



PRACTICE BRIEFING

Looking after a client's bank account

INTRODUCTION

Many law firms in New Zealand operate what is known as “controlled bank accounts”.

An example of this is where a lawyer holds a power of attorney for an impaired client, and makes payments on behalf of that client from the client's bank account. The bank account is under the control of the lawyer.

Trust accounts and “controlled accounts” share one thing in common. They are accounts where a lawyer has, in the course of his or her practice, control of money for or on behalf of a client.

The Law Society recommends that all lawyers in New Zealand adopt the following good practice in relation to “controlled bank accounts”.

GOOD PRACTICE

Appoint a responsible person to ascertain whether there are any controlled bank accounts within a firm and keep a central record.

Every law firm where lawyers are operating “controlled bank accounts” develops a protocol for centrally recording these accounts.

Every “controlled account” is administered so that the law firm accounts properly to the client and keeps records, both to the same standard as required for a law firm's trust account.

Every “controlled account” is reconciled at least monthly, in the same way a trust account must be reconciled.

Law firms practising with a trust account include a listing of all “controlled accounts” in the monthly and quarterly trust account certificates that must be provided to the Law Society. That listing should include all the information required for trust accounts. Firms may consider if it is appropriate to pay the monies from the controlled bank account into the firm's trust account.

Law firms practising without a trust account advise the Law Society that they have “controlled accounts” and provide the Law Society Inspectorate a listing of those “controlled accounts”

annually. This could be done at the same time as filing the annual section 112 certification due by 31 March.

When authority is needed for another person's bank account, it is recommended that the client's authority is obtained for there to be two signatories on the account. For sole practitioners, the other signatory could be the section 44 attorney or alternate.

The Law Society encourages law firms operating without a trust account and who have "controlled accounts" to assign someone within the firm to attend the Trust Account Supervisor training, and then operate their "controlled accounts" with the same high standards as trust accounts.

WHY THIS IS IMPORTANT

"Next to the right and obligation to keep our clients' secrets sits the right and privilege to take and hold money in trust as a significant and defining aspect of what it means to be a lawyer," Kathleen Robichaud writes in an article on the Canadian Bar Association website.¹

"The public places a special trust in our profession to hold on to and have the ability to use money belonging to our clients or third parties involved in a transaction a lawyer is acting on," Ms Robichaud writes.

"Trust accounts are special. They must balance to the penny. They must be properly monitored."

"Controlled accounts" are special in just the same way. They are accounts where lawyers are holding money in trust for people or entities.

Every law firm or lawyer that operates their "controlled accounts" as though they were trust accounts reduces any risk to the public and the reputation of the profession.

THE LEGISLATION

Section 110 of the Lawyers and Conveyancers Act 2006 says that "a practitioner who, in the course of his or her practice, receives money for, or on behalf of, any person must ensure that the money is paid promptly into a bank in New Zealand to a general or separate trust account."

The Lawyers and Conveyancers Act does not include a definition of "controlled account", although it does allow for money to be paid into a "general or separate trust account".

WHAT HAPPENS OVERSEAS

In Australia controlled bank accounts are known as "power accounts" and federal legislation states that a law practice is required to maintain records of all dealings with money held for

1. <https://www.cba.org/Publications-Resources/CBA-Practice-Link/solo/2015/With-trust-accounts,-the-devil-is-in-the-details>).

or on behalf of any person. The practice must maintain appropriate records for these “power accounts” and must provide an external examiner’s report annually to the regulator.

It is recommended that law firms in New Zealand adopt the good practice points set out above in relation to any controlled bank accounts operated by any member of a law firm.

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Information in the Practice Briefing series is provided by the Law Society as a service to members. This briefing is intended to provide guidance and information on best practices. Some of the information and requirements may change over time and should be checked before any action is taken.

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