer the money from that account into another trust account that is not a special trust account (e.g., mixed trust account) - section 16 (4), By-Law 19;

Errors relating to Deposits

- (1) If more money than required to pay the document registration fees and land transfer tax, through inadvertence, is paid into the special trust account, the lawyer shall transfer the excess money from the special trust account into another trust account that is not a special trust account- section 16 (3), By-Law 9;

Authorization of Withdrawal by Teranet - Form 9B

- (1) A lawyer prior to authorizing Teranet to withdraw the document registration fees and land transfer tax from the special trust account, must prepare and sign an authorization form as evidence that the lawyer has authorized the transfer of funds. The authorization form must be in Form 9B - sections 15 (5) and (6), By-Law 9;

Confirmation from Teranet

- (1) A lawyer shall not authorize Teranet to withdraw document registration fees and land transfer tax from the special trust account unless Teranet agrees to provide

the lawyer with a confirmation of the withdrawal. The confirmation must be received by the lawyer not later than 5 p.m. on the day immediately after the day on which the withdrawal is authorized by the lawyer - sections 15 (2) and (3), By-Law 9 .

- (2) The confirmation shall contain the amount of money withdrawn from the special trust account, the time and date that the authorization to withdraw is received by Teranet and the time and date that the confirmation is sent to the lawyer - section 15 (4), By-Law 9.

Comparison of Authorization and Confirmation

- (1) The lawyer must reconcile the information contained in the written authorization (Form 9B) to that contained in the confirmation no later than 5 p.m. on the day immediately after the day on which the confirmation is sent to the lawyer by:
 - producing a paper copy of the confirmation;
 - comparing the paper copy of the confirmation and the written authorization relating to the withdrawal (Form 9B) to verify that money was withdrawn from the special trust account by Teranet as authorized by the lawyer;
 - indicating on the paper copy of the confirmation the name of the client and the file number if the paper copy does not contain this information; and
 - signing and dating the paper copy of the confirmation if the amounts reconcile. If the amounts do not reconcile, Teranet must be contacted immediately and the error must be corrected - section 15 (7), By-Law 9.

Payment of Registration Fees and Land Transfer Tax from the Special Trust Account

Registration fees and land transfer tax may be paid from the special trust account as follows:

(1) Receipt of Funds From Client

When a lawyer receives one cheque payable to the lawyer or law firm in trust from the client which comprises closing funds and money required for the payment of registration fees and land transfer tax, the cheque must be deposited into the lawyer mixed trust account. The lawyer then prepares a trust cheque drawn on his or her mixed trust account in the amount of the registration fees and land transfer tax and deposits this cheque into his or her special trust account.

If the lawyer receives a separate cheque in the amount of the registration fees and land transfer tax from the client, then the lawyer may deposit this cheque directly into the special trust account.

Monies deposited into the special trust account, however, may not be kept in this account for more than five days. If money is received more than five days prior to closing, the money must be deposited into the lawyer's mixed trust account and then transferred into the special trust account when required.

(2) Completion of Form 9B and Registration

The lawyer completes and signs Form 9B and submits instructions to Teranet for registration.

(3) Comparison of Form 9B to Confirmation

The lawyer prints the confirmation of registration and ensures that the amounts contained in Form 9B match those contained in the confirmation. The time requirement, contained in By-Law 9, for completion of this step must be complied with.

(4) Report to Client

The lawyer reports to the client and provides the client with a bill and full explanation of the transaction of trust funds.

(Please refer to Appendix 1 - Diagram - Option 1 - Payment From New Mixed Trust Account)

General Account

Land transfer tax and registration fees may also be paid from a lawyer's general account. A lawyer may use either his or her existing general account or may set up a separate general account for this purpose. These expenses are treated like any other general client disbursements. Where a lawyer has sufficient monies in his or her trust account to the credit of the client in a particular matter and where the lawyer has properly incurred an expense on behalf of that client, the lawyer may reimburse himself or herself by withdrawing from his or her mixed trust account the amount of the expense incurred and by depositing it into his or her general account.

Procedure when paying registration fees and land transfer tax from the general account

Registration fees and land transfer tax may be paid from the general account as follows:

(1) Receipt of Funds from Client

A lawyer receives the client's money and deposits the money into the lawyer's mixed trust account.

(2) Registration

The lawyer submits instructions to Teranet to electronically register the documents and by so doing authorizes Teranet to debit the general account.

(3) Transfer from the Mixed Trust Account to the General Account

A trust cheque is prepared to the law firm in the amount of the land transfer tax and registration fees and is deposited into the lawyer's general account. Please note that this transfer from the mixed trust account to the general account can only be done after Teranet has been authorized to withdraw funds from the general account.

(4) Report to the Client

The lawyer provides the client with a report and an account. Although it would be preferable for the lawyer to send the client a disbursement account prior to reimbursing himself or herself for the expense incurred on behalf of the client, it is not a requirement. Please note, it is permissible to prepare and deposit a single cheque payable to the lawyer or law firm for disbursements incurred by the lawyer relating to multiple transactions and multiple clients provided that the amount of the disbursement relating to each individual client is properly posted to that client ledger.

