



**Law Society of Alberta**  
**Trust Safety Approvals Guideline**

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## Trust Safety Approvals Guideline

### I. The Nature of this Guideline

1. 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 Guideline has been developed to:
  - a) explain the requirements to be met by an active lawyer with relation to the set up of a practice and operation of trust accounts;
  - b) explain the process followed by the Executive Director to decide whether to approve a lawyer as a responsible lawyer for a firm;
  - c) explain the process followed by the Manager of Trust Safety to permit a lawyer or firm to set up or maintain a trust account or to impose conditions on a firm which must be met to set up or maintain a trust account;
  - d) articulate the criteria upon which decisions are made to approve a responsible lawyer for a firm and to approve a firm to set up or maintain a trust account or to impose conditions on a firm which must be met to set up or maintain a trust account; and
  - e) outline the process to be followed by lawyers to review a decision of the Executive Director or Manager of Trust Safety which affects a lawyer or firm;
2. This Guide is intended to support decision makers, at whatever level, to make effective and consistent decisions. It is also intended to offer helpful information to lawyers and other interested parties to allow them to understand some of the criteria which may be applied to various applications and to clarify the procedures involved.
3. This Guideline should be read in conjunction with the relevant provisions of the Act and the Rules. To the extent any provision in this Guideline appears to be inconsistent with the Act or Rules, parties should rely on the Act and Rules.

### II. Statutory Role and Mandate

4. The Law Society has the mandate to protect the public and support lawyers to enable them to fulfill their duty to their clients. The Law Society has enacted rules to implement some stringent control procedures to help lawyers and law firms avoid some identified risks to trust money and better serve their clients. These controls, in conjunction with the high levels of competence and ethics demonstrated by Alberta lawyers, will enhance the profession's ability to safeguard trust money.
5. This Guideline explains the Rules which have been enacted respecting the duties of lawyers and law firms related to these stringent control procedures.
6. This Guideline relates to approvals required under the Rules to set up or maintain a trust account and does not relate to the audit and enforcement programs operated by the Law Society.

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### III. Setting up as a Sole Proprietor or a Firm

7. An active lawyer is required to provide the Law Society with the current business name, business address and business communications numbers and email addresses. This information is maintained as public information by the Law Society, provided to the public on the Law Society website and upon request. Membership services should be contacted to submit the required information.
8. If two or more lawyers wish to practice in association under a common business name the lawyers are required to notify the Law Society of their association. Membership services should be contacted to submit the required information.
9. A sole proprietor or law firm is required to maintain at least one approved operating trust account and one operating general account unless exempted from this requirement by the Manager of Trust Safety.
10. Prior to commencing practice as a sole proprietor or a law firm a lawyer is required to:
  - a) Apply to the Executive Director to have a Responsible Lawyer designated for the practice;
  - b) Apply to the Manager, Trust Safety for trust account approval or to obtain a trust account exemption; and
  - c) Follow any directions from the Executive Director and Manager, Trust Safety regarding set up requirements for the practice.

### IV. Designation of a Responsible Lawyer

11. Every active lawyer is required to be designated as a Responsible Lawyer or to practice in association with a law firm with a designated Responsible Lawyer. If a lawyer wishes to practice as a sole proprietor but is not approved as a Responsible Lawyer the lawyer may practice under conditions imposed by the Executive Director including any requirement to furnish undertakings to the Executive Director.
12. An application to be designated as a Responsible Lawyer must be made in writing to the Executive Director. The applicant will be required to provide any information requested by the Executive Director.
13. The Executive Director may require a lawyer to furnish undertakings as a condition of being designated as a Responsible Lawyer.

#### A. Requirements to be designated a Responsible Lawyer

14. A Responsible Lawyer has the regulatory accountability for the operation of the trust and general accounts of the lawyer or law firm. To be approved as a Responsible Lawyer, the applicant must demonstrate a history of compliance with the Rules of the Law Society. The applicant must also demonstrate an ability and commitment to comply with the Rules in the future and a willingness to actively assess risks to trust safety on an ongoing basis. Appendix I sets out the factors to be considered in determining whether an applicant should be designated as a Responsible Lawyer or conditions should be imposed.

