



## Trust Safety Program Guideline

### Introduction

1. The Law Society of Manitoba is committed to its mandate to protect the public which includes protecting clients' money that is entrusted to lawyers.
2. The ability of practising lawyers to handle trust monies is a privilege reserved to the legal profession and it is just that – a privilege and not a right.
3. Effective April 1, 2019:
  - (a) all practising lawyers/firms who wish to open a trust account must first [apply](#) to the Law Society for approval to operate a trust account and then must meet the requirements set out by the Law Society.
  - (b) all practising lawyers/firms who already have been operating a trust account must apply to the Law Society for approval to continue to operate a trust account.
4. This guideline is intended to provide information to the profession regarding the approval criteria as well as the approval and revocation processes.
5. This guideline should be read in conjunction with *The Legal Profession Act* and the Law Society Rules.

### Trust Account Supervisor

6. Every trust account must be operated under the direction and control of a trust account supervisor. A trust account supervisor is a practising (Manitoba) lawyer who has been approved by the Law Society to operate a trust account and who has successfully completed the trust accounting education program.
7. To be approved as a trust account supervisor, the applicant must demonstrate a history of compliance with the Law Society Rules and the Code of Professional Conduct.<sup>1</sup> The applicant must also demonstrate an ability and commitment to comply with the Law Society Rules and the Code of Professional Conduct in the future and a willingness to actively assess the risks to trust safety on an ongoing basis.

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<sup>1</sup> See Appendix A for factors considered in the approval process.

## Possible Results of Approval Process

8. Upon receipt of a written application, an applicant will receive written notification from the Law Society that the application has been approved, conditionally approved or denied.
9. An approved or conditionally approved applicant can proceed with the trust accounting education program, which consists of the [Trust Accounting Fundamentals](#) education program and the related examination. If unsuccessful in the education program, the applicant will not become a trust account supervisor and will not be able to open a trust account. If successful, the applicant becomes a qualified trust account supervisor and can thereafter open a trust account.
10. A denied or conditionally approved applicant will receive written reasons for the decision and notification of a right of appeal.<sup>2</sup>
11. A conditionally approved applicant that successfully completes the trust accounting education program will have six months to demonstrate competence and compliance with the trust accounting rules and requirements, which shall include periodic review and/or audit of the applicant's records by Law Society inspector/auditors at the cost of the applicant.
12. At the conclusion of six months, a conditionally approved applicant will be reassessed and become either approved or denied to be a trust account supervisor. If denied, he/she will receive written reasons and notice of a right of appeal.

## Appeal Process

13. Where an application to be a trust account supervisor is denied, approved with conditions or where a trust account supervisor's status is revoked, the individual can initiate an appeal by submitting a *Trust Safety Program Notice of Appeal* to the assistant to the Trust Safety Appeal Committee within 14 days of receipt of the reasons for decision<sup>2</sup>.
14. The decision of the Trust Safety Appeal Committee is final.

## Designated Trust Account Supervisor

15. A practising Manitoba lawyer can apply to be a trust account supervisor for another member's trust account (a designated trust account supervisor) and may be approved to do so if the proposed designated trust account supervisor

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<sup>2</sup> See Appendix B *Trust Safety Program Appeal Guidelines* and Appendix C *Trust Safety Program Notice of Appeal*.

otherwise meets the approval criteria and successfully completes the trust accounting education program.

16. The required level of supervision of the trust account operation by the designated trust account supervisor will be determined by the Law Society and will depend upon the particular circumstances.
17. Where a designated trust account supervisor has been approved and qualified to operate another member's trust account:
- (a) measures will have to be taken to preserve and protect client confidentiality and solicitor and client privilege;
  - (b) when the firm or lawyer is retained, clients will need to be notified that a designated trust account supervisor is in place from outside the firm but that person will be required to preserve and protect the client's confidentiality; and
  - (c) conflicts checks will have to be conducted at the outset.

### **Continued Compliance**

18. Trust account supervisors are responsible for:
- (a) the controls in relation to the operation of all law firm trust accounts and general accounts;
  - (b) the accuracy of the law firm's reporting requirements;
  - (c) the timeliness and accuracy of the law firm's record keeping requirements; and
  - (d) any of (a), (b) or (c) that has been delegated to another person.

Refer to the [Trust Accounting Fundamentals](#) course for additional information.