(Please refer to Appendix 1 - Diagram - Option 2 - Payment From Lawyer's General Account)

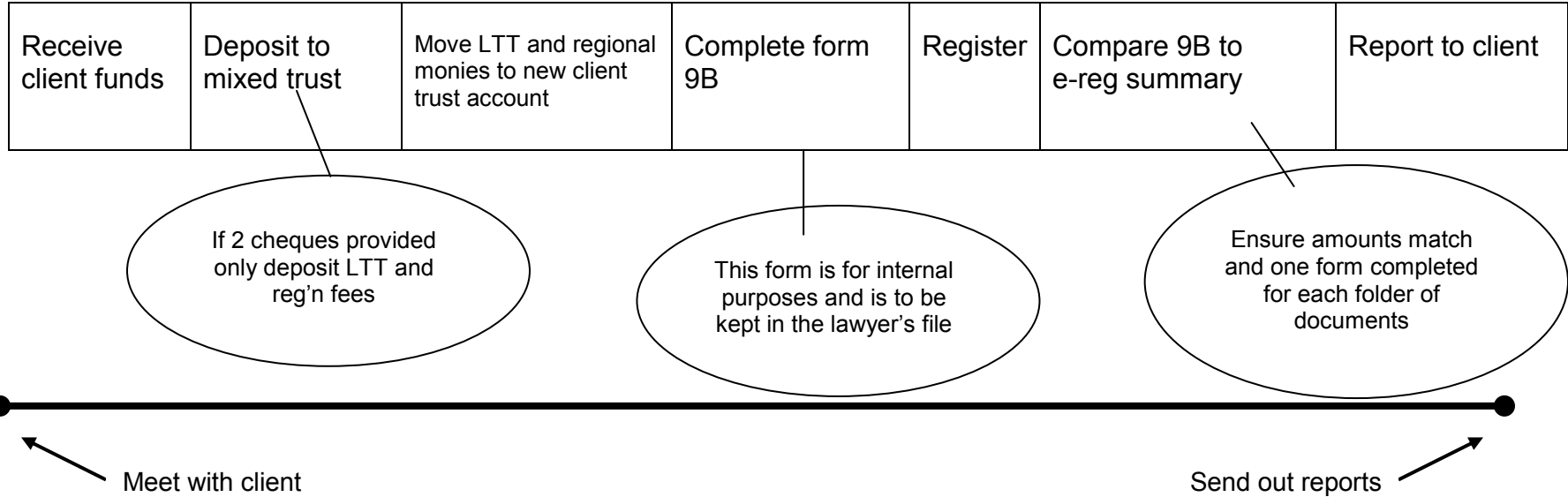
Which Option To Select - Trust Account or General Account

Both methods of payment are acceptable to the Law Society. A lawyer should select the method that best suits his or her practice. A lawyer may wish to consider the following in making a decision:

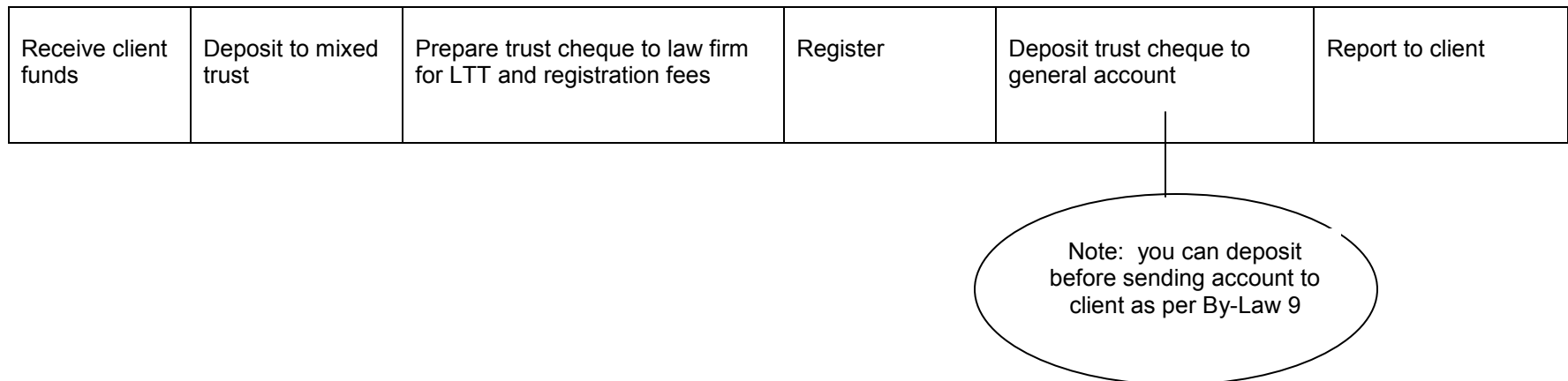
1. The firm's existing accounting procedures and systems;
2. The size of the firm (number of lawyers);
3. Whether the lawyer will be using support staff ;
4. The manner in which the lawyer conducts his or her practice;
5. The type of real estate practice that the lawyer operates - volume, types of transactions handled by the lawyer's office.
6. How easy will it be to do the banking - the distance and hours of operation of the bank.

APPENDIX 1 – PAYMENT OF LTT AND REGISTRATION FEES

Option 1: Payment from New Mixed Trust Account



Option 2: Payment from Lawyer's General Account



INTERNAL CONTROL SELF-ASSESSMENT GUIDE

Internal Controls are processes you put in place to help you run your practice more efficiently by reducing the risk of errors and fraud.

