

**THE LAW SOCIETY OF UPPER CANADA**  
**AUDIT REPORT**  
*Revised December 31, 2008*

**Firm/Lawyer:** \_\_\_\_\_

**Findings of the Audit Completed:**

(Circle the number of the inadequacies applicable on this spot audit. Discuss each inadequacy with the Lawyer or bookkeeper, if Lawyer unavailable; have Lawyer /bookkeeper initial each circled item in right-hand column.)

REPORTING AREA REQUIRING IMPROVEMENT		RECOMMENDATION	Law Firm Initial
<b>A</b>	<p><b>PRODUCTION OF FINANCIAL RECORDS</b></p> <p>The following financial records were not available at your office on our initial visit on (date): _____</p> <p>1 Trust Cash Receipts Journal – <i>18(1) of By-Law 9</i></p> <p>2 Trust Cash Disbursements Journal - <i>18(2) of By-Law 9</i></p> <p>3 Client Trust Ledger Accounts - <i>18(3) of By-Law 9</i></p> <p>4 Trust Transfer Journal - <i>18(4) of By-Law 9</i></p> <p>5 General Cash Receipts Journal - <i>18(5) of By-Law 9</i></p> <p>6 General Cash Disbursements Journal - <i>18(6) of By-Law 9</i></p> <p>7 Fee Book or Chronological Billings File - <i>18(7) of By-Law 9</i></p> <p>8 Trust Bank Reconciliations / Comparisons - <i>18(8) of By-Law 9</i></p> <p>9 Valuable Property Record - <i>18(9) of By-Law 9</i></p> <p>10 Source Documents - <i>18(10) of By-Law 9:</i></p> <p>10a bank statements or pass books for trust accounts</p> <p>10b cashed cheques for trust accounts, including certified cheques</p> <p>10c detailed duplicate deposit slips for trust accounts (incl bank stamp)</p> <p>10d bank statements or pass books for general accounts</p> <p>10e cashed cheques for general accounts</p> <p>10f detailed duplicate deposit slips for general accounts(incl bank stamp)</p> <p>11 Electronic Trust Transfers - <i>18(11) of By-Law 9</i></p> <p>11a signed electronic trust transfer requisitions (Form 9A) and signed</p> <p>11b printed confirmations of electronic transfers of trust funds</p> <p>12 Teranet Withdrawals - <i>18(12) of By-Law 9</i></p> <p>12a signed authorizations of withdrawals by Teranet (Form 9B) and</p> <p>12b signed paper copies of confirmations of withdrawals by Teranet</p> <p>13 Duplicate Cash receipts book - <i>Section 19 (1) of By-Law 9</i>  <i>(see Recommendation column for item C13 for details)</i></p>	<p>Ensure that a paper copy of all financial records, whether entered and posted by mechanical or electronic means, may be produced promptly on the Society’s request. <i>Section 21 of By-Law 9.</i></p> <p>You must keep the financial records required to be maintained under Sections <i>18 and 19 of By-Law 9</i> for at least a six (6) year period immediately preceding your most recent fiscal year end. <i>Section 23(1) of By-Law 9.</i></p> <p>You must keep the financial records required to be maintained under paragraphs 1, 2, 3, 8, 9, 10, and 11 of <i>Section 18 of By-Law 9</i> (trust records) for at least the ten (10) year period immediately preceding your most recent fiscal year end. <i>Section 23(2) of By-Law 9.</i></p>	

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<b>B</b>	<p><b>CURRENT FINANCIAL RECORDS</b></p> <p>The following books and records were not entered and posted currently at the date of our review.</p> <p>1 Trust Cash Receipts Journal - <i>18(1) of By-Law 9</i>  2 Trust Cash Disbursements Journal - <i>18(2) of By-Law 9</i>  3 Client Trust Ledger Accounts - <i>18(3) of By-Law 9</i>  4 Trust Transfer Journal - <i>18(4) of By-Law 9</i>  5 General Cash Receipts Journal - <i>18(5) of By-Law 9</i>  6 General Cash Disbursements Journal - <i>18(6) of By-Law 9</i>  7 Fee Book or Chronological Billings File - <i>18(7) of By-Law 9</i>  9 Valuable Property Record - <i>18(9) of By-Law 9</i>  13 Duplicate Cash Receipts Book - <i>19(1) of By-Law 9</i></p>	<p>The financial records required to be maintained under <i>Sections 18 and 19 of By-Law 9</i> shall be entered and posted so as to be current at all times. <i>Section 22(1) of By-Law 9.</i></p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;"><u>Last Date Posted</u></th> <th style="width: 40%; text-align: center;"><u>Last Transaction Date</u></th> </tr> </thead> <tbody> <tr><td>B1</td><td>_____</td><td>_____</td></tr> <tr><td>B2</td><td>_____</td><td>_____</td></tr> <tr><td>B3</td><td>_____</td><td>_____</td></tr> <tr><td>B4</td><td>_____</td><td>_____</td></tr> <tr><td>B5</td><td>_____</td><td>_____</td></tr> <tr><td>B6</td><td>_____</td><td>_____</td></tr> <tr><td>B7</td><td>_____</td><td>_____</td></tr> <tr><td>B9</td><td>_____</td><td>_____</td></tr> <tr><td>B13</td><td>_____</td><td>_____</td></tr> </tbody> </table>		<u>Last Date Posted</u>	<u>Last Transaction Date</u>	B1	_____	_____	B2	_____	_____	B3	_____	_____	B4	_____	_____	B5	_____	_____	B6	_____	_____	B7	_____	_____	B9	_____	_____	B13	_____	_____	
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<b>B8</b>	<p>The trust comparison between the total trust obligations to clients and total trust funds on deposit required to be made monthly by <i>Section 22(2) of By-Law 9</i>,</p> <p>a) was not up-to-date</p> <p>Last month reconciled:  _____</p> <p>b) was not always completed by the 25<sup>th</sup> of the next month</p>	<p>By the <b>25<sup>th</sup></b> of each month you must review the trial balance of the clients' trust ledger at the preceding month end, identifying each client and showing each trust ledger account balance, and a copy of the detailed trust bank account reconciliation at the same date. Thus you can satisfy yourself that the total trust liabilities to clients is matched by the total of trust funds on deposit.</p>																															
<b>C</b>	<p><b>COMPLETENESS OF FINANCIAL RECORDS</b></p> <p>The following books and records did not always show full particulars as required by <i>Section 18 of By-Law 9</i>:</p>	<p>Include full particulars as required by the subsections of the By-Law. The following particulars were omitted from your books and records:</p>																															
<b>C1</b>	Trust Cash Receipts Journal - <i>18(1) of By-Law 9</i>	A book of original entry showing receipt of client trust money, 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 and the client for whom money is received in trust.																															
<b>C2</b>	Trust Cash Disbursements Journal - <i>18(2) of By-Law 9</i>	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 and the client on whose behalf money is disbursed.																															