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## **B. Appeal of decision**

15. If the applicant to be designated as a Responsible Lawyer disagrees with the decision of the Executive Director, the applicant may appeal the decision to the Trust Safety Committee. The appeal process is described in Section VI of this Guideline.

## **V. Obtaining Trust Account Approval or a Trust Account Exemption**

16. Most lawyers and law firms prefer to maintain a trust account to provide full legal services to clients. In some areas of practice lawyers prefer not to maintain trust accounts as they do not require retainers from their clients. Lawyers who apply for an exemption from 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 unexpected receipt of trust funds. Lawyers applying for an exemption will be required to undertake not to accept any funds except in payment of an account for legal services rendered in accordance with the rules.

### **A. Trust account exemption**

17. If a lawyer satisfies the Manager, Trust Safety that he or she has made suitable alternate arrangements to manage any trust funds received by the lawyer and has entered into the required undertaking to the Executive Director, the lawyer may be exempted from the requirement to maintain a trust account. The request for a trust account exemption must be submitted in writing and be accompanied by an undertaking in a form prescribed by the Executive Director.

### **B. Trust account approval**

18. Only a Responsible Lawyer or an applicant to be designated as a Responsible Lawyer may apply for approval to maintain a trust account. An application for trust account approval must be submitted in writing. To be approved to maintain a trust account the Responsible Lawyer must demonstrate the existing accounting controls comply with the Rules and satisfy any identified or foreseeable risks to trust safety or satisfy the Manager, Trust Safety that suitable controls and systems will be implemented to achieve this requirement. The Manager, Trust Safety may require conditions be met as part of the approval of a trust account.

### **C. Acceptance or referral to Trust Safety Committee**

19. Upon making a decision regarding an application for trust account exemption or approval the Manager, Trust Safety will provide a written determination to the applicant detailing the decision, any conditions and the reasons for the decision. The applicant may either accept the determination, by signing the required form, or may reject the determination and request the application be heard by the Trust Safety Committee. The hearing process is described in Section VI.

## **VI. Process Determination by the Trust Safety Committee**

20. **Panel.** In most cases the appeal or referral to the Trust Safety Committee will be decided by a panel of 3 members of the Committee, appointed by the Chair or Vice Chair.

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21. **Oral hearing.** The panel or Committee will only conduct an oral hearing if requested in the appeal notice or request for Committee determination.
22. **Process for paper hearing.** If no request for an oral hearing is received the decision will be based on written materials only. If the appellant/applicant provides information to the Trust Safety Committee that was not provided to the Executive Director or Manager, Trust Safety prior to the original determination of the application, counsel for the Law Society will be entitled to reply to any new information.
23. The following material shall be submitted to the Committee or panel prior to its determination of the outstanding matter:
  - a) Letter of appointment by the Chair or Vice Chair of the Committee appointing the members of the panel;
  - b) Copies of the materials that were before the Executive Director or Manager, Trust Safety;
  - c) The written decision and reasons of the Executive Director or Manager, Trust Safety; and
  - d) Any further submissions provided by the appellant/applicant and the Law Society permitted by the Rules or permitted by leave of the Committee or panel.
24. If an oral hearing is requested, the applicant and counsel for the Law Society will also receive notice of the time and date of the hearing.
25. Where no request for an oral hearing has been made, the panel or Committee must determine the process to be followed prior to making its decision as guided by the principles for natural justice and the circumstances of the case. Amongst other things, this will generally require:
  - a) That the applicant and counsel for the Law Society be permitted to submit relevant evidence and argument to the panel or Committee;
  - b) That the applicant and counsel for the Law Society be advised of all material that will be provided to the panel or Committee; and
  - c) That the applicant and counsel for the Law Society be provided with a meaningful opportunity to object to material being provided to the panel or Committee.
26. A court reporter shall be present for the duration of an oral hearing. The process shall be guided by the principles of natural justice, and in general will proceed as described below.
27. **Jurisdiction.** For the purposes of establishing the authority of the panel or Committee to decide an application or appeal, counsel for the Law Society shall submit the following exhibits:
  - a) Letter(s) of Appointment.
  - b) Materials provided to the parties as required by Rule 49. (See paragraph 20)