This guide is designed primarily for sole practitioners and lawyers in small law firms who may not have the resources to implement a formal control structure. However, many of these suggestions can be used in any size law firm. Even with limited resources, you can reduce the risks by:

- knowing how your law firm's accounting system works
- being familiar with the Law Society's record keeping requirements in By-Law 9
- knowing how to set up and maintain proper books and records
- being aware of the Law Society's money handling requirements in By-Law 9
- being actively involved in the financial activities of your firm
- supervising the accounting and finance functions of your firm

You can easily implement many of the following recommendations in your firm. Please note that while many of these recommendations are offered as suggestions, some are Law Society requirements and must be implemented. You should be familiar with the Law Society's By-Laws and the *Rules of Professional Conduct* to ensure your firm's record keeping and money handling procedures are in compliance with them. You can view the Law Society's By-Laws and the *Rules of Professional Conduct* at www.lsuc.on.ca.

TRUST RECORDS

Goal:

To ensure clients' money is promptly and accurately recorded in your firm's financial records in accordance with By-Law 9.

Risks:

- you are unable to meet your client trust obligations
- trust transactions are allocated to the incorrect client trust ledger account
- transaction errors go undetected.

Recommendations:

1. Are your trust receipts and disbursements always up to date?
2. Do you ensure that the trust comparison, which compares the reconciliation of the trust bank account and the client trust listing, is prepared within 25 days of each month end?
3. Do you review the trust comparison, trust bank account statements, reconciliations and the client trust listing each month?

4. When you review the monthly trust comparisons do you ensure that:
 - The reconciliations have been prepared by the 25th of the following month?
 - Reconciling items are listed individually and each one is clearly explained and can be traced to the bank statement?
 - The deposit book confirms any outstanding deposits listed on the trust bank reconciliation were deposited the next banking day?
 - Reconciling items, except outstanding cheques, are cleared promptly and do not recur the next month?
 - Uncashed cheques that are outstanding for more than two months are followed up?
 - Stop payments are requested on stale dated cheques over six months old, the cheques are reversed, the client trust liability reinstated in the clients' trust ledger, and the cheque reissued if appropriate?
 - The balance held in trust for each client on the client trust listing is correct?
 - There are no overdrawn client trust ledger accounts?
 - Funds in trust for completed matters have been billed to the proper clients, and the funds either transferred to your general account or returned to the client as appropriate?
 - You have followed up on all client trust ledger account balances that have had no activity in the past twelve months?
 - All funds in the trust account are allocated to a client and that there are no miscellaneous or suspense accounts or accounts in your name or the firm's name?
5. Do you periodically check the clients' trust ledger looking for unusual or incorrect items?
6. Do you ensure that you have adequate documentation, for example, the client's written instructions, to support the transfer of trust funds from one client's trust ledger account to another client's trust ledger account?
7. Are all transfers of funds between client trust ledger accounts recorded in a trust transfer journal as required by section 18(4) of By-Law 9?
8. Does your trust bank statement clearly indicate that it is a trust account?
9. Have you given a written direction to your financial institution to pay all interest on your mixed trust account directly to The Law Foundation of Ontario as required by section 57.1 of the Law Society Act?
10. Have you advised your financial institution in writing to deduct any service charges for your mixed trust account from your general account?
11. Have you sent a completed Form 2: Report on Opening a Mixed Trust Account to The Law Foundation of Ontario within 30 days of opening each mixed trust account?
12. Have you sent a completed Form 3: Report on Closing a Mixed Trust Account to The Law Foundation of Ontario within 30 days of closing each mixed trust account?

13. If you make automatic banking machine (ABM) deposits, do you always print out the ABM deposit receipts, attach them to your deposit book, and record the details of the deposit (*i.e.* source of funds, client reference and amount) in your deposit book?
14. Are credit card and debit card receipts from clients paying retainers for future fees and disbursements always deposited directly to your trust account and the details recorded in your trust deposit book?
15. Are credit card and debit card receipts from clients paying your invoices always deposited directly to your general account and the details recorded in your general deposit book?

SEGREGATION OF DUTIES AND HANDLING OF MONEY

Goal:

To ensure cash and cheque receipts are properly controlled and safeguarded.

Risks:

- funds received are lost
- funds received are not recorded
- funds received are stolen

Recommendations:

1. Do you ensure that the individual who opens and reviews your firm's mail, stamps each cheque with a restrictive endorsement such as "deposit only" to reduce the likelihood of fraud?
2. If opening mail and depositing funds is assigned to staff in your firm, do you ensure that one person opens the mail and a separate person deposits funds?
3. If a staff member deposits the cash and cheques, does another person enter the receipts in the accounting records?
4. Do you ensure cash and cheque receipts are deposited by the end of the next banking day and if they are not deposited immediately that they are locked in a safe location?
5. Do you review the stamped deposit slips to ensure each cheque is listed by source, client reference and amount?
6. Do you issue pre-numbered receipts to clients with a copy to accounting staff for all cash and cheques received to:
 - provide clients with proof of payment?
 - ensure funds are posted to the correct client's account?
 - reduce the risk of theft?

7. Does a person, other than the person who issues receipts for cash or cheques, verify the numerical sequence of receipts to ensure that all funds receipted are also recorded in the accounting records and deposited in the bank?
8. If you are a partner in a law firm, do you have management controls in place to monitor the handling of money to:
 - scrutinize your firm's trust and general bank account statements and returned cheques for any unusual transactions?
 - assess the reasonableness of the trust bank account balance(s)?
 - review the monthly trust account reconciliation and list of outstanding items and follow up on items over two months old and any stale-dated cheques over six months old?
 - review the client trust listing for overdrawn and inactive accounts and any accounts not in the name of a client?

