



THE LAW SOCIETY
OF NEW SOUTH WALES

TRUST MONEY AND TRUST RECORDS INFORMATION SHEET FOR LEGAL PRACTITIONERS AND ACCOUNTING STAFF

Key differences between the Legal Profession Uniform Law (NSW) and the Legal Profession Act 2004

The principal legislation relating to trust money is:

- [Legal Profession Uniform Law \(NSW\)](#) - Part 4.2 - Sections 127 to 168 – trust money , and
- [Legal Profession Uniform General Rules 2015](#) - Part 4.2, Rules 33 to 69 relating to trust records, and Part 4.6 Rules 92 to 95 relating to the maintenance of a file register, Register of Safe Custody Documents, and Register of Financial Interests. These registers were previously required to be maintained under the New South Wales Professional Conduct and Practice Rules (Solicitors' Rules) 2013.
- [Legal Profession Uniform Law Application Act 2014 \(NSW\)](#) - Sections 46 and 47 relating to Statutory Deposits and section 14 unclaimed money
- [Legal Profession Uniform Law Application Regulation 2015 \(NSW\)](#) - Part 3 Rules 9 to 12 regarding the calculation of the amount to be retained on statutory deposit. The calculation of the amount to be held has not changed. The calculator is still current although references to Approved ADI should read Authorised ADI. This will be updated later in the year.
- [Legal Profession Uniform Australian Solicitors' Conduct Rules 2015](#) - Rule 12.3 Borrowing from a client
- [Legal Profession Uniform Legal Practice \(Solicitors\) Rules 2015 – Rule 6 Transfer of a practitioner's practice](#)

While most of the day-to-day requirements for law practices are unchanged by the Legal Profession Uniform Law (Uniform Law), it is important to be familiar with the Uniform Law and Rules. The Trust Money and Trust Records Seminar Notes have been updated.

The introduction of the above instruments made some changes to the previous legislative regime but a law practice's compliance obligations with respect to trust accounts and trust money remain largely unchanged.

Practising certificates

Section 47(2) of the Uniform Law provides that an Australian practising certificate granted in New South Wales is subject to a condition, as determined by the designated local regulatory authority, that the holder is authorised or not authorised to receive trust money.

The Law Society Council, being the designated local regulatory authority, has resolved that for practising certificates issued under the Uniform Law :

- all principal practising certificates will be issued on the condition that the applicant is authorised to receive trust money on behalf of a law practice, unless otherwise determined by Council, and
- all other practising certificates will be issued on the condition that the applicant is not authorised to receive trust money on their own account, unless otherwise determined by Council.

Non-trust money

Non-trust money now includes money received for legal services that have been provided and after a bill is given. Money received for or in connection with a managed investment scheme, mortgage financing, financial services or investment purposes remains non-trust money.

Deficiency in a trust account or ledger

A person or law practice can be liable for a deficiency in a trust account or ledger or a failure to pay trust money. Under the Legal Profession Act 2004 only Australian legal practitioners were liable.

Key differences between the Uniform Rules and the Legal Profession Regulation 2005

Trust money notifications under the Legal Profession Uniform General Rules include:

- Notification of opening general trust account
- Notification of Closure of General Trust Account
- Notification of a law practice closing down, closing office or ceasing to receive or hold trust money
- Notification of appointment or cessation of external examiner
- Request for approval to terminate an external examiner by law practice
- Notification of authorised signatories as at 1 July

Receipt of trust money

Rule 36(4) was amended on 2 September 2016 and now requires that the receipt must be given, on request, to the person from whom the trust money was received. The amendment removed the requirement that the receipt must, as soon as practicable, be given to the person from whom the trust money was received which was introduced in the Legal Profession Uniform General Rules. This relates to money received by cash, cheque or electronic funds transfer.

Withdrawal of trust money

The Rule 42 of the Legal Profession Uniform General Rules sets out when money can be withdrawn for payment of legal costs. There are now 4 methods for withdrawing trust money.

- **Method 1:** Rule 42(3) - Withdrawal on the issue of bill of costs or money becomes legally payable. A law practice may withdraw money from trust if the law practice has given the person a bill relating to the money and referring to the proposed withdrawal. The term "*referring to the proposed withdrawal*" is a new concept to the withdrawal of trust money for legal costs. The Trust Accounts Department suggests that the term "*referring to the proposed withdrawal*" requires the law practice to include in the footer of the bill a statement to the effect "*It is intended to withdraw the above amount from money held in your trust ledger at the expiration of 7 business days from the date of this bill unless an objection is received.*" The trust money can be withdrawn seven **business** days after the client is given the bill if the person does not object to the bill (previously the timeframe was 7 calendar days)