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C3a	Client Trust Ledger Accounts - <i>18(3) of By-Law 9</i>	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.	
C3b	Clients' trust ledger accounts were not maintained together in a central location and therefore do not constitute a ledger as required by <i>section 18(3) of By-Law 9</i> .	Please ensure that clients' trust ledger accounts are maintained together in a central location.	
C4	Trust Transfer Journal - <i>18(4) of By-Law 9</i>	A record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made.	
C5	General Cash Receipts Journal - <i>18(5) of By-Law 9</i>	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	
C6	General Cash Disbursements Journal - <i>18(6) of By-Law 9</i>	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.	
C7	Fee Book or Chronological Billings File - <i>18(7) of By-Law 9</i>	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.	

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C8	Trust Bank Reconciliations / Comparisons - <i>Section 18(8) of By-Law 9</i>	<p>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:</p> <p>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.</p> <p>ii. A detailed reconciliation made monthly of each trust bank account.</p> <p>Trust bank reconciliations should properly detail all outstanding or reconciled items:</p> <p>a) Outstanding cheques should be detailed as to cheque number, amount and date.</p> <p>b) The date of receipt and date of bank processing of outstanding deposits should be detailed.</p> <p>c) The adjustment made to account for banking errors or similar reconciling items should detail the particulars of the adjustment, the date of the occurrence and the date of the disposition.</p>	
C9	Valuable Property Record - <i>18(9) of By-Law 9</i>	A record showing all property, other than money, held in trust for clients, and describing each property and identifying the date on which the lawyer took possession of each property, the person who had possession of each property immediately before the lawyer 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.	
C10c C10f	<p>Duplicate deposit slips for:</p> <p><input type="checkbox"/> trust bank account(s)</p> <p><input type="checkbox"/> general bank account(s)</p> <p><input type="checkbox"/> estate account(s)</p> <p>do not always detail the source and client reference of funds deposited.</p>	Ensure that in future deposit slips for your practice bank accounts are properly detailed showing the source of money received and on whose behalf money is deposited.	

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<p>C11</p> <p>a) Electronic Trust Transfer Requisitions (Form 9A) do not include all the information required by <b>Section 12(7) of By-Law 9</b></p> <p>b) Printed bank confirmations of Electronic Trust Transfers do not include all the information required by <b>Section 12(2)3 of By-Law 9</b></p>	<p>a) Form 9A as prescribed by <b>Section 12(7) of By-Law 9</b> is to contain:</p> <ul style="list-style-type: none"> <li>i. a requisition number</li> <li>ii. amount of funds to be transferred</li> <li>iii. name of client</li> <li>iv. file reference number</li> <li>v. reason for payment</li> <li>vi. name and account number for the trust account to be debited</li> <li>vii. name of recipient</li> <li>viii. name, branch name and address, and account number for account to be credited</li> <li>ix. name of person requisitioning electronic trust transfer</li> <li>x. date and signature of person requisitioning electronic trust transfer</li> <li>xi. additional transaction details</li> <li>xii. name and signature of person entering details of transfer</li> <li>xiii. name and signature of person authorizing transfer at computer terminal</li> </ul> <p>b) Before electronically transferring money from your trust account, you must ensure that your bank will provide confirmation of the information required by <b>Section 12(2)3 of By-Law 9</b>:</p> <ul style="list-style-type: none"> <li>i. the number of the trust account from which money is drawn,</li> <li>ii. the name, branch name and address of the financial institution where the account to which money is transferred is kept,</li> <li>iii. the name of the person or entity in whose name the account to which money is transferred is kept,</li> <li>iv. the number of the account to which money is transferred,</li> <li>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</li> <li>vi. the time and date that the confirmation from the financial institution is sent to the licensee.</li> </ul>	

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C13	Duplicate Cash receipts book - <i>Section 19 (1) of By-Law 9</i>	<p>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 lawyer or the person authorized by the lawyer to receive cash and of the person from whom cash is received.</p> <p>If the person from whom you receive the cash refuses to sign the receipt you should document your efforts to obtain that person's signature.</p>	
E3	Your accounting system is not capable of producing, on demand, an accurate hard copy of the trust records of original entry for the ten-year period immediately preceding the firm's most recent fiscal year end and a hard copy of the general records of original entry for the six-year period immediately preceding the firm's most recent fiscal year end.	Please ensure that your accounting system is capable of producing accurate records on demand for the time periods as set out in <i>Sections 22(1) and (2) and Section 23(1), (2) and (3) of By-Law 9</i> .	
E5	Records entered in pencil: _____	Ensure that in future your books and records are entered in ink as required by <i>Section 21(1) of By-Law 9</i> .	
E8	You receive a fee from a title insurer but this fee is not disclosed to the client in writing.	The Rules of Professional Conduct require that when a fee is paid to the lawyer by someone other than the client it must be disclosed to the client ( <i>subrule 2.08</i> ). The only practical way to establish disclosure is in writing.	
E9 a)	You have received cash funds in excess of \$7500 (individually or in the aggregate) for any one client file but the transaction is not excepted by <i>section 6 of By-Law 9</i> .	<i>Section 4 (1) of By-Law 9 prohibits</i> the receipt or acceptance of cash from a person, in respect of any one client file, in an aggregate amount of 7,500 or more Canadian dollars unless one of the exceptions in <i>section 6 of By-law 9</i> applies.	
E9 b)	Some cash receipts have not been recorded in the duplicate cash receipts book	<p>Every lawyer who receives cash shall maintain financial records and as a minimum additional requirement, shall maintain, 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 lawyer or the person authorized by the lawyer to receive cash and of the person from whom cash is received.</p> <p>Please ensure that all cash transactions are properly recorded in your duplicate cash receipts book.</p>	

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E10	You were retained to provide professional services to a client but did not obtain the required information about the client as set out in By-Law subsection 23 (1).	<p>When you are retained to provide professional services to a client, subsection 23(1) of By-Law 7.1 requires that you obtain the following information about the client:</p> <ol style="list-style-type: none"> <li>1. The client's full name.</li> <li>2. The client's business address and business telephone number, if applicable.</li> <li>3. If the client is an individual, the client's home address and home telephone number.</li> <li>4. If the client is an organization, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable.</li> <li>5. If the client is an individual, the client's occupation or occupations.</li> <li>6. If the client is an organization, other than a financial institution, public body or company that is not a private company, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable.</li> <li>7. If the client is an organization, the name, position and contact information for those individuals authorized to give instructions with respect to the matter for which the licensee is retained.</li> <li>8. If the client is acting for or representing a third party beneficiary or a principal, information about the beneficiary or principal as set out in paragraphs 1 to 7, as applicable.</li> </ol>	