Petty Cash:

9. If your firm uses petty cash, have you established a reasonable dollar amount for your firm as petty cash?
10. Do you require pre-numbered written requests supported by original receipts for petty cash?
11. Does the sum of petty cash on hand, plus the amounts in the written requests/receipts, always total your firm's established petty cash amount?
12. Do you ensure the petty cash account is reconciled monthly to the requests and receipts for petty cash by a person independent of the person who handles the petty cash?
13. Does your firm have a policy setting out what types of expenditures are acceptable for petty cash disbursements?

DISBURSEMENTS

Goal:

To ensure that all withdrawals of money from the trust and general bank accounts are for goods and services properly billed and authorized and that trust money is properly disbursed in accordance with By-Law 9.

Risks:

- money could be erroneously or fraudulently withdrawn from bank accounts
- funds could be withdrawn from the incorrect client trust ledger account
- trust accounts could be overdrawn
- payments could be made twice

Recommendations:

- A) *Cheque Preparation Policies*

1. Are original copies of invoices stamped "paid" to prevent invoices being paid more than once?
2. Are only original invoices, and not photocopies, required as backup for cheques?
3. Are your trust account cheques clearly marked "trust" and your general account cheques marked "general"?
4. Are your trust cheques and general cheques different colours to avoid confusion?

B) Cheque Signing Policies

1. Do you review the validity and reasonableness of cheques before signing them?
2. Do you check that there are adequate trust funds available for the related client before signing cheques?
3. Do you review the supporting documentation prior to signing cheques to ensure the service was provided and billed, or the disbursement is proper?
4. Do cheques issued on behalf of clients include a client reference to ensure the disbursement is allocated to the proper client in your disbursement journal and client ledger?
5. Do cheques made payable to financial institutions include details of the transaction, for example, a mortgage number?
6. Do cheque stubs have sufficient detail to provide a trail to supporting documentation?
7. Are trust cheques always signed by at least one licensee of the Law Society who is permitted to hold trust funds?
8. Do you have a practice to never sign blank cheques?
9. If you are in a partnership, do cheques above a certain dollar limit require more than one partner's signature?
10. If you are a sole practitioner, have you made arrangements with another licensee of the Law Society who is entitled to hold trust funds, to sign cheques on your trust account if you are unable to do so?

C) Internet Banking and Automated Banking Machines (ABM)

1. If you use Internet banking to transfer trust funds, do you ensure your firm is following the procedure set out in section 12 of By-Law 9?
2. Do you prepare a proper audit trail for electronic transfers, for example:
 - does each electronic transfer start with a properly numbered, completed, and signed Form 9A - Electronic Transfer Requisition?
 - does each electronic Teranet withdrawal from a special trust account for registration fees and Land Transfer tax, start with a properly numbered, completed, and signed Form 9B - Authorization for Withdrawal by Teranet?

- do you print the bank confirmation for each electronic transfer and Teranet withdrawal, compare it to the requisition details for accuracy, then sign and date the confirmation?
3. Do you keep all electronic transfer requisitions (Form 9A), Teranet withdrawal requisitions (Form 9B), and bank confirmations in numerical sequence with your accounting records?

Note: By-Law 9 and Forms 9A and 9B can be viewed on the Law Society website at: www.lsuc.on.ca

4. If your financial institution offers automatic banking machine (ABM) access, have you carefully read the ABM agreement and made sure you understand, and are willing to accept, the risks and liabilities involved before signing the agreement?
5. Have you confirmed that the ABM agreement for your trust account does not allow any funds to be withdrawn unilaterally by your financial institution?
6. Do you ensure that trust funds are never transferred or disbursed from an ABM?
7. Is the ABM access card for your trust account encoded for deposits only?
8. Do you keep your passwords to access and authorize ABM and Internet transactions confidential?

D) Cash Refunds

1. Do you prepare a proper audit trail when making cash refunds (such as when required by section 6(e) of By-Law 9), for example:
 - Always obtaining a detailed receipt from the payee?
 - If using a withdrawal slip, requesting a duplicate copy of the withdrawal slip for your records?
 - If issuing a cheque payable to yourself or your firm, noting the client file number and that it is a cash withdrawal?
2. Do you obtain written instructions from the client on the method of refunding

BILLINGS

Goal:

To ensure that billings to clients for services rendered, are prepared promptly and accurately, and are properly recorded in your books and records

Risks:

- legal services not billed
- invoice delivered to client but legal services not provided
- errors in invoices to clients
- revenue recorded in incorrect period
- invoice to client posted to incorrect client ledger account

Recommendations:

1. Do you discuss the fees for legal services and the expected disbursements with your client at the start of a matter?
2. Do you confirm all fee arrangements in writing for all services in easy to understand language?
3. Do you bill work-in-progress within a specified time frame and according to your agreement with the client?
4. Do you review the appropriateness and accuracy of invoices to clients?
5. Do you bill disbursements on a regular basis to maintain cashflow and prevent allocation of personal disbursements to client ledger accounts?
6. Do you check the original documents for accuracy before authorizing a request to transfer a disbursement from one client ledger account to another client ledger account?
7. Do you ensure invoices for legal fees are mailed or delivered to clients before transferring the fee amount from your trust bank account to your general bank account?
8. Are invoices to clients promptly recorded in your books and records as to date, client and amount?
9. Do you review the accounts receivable monthly to identify any credit balances which may indicate that invoices to clients have not been prepared, mailed to the client and entered in the client's ledger account?

