

Trust Safety Program

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Proactive Approach

Recently, the Law Society benchers decided to take a more proactive approach to the regulation of trust accounts by implementing the new Trust Safety Program which will come into effect on April 1, 2019.

Under the program, lawyers must first obtain approval from the Law Society and complete an on-line trust account education program before opening and operating a trust account. Similarly, firms with existing trust accounts will be required to have a trust account supervisor approved and that person will be required to complete the education program.

Why?

Why would the benchers take such a step? The Law Society is very proactive when it comes to licensing lawyers. We require those that wish to practise law in Manitoba to have a law degree from a recognized university, to complete the CPLED program, to article under the supervision of a practising lawyer and, once called, to complete some annual education.

The requirements have not, however, been as proactive when it comes to lawyers who operate trust accounts. Historically, any practising lawyer has been able to open a trust account in Manitoba regardless of that individual's training in accounting, or knowledge of the trust accounting rules and record keeping requirements. So, even though the Society has a robust auditing program, it is largely reactive in nature – identifying and responding to concerns rather than preventing the problems from arising at the outset.

Benefits

There are many benefits to the new program:

- **Reduced Risk Increases Protection of the Public** Requiring that a trust account be operated under the direction of an approved and qualified trust account supervisor reduces the risk of trust funds being mismanaged, thus better protecting the public and likely reducing the number of claims to which the profession must respond.
- **Qualified Backup** For firms who rely upon a bookkeeper or accountant for the day to day functioning of the trust account, there will be a knowledgeable lawyer who can effectively oversee that work or take over the responsibilities in the event of an unexpected departure of the bookkeeper.
- **User Pay System** The cost of monitoring firms that do not comply with the trust accounting rules will be borne by those non-compliant firms rather than the profession.
- **More Resources to Support Effective Trust Account Management** Those trust account operators whose non-compliance results in the application of a disproportionate amount of Law Society resources will no longer be permitted to have a trust account, thus freeing up resources for other purposes to benefit the public and the profession.
- **CPD at No Charge** Lawyers who take the program can do so at no charge and will receive credit toward their CPD requirements.
- **No Annual Trust Account Report Required** With the advent of the trust safety program, the benchers decided to eliminate the requirement that firms with trust accounts file a lengthy annual trust account report. Instead, a few key questions from the annual trust account report will be incorporated into the annual member report, and those questions need only be completed by the trust account supervisor.

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The rules to implement this program will be finalized in the next two months and will come into effect on April 1, 2019. In the interim, the Law Society will be hosting the following lunch hour information sessions:

Session #1	December 5, 2018	The Victoria Inn, Brandon
Session #2	December 17, 2018	Law Society classroom, Winnipeg
Session #3	January 9, 2019	Law Society classroom, Winnipeg
Session #4	January 11, 2019	Webinar

While there is no charge to attend, members must [register](#) in advance in order to ensure that there is sufficient seating and to receive the reading materials.

What else is happening?

Effective April 1, 2019, every law firm in Manitoba also will be required to register with the Law Society and to designate a practising lawyer within the firm to communicate with the society on behalf of the firm.

Why?

In 2017, the benchers developed a three year strategic plan, a major component of which is for the Law Society to regulate proactively to protect the public interest by ensuring that legal services are delivered by competent and ethical lawyers. Among other things, the plan contemplates that the Society will proactively assist lawyers and law firms to mitigate risk. The Trust Safety Program is one example of an initiative to accomplish this goal.

A preliminary step for the benchers was to clarify the Society's ability to regulate law firms and not just individual lawyers. This will enable the Society to communicate with firms in order to provide advice, direction and resources so as to mitigate risk within the firm.

As a result, the benchers resolved to amend the definition of "law firm" within the Law Society Rules so as to align it with the definition of "law firm" in *The Legal Profession Act* and to require, as of April 1, 2019, each firm to register with the Society and designate a practising lawyer within the firm to communicate with the Society on behalf of the firm. Although the designated lawyer need not be the firm's trust account supervisor, these rules will come into effect at the same time as the Trust Safety Program requirements.