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- c) Affidavit(s) of Service of materials on any interested parties.
28. **Bias.** At the hearing, parties should be asked if there is any objection to the membership of the panel or Committee based on an apprehension of bias or for any other reason. If there is an objection, the panel or Committee member should not disqualify herself or himself unless reasonable grounds exist.
29. **Private hearing.** An oral hearing is presumptively private, however an application may be brought under Rule 115.15(5) to have some or all of the proceedings in public. If an application is brought, the panel or Committee should consider the following:
- a) A hearing under this Part of the Rules is an inquiry into the risk posed by the member as opposed to the determination of a complaint or application against the member.
- b) Evidence considered at this hearing may include discussions of accounting and risk management practices at current and past law firms of the applicant, and the privacy interests of those firms and their members should be considered.
- c) Protection of legal privilege and solicitor-client confidentiality are compelling privacy interests which must be protected unless they are expressly waived by the appropriate person(s).
- d) The decision and written reasons of the panel or Committee will be public.
30. **Exclusion of witnesses.** Generally, witnesses other than the applicants should be excluded until they have given their evidence.
31. **Opening statements.** The applicant or counsel for the applicant and counsel for the Law Society may each respectively provide a brief opening statement. Ordinarily in applications of this nature, counsel for the Law Society shall make the first opening statement, followed by the applicant.
32. **Oath.** A member of the panel or Committee may administer an oath or affirmation to a witness pursuant to sections 16 or 17 of the Alberta Evidence Act.
- OATH: "Do you swear that the evidence you will give touching the matters in question shall be the truth, the whole truth and nothing but the truth so help you God?" or
- AFFIRMATION: "Do you affirm that the evidence you will give touching the matters in question shall be the truth, the whole truth and nothing but the truth?"
33. **Applicant evidence.** The applicant and additional witnesses on behalf of the applicant may be called to provide relevant evidence. The applicant or witnesses called on behalf of the applicant will be subject to questions by the counsel for the Law Society and members of the panel or Committee.
34. **Other party evidence.** Other interested parties may, with the leave of the panel or Committee, give evidence as the panel or Committee considers proper. All other parties giving evidence at the hearing shall be subject to questions by the applicant or his or her respective counsel, counsel for the Law Society, and members of the panel or Committee.

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35. **Response evidence.** Counsel for the Law Society may call witnesses in response to the application or appeal. Any witnesses called by counsel for the Law Society will be subject to questions from the applicant, or his or her counsel, and members of the panel or Committee.
  36. The applicant is a compellable witness and may be called to give evidence at the hearing.
  37. **Submissions.** Ordinarily the applicant is asked to present argument first, followed by any other parties, and then counsel for the Law Society. There is a right of rebuttal at the discretion of the panel or Committee.
  38. **Decision based on evidence presented.** The panel or Committee shall make a decision based on the following:
    - a) Materials that were before the Executive Director;
    - b) Written reasons for the decision of the Executive Director;
    - c) Additional materials provided to the panel by the applicant, the appellant, any other interested person or by counsel for the Law Society; and
    - d) Evidence presented during the course of the hearing if an oral hearing is held.
  39. **Exhibits.** The exhibits form part of the hearing record and are private. Decision. The panel or Committee shall make its decision considering the factors described in Appendix I and considering the mandate of the Law Society as a regulator to support lawyers to meet their obligations to safeguard trust money. The panel or Committee may:
    - a) Dismiss the application or appeal;
    - b) Allow the application or appeal provided certain conditions are met; or
    - c) Allow the application or appeal.
  40. **Form of the decision.** The decision and reasons of the panel or Committee shall be in writing. A copy shall be provided to the applicant. The decision and reasons are public and will be available on the Law Society of Alberta website.