PROTECTION OF CLIENT ASSETS**Goal:**

To protect physical assets, important documents and financial records from loss.

Risks:

- misappropriation of clients' assets.
- inability to fulfill your financial obligations

Recommendations:

1. Do you maintain an up to date inventory of valuable items and negotiable documents held on behalf of clients in a Valuable Property Record as required by section 18(9) of By-Law 9?
2. Do you periodically check the physical existence of the valuable items, to ensure items have not been lost, stolen, taken for personal use or used as collateral?
3. Do you keep all unissued cheques locked up and ensure they are all accounted for?

4. Are all issued cheques numerically accounted for in your trust and general disbursement journals and do you follow up on any missing cheques?
5. Do you print hard copies of your trust and general bank journals on a regular basis, at least monthly, and store them in a secure, fire proof location so that you can reconstruct your records in the event your computer crashes or your data is corrupted?
6. Do you print a hard copy of the client trust ledger account and review it for accuracy whenever you bill the client?

PERSONNEL POLICIES

Goal:

To ensure you and your staff conduct yourselves in a professional manner and identify and address conflict of interest situations.

Risks:

- inappropriate activities or conduct by lawyers or staff
- errors and Omissions and/or Compensation Fund claims
- fraudulent transactions are not identified or prevented
- decline in revenue

Recommendations:

1. Do you have an adequate conflicts checking system, and does everyone in your firm know how to use it?
2. Do you conduct thorough reference checks before hiring lawyers and staff?
3. Do you ensure all staff are aware of, and respect, the requirements for client confidentiality?
4. Does your firm require lawyers to disclose when they are acting as an executor or estate trustee, or are exercising a power of attorney on matters that are not reflected in the firm's books and records?
5. Do you ensure that any files of lawyers who act as executors of estates or in which the lawyer exercises a power of attorney is subject to the same scrutiny as "firm" files and that proper accounting records are being kept?
6. Does your firm conduct periodic reviews of lawyer and staff work to identify:
 - a lawyer or staff member who is consistently too busy to take holidays?
 - a lawyer or staff member who appears to be living beyond his or her means, including any sudden significant increase in advances of entertainment expenditures, or large increases in unbilled disbursements?
 - a lawyer whose production has fallen off for no apparent reason, or a lawyer who appears withdrawn or nervous?
 - a lawyer or staff member who often makes last minute requests for funds?

SMALL BUSINESS COMPUTER CONTROLS

Goal:

To ensure financial data is protected and to ensure you will be able to continue to practice in the event of a disruption.

Risks:

- misappropriation of funds
- unauthorized access to your financial records
- loss of data
- loss of clients and income during the recovery of operations after a disaster

Recommendations:

1. Do you deal with a reputable software dealer to ensure that updates, service and support are available?
2. Do you have appropriate licenses for all the software on your firm's computers?
3. Do you back up your computer data daily so that when your hard drive crashes you will lose only one day's data?
4. Do you have surge protectors for all your computers and modems?
5. Do you know how to operate your computer and accounting systems?
6. Do at least two people know how to operate your firm's systems?
7. Has your firm implemented segregation of duties in using the various functions in your computer system?
8. Are your computer systems password protected?
9. Do you safeguard your system's passwords to ensure client confidentiality?
10. Do you change passwords periodically?
11. Do you have adequate firewalls to prevent unauthorized access to your computer through the Internet?
12. Does everyone in your office scan for viruses prior to installing or using software or copying any file to the hard drives on your office computers?
13. Do you restrict access to your clients' and your firm's accounting information to authorized personnel?
14. Do you have adequate insurance, including business interruption insurance and insurance on records in storage?
15. Do you have a business recovery plan and procedures in place to ensure that:
 - your hardware and software are safeguarded from loss or damage?
 - electronic files are regularly backed-up and kept off-site?
 - important financial documents and files are copied and stored off-site?

16. Do you periodically test your business recovery plan to ensure it is effective?

And a final word of advice...

A system of internal controls will work only if it is understood, accepted and implemented by everyone in your firm. We suggest you use this guide as a basis for discussion with your partners, employed lawyers, staff, and accountants to set up appropriate internal controls that will work for your practice.

USE OF CREDIT CARDS IN THE LEGAL PRACTICE

Licensees may enter into agreements with financial institutions that offer credit card services subject to certain conditions.

The definition of “money” in By-Law 9 includes “credit card sales slips” and provides that credit card sales slips like other money received into trust, must be deposited to the licensee’s trust account not later than the following banking day.

CONDITIONS

Accounts from which Discounts and Services Charges are to be Deducted

Any credit card agreement that licensees enter into **must** provide that all service charges, discounts and other fees payable by the licensee to the financial institution are to be deducted from the licensee’s general account and that no such charges are to be deducted from the trust account. Licensees should note that most financial institutions offering credit card services require the opening of accounts at one of their branches. If a trust account is opened with a financial institution to facilitate the use of a particular credit card, the financial institution must be directed to pay interest on the funds held in trust to The Law Foundation of Ontario.

CONFIDENTIALITY

The sales slip may show the name of the lawyer or firm and its address, the necessary code numbers and date. The nature of the legal services provided must **not** be indicated, but only the words “legal services” plus a file number and a dollar amount. Details of the services are to be provided to the client in the usual way.

AMOUNT MUST BE SHOWN

Licensee **must not** accept a charge card sales slip unless the amount of the charge has been inserted at the time the client signs the sales slip.