19. Trust account supervisors may be required to participate in annual continual professional development in order to remain current on trust accounting issues, for which credit will be given toward the annual continuing professional development requirements.

### **Revocation**

20. If a trust account supervisor demonstrates a significant departure from, or repeated non-compliance with, his or her responsibilities the Law Society will provide the following notice to the trust account supervisor:
- (a) all trust accounts must be closed within 60 days unless a new trust account supervisor is approved and qualified within the 60 days;

- (b) unless and until a new trust account supervisor is approved and qualified, the firm is unable to take on any new matters where the firm will be required to handle trust funds;
  - (c) if a new trust account supervisor is not in place and if, at the conclusion of 60 days the trust account has not been closed, the Law Society will take custody of the trust account and attend to the closing of the trust account. All associated costs will be charged to the trust account supervisor and the firm.
21. If the trust account supervisor fails to complete any required annual professional development programming without reasonable excuse, he/she may have his/her status revoked in the same manner as described herein.
22. If the trust account supervisor makes an assignment in bankruptcy, a proposal to creditors or is petitioned into bankruptcy, he/she may have his/her status revoked in the same manner as described herein.
23. Revocation does not affect the authority of the complaints investigation committee to take any action under Rule 5-74, including the ability to impose an interim suspension or impose conditions or restrictions on a member's practice, where appropriate.
24. Revocation can also be appealed.<sup>3</sup>

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<sup>3</sup> See Appendix B *Trust Safety Program Appeal Guidelines*.



## **Trust Safety Program Guideline Appendix A: Approval Criteria**

When deciding whether to grant approval to an applicant to become a trust account supervisor, the chief executive officer will take into account the following factors:

### **Trust Accounting History**

1. In the last five years, has the applicant been associated with a firm where there has been non-compliance with:
  - (a) the Law Society Rules regarding the handling of trust funds;
  - (b) the rules regarding recordkeeping in respect of trust ledgers, books of original entry, receipts or monthly trust reconciliations;
  - (c) the deadlines for filing accounting records or forms (Annual Trust Account Reports)

### **Conduct/Competence History**

2. Does the applicant have a troublesome and/or lengthy history of complaints?
3. Has the applicant been charged with conduct unbecoming a lawyer, incompetence or professional misconduct?
4. Has the applicant been formally disciplined for conduct unbecoming a lawyer, incompetence or professional misconduct?
5. Has the applicant accepted a formal caution from the complaints investigation committee?
6. Has the applicant been the subject of a practice review that was ordered by the complaints investigation committee?
7. Is the applicant subject to an undertaking, conditions or restrictions by the Law Society?

### **Governability**

8. Does the applicant have a history of failing to respond to the Law Society, including the audit department?

9. In the last five years has the applicant been delinquent/late in:

1. paying practising fees?
2. remitting professional liability insurance contribution?
3. paying insurance deductibles, fines or costs?
4. completing mandatory continuing professional development?

10. Does the applicant owe any money to the Law Society?

**Other**

11. Has the applicant made a consumer proposal, assignment in bankruptcy or been petitioned into bankruptcy?

12. Is the applicant an undischarged bankrupt?

13. Does the applicant have any outstanding civil judgments against him/her?

14. Has the applicant been convicted of an offence under a federal statute or are there outstanding charges of such nature against the applicant?

15. Has the applicant been found to be unsuitable to be a principal?



## **Trust Safety Program Appendix B: Appeal Guidelines**

The following guidelines will govern appeals of trust safety decisions made by the chief executive officer under Law Society Rule 5-42.2(2). In these guidelines, reference to the chief executive officer includes the director of audit as the designate of the chief executive officer.

### **Initiation of Appeal**

1. An appeal will be initiated by submitting a Notice of Appeal in the required form to the assistant to the Trust Safety Appeal Committee, within 14 days of the appellant's receipt of the chief executive officer's decision.
2. If an existing trust account is affected by the decision of the chief executive officer, the appellant may request in writing that the appeal be heard on an expedited basis.
3. The appellant may be represented by counsel.
4. The completed Notice of Appeal will be provided to counsel for the Law Society and to the chairperson of the Trust Safety Appeal Committee.

### **Information/Record**

5. Upon receiving the Notice of Appeal, the chief executive officer will prepare and provide to the parties a record of materials considered by the chief executive officer when making the decision under appeal, with the exception of solicitor and client privileged information.
6. In the case of an expedited appeal, the record will be provided to the parties within seven days of the chief executive officer's receipt of the Notice of Appeal.
7. No additional materials will be considered by the appeal panel except with the consent of all parties or with leave of the panel and then only in exceptional circumstances as the appeal panel may determine.