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E11	<p>You engaged in or gave instructions in respect of the receiving, paying or transferring of funds but did not comply with:</p> <p>E11(a) the client identification requirements set out in subsections 23(1) AND 23(2) of By-Law 7.1</p> <p>E11 (b) the verification requirements set out in subsection 23 (4) of By-Law 7.1</p>	<p>Subsection 23(2) of By-Law 7.1 requires that when you engage in or give instructions in respect of the receiving, paying or transferring of funds, you shall comply with the client identification requirements set out in subsection 23(1), and make reasonable efforts to obtain the following information about the client:</p> <ol style="list-style-type: none"> <li>1. The name and occupation or occupations of each director of the organization, other than an organization that is a securities dealer.</li> <li>2. The name, address and occupation or occupations of each person who owns twenty-five percent or more of the organization or of the shares of the organization.</li> </ol> <p>Subsection 23(4) of By-Law 7.1 requires that when you engage in or give instructions in respect of the receiving, paying or transferring of funds, you shall take reasonable steps to verify the identity of the client and, where appropriate, the third party beneficiary or principal, using what the licensee reasonably considers to be reliable, independent source documents, data or information. Subsections 23(7) to 23(10) provide further details on acceptable means of verification.</p> <p>Please review By-Law 7.1 and ensure that you are complying with the identification and verification requirements.</p>	
F1	<p>Not all trust bank accounts were included in the trust reconciliation and comparison:</p> <ol style="list-style-type: none"> <li>a) separate interest bearing accounts</li> <li>b) term deposits</li> <li>c) estate accounts</li> <li>d) other mixed trust accounts</li> </ol>	<p>Please alter your trust reconciliation and comparison procedures to include all trust accounts in the monthly trust reconciliation and comparison.</p>	

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F2a	<input type="checkbox"/> Your trust bank account statement does not indicate that your account is designated as a trust account. <input type="checkbox"/> Your trust bank account statement is not in your name, including “LLP” or “Professional Corporation” if applicable <input type="checkbox"/> Your trust bank account statement is not in the name of the firm of lawyers of which you are a partner or by which you are employed.  Account #: _____ Account #: _____ Account #: _____	Contact the financial institution where the trust funds are held and have all your trust accounts properly designated as trust accounts held in your name or in the name of the firm in which you are a partner or employee as required by <b>Section 7(1) of By-Law 9</b> .	
F2b	Your trust bank statement or firm name includes “Professional Corporation” but your firm is not officially registered with the Law Society as a Professional Corporation.	<b>Section 5(1) of By-Law 7</b> requires a corporation that wishes to practise law in Ontario, provide legal services in Ontario or both practise law and provide legal services in Ontario to apply to the Society for a certificate of authorization.	
F3a	The monthly trust reconciliations and comparisons do not agree to supporting documentation, bank statement by the amount: _____ client trust listing by the amount: _____ general ledger by the amount: _____ outstanding cheques by the amount: _____ outstanding deposits by the amount: _____	You should ensure the accuracy of the trust reconciliation and comparison and add the trust reconciliations when you receive them monthly for your review. Any discrepancies with supporting documentation and any arithmetic errors should be corrected promptly	
F3b	The monthly trust comparisons between total trust obligations and total trust funds on deposit disclosed differences between the totals which were neither explained nor corrected as required by <b>Section 18(8) of By-Law 9</b> .  Amount of Differences: _____ Month: _____ Amount of Differences: _____ Month: _____ Amount of Differences: _____ Month: _____	The trust records must be balanced in accordance with <b>Section 22(2) of By-Law 9</b> no later than the <b>25th</b> of each month, and we suggest that you personally review each completed trust comparison to ensure that it is accurate and that uncorrected errors or differences are not carried to a succeeding month.	

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F4	<p>a) Although corrected by the audit date, trust bank reconciliations have contained the same uncorrected reconciling items from month to month.</p> <p>b) Reconciling items over two months old remain uncorrected at audit date.            Balance of debit reconciling items at audit date _____            Balance of credit reconciling items at audit date _____</p>	<p>a) Ensure that reconciling items are corrected forthwith and are not carried over to the following month's trust reconciliation.</p> <p>b) Determine the causes of the reappearing reconciling items and have them corrected forthwith.</p>	
F5	<p>Trust bank reconciliations contain outstanding, stale-dated cheques [ie, issued more than six (6) months ago] as reconciling items.</p> <p>Total number of stale-dated cheques: _____</p> <p>Total dollar value of stale-dated cheques: _____</p>	<p>Determine why these cheques have not been cashed, stop payment, reverse them, and reinstate the trust obligations in the clients' trust ledger for the client involved.</p> <p>If you cannot locate the person(s) entitled to these funds, consider applying to pay the money to The Law Society's Unclaimed Trust Fund. Information about the Fund and a copy of the <i>Application Form</i> are included in the information folder which the auditor has left with you.</p>	
F6	<p>The trust bank statement indicated that the account was overdrawn:</p> <p>Account #: _____ Amount: _____            Date: _____</p> <p>Account #: _____ Amount: _____            Date: _____</p>	<p>You must maintain sufficient balances on deposit in the trust account at all times to meet your obligations with respect to funds held in trust for clients: <b>Section 14 of By-Law 9.</b></p>	
F7	<p>Outstanding deposits on the trust bank reconciliations were not subsequently deposited in the trust account.</p> <p>Amount of O/S Deposits: _____</p>	<p>Follow a routine of depositing trust money as soon as possible after receipt, preferably daily: <b>Section 7(1) of By-Law 9.</b></p>	
F8	<p>Outstanding deposits were not deposited the next banking day.</p>	<p>Follow a routine of depositing trust money as soon as possible after receipt, preferably daily: <b>Section 7(1) of By-Law 9.</b></p>	
F9	<p>a) Not all client trust ledger accounts were included in the client trust listing: _____            or            b) client trust balances per the client trust ledger do not agree to the client trust listing: _____</p>	<p>All trust obligations to clients must be shown in the client trust listing, whether represented by funds held on deposit in mixed trust accounts, in separate trust accounts or in term deposits held in trust: <b>Section 18(8)(i) of By-Law 9.</b></p>	