PAYMENT OF RETAINERS

The words “trust account” must appear on the original credit card sales slip and the credit card sales slip must be presented for deposit in the appropriate trust account in accordance with By-Law 9. Normal accounting procedures are then to be followed in transferring the funds from trust to general. Any refund is to be made by credit card voucher. All service charges are to be deducted from the general account and the client

must receive full credit for the face amount of the credit card invoice. **The credit card company's discount or fee is a cost of carrying on practice and is not to be charged to the client.**

The procedures of some credit card companies place licensees in conflict with provisions in By-Law 9. Some credit card companies require merchants (including lawyers) to designate only **one** account into which credit card payments are to be deposited. Additionally, the discount charged by the company is automatically debited from this account.

This process will not permit licensees to receive by credit card both retainers and payments for billed fees and/or disbursements. Subsection 2(1) of By-Law 9 requires licensees to deposit funds received in trust (e.g. retainers) into an account designated as a trust account. Meanwhile, subsection 8(2) of By-Law 9 prohibits the deposit into trust, funds that are "received by the licensee on account of fees for which a billing has been delivered..." Consequently the use of one account for both purposes is not permissible.

Additionally, as with bank charges, the discount must be withdrawn from the licensee's general account.

Licensees are urged to canvass this issue with credit card companies that they are using or contemplating using. If the company imposes the above restrictions, licensees can only designate their general account and thus may only receive payments for billed fees and/or disbursements.

TELEPHONE AUTHORIZATIONS

We are asked from time to time whether it is acceptable to take a client's card number over the telephone and process payment of the account that way. It could be acceptable provided the lawyer has rendered the account before doing this. It is always preferable to have the best possible paper trail in any financial dealings, and the signature of the client on the sales slip is obviously the best proof one could have of the client's agreement to use this service.

The issue also arises as to whether it would be acceptable to renew a retainer in this way. It is suggested that the firm would not wish to put itself at risk of having the client deny that permission was given for this type of transaction and that if it is contemplated that retainers would be renewed by telephone permission, this arrangement should be

clearly set out in the written retainer. In fact we would suggest having the client specifically initial the paragraph of the retainer that would permit this arrangement. Reference should then be made to the paragraph headed "Payment of Retainers" set out above, and the procedure therein followed. It is emphasized that the "paper trail" is for the protection of the lawyer as much as for the protection of the client, and licensees are urged to take care in their use of credit cards so that misunderstandings do not arise between the firm and the client.

PRIVATE MORTGAGES – RECORD KEEPING

What is a “private” mortgage?

A “private” mortgage is any mortgage *not* excepted by section 24(2) of By-Law 9. These are funds, which are advanced usually from an individual, a corporate client or group of clients, rather than funds advanced by a financial institution.

The following questions can help you determine if the transaction is classified as a “private” mortgage:

- Do you act for private lenders?
- Do you receive money from private lenders?
- Do you act on mortgages arranged through mortgage brokers or other third parties?
- Do you act for lenders on mortgages where the lender is not a financial institution?

NOTE: Mortgage loans through RRSPs are *not* loans provided by a financial institution; the lender is the plan holder.

I am confused as to what is considered to be acting for clients on a private mortgage transaction and what is arranging a mortgage transaction?

Acting is the preparation and registration of documents pursuant to client instructions, certifying title, reporting, charging a legal fee, etc. Arranging (not necessarily a business) is being involved in the negotiations between the lender and borrower. A brokerage or arranging fee may be charged. Merely giving the name, address and telephone number of a lender to a borrower by itself does not constitute arranging a mortgage.

When are Forms 9D and 9E required?

The Forms are required whenever a lawyer "acts for or receives money from a lender" (section 24(1) of By-Law 9). A lender is defined in section 1(1) of By-Law 9 as "a person who is making a loan that is secured or to be secured by a charge, including a charge to be held in trust directly or indirectly through a related person or corporation."

However, section 24(2) sets out the transactions in which the Forms are not required. The exceptions are, where:

- a) the lender,
 - i. is a bank listed in Schedule I or II to the *Bank Act* (Canada), a licensed insurer, a registered loan or trust corporation, a subsidiary of any of them, a pension fund, or any other entity that lends money in the ordinary course of its business;
 - ii. has entered a loan agreement with the borrower and has signed a written commitment setting out the terms of the prospective charge, and,

iii. has given the licensee a copy of the written commitment before the advance of money to or on behalf of the borrower;

(Note: all three conditions must apply)

- b) the lender and borrower are not at arm's length; *[Note: "arm's length" is defined in sec.1(1) of By-Law 9 as having the same meaning as in the Income Tax Act (Canada)]*
- c) the borrower is an employee of the lender or of a corporate entity related to the lender;
- d) the lender has executed the Investor/Lender Disclosure Statement For Brokered Transactions approved by the Superintendent under subsection 54 (1) of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, and has given the lawyer written instructions, relating to the particular transaction, to accept the executed form as proof of the loan agreement;
- e) the total amount advanced by the lender does not exceed \$6,000; or
- f) the lender is selling real property to the borrower and the charge represents part of the purchase price.

See the Appendices for samples of completed Forms 9D and 9E.

What is the purpose of Forms 9D and 9E?

The Forms were developed to ensure documented communication between lawyers and their clients. Written instructions reduce allegations of miscommunication and failure to follow client instructions. The Law Society's goal is to ensure that the public is protected and to reduce claims and complaints by lender/clients to the Lawyers' Professional Indemnity Company and the Lawyers Fund for Client Compensation.