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## Appendix I: Factors to be Considered – Responsible Lawyer

1. General Test - To be approved as a Responsible Lawyer, the applicant must demonstrate a history of compliance with the Rules of the Law Society. The applicant must also demonstrate an ability and commitment to comply with the Rules in the future and a willingness to actively assess risks to trust safety on an ongoing basis.
2. Where there appears to be concern that the applicant does not meet the general test, the Executive Director may refuse the application or may approve the application on conditions.
3. In assessing the appropriateness of the applicant to be designated a Responsible Lawyer the following questions should be considered:
  - a) In the last 5 years has the applicant practiced in association with a law firm which has failed to file required accounting forms on time?
  - b) In the last 5 years has the applicant practiced in association with a law firm which has failed to comply with the Rules as demonstrated by exceptions to the Form S or Form T or exceptions to the Electronic Law Firm Filing?
  - c) Is the applicant under formal review under Part 3 of the *Legal Profession Act*?
  - d) Have there been any claims against the Assurance Fund resulting from the conduct of the applicant?
  - e) Have there been any insurance claims paid related to the handling of trust money? Are there current outstanding claims?
  - f) Has the applicant received any Mandatory Conduct Advisories related to the handling of trust money?
  - g) Has the applicant been found unsuitable to be a principal?
  - h) Has the applicant been found guilty of conduct deserving of sanction?
  - i) Has the applicant been the subject of a review by the Practice Review Committee?
  - j) Is the applicant under any restrictions, conditions or undertakings imposed by or provided to the Law Society?
  - k) Is there a reasonable prospect that the imposition of conditions will reduce the risk of continuation or recurrence of the conduct of concern?

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## Appendix II: Factors to be Considered – Trust Account

1. General Test - To be approved for a trust account, the applicant must demonstrate a history of compliance with the Rules of the Law Society. The applicant must also demonstrate an ability and commitment to comply with the Rules in the future and a willingness to actively assess risks to trust safety on an ongoing basis.
2. Where there appears to be concern that the applicant does not meet the general test, the manager, Trust Safety may deny the application or may approve the application on conditions.

The expectation for the application of conditions is that the law firm has not clearly demonstrated an attention to detail and/or competence regarding the handling of trust funds. Conditions will address if the applicant/associated law firm has the capability to handle the current and proposed level of trust account activity.

3. In assessing the appropriateness of the applicant to operate a trust account the following questions should be considered:
  - a) In the last 5 years has the applicant and/or associated law firm failed to file required accounting forms on time?
  - b) In the last 5 years has the applicant and/or associated law firm failed to comply with the Rules as demonstrated by exceptions to the required accounting form filings?
  - c) Has the applicant and/or members associated with the law firm been subject to any reviews by the Law Society of their accounting records and said reviews resulted in referrals to the Conduct Department due to issues of non-compliance.
  - d) Have any of the reviews noted in point c) resulted in a response contemplated under Section 53 of the *Legal Profession Act*.
  - e) Has the applicant received a Mandatory Conduct Advisory regarding the handling of trust funds?
  - f) Has the applicant been found guilty of conduct deserving of sanction regarding the handling of trust funds?
  - g) Have there been any successful claims against the Assurance Fund resulting from the conduct of the applicant?
  - h) Has the applicant been the subject of a review by the Practice Review Committee?
  - i) Is the applicant under any restrictions, conditions or undertakings imposed by or provided to the Law Society as they relate to the trust accounting rules?
  - j) Is there a reasonable prospect that the imposition of conditions will reduce the risk of continuation or recurrence of the conduct of concern?

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4. Factors which may be considered in assessing the potential effectiveness of conditions in reducing the risk of continuation or recurrence of the conduct of concern include:
- a) Area of law;
  - b) Number of trust bank accounts;
  - c) Volume of trust activity (deposits and payments)
  - d) Number of staff;
  - e) Background of staff (education, years of experience, accounting knowledge, etc)
  - f) Accounting software systems;
  - g) Availability of accounting/technical support;
  - h) Financial sustainability of the practice.

*Potential conditions to be recommended by Manager, Trust Safety*

If the Manager, Trust Safety is concerned about the custody of trust money by the applicant, examples of the type of conditions which may be recommended include the following:

- Conversion to approved accounting software
- Increased frequency of submissions of accounting data
- Co-signor on payments
- Retention of trained/experienced bookkeeper as approved by the Law Society
- Limit the number of trust bank accounts
- Limit the number of open client files in cases where the applicant has stated non-compliance resulted from too many files

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