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F10	There were overdrawn trust ledger accounts which were permitted to exist uncorrected over periods in excess of one month: _____ _____	Please review your procedure for handling trust funds. We recommend that you personally review the client trust listing each month. If overdrawn accounts show on the client trust listing, the Society expects the solicitor to correct the problem by injecting his or her own funds into the trust account, and not to await the client replacing the funds to correct the overdrawn account: <b>Section 9(3) and Section 14 of By-Law 9.</b>	
F11a	There is(are) an inactive trust ledger account(s) whose balance(s) has(have) remained unchanged for more than twelve months.  Total number of inactive accounts: _____  Total dollar value of inactive accounts: _____	a) You should review the list of inactive trust ledger accounts monthly so that instructions can be given to close them, if possible, either by paying the balances held to or on behalf of the clients, or by billing and transferring to the general account if you are entitled to any of those amounts. If a large balance is held on behalf of a client, discuss with the client placing the funds in an interest bearing account.  b) If you cannot locate the person(s) entitled to these funds, consider applying to pay the money to The Law Society's Unclaimed Trust Fund. Information about the Fund and a copy of the <i>Application Form</i> are included in the information folder which the auditor has left with you.	
F11b	Refunds owed to clients are held in the trust account.	Once a matter is concluded, funds owed to the client should be returned promptly. Failure to do so could be fail to serve and/or fail to account.	
F11c	Funds are being held in trust for the registration of mortgage discharges which have not been registered in over one year.  Number of identified unregistered discharges: _____ Client Names: _____ _____ _____	Review your inactive accounts and ensure that those which represent funds held to register mortgage discharges are dealt with promptly.	
F12a	Trust account has been used for personal transaction.	Prevent mingling of your own money with the money of your clients.	

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F12b	<p>Clients' trust funds are occasionally posted to a trust ledger account entitled:</p> <p><input type="checkbox"/> GST Collectible</p> <p><input type="checkbox"/> Law Pro transaction levies or similar items</p> <p><input type="checkbox"/> Other _____</p>	<p><i>Section 18(3) of By-Law 9</i> requires that you maintain a separate trust ledger account in each client's name for each client for whom you hold trust funds <del>are held</del>. Please immediately discontinue use of a miscellaneous clients' trust ledger account.</p> <p>"GST Collectible" and "Law Pro transaction levies" are not "trust money" within the meaning of that term contained in <i>Section 7(2) of By-Law 9</i> made pursuant to the <i>Law Society Act</i>. They are liabilities of your firm. As a consequence, billed GST and Law Pro levies should be removed from your firm's trust account(s).</p>	
F13d	Trust cheques made payable to cash.	Do not make trust cheques payable to cash or the bearer: <i>Section 11(a) of By-Law 9</i> .	
F13e	Trust cheques have not been signed by a Lawyer as required by <i>Section 11(b) of By-Law 9</i> .	Ensure that trust cheques are always signed by a Lawyer. You should make arrangements for another lawyer to sign your trust cheques when you are unavailable.	
F14	Blank cheques were identified that contained the lawyer's signature.	You should never sign blank trust cheques. Once a cheque is signed, the other details can be completed and the cheque negotiated. If a signed blank cheque should be lost or stolen your clients' funds are at risk.	
F15	You and/or your firm act(s) for more than one party in transactions but do not obtain written consents from each party to so act or obtain the consent of each party confirmed in a letter to each before accepting employment from more than one client.	<p>Before a lawyer accepts employment for more than one client, including spouses, in a matter or transaction, the lawyer must advise the clients concerned that:</p> <ol style="list-style-type: none"> <li>the lawyer has been asked to act for both or all of them,</li> <li>that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned and</li> <li>that, if a conflict develops which cannot be resolved, the lawyer cannot continue to act for both of them and may have to withdraw completely.</li> </ol> <p>If one of the clients is a person with whom the lawyer has a continuing relationship and for whom the lawyer acts regularly, this fact should be revealed to the other or others with a recommendation that they obtain independent legal advice about the joint retainer. <b>If following such disclosure, all parties are content that the lawyer act, the latter should obtain their written consent, or record their consent in a separate letter to each: <i>Rules of Professional Conduct - subrules 2.04 (6), (7) and (8)</i>.</b></p>	

REPORTING AREA REQUIRING IMPROVEMENT		RECOMMENDATION	Law Firm Initial
F15c	You act for both transferor and transferee in a real estate transaction involving a transfer of title to real property but are prohibited to act for both parties.	<p><b>2.04.1 (1)</b> Subject to subrule (3), an individual lawyer shall not act for or otherwise represent both the transferor and the transferee in a transfer of title to real property.</p> <p><b>2.04.1 (2)</b> Subrule (1) does not prevent a law firm of two or more lawyers from acting for or otherwise representing a transferor and a transferee in a transfer of title to real property so long as the transferor and transferee are represented by different lawyers in the firm and there is no violation of rule 2.04.</p> <p><b>2.04.1 (3)</b> So long as there is no violation of rule 2.04, an individual lawyer may act for or otherwise represent both the transferor and the transferee in a transfer of title to real property if</p> <p>(a) the <i>Land Registration Reform Act</i> permits the lawyer to sign the transfer on behalf of the transferor and the transferee,</p> <p>(b) the transferor and transferee are "related persons" as defined in section 251 of the <i>Income Tax Act(Canada)</i>, or</p> <p>(c) the lawyer practices law in a remote location where there are no other lawyers that either the transferor or the transferee could without undue inconvenience retain for the transfer.</p> <p style="text-align: right;"><i>[Effective - March 31, 2008]</i></p>	
F16	We have identified repayments to the trust account for amounts improperly deducted from the trust account.	<b>Sections 7, 8 and 9 of By-Law 9</b> clearly state the instances when funds can be deposited to, or deducted from, a trust account. Ensure that you comply with the By-Law.	
F17	Transfers from trust to general on account of fees without first delivering a billing. Number of unbilled transfers _____	Institute a procedure to ensure that billings are prepared, delivered, entered and posted before transfers are made from trust to general on account of fees earned: <b>Section 9(1)3 of By-Law 9.</b>	

REPORTING AREA REQUIRING IMPROVEMENT		RECOMMENDATION	Law Firm Initial
F18	Interest charged on overdue accounts exceeds the prescribed rate.	<p><b>Subrule 2.08 (2)</b> states that “a lawyer shall not charge a client interest on an overdue account save as permitted by the <i>Solicitors Act</i> or as otherwise permitted by law”.</p> <p><i>Section 33</i> of the <i>Solicitor’s Act</i> states that the rate of interest chargeable shall not exceed the rate that is established for the purpose of <i>section 128</i> of the <i>Courts of Justice Act</i>. <i>Section 33 (4) of the Solicitors Act</i> states “The rate of interest applicable to a bill shall be shown on the bill delivered”.</p> <p>Where a business decision is made to charge interest on overdue accounts, you must check the prejudgment interest rates to determine the correct rate for the quarter that an account is issued and delivered</p> <p>Prejudgment interest rates are posted online at either of the following websites</p> <p>Ministry of the Attorney General: (<a href="http://www.attorneygeneral.jus.gov.on.ca/english/courts/interestrates.asp">http://www.attorneygeneral.jus.gov.on.ca/english/courts/interestrates.asp</a>)</p> <p>Law Society of Upper Canada Great Library: (<a href="http://library.lsuc.on.ca/GL/home.htm">http://library.lsuc.on.ca/GL/home.htm</a>)</p>	

