

To: Michael Lucas [REDACTED]
From: Jeanette McPhee
Sent: Thur 11/10/2018 4:12:54 PM
Subject: FW: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

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And these are Eva's comments, as information
Jeanette McPhee, CPA, CA, BBA, CAMS, CRMS
Chief Financial Officer and Director of Trust Regulation
The Law Society of British Columbia

[REDACTED]

From: Eva Milz
Sent: Tuesday, October 09, 2018 6:07 PM
To: Jeanette McPhee ; Tina Kaminski
Subject: RE: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Hi Ladies

Sorry I'm a little late with my two cents.

We have some members that act in a representative capacity (e.g. Executor) while also providing legal services. When we amended the rules requiring lawyers to hold FP in other accounts we received a lot of pushback and complaints since most of the lawyers had deposited the funds into the pooled trust accounts. There were others that wanted the flexibility to leave the funds where they currently were and they didn't want to transfer the funds into the pooled trust (e.g. Investment accounts). The rules were amended again to accommodate what members had been doing for so many years. I think it is best when the lawyer is acting both as Executor and providing legal services to have the ability to forward the funds in the pooled trust account. It's when the lawyer is only acting in a representative capacity and not providing legal services that this needs to be clearly noted and the funds need to be separate from the trust accounts and held in the estate's name.

Having said that Tina brings up a very good point re: CIV.

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From: Jeanette McPhee
Sent: Tuesday, October 09, 2018 4:39 PM
To: Tina Kaminski <[REDACTED]>
Cc: Eva Milz <[REDACTED]>
Subject: RE: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Thanks Tina,

The issue is that with the new trust account rule, lawyers cannot put FP into trust accounts anymore, as it is not related to legal services.

So the changes made in 2016 would need to be reversed, and they can't use trust accounts for FP anymore. Doesn't have anything to do with what we want banks to do.

Comments?

Jeanette McPhee, CPA, CA, BBA, CAMS, CRMS
Chief Financial Officer and Director of Trust Regulation
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From: Eva Milz

Sent: Tuesday, October 09, 2018 3:58 PM

To: Jeanette McPhee <REDACTED>

Cc: Tina Kaminski <REDACTED>

Subject: FW: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Hi Jeanette

Here are Tina's comments. Unfortunately, I have not yet had a chance to review.

Sorry but I'm sure Tina's comments are very helpful, as they always are 😊

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From: Tina Kaminski

Sent: Tuesday, October 09, 2018 3:55 PM

To: Eva Milz <REDACTED>

Subject: RE: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Hi Eva,

Here are my notes and comments. Do you want to discuss it first or send it to Jeanette directly (from the both of us)?

Prior to March 6, 2015: "FP must go into trust"

Previously, the rules required lawyers to deposit fiduciary property (FP) into a lawyer's trust account. Trust Funds were defined to include funds received in trust by a lawyer acting as a personal representative of a person or at the request of a person, or as a trustee under a trust established by a person, if the lawyer's appointment derived from a solicitor-client relationship. Since trust funds have to be deposited into a trust account, FP was deposited into the trust account. The Trust Assurance Reform Task Force gave the following reasons:

1. Lawyers must properly handle and account for funds and valuables where the lawyer is acting as executor (or another appointment) or as a lawyer.
2. Appointments must be disclosed on the lawyer's Trust Report and subject to audits.
3. If lawyer ever absconds with the funds, the Part B Insurance could be liable.

However, there were several issues:

1. Inability for lawyers to comply with specific rules: deposited into a designated savings institution, funds withdrawn via cheque, automatic withdrawals not permitted.
2. Disadvantages to transfer all funds into the lawyer's trust account (e.g. PoA is temporary, client is a minor and expected to live many years, lower rate of return in a trust account)

From March 6, 2015 to June 2016: "FP must go into other"

The definition of "trust funds" was changed and FP was defined. All FP must be deposited into another account (not trust and not general) and follow the rules listed under Rule 3-48.1 (now 3-55). FP rules are less restrictive than the rules for trust funds.

Starting June 2016: "FP can be in trust or other"

The rules were amended to allow lawyers to put FP into a trust account. The lawyers can now deal with FP in two ways:

- a. Deposit FP into a pooled or SIB trust account. The lawyer will have to follow all trust rules which is more restrictive.
- b. Deposit FP into another account and follow the rules listed under Rule 3-48.1 (now 3-55). These rules are less restrictive.

My thoughts

If we remove the ability of lawyers to put FP in a trust account, I think we would get a bit (not a lot) of pushback. A lot of lawyers put FP into trust so that it gets accounted for properly (e.g. recorded and reconciled in a timely manner and appropriate records maintained). Lawyers who keep FP outside of trust are not as diligent about record-keeping or maintenance.

The potential for ML exists whether the FP is put into the trust account or another account. From what I understand, when funds are deposited into a lawyer's bank account whether it be trust, general or other, banks will not make further inquiries. Banks expect lawyers to do their own due diligence to ensure that they are not facilitating ML/TF. For example, lawyer deposits \$500K cash into his trust or general account. The bank does not file an STR. If the lawyer opens a non-trust bank account using his firm name and deposits FP into that account, my assumption is that the bank will not file STRs for that account either since it is connected with the law practice. If our goal is to have the banks take a closer look at the transactions, the account should not be under the law firm's name and the bank will have to run KYC/CIV procedures on the actual client and the circumstances of opening a new account.

From: Eva Milz

Sent: Tuesday, October 09, 2018 10:05 AM

To: Jeanette McPhee <REDACTED>

Cc: Tina Kaminski <REDACTED>

Subject: FW: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Redacted

Thanks

Eva

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From: Jeanette McPhee

Sent: Tuesday, October 09, 2018 9:55 AM

To: Eva Milz <REDACTED>

Subject: FW: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Hi Eva,

We should discuss this, or you can give it to Tina to review it, although she will need to consult with you on it. We will eventually need to have Policy involved. It is timely as the new trust account rule will be approved this month at Federation.

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From: Frederica Wilson [mailto:<REDACTED>]

Sent: Saturday, October 06, 2018 12:35 AM

To: <REDACTED>; Leah Kosokowsky <REDACTED>; Chioma Ufodike <REDACTED>; Deborah Armour, QC <REDACTED>; Jeanette McPhee <REDACTED>; Jim Varro <REDACTED>

Subject: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Good morning,

I hope that you are all enjoying the long weekend.

Leah has suggested that we arrange a call of the Working Group members from jurisdictions with rules that permit lawyers who are acting in a representative capacity to deposit into their trust accounts fiduciary property that they receive in that capacity. As you know, the new trust accounting rule does not permit that. The attached memo from Leah sets out the issue.

Can you please let me know if you might be free for a call on one of Wednesday, October 10, Thursday the 11th, Friday the 12th or Monday the 15th?

I know that several of you will be at DAC at the end of the week but Leah and I thought you might be able to find some time for a call while there.

Can I ask that you get back to me as early as possible after Thanksgiving?

Thanks.

Frederica Wilson

Executive Director, Policy and Public Affairs and Deputy CEO /

Directrice générale des politiques et affaires publiques, et première dirigeante adjointe

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