Form 9D contains the written instructions from the lender. It crystallizes the transaction and is available for confirmation purposes in the event of an Errors & Omissions claim. Form 9D is a prescribed form and may not be changed. Every point on the form must be completed, with "N/A" being noted only if the point is not applicable, for example: Form 9D paragraphs 8a, 8b, and 8c are always applicable and should not be answered "N/A"; the legal fees paid are to be specified and to whom paid in paragraph 14 of Form 9D and paragraph 15 of form 9E, and the investor's answer to question B2a must be initialed by the investor. Form 9D must be signed and dated by the lender before the first advance of money to or on behalf of the borrower.

Form 9E, or a reporting letter that answers all of the questions in Form 9E, is your report to the lender and should be fully completed and dated after the mortgage registration and sent to each lender within 60 days of the mortgage registration.

What if the mortgage is arranged through a mortgage broker?

While Forms 9D and 9E would normally be applicable, the transaction may be exempt provided that the lender:

- a) has executed the Investor/Lender Disclosure Statement for Brokered Transactions, approved by the Superintendent under subsection 54(1) of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*,
and
- b) has given the licensee written instructions, relating to the particular transaction, to accept the executed form as proof of the loan agreement. Section 24(2)(d) 7(2)(d).

May I act for both lender and borrower in a mortgage transaction?

Rule 2.04(11) of the *Rules of Professional Conduct* which came into effect November 1, 2000 prohibits a lawyer, or two or more lawyers practising in partnership or association, from acting for, or otherwise representing, both lender and borrower in a mortgage or loan transaction unless the transaction falls under one of the exceptions in *Rule 2.04(12)*. The exceptions are:

- a) the lawyer practices in a remote location where there are no other lawyers that either party could conveniently retain for the mortgage or loan transaction,
- b) the lender is selling real property to the borrower and the mortgage represents part of the purchase price,
- c) the lender is a bank, trust company, insurance company, credit union or finance company that lends money in the course of its business,
- d) the consideration for the mortgage or loan does not exceed \$50,000, or, the lender and borrower are not at "arm's length" as defined in the *Income Tax Act* (Canada).

Please note that Independent Legal *Advice* does not meet the requirements of Independent Legal *Representation*. If a mortgage transaction does not meet the requirements of *subsection 2.04(12)* the other party must either be legally represented throughout the transaction by another lawyer, in which case *subrule 6.03(7)* applies or the other party is unrepresented, in which case *subrule 2.04(14)* applies.

When reviewing the *Rules of Professional Conduct* to determine whether you could be considered to be representing both lender and borrower, keep in mind the following points:

When you act for a lender, there are essentially three situations with respect to the borrower:

- i. The Borrower is Represented (ILR) - *subrule 6.03(7)*
 - You communicate only with the borrower's lawyer throughout the transaction
- ii. The Borrower is Unrepresented - *subrule 2.04(14)*
 - a. You urge the borrower to obtain independent legal representation *i.e.* retain his or her own lawyer
 - b. You ensure that the borrower does not believe you are looking after his or her interests, and
 - c. You make clear to the borrower that you are acting solely in the interests of the lender and therefore your comments may be biased.

You should convey the above three points to the unrepresented borrower in writing at the first opportunity.

- iii. You represent the Borrower - *subrules 2.04(6), (7), and (8)*
- Where permitted by *subrule 2.04(12)*, you may also represent the borrower if you have obtained the written consent of both the lender and borrower before you begin to act for the borrower: Depending on the circumstances, you may or may not refer the borrower for independent legal advice (ILA); e.g. if the lender is one of your regular clients.

If you are unable to produce documentation establishing either situation i) or ii) exists, it will be assumed that situation iii) applies, and depending on the circumstances, *i.e.* prohibited transaction [*subrule 2.04(11)*] or no consents [*subrule 2.04(6)*], it could result in a finding that you are not in compliance with the *Rules of Professional Conduct*.

ESTATES – FINANCIAL RECORD KEEPING

Record keeping requirements for estates applies to all lawyers who have control of estate assets, whether as estate trustee or as solicitor managing the funds on behalf of the estate trustee. You should decide at the very beginning of the administration of an estate how you are going to prepare the estate accounts and who is going to prepare them. If the will designates separate income and capital beneficiaries, you may be required to keep the estate records in court passing form according to *Rule 74* of the *Rules of Civil Procedure*.

There is a duty at common law and under the *Trustee Act* for estate trustees, executors, administrators, and guardians to keep complete and accurate accounts of the assets under their administration. A beneficiary is entitled, on notice, to inspect the accounts and any of the supporting documentation. All trustees, and especially lawyers who hold trust funds, should maintain accurate, up to date estate accounts, and organize and keep all source documents such as bank statements, duplicate deposit slips, cancelled cheques, receipt confirmations and vouchers to support the records. While maintaining estate accounts in court passing form is preferred, spot auditors expect to see, as a minimum, the same information in records for estate assets controlled by lawyers as is required for trust records in section 18 of By-Law 9.

You should distribute estate assets in a timely manner, including filing income tax returns and paying any taxes due.