REPORTING AREA REQUIRING IMPROVEMENT	RECOMMENDATION	Law Firm Initial
<p>G Your firm uses a <b>trust account</b> for electronic Teranet registrations but:</p> <p>a) Authorizations of Withdrawal by Teranet (Form 9B) do not include all the information required by <b>Section 15 (5) of By-Law 9</b>.</p> <p>b) Printed confirmations of withdrawals by Teranet do not include all the information required by <b>Section 15(4) and (6) of By-Law 9</b></p> <p>c) Registration fees and Land Transfer Tax have been debited from your mixed trust account.</p> <p>Your firm uses a <b>general account</b> for electronic Teranet registrations but:</p> <p>d) Trust funds have been transferred to:</p> <ol style="list-style-type: none"> <li>i) your firm's general account or</li> <li>ii) to a conveyancer before registration fees and Land Transfer Tax have been incurred in contravention of <b>Section 9(1)2 of By-Law 9</b>.</li> </ol>	<p>Please read <b>Sections 1, 15, 16 and 17 of By-Law 9</b> for the required procedure for authorizing Teranet electronic withdrawals from a trust account.</p> <p>a) Form 9Bas prescribed by <b>Section 15 (5) of By-Law 9</b> is to contain:</p> <ol style="list-style-type: none"> <li>i. an authorization number</li> <li>ii. amount to be withdrawn by Teranet</li> <li>iii. client name</li> <li>iv. file reference number</li> <li>v. reason for withdrawal</li> <li>vi. name and account number of trust account to be debited</li> <li>vii. name of person authorizing withdrawal</li> <li>viii. date and signature of person authorizing withdrawal</li> </ol> <p>b) Ensure that the confirmation of withdrawals by Teranet contain the information required by <b>Section 15(4) and (6) of By-Law 9</b>:</p> <ol style="list-style-type: none"> <li>(4) (a) the amount of money withdrawn from the trust account;</li> <li>(b) the time and date that the authorization to withdraw money is received by Teranet; and</li> <li>(c) the time and date that the confirmation from Teranet is sent to the licensee.</li> <li>(6) (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</li> <li>(d) after complying with clauses (a) to (c), sign and date the paper copy of the confirmation.</li> </ol> <p>c) Authorization for Teranet to debit registration fees and Land Transfer Tax from a trust account must be from a special trust account as required by <b>Section 16 of By-Law 9</b>. Ensure that your electronic registration trust account complies with the By-Law.</p> <p>d) Registration fees and Land Transfer Tax disbursements are not incurred until Teranet has been authorized to debit your general account or the conveyancer's account after the electronic registration is complete. Ensure that transfers from your trust account to your general account to reimburse your firm for registration fees and Land Transfer Tax paid from your general account or to a conveyancer on electronic registrations, are made in compliance with <b>Section 9(1)2 of By-Law 9</b>.</p>	

REPORTING AREA REQUIRING IMPROVEMENT		RECOMMENDATION	Law Firm Initial
G5	The amount of funds deposited to the special trust account for Teranet transaction(s) exceeds the exact amount required for Land Transfer tax and registration fees for the client's real estate transaction.	<i>Section 16(3) of By-Law 9</i> states that you must not pay into the special trust account, described in <i>section 16(1) of By-Law 9</i> , 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.	
G6	Funds for any one client transaction are held in the Teranet trust account for more than 5 banking days.	<i>Section 16(3) of By-Law 9</i> states that if you pay money into a trust account described in subsection (1) you shall not keep the money in that account for more than five (business) 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, you shall transfer the money from that account into another trust account that is not a trust account described in <i>section 16(1) of By-Law 9</i> .	
G8	You have not maintained the security of your or your staff electronic registration diskette(s).	<p><i>Rule 5.01 of the Rules of Professional Conduct</i> requires that you maintain the security of electronic registration diskettes issued to you or your staff.</p> <p>Electronic Registration of Title Documents</p> <p>5.01 (3) When a lawyer has a personalized specially encrypted diskette to access the system for the electronic registration of title documents ("e-reg"™), the lawyer  (a) shall not permit others, including a non-lawyer employee, to use the lawyer's diskette, and  (b) shall not disclose his or her personalized e-reg™ pass phrase to others.</p> <p>5.01 (4) When a non-lawyer employed by a lawyer has a personalized specially encrypted diskette to access the system for the electronic registration of title documents, the lawyer shall ensure that the non-lawyer  (a) does not permit others to use the diskette, and  (b) does not disclose his or her personalized e-reg™ pass phrase to others.</p> <p>Please ensure that you are in compliance with the Rules of Professional Conduct.</p>	
G9	You have delegated the electronic registration of a title document to staff or another non-lawyer when the document was required to be signed and registered by the lawyer.	<p>In real estate transactions using the system for the electronic registration of title documents ("e-reg"™), only a lawyer may sign for completeness of any document that requires compliance with law statements (<i>Rule 5.01 commentary</i>).</p> <p><i>By-Law 7.1</i> also states that you shall not permit a non-lawyer to use your personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.</p>	

REPORTING AREA REQUIRING IMPROVEMENT		RECOMMENDATION	Law Firm Initial
H1 (a & b)	Retainers (trust money received on account of services to be performed or for future disbursements) deposited improperly into the general account.	Analyse your accounts and transfer to your trust account any money received and deposited to your general account which is unearned at the date of your review: <b>Section 7(2)(d) of By-Law 9.</b>	
H1 (c1)	Your spouse, or a corporation, syndicate or partnership in which you and/or your spouse have a substantial interest has borrowed money from a client without ensuring that the client's interests are fully protected by independent legal representation.	<b>Subrule 2.06(5) of the Rules of Professional Conduct</b> requires that you must be able to discharge the onus of proving that the client's interests were fully protected by the nature of the case and by independent legal representation. Please ensure that in future you are in compliance with the subrule.	
H1 (c2)	You have borrowed money from a client when not permitted to do so by the <b>Rules of Professional Conduct</b> .	<b>Rule 2.06(4) of the Rules of Professional Conduct</b> permits a lawyer to borrow money from clients only if (a) the client is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to licensees of the public; or (b) the client is a related person as defined by the <i>Income Tax Act (Canada)</i> and the lawyer is able to discharge the onus of proving that the client's interests were fully protected by the nature of the case and by independent legal advice or independent legal representation.	
H2	The clients' general accounts contained accounts in credit balances, the result of: <ul style="list-style-type: none"> <li><input type="checkbox"/> Fees transferred from trust without first delivering a fee bill</li> <li><input type="checkbox"/> Money received for estimated disbursements or disbursements not yet incurred</li> <li><input type="checkbox"/> Retainers deposited to general account instead of trust account</li> <li><input type="checkbox"/> Overpayments on clients' accounts deposited to the general account</li> <li><input type="checkbox"/> Fee bill or disbursement not posted current</li> <li><input type="checkbox"/> Other _____</li> </ul>	<b>Section 9(1)3 of By-Law 9</b> states that you may withdraw from a trust account only money properly required for or toward payment of fees for services performed by you for which a billing has been delivered.  Ensure money received on account of services to be performed, disbursements to be made, or overpayments from clients is deposited to your trust account, and removed from the trust account only as permitted by <b>Section 9 of By-Law 9.</b>  Ensure that posting of fees and disbursements is kept current.  Investigate and correct any credit balances in your general account.	
I4c	Your firm does not have a system that accurately records transactions subject to the Law Pro transaction levies required by <b>By-Law 6</b> .	In order to comply with the requirements of <b>By-Law 6</b> , please immediately institute a procedure to accurately track transactions subject to the Law Pro transaction levies.	

