Law Society of Alberta

Application of Rule 119.2

Responsible Lawyer Acting on behalf of another Responsible Lawyer

March 13, 2017

Background

The Law Society of Alberta is committed to protecting the public and supporting lawyers and law firms to develop the best possible practices to ensure the safety of trust money held by lawyers.

This document has been developed to provide support to lawyers in the application of Rule 119.2 and outline the requirements to be met when a Responsible Lawyer (RL) or a law firm approved to operate and maintain a trust account receives or disburses trust funds on behalf of an RL who is not part of the law firm.

Responsible Lawyer Acting on behalf of another Responsible Lawyer

Pursuant to the Rule 119.2, a law firm may receive or disburse trust funds on behalf of a lawyer who is not part of the law firm.

119.2　　　*Subject to rule 119.1.1, only a lawyer practicing with a law firm approved to operate a trust account is permitted to receive trust money, unless a specific alternate arrangement is approved by the Executive Director or Manager, Trust Safety, where:*

　　　(a)　　*a lawyer approved as a responsible lawyer is permitted to receive trust money that will be held in the trust account of a law firm approved to operate a trust account where he or she is not practicing; or*

　　　(b)　　*a law firm approved to operate a trust account is permitted to hold trust money received by a lawyer approved as a responsible lawyer, who is not practicing with that law firm.*

Restrictions

1. This arrangement may be entered into only when a lawyer is approved as a Responsible Lawyer but exempt from operating a Trust Account.

2. Lawyers who apply for an exemption from operating and maintaining a trust account are required to satisfy the Law Society that they have made adequate arrangements with another lawyer or law firm for the receipt of trust funds.

3. This arrangement may not be used to administer Real Estate file matters.

   Note: This arrangement should only be entered into after careful consideration. The Law Society of Alberta is not a party to, nor is in any way responsible for the structure or wording of any agreement between lawyers in fulfilment of the requirements for an arrangement under rule 119.2.

Definitions:

- **Guest Responsible Lawyer (Guest RL)** - a lawyer approved as a responsible lawyer permitted to **receive** trust money that will be held in the trust account of a law firm approved to operate a trust account where he or she is not practicing.

- **Host Responsible Lawyer (Host RL) -** a law firm approved to operate a trust account permitted to **hold** trust money received by a lawyer approved as a responsible lawyer, who is not practicing with that law firm.

Requirements for the Guest and Host RL

#	Requirement	Guest RL	Host RL
Approval			
1	Must seek approval of this arrangement from the Law Society[1]	X	
2	Must obtain and thereafter maintain approval of designation of a Responsible Lawyer	X	X
3	Must obtain and thereafter maintain authorization to operate a Trust Account		X
4	Must be exempt from operating a Trust Account	X	
Agreement & Conflict of Interest Check			
1	Signed Agreement between Host and Guest RL that sets out the terms of the arrangement including fees, trust accounting and record keeping requirements etc The Law Society may request to see this agreement at any time.	X	X
2	Obtain in writing, signed consent from client to the essential terms of the arrangement. The signed consent should also include: • a consent to disclose name and identity to the Host as this information is confidential as between the Guest and Client • confirmation that the money is to be held in trust; • any conditions upon which the money is to be held in trust; and • any instructions directing that the money be paid to a person other than the client.	X	
3	Perform Conflict Check. A conflict of interest check must be complete and clear before you proceed any further or enter into this arrangement. Conflict Checks should be an ongoing obligation for each Client matter		X
4	Obtain signed Retainer Agreement	X	
Trust Funds[2,3]			
1	Receive funds from client payable to Host RL in Trust	X	
2	Receive and deposit funds from Guest RL		X
Accounting and Record Keeping			
1	A. Create a New Matter in the Trust Ledger showing: • The "Client" as the "Guest RL" and • "Description" should include 'ClientName-Matter description'. Example 'Smith, John [Guest RL] – Estate of Bill Smith [Guest RL's client]' • If this matter was for an actual client of the Host RL, then the matter description would have to include details of the nature of the file, i.e. 'Estate of Bill Smith'. • This same requirement should follow for any file opened by the Host, even if on behalf of the Guest • Host RL has added requirement to include reference to actual client in the matter description B. Record all transactions		X
2	A. Set-up a Trust Bank Account within your software in the name of the Host RL e.g. Host RL Bank Account B. Create a New Matter in the Trust Ledger in the name of the Client C. Record all transactions	X	
3	Prepare monthly trust reconciliations as required under Rule 119.36(4)(d)	X	X

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[1] The Law Society will apply the same general test and criteria to a Host RL as we would to a lawyer who is newly applying to be an RL

[2] If while retained by the Guest RL and the Host RL knows or ought to know that he or she is or would be assisting the Guest RL in fraud or other illegal conduct, the Host RL must withdraw from this arrangement pursuant to Rule 118.9 and report the matter to the LSA.

[3] The Host RL must conduct due diligence prior to the receipt and disbursement of funds to ensure that the trust money in the trust account is in relation to legal services provided by the Guest RL pursuant to Rule 119.17 and that the money is not subject to trust conditions or restricted for another purpose

#	Requirement	Guest RL	Host RL
	Note: • If this is a long-term business relationship between the Host and the Guest RL, best practice is for the Guest RL to also reconcile this bank account monthly. • Host would be required to provide the Guest RL with a month-end trust listing that has been filtered to only display the ledgers in which the client was the Guest. • It is the balance displaying on the month-end trust listing that is the 'ending balance on the bank statement' utilized to reconcile the bank. • Reconciling this bank account ensures that Host and Guests books are balanced to each other.		
Payment and Disbursements			
1	Obtain signed "Direction To Pay" from client	X	
2	Pay disbursements per client's instruction or consent		X
3	If all services relating to the file have been completed, send bill or statement of account to the client	X	
4	Once the statement of account has been issued to the client, lawyer fees for legal services should be paid per client's instruction		X
5	Issue an account for administrative fees incurred for services rendered to the Guest RL per agreement[4]		X
6	Issue payment to Host RL per agreement	X	
Filing Requirement			
1	Submit Sections A and B of the Annual Law Firm Self Report to the Law Society of Alberta	X	
2	Submit Sections A to C of the Annual Law Firm Self Report to the Law Society of Alberta Ensure Section C, Question 18 is answered: Did the law firm receive or disburse trust funds on behalf of another lawyer(s) who is (are) not part of the law firm?		X
3	Submit Trust Safety Accounting Upload to the Law Society of Alberta		X

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[4] The decision to charge a fee for administering this service is at the discretion of the Host RL. Any fee arrangements e.g. how fees will be set, what other expenses will be paid, how fee disputes will be settled, etc must be outlined in the agreement between the Host and Guest RL. The Law Society of Alberta has no involvement in fee arrangements and no authority to control what the Host RL wishes to charge for the administration of this service.