

# Essentials of Trust Accounting: IOLTA Accounts & Beyond

ISBA Mutual  
July 12, 2018

David Holtermann, General Counsel  
Lawyers Trust Fund of Illinois



## Objectives

- ✓ IOLTA explained
- ✓ IOLTA vs Non-IOLTA account
- ✓ When to use an IOLTA account
- ✓ Establishing an IOLTA account
- ✓ E-filing and IOLTA
- ✓ Unidentified funds
- ✓ Support for the legal aid system
- ✓ IOLTA & trust accounting resources



2

## Safekeeping Requirement

- Funds must be held in client trust account
- Two types allowed under Rule 1.15(a):
  - IOLTA account
  - Separate, interest-bearing non-IOLTA client trust account
- Must be interest-bearing
- Lawyer **may not receive interest**



3

## IOLTA Accounts

- Defined in Rule 1.15(i)(2):
  - Pooled interest- or dividend-bearing
  - Lawyers Trust Fund designated as income beneficiary (LTF earns interest; principal belongs to clients)
  - For deposit of **nominal or short-term funds** of clients or third persons
  - Funds may be withdrawn upon request as soon as permitted by law



4

## Non-IOLTA Client Trust Account

- Rule 1.15(f):
  - Separate interest- or dividend-bearing client trust account
  - Client earns interest
  - For deposit of funds of clients or third persons that are **not** nominal in amount or expected to be held for a short period of time
  - I.e. substantial amount held for substantial period, such as a commercial real estate escrow



5

## IOLTA or Non-IOLTA?

- See Rule 1.15(f):
  - IOLTA: “nominal in amount or are expected to be held for a short period of time”
    - Advances for costs and expenses
    - Funds “belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm”
  - Non-IOLTA: Not nominal in amount or expected to be held for a short period of time



6

## IOLTA or Non-IOLTA?

- Rule 1.15(g):
  - Lawyer or law firm makes determination
  - Exercise **reasonable judgment**
  - Are funds nominal in amount or expected to be held for a short period of time?
  - Factors
    - Amount of interest funds would earn
    - Cost of separate account
    - Capabilities of financial institution



7

## IOLTA or Non-IOLTA?

- Key question: Will client funds generate **net interest** for benefit of client?
- Net interest = gross interest – costs
  - Gross interest = amount x duration x interest rate
  - Costs: account fees, check fees, lawyer and staff time, expenses related to tax reporting



8

## Establishing an IOLTA Account

- Eligible institution under Rule 1.15(f) & (h)
- Establish as an interest-bearing demand deposit account
  - Identify as a client trust account
  - Use LTF tax identification number (TIN)
- Notice forms ([www.ltf.org](http://www.ltf.org))
  - Page 1 (Notice to Financial Institution) → bank
  - Page 2 (Notice of Enrollment) → LTF



9

## Managing an IOLTA Account

- Remember basic safekeeping principles
- Has the check cleared?
- No negative balances
- Recordkeeping - Rule 1.15(a)
- Bank statements
  - Use for reconciliation
  - Is interest remitted to LTF?
- Consider hiring an accountant or bookkeeper



10

## E-filing and IOLTA Accounts

- Mandatory e-filing in civil cases
- Electronic payment methods only
  1. Debit cards – direct from IOLTA account
  2. Credit cards – reimburse from IOLTA account
  3. E-checks (ACH transactions) – direct from IOLTA account
- Maintain adequate records
- Account for service fees



11

## Contingency Planning

- Prepare for the unexpected
- Prevent client neglect/harm
- Rules of Professional Conduct
  - Rule 1.3, Comment [5]: Sole practitioners and duty of diligence
  - Rule 1.15(a)(8): Arrangements to maintain trust account records in event of closing, sale, dissolution, merger



12

## Contingency Planning

- Add a co-signer to client trust accounts
  - Bank will need ID and SSN
  - May require new resolutions
  - Should be trusted person
- Leave written instructions
  - Account number and information
  - Location of account records
- Client ledgers: Required by rule, helps third party get up to speed



13

## Unidentified Funds Requirement

- A legacy issue?
- Rule 1.15(i), effective 7/1/15
- “amounts accumulated ... that cannot be documented as belonging to a client, a third person, or the lawyer or law firm”
- Lawyer required to try to identify and return funds
- After 12 months, remit funds to LTF if further efforts not likely to succeed



14

## Remitting Unidentified Funds

- Protections:
  - Reasonable judgement of lawyer (“no charge of ethical impropriety”)
  - Refund provision
- Unidentified funds vs. unclaimed funds
- Use reporting form to remit funds (available on [www.ltf.org](http://www.ltf.org))



15

## What Does IOLTA Support?

- IOLTA created by Supreme Court in 1983
- LTF grants support civil legal aid
  - Access to justice system
  - Fairness
  - Protect people with nowhere else to turn
- \$9.8 million to 38 organizations :
  - 47% downstate and collar counties
  - 45% Cook County
  - 8% statewide



16



## What Does IOLTA Support?

- IOLTA-supported organizations = **120,000 cases** in 2016
  - Domestic violence
  - Elder abuse
  - Consumer fraud
  - Access to education
- Competitive grants process = accountability
- Grants approved by board appointed by Supreme Court and bar associations



17

## The Lawyer's Role

- Understand duties under Rules of Professional Conduct
  - Rule 1.15
- Be a conscientious participant in IOLTA
  - Properly established account
  - Use when appropriate
  - Pay attention to where you bank
- Unidentified funds?



18

## Trust Account Resources

- Rules
  - Rule of Professional Conduct 1.15
  - Supreme Court Rule 756 (client trust account reporting)
- ARDC ([www.iardc.org](http://www.iardc.org))
  - ARDC Client Trust Account Handbook
  - On-demand CLE webcast: *The Ethical Requirements of Handling Trust Funds Under Rule 1.15 and IOLTA Basics*
  - Ethics Inquiry Program: Chicago (312-565-2600) or Springfield (217-522-6838)

19

## IOLTA Resources

- Lawyers Trust Fund ([www.ltf.org](http://www.ltf.org))
  - IOLTA Basics
  - List of eligible financial institutions
  - IOLTA account instructions & forms
  - Unidentified funds info and report
  - Guide to E-filing & IOLTA
- Help:
  - David Holtermann, LTF General Counsel: 312-938-3076, [david@ltf.org](mailto:david@ltf.org)
  - Terri Smith, LTF Director of Banking: 312-938-3001, [tlsmith@ltf.org](mailto:tlsmith@ltf.org)

20



**David Holtermann**

**david@ltf.org**

**312-938-3076**

**[www.ltf.org](http://www.ltf.org)**

21