REPORTING AREA REQUIRING IMPROVEMENT		RECOMMENDATION	Law Firm Initial
I4f	<p>You have not submitted:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Law Pro transaction levies as required by <b>By-Law 6</b>.</li> <li><input type="checkbox"/> Law Pro transaction levy quarterly filings or annual exemptions as required by <b>By-Law 6</b></li> </ul> <p>You have submitted Law Pro transaction levies as required by <b>By-Law 6</b> but</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Law Pro transaction levies were submitted late.</li> </ul>	<p>Unless you are exempted by the Lawyer's Professional Indemnity Company (Law Pro), <b>By-Law 6</b> requires that lawyers file quarterly reports and pay a transaction levy on each real estate and civil litigation transaction (as defined in Endorsements No. 2 and 3, respectively, of the Law Pro Insurance Policy).</p> <p>Please review <b>By-Law 6</b> and ensure that you are submitting the filings and payments required under the By-Law.</p>	
J1	Books and records for the Estate(s) you control are not maintained in accordance with <b>Section 18 of by-Law 9</b> .	Institute proper cash books and a trust ledger record from the inception of the estate to meet the requirements of <b>Section 18 of By-Law 9</b> . You must also maintain bank statements and other bank confirmations, deposit slips, and cashed cheques for the account. Ensure that estate accounts are included in your monthly trust comparisons.	
J2	<p>a) The executor's compensation charged to the estate exceeds the amount specified in the Will.</p> <p>b) Your estate billings for legal fees include executor duties.</p>	<p>a) By accepting to be appointed as an executor you are bound by the fees provided by the Will and any excess fees must be repaid to the estate.</p> <p>b) Ensure that your legal fees to estates are for legal services and not for executor duties that are included in the executor's compensation. Otherwise the estate is billed twice for the same work. Legal duties and estate trustee duties are to be separately docketed because each has a different method of calculation and each has a separate beneficiary remedy.</p>	
J4	Executor's compensation has been taken without a passing of accounts or the written approval of the beneficiaries.	The Knoch decision (1982), 12 E.T.R. 162 (Surr. Ct.) provides that an executor may not take compensation unless, <ul style="list-style-type: none"> <li>(i) it is approved by all the beneficiaries representing 100% interest in the residue of the estate; or</li> <li>(ii) the compensation has been awarded to the executor by the court.</li> </ul>	

REPORTING AREA REQUIRING IMPROVEMENT		RECOMMENDATION	Law Firm Initial
K1	<p>You hold mortgages in trust but do not maintain a mortgage asset ledger showing separately for each mortgage or charge:</p> <ul style="list-style-type: none"> <li>i) all funds received and disbursed on account of the mortgage or charge;</li> <li>ii) the balance of the principal amount outstanding for each mortgage or charge;</li> <li>iii) an abbreviated legal description or the municipal address of the real property; and</li> <li>iv) the particulars of registration of the mortgage or charge.</li> </ul>	<p>Every lawyer who holds in trust mortgages or other charges on real property, either directly or indirectly through a related person or corporation, shall maintain a mortgage asset ledger showing separately for each mortgage or charge,</p> <ul style="list-style-type: none"> <li>i. all funds received and disbursed on account of the mortgage or charge,</li> <li>ii. the balance of the principal amount outstanding for each mortgage or charge,</li> <li>iii. an abbreviated legal description or the municipal address of the real property, and</li> <li>iv. the particulars of registration of the mortgage or charge.</li> </ul> <p>Please ensure that a detailed mortgage asset ledger is maintained as required by <b>Section 20(1) of By-Law 9</b> and that it is entered and posted currently at all times as required by <b>Section 22(1) of By-Law 9</b>.</p>	
K2	<p>You hold mortgages in trust but do not maintain a mortgage liability ledger showing separately for each person on whose behalf a mortgage or charge is held in trust:</p> <ul style="list-style-type: none"> <li>i) all funds received and disbursed on account of each mortgage or charge held in trust for the person;</li> <li>ii) the balance of the principal amount invested in each mortgage or charge;</li> <li>iii) an abbreviated legal description or the municipal address for each mortgaged or charged real property; and</li> <li>iv) the particulars of registration of each mortgage or charge.</li> </ul>	<p>Every lawyer who holds in trust mortgages or other charges on real property, either directly or indirectly through a related person or corporation, shall maintain a mortgage liability ledger showing separately for each person on whose behalf a mortgage or charge is held in trust,</p> <ul style="list-style-type: none"> <li>i. all funds received and disbursed on account of each mortgage or charge held in trust for the person,</li> <li>ii. the balance of the principal amount invested in each mortgage or charge,</li> <li>iii. an abbreviated legal description or the municipal address for each mortgaged or charged real property, and</li> <li>iv. the particulars of registration of each mortgage or charge.</li> </ul> <p>Please ensure that a detailed mortgage liability ledger is maintained as required by <b>Section 20(2) of By-Law 9</b> and that it is entered and posted currently at all times as required by <b>Section 22(1) of By-Law 9</b>.</p>	