- **Method 2:** Rule 42(4) Withdrawal with authority (same as Legal Profession Regulation 2005). The law practice may withdraw the trust money (whether or not the law practice has given the person a bill relating to the money)
 - a.) if the money is withdrawn in accordance with instructions that have been received by the law practice and that authorise the withdrawal; **and**
 - b.) if, before effecting the withdrawal, the law practice gives or sends to the person:
 - i.) a request for payment, referring to the proposed withdrawal; **or**
 - ii.) a written notice of withdrawal.
- **Method 3:** Rule 42(5) Withdrawal for reimbursement (same as Legal Profession Regulation 2005). The law practice may withdraw the trust money:
 - a.) if the money is owed to the law practice by way of reimbursement of money already paid by the law practice on behalf of the person; **and**
 - b.) if, before effecting the withdrawal, the law practice gives or sends to the person:
 - i.) a request for payment, referring to the proposed withdrawal; **or**
 - ii.) a written notice of withdrawal.

Rule 42(8) provides that money is taken to have been paid by the law practice on behalf of the person when the relevant account of the law practice has been debited. The Trust Accounts Department's view is that the cheque drawn to pay the disbursement must be debited to the law practice's office bank account.
- **Method 4:** Rule 42(6) Withdrawal for a commercial or government client (new concept). The law practice may withdraw the trust money if the law practice has given the person who is a commercial or government client a bill specifying the amount payable by the person; **and**
 - a.) the money is withdrawn in accordance with a costs agreement between the law practice and the person; **and**
 - b.) the costs agreement complies with the legislation under which it is made and authorises the withdrawal; **and**
 - d) before effecting the withdrawal, the law practice gives or sends to the person a request for payment, referring to the proposed withdrawal.

Trust account statements

A law practice must give a trust account statement to the person for whom or on whose behalf trust money is held or controlled as soon as practicable after:

- i) completion of the matter to which the ledger account or record relates;
- ii) the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter;
- iii) 30 June each year, unless exempted by rule 52(5) or (6).

Under rule 52(5), a law practice is not required to give a trust account statement at 30 June in respect of a ledger account or record if at 30 June the balance of the ledger account or record is zero and:

- no transaction affecting the account has taken place within the previous 12 months, or
- a trust account statement has been furnished within the previous 12 months and no transaction affecting the account has taken place since the last statement was furnished.

The exemptions provided under the Legal Profession Regulation 2005, where a ledger account opened for less than 6 months and where a statement issued during the period with no subsequent transactions, are included at rule 52(6) which expires on 1 July 2016. This

amendment will require software amendment if the software provider offers a “statement run” for 30 June. The examined software providers will be notified of the change by the Trust Accounts Department.

Rule 53 also provides an exemption to rule 52 if the client is a commercial or government client to the extent to which the client directs the law practice not to provide trust account statements under that rule. However the client may direct the law practice to give a statement on a different basis from that prescribed by rule 52 to which the law practice must comply unless the direction is unreasonably onerous.

Notifications regarding authority to operate a general trust account

In July each year, a law practice is required to provide the Law Society with written notice of persons authorised to sign cheques or effect electronic funds transfers on the general trust account as at 1 July of that year if that information is not already provided in the external examiner’s report lodged that year. The Trust Accounts Department will arrange for names and addresses of authorised signatories to be entered into Part B of the Law Practice Confirmation and Trust Money Statement. If there are changes during the period of completing this form and 30 June then a Notification of additional signatories will need to be completed.

The law practice is no longer required to provide notification upon the appointment or termination of authorised persons.

Computer records

Law practices that maintain their trust records by means of a computerised accounting system are no longer required to keep paper copies of trust records. Records may be kept in readable and printable form provided the law practice ensures that copies of the trust records cannot be modified.

Controlled money

The controlled money listing of the practice’s controlled money accounts, which is prepared within 15 working days after each named month, must be reviewed by a principal of the law practice who is authorised to receive trust money and that review must be evidenced on the statement. The requirement for the controlled money listing to be reviewed and for evidence of the review to be recorded on the listing was not required by the Legal Profession Regulation 2005.

External examinations

The deadline for providing the Law Society with an external examiner’s report each year will now be published on the Legal Services Council’s website.

Rule 66(2) of the Legal Profession Uniform General Rules now places time limits on a law practice to notify the Law Society of the appointment or cessation of an external examiner. These time limits are:

- (a) within 30 days after first receiving trust money (other than transit money) — written notice of the external examiner appointed by the law practice as its external examiner; and
- (b) within 7 days after an external examiner ceases to be the external examiner of the law practice—written notice of that fact; and
- (c) within 30 days after an external examiner ceases to be the external examiner appointed by the law practice—written notice of the successor external examiner appointed by the law practice as its external examiner.

Rule 66(3) provides that a law practice may terminate the appointment of an external examiner with prior approval of the Law Society Council. The Legal Profession Regulation 2005 did not have time limits for the notification of appointment or termination of an external examiner nor was there a requirement to seek the approval of the Law Society Council prior to termination of an external examiner.