



THE LAW SOCIETY OF SOUTH AUSTRALIA

Trust Accounting Fact Sheet

Appropriating Trust Money for Payment of Fees

The purpose of this Fact Sheet is to provide an over-view of the legal obligations that exist with respect to the subject trust accounting scenario and options for resolving issues that may arise.

It is not an exhaustive statement of all the relevant obligations that might apply to specific circumstances.

If you need advice that addresses a specific set of facts, please contact Professional Standards on 82290229.

My client paid money into my trust account for my fees. When can I withdraw that money from my trust account in payment of my fees?

The following applies only where money has been placed in trust specifically for the payment of fees. If money has not been placed into the trust account for that purpose, then the client's informed consent must be obtained prior to that money being appropriated for legal fees or any purpose other than that for which it was paid into trust.

Pursuant to section 41(1) of the *Legal Practitioners Act 1981* (Act), before you can appropriate money in or towards satisfaction of a claim for legal costs, you must ensure that a bill, specifying the total amount of these costs and describing the legal work to which the costs relate, has been delivered to the person liable for the costs either personally (by hand), or by post addressed to the person's last known place of business or residence.

According to the *Acts Interpretation Act* (33(1)) delivery by post means the following:

"Where any Act ... authorises or requires any document to be served by post (whether the expression "serve", "give", "deliver" or "send" or any other expression is used), then, unless the contrary intention appears, the Act will be taken to provide

- a) That the service is effected by properly addressing, prepaying and posting a letter or packet containing the document; and*
- b) That, unless the contrary is proved, service will be taken to have been effected at the time at which the letter or packet would be delivered in the ordinary course of post."*

This means that, if you have posted a bill for fees to the client, it is not legally considered to have been "delivered" in accordance with section 41(1) of the Act, until the minimum amount of time in which the bill would be delivered in the ordinary course of post has passed.

We recommend that 3 business days be allowed to pass after posting a bill before appropriation of trust money towards that bill takes place (unless the client objects to the bill in which case the money should remain in trust as the objection by the client constitutes a withdrawal of the client's consent to appropriate the money in trust for fees).

I gave the client my bill in person. He said I could take payment of the bill out of the money he has placed in trust immediately. Can I?

Technically, yes you can, but without the client's written authority you are placed at risk of an accusation of misappropriation later if the client doesn't recall or misunderstood what he or she said.

We recommend that you allow the client time to read and agree with the bill and then ask them to make a dated notation on it, or on another document, authorising the payment from trust.

Can I email bills to my clients?

Bills for legal fees or disbursements can legitimately be emailed to clients.

However, this will not allow you to appropriate money from trust towards that bill. This can only be done when delivery of the bill has been effected personally or by post as set out in section 41 of the Act.

If you routinely email bills to clients, you must ensure that you deliver a copy of the bill by post before appropriating trust money towards it.

My bill includes requests for reimbursement for payments that I have made to third parties for an on behalf of my client (paid disbursements) and for payment of bills from third parties that I have not yet paid. Is there anything I need to consider before I draw on the trust account for payment?

There are a number of important issues to consider here. Please refer to our Disbursements Fact Sheet for further information.

Is there anything I should do after I have appropriated money for my billed fees from trust to office?

In accordance with Regulation 19(1) of the *Legal Practitioners Regulations 2009*, within a reasonable time of this occurring, you must deliver a Trust Account Statement to the client.

That Trust Account Statement must contain all of the information that is required to be included in the trust account ledgers pursuant to Regulation 15.

Date of last review -9 October 2012