REPORTING AREA REQUIRING IMPROVEMENT		RECOMMENDATION	Law Firm Initial
K3	<p>You hold mortgages in trust but do not maintain 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 books and records together with the reasons for any differences between the totals and supported by,</p> <p>i) a detailed listing made monthly identifying each mortgage or charge and showing for each the balance of the principal amount outstanding, and</p> <p>ii) a detailed listing made monthly identifying each investor and showing the balance of the principal invested in each mortgage or charge.</p>	<p>Every lawyer who holds in trust mortgages or other charges on real property, either directly or indirectly through a related person or corporation, shall maintain 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:</p> <p>i. A detailed listing made monthly identifying each mortgage or charge and showing for each the balance of the principal amount outstanding.</p> <p>ii. A detailed listing made monthly identifying each investor and showing the balance of the principal invested in each mortgage or charge.</p> <p><i>Section 22(2) of By-Law 9</i> requires that each comparison be made monthly within <b>25</b> days from the effective date of each comparison. Thus, you can satisfy yourself that the total of mortgage liabilities to clients is matched by the total of principal mortgage balances held in trust, and that the bookkeeping function is operating properly. If differences show on the listings instructions can be given to correct them immediately.</p>	
K5	<p><b>Form 9D</b> has been prepared as required by <i>Sections 24(1)(a) and 24(9) of By-Law 9</i>, but instances have been found where Form 9D,</p> <p>a) has been altered without being initialled by the lender</p> <p>b) is not fully completed; (specify)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>c) is signed by the lender after the advance of funds;</p> <p>d) is not signed by the lender;</p> <p>e) is not the exact form as prescribed by the By-Law.</p> <p>f) is not dated by the lender</p>	<p>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 and Omissions claim.</p> <p>Form 9D is a prescribed form and may not be changed. Every point on the form must be completed, with N/A being noted if the point is not applicable. The form must be signed by the lender before the first advance of money to or on behalf of the borrower.</p> <p>The lender of RRSP funds is the plan holder, not the financial institution, which is a bare trustee.</p>	

REPORTING AREA REQUIRING IMPROVEMENT	RECOMMENDATION	Law Firm Initial
<p>K6 Form 9D as required by <i>Sections 24(1)(a) and 24(9) of By-Law 9</i> has not been completed,</p> <p>i) in any of the transactions in which you act and where it is required by the By-Law;</p> <p>ii) in some instances where it is required by the By-Law.</p>	<p><i>Section 24 of By-Law 9</i> states that when you act for or receive money from a lender you shall in addition to maintaining the financial records required under <i>Sections 18 and 20 of By-Law 9</i>, maintain a file for each charge, containing,</p> <p>1(a) a completed investment authority, signed by each lender before the first advance of money to or on behalf of the borrower; (Form 9D)</p> <p>except where:</p> <p>2(a) the lender,</p> <p>(i) is a bank listed in Schedule I or II to the <i>Bank Act</i> (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;</p> <p>(ii) has entered a loan agreement with the borrower and has signed a written commitment setting out the terms of the prospective charge; and</p> <p>(iii) has given the licensee a copy of the written commitment before the advance of money to or on behalf of the borrower;</p> <p>(b) the lender and borrower are not at arm's length;</p> <p>(c) the borrower is an employee of the lender or of a corporate entity related to the lender;</p> <p>(d) the lender has executed the Investor/Lender Disclosure Statement For Brokered Transactions (formerly Form 1) under Regulation 798 of the Revised Regulations of Ontario, 1990, made under the <i>Mortgage Brokers Act</i>, and has given the licensee written instructions, relating to the particular transaction, to accept the executed form as proof of the loan agreement;</p> <p>(e) the total amount advanced by the lender does not exceed \$6,000; or</p> <p>(f) the lender is selling real property to the borrower and the charge represents part of the purchase price.</p>	

REPORTING AREA REQUIRING IMPROVEMENT		RECOMMENDATION	Law Firm Initial
K7	<p>Form 9E as required by <i>Sections 24(1)(b) and 24(10) of By-Law 9</i> has not been completed,</p> <p>i) in any of the transactions in which you act and where it is required by the By-Law;</p> <p>ii) in some instances where it is required by the By-Law.</p>	<p><i>Section 24 of By-Law 9</i> states that when you act for or receive money from a lender you shall maintain a file for each charge, containing,</p> <p>(1)(b) a copy of a completed report on the investment;</p> <p>except where:</p> <p>(2)(a) the lender,</p> <p>i) is a bank listed in Schedule I or II to the <i>Bank Act (Canada)</i>, 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;</p> <p>ii) has entered a loan agreement with the borrower and has signed a written commitment setting out the terms of the prospective charge; <i>and</i></p> <p>iii) has given the licensee a copy of the written commitment before the advance of money to or on behalf of the borrower;</p> <p>(b) the lender and borrower are not at arm's length;</p> <p>(c) the borrower is an employee of the lender or of a corporate entity related to the lender;</p> <p>(d) the lender has executed the Investor/Lender Disclosure Statement For Brokered Transactions (formerly Form 1) under Regulation 798 of the Revised Regulations of Ontario, 1990, made under the <i>Mortgage Brokers Act</i>, and has given the licensee written instructions, relating to the particular transaction, to accept the executed form as proof of the loan agreement;</p> <p>(e) the total amount advanced by the lender does not exceed \$6,000; or</p> <p>(f) the lender is selling real property to the borrower and the charge represents part of the purchase.</p> <p><i>Section 24(10) of By-Law 9</i> provides that the report on the investment required by <i>Section 24(1)(b) of By-Law 9</i> shall be in Form 9E.</p> <p><i>Section 24(11) of By-Law 9</i> states the report required under <i>Section 24(1)(b)</i> may be contained in a reporting letter addressed to the lender or lenders which answers every question on Form 9E.</p>	

REPORTING AREA REQUIRING IMPROVEMENT		RECOMMENDATION	Law Firm Initial
K8	<p>Form 9E has been prepared as required by <i>Sections 24(1)(b) and 24(10) of By-Law 9</i> but instances have been found where Form 9E:</p> <p>a) is not provided to the client nor is it replaced by a reporting letter which contains a response to every question in the prescribed form;</p> <p>b) is not fully completed (specify);</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>c) is not provided to the client and is replaced with a reporting letter but the latter does not contain a response to every question in Form 9E; and</p> <p>d) is not the exact form as prescribed by the By-Law.</p>	<p>a) <i>Section 24(3) of By-Law 9</i> requires that forthwith after the first advance of money to or on behalf of the borrower, you shall deliver to each lender, an original of the completed report on the investment (Form 9E).</p> <p>b) Ensure that Form 9E is completed as required by <i>Section 24(3) of By-Law 9</i>.</p> <p>c) <i>Section 24(11) of By-Law 9</i> provides that Form 9E may be contained in a reporting letter addressed to the lender(s) if the reporting letter answers every question in Form 9E.</p> <p>d) Form 9E is a prescribed form and may not be changed.</p>	
K9	<p>You hold investments in trust but the declarations of trust</p> <p>a) have not been prepared; or</p> <p>b) have been prepared but not executed and delivered to the beneficial owners.</p>	<p>Please execute and deliver to the investors your declaration of trust as required by <i>Section 24(3)(b) of By-Law 9</i>.</p>	
K10	<p>You have, either personally, or through a corporation or other entity:</p> <p><input type="checkbox"/> participated in investments with clients</p>	<p><b>Rule 2.06 of the Rules of Professional Conduct</b> requires that if you participate in an investment with a client you must demonstrate that:</p> <p>i. you explained the nature of the conflict, or potential conflict, of interest to the client</p> <p>ii. you recommended independent legal representation to the client</p> <p>and if the client declined independent legal representation that:</p> <p>iii. you required that the client obtain independent legal advice</p> <p>iv. you obtained the client's written consent to act</p> <p>Please review <b>Rules 2.04 and 2.06 of the Rules of Professional Conduct</b> and ensure that you are in compliance with the Rules.</p>	
K11	<input type="checkbox"/> loaned money to a client		
K12	<input type="checkbox"/> accepted a mortgage as security for payments of legal fees		
K13	<input type="checkbox"/> entered into a joint venture with clients		
K14	<input type="checkbox"/> entered into a transaction with clients		
	<p>without ensuring independent legal representation or independent legal advice for the client.</p>		