If there is no compensation for the estate trustee set out in the will, the *Trustee Act* states that the compensation is based on "fair and reasonable allowance for [the trustee's] care, pains and trouble, and [the] time expended in or about the estate". The Court has applied "tariff guidelines". For an estate of average complexity the allowance is usually set at 2.5% for capital receipts, 2.5% for revenue receipts, 2.5% for capital disbursements, and 2.5% for revenue disbursements. If the will sets up a trust, the compensation may include 2/5 of 1% of the assets under administration. For uncomplicated estates the compensation should be less. For complicated estates an executor can apply to the court for compensation in excess of the guidelines. Transfers between the estate accounts and payment of executor's compensation itself are

deducted from the calculation and *in specie* transfers of estate assets are usually compensated at a reduced rate.

These amounts are the total compensation for all estate trustees as well as for anyone (e.g. estate solicitor) who claims fees for performing estate trustee duties. Those lawyers who act as estate trustee as well as solicitor for an estate, or just assume some of the estate trustee duties, must be careful to distinguish between these two roles. If your legal fees include services which are properly the responsibility of the estate trustee, (such as accumulating, evaluating, and distributing estate assets; paying debts, preparing estate accounts and income tax returns; and notifying and reporting to beneficiaries), then the amount of your legal fees which relate to the performance of executor's duties must be deducted from the amount of executor's compensation claimed; otherwise the estate would be charged twice for the same service. Legal work and estate trustee work are compensated differently, and the remedies for the estate trustee and beneficiaries to dispute the legal fees and executor's compensation are different. You should consider maintaining separate dockets for executor's duties and solicitor's duties in order to avoid double billing the estate and as supporting documentation for fees charged. Also, your fee bills for legal services should detail the services provided.

If you are the estate trustee and compensation is not set out in the will, once you have completed the estate administration, you can take executor's compensation if all the residual beneficiaries are legally competent adults and they specifically consent in writing to your claim for compensation, which should be in accordance with the court guidelines. Beneficiaries should be fully informed, preferably by independent legal advice, of the appropriate procedure for billing for estate work. Otherwise, you must apply to the Court to pass the estate accounts and obtain judicial approval for any executor's compensation. (See *Re: Knoch* (1982), 12 E.T.R. 162 (Surr. Ct.))

The case of *Rooney Estate v. Stewart Estate* (2007), *Carswell Ont* 6560 has some interesting comments on the role of lawyers in estates; the court held *inter alia*:

- The roles of the estate trustee [funeral arrangements; locating the will and instructing the solicitor; locating, securing, preserving, and disposing of estate assets in accordance with the will; advertising for creditors and paying the debts including filing tax returns; preparing estate accounts for the approval of the

beneficiaries or the court; distributing estate assets] and the estate solicitor [apply for certificate of appointment for the estate trustee and attend on a passing of accounts if required] are distinct but complementary.

- The solicitor's client is the trustee, not the estate. Therefore, the solicitor takes instructions from the trustee and reports to her. With respect to the solicitor's account, the solicitor is entitled to be paid *for these legal services* from the estate.
- The trustee cannot expect to receive compensation for services performed by others whose services are charged to the estate. In other words, the trustee cannot claim compensation for time she did not expend; rather, she must pay the accounts for services of others out of her compensation.
- The solicitor should not perform trustee's work unless instructed to do so by the trustee. If such a request is made, the solicitor should advise the trustee that he will render an account to the trustee personally for doing her work. Generally, the estate is not liable to pay this account; rather, it falls to the trustee to pay out of her compensation.
- It follows that a solicitor is not entitled to charge a solicitor's rate for doing work that could have been done by the estate trustee.
- While it is proper to render an account for trustee's work done by the solicitor, the account must be rendered *to the trustee*, to be paid out of her compensation.
- [T]he solicitor is not entitled to charge for the performance of trustee's work at the solicitor's rate, since he is not rendering legal advice or performing legal services.
- It is not an answer to say that the beneficiary approved of the accounts and gave a release. One of the obligations of the solicitor acting for the trustee is to ensure that all beneficiaries have competent, independent advice in reviewing the accounts.
- Where there is no special agreement between solicitor and estate trustee, the proper measure of the solicitor's account for legal services to the estate and for doing trustee's work is on *quantum meruit* basis.
- The practice of holding a beneficiary's cheque until the beneficiary sends the signed release to the estate trustee implies that the beneficiary's entitlement was conditional upon forwarding the release. This practice was criticized by the court in *Brighter v. Brighter Estate* 1998 CarswellOnt 3113 [1998] O.J. No. 3144, (Ont. Gen. Div.).

- An executor's duty is to carry out the instructions contained in the will ... The executor has no right to hold any portion of the distributable assets until a beneficiary provides an approval or release of the executor's performance of duties as trustee, or the executor's compensation or fee. It is quite proper for an executor ... to accompany payment with a release which the beneficiary is requested to execute. But it is quite another matter for the trustee to require execution of the release before making payment; that is manifestly improper.
- [T]he solicitor owes a fiduciary duty to the beneficiary in respect of her beneficial interest.

Whenever you do estate trustee work on behalf of an estate trustee, you should properly advise the estate trustee that he/she, and not the estate, is responsible for your fees for doing estate administration work on behalf of the estate trustee, how this would affect his/her claim to executor's compensation, and also affect the amount of the distribution to the beneficiaries, for which the estate trustee is accountable to the beneficiaries.

Powers of Attorney

When exercising a power of attorney you should be maintaining proper accounts as required by the Substitute Decisions Act. As with estate work, you must be aware of the distinction between your role as a solicitor and as an attorney. Most, if not all, of your services will be as an attorney, and you should consult the Substitute Decisions Act for the appropriate compensation procedure.