



2016 Trust Account Checkup
By Benjamin Ipock, Title Counsel

For most North Carolina citizens, Thursday, June 9, 2016 was just a normal day. There was nothing extraordinary about it. However, the same cannot be said for members of the North Carolina State Bar who maintain trust and fiduciary accounts. This day brought the long anticipated North Carolina Supreme Court approval of proposed amendments to Rule 1.15 of the Rules of Professional Conduct (RPC). RPC 1.15 governs the safe keeping of entrusted trusted property and funds and is divided into four subparts: 1.15-1 Definitions, 1.15-2 General Rules, 1.15-3 Records and Accountings and 1.15-4 Alternative Trust Account Management Procedure for Multi-Member Firm. The fourth subpart, 1.15-4, is an entirely new rule that is “optional” to firms of two or more lawyers. Whether you know it or not, your obligations and responsibilities under these rules as an attorney have changed and we at Attorneys Title want to help you stay in compliance. Attorneys and paralegals attending any of our free 2016 CLE seminars will be a step ahead, as the program contains a segment that meets the new one (1) hour trust accounting CLE requirement. While a thorough review of all the changes is recommended, we wanted to make it a bit easier by pointing out the changes that will have the most direct impact on your daily practice.

Rule 1.15-2(p) – Duty to Report Misappropriation

This rule has been revised to reflect the addition of the role of a Trust Account Oversight Officer (TAOO), as discussed below. Additionally, the revision includes the removal of the reporting requirement for unintentional or inadvertent misapplication of funds *if* the error is fixed prior to the next *required* quarterly reconciliation. If the issue or mistake has not been corrected, then self-reporting is still required.

Note on self-reporting:

We are all human and prone to make mistakes, and the Bar understands this. If the question of whether to self-report crosses your mind, please seek out advice from the Bar, your local bar counselor or another lawyer. Self-reporting is very easy to do and as long as the error has been documented, explained and corrected the Bar is very understanding.

Rule 1.15-2(s) – Signatures on Trust Checks.

The general rules have been amended to add a rule specifically related to signatures on checks. For purposes of clarity, the entire rule is being presented below:

Checks drawn on a trust account must be signed by a lawyer, or by an employee who is not responsible for performing monthly or quarterly reconciliations and who is supervised by a lawyer. Prior to exercising signature authority, a lawyer or supervised employee shall take a one-hour trust account management continuing legal education (CLE) course approved by the State Bar for this purpose. The CLE course must be taken at least once for every law firm at which the lawyer or the supervised employee is given signature authority.

Trust account checks may not be signed using signature stamps, pre-printed signature lines on checks, or electronic signatures.

Rule 1.15-3(d)(3) – Trust Account Records

This rule amends the existing requirement addressing record retention related to quarterly and monthly reconciliations. In addition to retaining records of such reconciliations for a period of six years, the lawyer must now sign and date the reconciliations.

Rule 1.15-3(i) – Reviews.

This rule is a new addition to the RPC that now requires the lawyer to do four things related to trust account record keeping in addition of the already required reconciliations:

1. Monthly review of bank statements and canceled checks for all accounts.
2. Quarterly review of at least three transactions, chosen at random, to ensure that disbursements and receipts are in order. This will likely include a review of all deposits, receipts, invoices, ledgers, wires, canceled checks and other supporting documentation such as the Closing Disclosure, ALTA Settlement Statement or HUD-1.
3. Resolve any discrepancies and issues within 10 days of discovery.
4. Sign, date and maintain a copy of each monthly and quarterly review. The review report should include a description of the steps taken, files reviewed and any corrective actions. The completed reviews need to be properly maintained for a minimum of six years and treated as a trust account record in accordance with RPC 1.15-3(g).

Rule 1.15-3(j) – Electronic Record Retention.

This is a new rule that specifically allows for the electronic retention of trust account records in an electronic format so long as (1) the electronic records comply with other applicable rules (e.g. 1.15-3(g)), (2) records can be printed on demand and (3) the records are regularly backed up. It is important to note that the RPC provides that a “digital signature” of electronic records is acceptable, so long as the digital signature is compliant.

Rule 1.15-4 – Alternative Trust Account Management Procedures for Multi-Member Firm.

This new rule represents the most significant change to the RPC regarding trust accounts. The rule itself is an “optional rule” that *may* be used by firms of two or more attorneys who wish to designate a Trust Account Oversight Officer (TAOO) for the administration of the firm’s general trust and fiduciary accounts. The rule does not apply to trust or fiduciary accounts that are associated with a specific client or legal matter. In order to use the new rule, the firm must have a written agreement that designates a “partner” as the TAOO and the agreement must be signed by the TAOO and the managing lawyers of the firm. The agreement must also be reviewed and confirmed annually. There are special initial and annual training requirements that the TAOO must complete. These training sessions will be similar to the new one-hour requirement for signatories (lawyers and non-lawyers) on trust accounts. The TAOO program also requires that the firm have a detailed written policy of its trust accounting procedures. Many firms will likely find that this policy may already be incorporated within their ALTA Best Practices Certification Manual.

The above amendments and new rules only represent a portion of the changes approved by the North Carolina Supreme Court. It is recommended that each attorney (and those responsible for administration or reconciliation of trust accounts) in your firm take time to review the changes to

ensure your firm's compliance. More importantly, each attorney and supervised employees with signatory authority for any trust account needs to complete a one (1) hour trust account training CLE course in the near future. To allow time for compliance, and creation of approved courses, the Bar has stated on their website that the CLE requirement may be satisfied in 2017. However, other requirements, such as the ban on signature stamps, electronic or pre-printed signatures on trust account checks, should be complied with immediately. It is worth noting that for the Attorneys Title 2016 CLE seminar series we have a one (1) hour CLE taught by Peter Bolac, Trust Account Compliance Counsel for the North Carolina State Bar, that meets the new trust accounting CLE requirement.

Attorneys Title thanks you for your business and for trusting us to be your preferred choice for you and your client's title insurance needs across North Carolina. If you have any questions, please contact any of our offices or title counsel located across the state.

General Trust Resources:

[North Carolina State Bar Lawyer's Handbook – 2016 version](#)

[Lawyer's Trust Account Handbook – 2014 version - *Currently being revised for 2016.*](#)

[Good Funds Settlement Act](#)