REPORTING AREA REQUIRING IMPROVEMENT		RECOMMENDATION	Law Firm Initial
K15	<p>You act for:</p> <ul style="list-style-type: none"> <li>a) both borrower(s) and lender(s)</li> <li>or</li> <li>b) more than one lender</li> <li>or</li> <li>c) more than one borrower</li> </ul> <p>in mortgage transactions as permitted by <i>subrule 2.04(12)</i> but do not obtain written consent from each party to so act or obtain the consent of each party confirmed in a letter to each before accepting employment from more than one client.</p>	<p>Before you accept employment for more than one client, including spouses, in a matter or transaction, you must advise the clients concerned:</p> <ul style="list-style-type: none"> <li>a. that you have been asked to act for both or all of them,</li> <li>b. that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned and</li> <li>c. that, if a conflict develops which cannot be resolved, you cannot continue to act for both of them and may have to withdraw completely.</li> </ul> <p>If one of the clients is a person with whom you have a continuing relationship and for whom you act regularly, this fact should be revealed to the other or others with a recommendation that they obtain independent legal advice about the joint retainer. <b>If following such disclosure, all parties are contented that you act, you should obtain their written consent, or record their consent in a separate letter to each.</b></p> <p>Please review <i>Rule 2.04</i> and ensure that you are in compliance with the Rule.</p>	
K16	<p>You act for both the borrower and the lender in mortgage transactions but the transactions do not fall within one of the exceptions in <i>subrule 2.04(12)</i> to the prohibition in <i>subrule 2.04(11)</i> to acting for both borrower and lender in a mortgage or loan transaction.</p>	<p><i>Subrule 2.04 (11) of the Rules of Professional Conduct</i> prohibits a lawyer or two or more lawyers acting in partnership or association from representing both borrower and lender in a mortgage or loan transaction unless the mortgage or loan transaction falls within one of the exceptions in <i>subrule 2.04(12)</i>:</p> <ul style="list-style-type: none"> <li>(a) the lawyer practises in a remote location where there are no other lawyers that either party could conveniently retain for the mortgage or loan transaction;</li> <li>(b) the lender is selling real property to the borrower and the mortgage represents part of the purchase price;</li> <li>(c) the lender is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business;</li> <li>(d) the consideration for the mortgage or loan does not exceed \$50,000; or</li> <li>(e) the lender and borrower are not at “arm’s length” as defined in the <i>Income Tax Act</i> (Canada).</li> </ul> <p>Independent Legal Advice does not satisfy the requirement for Independent Legal Representation. <i>Subrule 2.04(14)</i> applies if the Borrower is unrepresented. Please review <i>subrules 2.04(11), (12) and (14)</i> and ensure that you are in compliance with these subrules.</p>	

REPORTING AREA REQUIRING IMPROVEMENT		RECOMMENDATION	Law Firm Initial
G10 K17	You have acted for a lender on a loan secured by a mortgage on real property, however you have not reported to the lender within 60 days of the registration of the mortgage as required.	<p><b>Rule 2.02(14) of the Rules of Professional Conduct</b> requires that where you act for a lender and the loan is secured by a mortgage on real property, you must provide a final report on the transaction, together with the duplicate registered mortgage, to the lender within 60 days of the registration of the mortgage, or within such other time period as instructed by the lender.</p> <p>The final report required by subrule (14) must be delivered within the times set out in that subrule even if you have paid funds to satisfy one or more prior encumbrances to ensure the priority of the mortgage as instructed and you have obtained an undertaking to register a discharge of the encumbrance or encumbrances but the discharge remains unregistered.</p>	
MAR	Your Law Society Annual Report for the year _____ does not agree with your financial records and/or lawyer information as follows:  _____	Ensure that your Law Society Annual Report accurately reflects your financial records and lawyer information.	

Please CHECK ONE and complete the following acknowledgement:

1. **SIGNED BY THE LAWYER/FIRM:**

I am the Managing Partner or a Sole Practitioner and acknowledge receiving and reviewing a complete copy of the Audit Report which identifies any inadequacies found during the audit. I acknowledge by initialling each item and signing below that I understand the inadequacies identified in my books and records. **OR**

I am a partner of the firm and acknowledge receiving and reviewing a complete copy of the Audit Report which identifies any inadequacies found during the audit. I acknowledge by initialling each item and signing below that I understand the inadequacies identified in my books and records. I will immediately provide a copy of this Audit Report to the other firm partners.

Please note that your firm's audit file will be subject to a final review by a Spot Audit Co-ordinator who will decide on the disposition of the file. If the Co-ordinator identifies any other issues of concern you will receive correspondence in due course and may be required to submit further documentation and/or explanations related to your financial records and files. **The status of compliance with the *By-Laws and Rules of Professional Conduct* will be reviewed during subsequent audits. If problems persist, your firm may be referred to the Investigations Department or Practice Review.**

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Name of Lawyer	Signature of Lawyer	Date
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2. **SIGNED BY BOOKKEEPER/ACCOUNTANT/STAFF (IF LAWYER IS UNAVAILABLE):**

I acknowledge receiving a complete copy of the Audit Report which identifies any inadequacies found during the audit and the request for documents, if any, which I agree that I will immediately provide to the Lawyer. **Please note the Lawyer or Managing Partner is required to complete paragraph 1 above and fax this page to (416) 947- 3485 or mail to:**

**Administrator, Spot Audit  
The Law Society of Upper Canada  
Spot Audit Department  
130 Queen Street West  
Toronto, ON M5H 2N6**

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Name and Position of staff person	Signature of staff person	Date
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