## **Appointment of the Appeal Panel**

8. The chairperson of the Trust Safety Appeal Committee will appoint three members of the committee to serve on the appeal panel and will appoint one member to act as chair of the appeal panel.
9. The appellant and counsel for the Law Society will be advised of the proposed composition of the appeal panel to determine if either party has an objection based on conflict of interest or bias.

## **Appeal Format**

10. The appeal panel will consider an appeal based solely on written submissions unless the appellant requests an oral hearing or the chairperson of the Trust Safety Appeal Committee directs an oral hearing.

## **Setting the Appeal Date**

11. For appeals based solely on written submissions, the appeal date will be fixed by the chair of the appeal panel. The appellant and counsel for the Law Society will be advised of the appeal date so that they may submit written materials within the time prescribed by the guidelines.
12. If the appeal is to be considered by way of an oral hearing, once the parties agree upon a date for the hearing, the chair of the Trust Safety Appeal Committee will fix the appeal date and members of the Committee will be canvassed for their availability.
13. In the case of an expedited appeal, the chair of the Trust Safety Appeal Committee will set the appeal date to be heard within 14 days of the delivery of the record to the parties.

## **Written Materials**

14. In the case of a standard appeal:
  - (a) At least 21 days before the appeal date, the appellant must provide to the assistant to the Trust Safety Appeal Committee five copies of written argument and authorities upon which he/she is relying.
  - (b) Counsel for the Law Society will be provided with one copy of the appellant's materials.
  - (c) At least seven days before the appeal date, counsel for the Law Society must provide to the assistant to the Trust Safety Appeal Committee five copies of written argument and authorities upon which he/she is relying.



- (d) The appellant will be provided with one copy of the written materials submitted by counsel for the Law Society.
15. In the case of an expedited appeal:
    - (a) At least three days before the appeal date, both parties must provide to the assistant to the Trust Safety Appeal Committee five copies of written argument and authorities upon which they are relying.
    - (b) Within one day of receipt of the written argument and authorities, the assistant to the Trust Safety Appeal Committee will provide each party with one copy of the other party's materials.
  16. Prior to the appeal date, the appeal panel will be provided with copies of the record along with the written argument and authorities submitted by the parties.
  17. No further written materials may be submitted without leave of the appeal panel.

### **Oral Hearings**

18. Witnesses, including the appellant may be called during oral hearings only with leave of the appeal panel and only in exceptional circumstances as may be determined by the appeal panel. The testimony of an appellant or witness at an oral hearing must be taken under oath unless the chairperson of the panel waives the requirement.
19. Oral hearings will be transcribed and each party will bear its own costs of obtaining a transcript, if required.

### **Decision of the Appeal Panel**

20. The appeal panel may dismiss the appeal, make any decision the chief executive officer could have made, or allow the appeal with or without conditions.
21. The appeal panel must provide written reasons for its decision.
22. In the case of a standard appeal, the appeal panel should provide its written reasons within 30 days of the conclusion of the hearing.
23. In the case of an expedited appeal, the appeal panel must deliver its decision within seven days of the conclusion of the hearing and should provide written reasons for its decision within 14 days of the conclusion of the hearing date.



**Trust Safety Program  
Appendix C: Notice of Appeal**

**NOTICE OF APPEAL  
TO  
THE TRUST SAFETY APPEAL COMMITTEE**

**In the Matter of:**

\_\_\_\_\_ **Appellant,**

**And in the Matter of:**

**A Decision of** \_\_\_\_\_  
[insert the CEO or delegate]  
**Dated** \_\_\_\_\_

1. Take notice that the appellant is appealing the decision to [approve with conditions, deny or revoke] the appellant's status as a Trust Account Supervisor.

2. The grounds for appeal are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Set out the basis for your appeal. Indicate whether your grounds relate to new information that was not previously provided to the chief executive officer and if so, please provide a description of the new information.]

3. The appeal panel will consider an appeal based solely on written materials unless the appellant requests an oral hearing or the Chairperson of the Trust Safety Appeal Committee directs an oral hearing.

\_\_\_\_\_ I request an oral hearing.

\_\_\_\_\_ I am not requesting an oral hearing.

4. I am asking the appeal panel to:

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\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature/Counsel