

### Analysis of the handling of client money in the United States and Canada

Question	United States	Canada
<b>Do lawyers hold trust monies? If so, how?</b>	Yes, all lawyers are obligated to deposit client and third-party funds into a trust account. Larger sums must be kept in an individual account. Small or short-term funds are held in pooled IOLTA* trust accounts. Funds must be held in banks with sufficient federal insurance protection.	There are 14 separate provincial and territorial law societies who are responsible for the regulation of the country's 100,000 plus lawyers and more than 4,000 Quebec notaries. Both lawyers and notaries are obliged to deposit client trust funds into trust accounts. Trust accounts may be either pooled or general trust accounts (for multiple clients) or specific trust investment or special accounts opened in relation to a specific client or clients. The funds are held in financial institutions including banks or trust companies that are insured by the Canada Deposit Insurance Corporation and also in credit unions.
<b>Do lawyers receive training in the handling of money? If so, what kind of training?</b>	Law students receive basic training on handling trust accounts as part of the law school curriculum. Some jurisdictions require new lawyers to participate in new lawyer training that includes training on handling trust accounts. Lawyers also receive guidance through continuing legal education programs, their jurisdiction's IOLTA programs, and through formal ethics opinions.	Most jurisdictions provide training on the handling of client trust funds in their bar admission programs. Continuing professional development is also offered to lawyers by either law societies or other entities in both business management and trust accounting. New firms will in some jurisdictions be inspected by auditors within the first six months to provide support and direction and to assess the risk of the firm. In Alberta a law firm must be approved by the regulator to operate a trust account and the firm must have a Responsible Lawyer who is responsible and accountable for the trust account. The Responsible Lawyer must participate in mandatory education in trust accounting and be approved to serve in that role. In many jurisdictions lawyers may be required to successfully complete training on trust accounting as part of a disciplinary sanction.
<b>If lawyers don't hold trust monies, who does and how?</b>		
<b>Do lawyers/escrow agents have to report to the regulator about these monies? What do they have to report and when?</b>	Generally, yes. Most jurisdictions require lawyers to declare, as part of their annual registration, that they have established trust accounts and to certify that the lawyer is in compliance with trust accounting requirements. Some jurisdictions require the lawyer to disclose the name and location of the financial institutions holding those accounts. Lawyers with organizational or government employers are exempt from the certification requirement. Requirements for non-lawyer escrow agents falls outside the scope of lawyer regulatory rules and requirements.	Yes. All jurisdictions have a mechanism by which lawyers and or law firms must report to the regulator that the lawyer has opened a trust account or accounts and is in compliance with trust accounting requirements. This would generally require the disclosure of the particulars of the financial institutions and the accounts. Lawyers and notaries are typically required to prepare monthly reports reconciling the previous monthly transactions and thereafter file an annual report with the regulator. In some instances annual trust account reports must be audited by a professional accountant. Generally government lawyers are exempt from the reporting requirements as are lawyers who do not handle trust funds. In Alberta lawyers are given the option of uploading trust accounting data that is analyzed by the regulator for risk factors. Similarly the Chambres des notaires du Quebec has an electronic funds transfer platform that permits the regulator to access current trust account data in real time. Lawyers are obliged under the Federation of Law Societies Model Code of Conduct to report the misappropriation of client trust funds to the regulator.

<p><b>What authority does the regulator have over these monies?</b></p>	<p>Generally, the regulator may obtain information beyond annual disclosure requirements if misconduct is suspected or disciplinary proceedings have been initiated. In jurisdictions with a random audit program, the regulator may obtain information regarding the trust account without evidence of misconduct. If a lawyer is unexpectedly unable to continue in practice due to death, disbarment or other incapacity, the regulator may appoint or serve as a receiver to distribute trust funds and close accounts as necessary.</p>	<p>Regulators regulate the operation of trust accounts as noted above. They also have the authority to conduct random spot audits of client trust accounts to confirm compliance with the trust accounting requirements. They may commence investigations to obtain further information where there is a concern of lawyer misconduct. Where necessary to protect the interests of clients (where a sole practitioner has died or been suspended or disbarred) regulators may appoint custodians to take custody of a lawyer's practice and disburse client trust funds.</p>
<p><b>What are the controls/security features?</b></p>	<p>The American Bar Association has adopted a number of model policies that aim to limit or detect potential losses, including model rules for trust account overdraft notification, random audit of trust accounts, client trust account recordkeeping requirements, and notification to clients when a lawyer is paid insurance proceeds. Most jurisdictions have implemented some or all of these policies. The model policies and state by state implementation information is available on the client protection resource page.** Some jurisdictions have implemented additional controls. Florida, for example, now requires lawyers in firms of two or more lawyers to have written trust account plans.</p>	<p>All regulators have rules or regulations in place governing the handling of client trust funds including the obligation to deposit, preserve, report, disburse and account for them. Security measures implemented by the rules provide for random audits of trust accounts, prescribed record keeping requirements and annual reporting to regulators. Specific measures typically include an obligation to deposit trust funds into a trust account as soon as practicable, maintain sufficient balances to meet all obligations with respect to trust money, pay monies out of trust expeditiously at the conclusion of a legal matter, not make withdrawals except by cheque or (in some jurisdictions) electronic transfer, not overdraw trust accounts, not pay a member's personal or office expenses from a trust account and not retain personal funds in a trust account. Neither lawyers nor notaries are permitted to accept cash over \$7,500 to prevent money laundering.</p>
<p><b>What are the vulnerabilities?</b></p>	<p>Trust accounts are ultimately in the control of the lawyers. There is no immediate regulatory supervision. Lawyers may also, as a necessary practicality, delegate some responsibility to non-lawyer employees thus exposing trust accounts to additional vulnerabilities. Current loss prevention mechanisms can mitigate losses, but cannot wholly prevent them.</p>	<p>Client trust funds remain vulnerable to theft by lawyer dishonesty which may go undetected either between random spot audits or even during the course of a spot audit. A lawyer may authorize disbursements to his or her own personal benefit that appear to be legitimate, or may withdraw funds on account of fees without providing services. Trust account records that are not kept up to date can result in bank overdrafts and debit balances.</p>
<p><b>What is the cost?</b></p>	<p>The costs depend on the bank and the type of account established. There are generally no costs associated with IOLTA accounts, and nominal costs for individual trust accounts.</p>	<p>The regulators incur the cost of the regulatory oversight of trust accounts, however where an annual report must be prepared or reviewed by an accountant that is at the expense of the lawyer or law firm. Where an inspection is required in order to ascertain whether there has been compliance with trust accounting requirements that cost may be recoverable from the lawyer.</p>
<p><b>Who receives the benefit of the interest? How is it used?</b></p>	<p>The interest from IOLTA or pooled interest accounts is used to provide support for civil legal aid and to support improvements to the justice system. Interest on individual trust accounts belongs to the client.</p>	<p>Interest on pooled or general trust accounts is generally payable to Law Foundations established in individual jurisdictions with a prescribed portion of the accumulated interest then being designated to fund activities such as legal education, legal research, legal aid services, law reform or the development and maintenance of law libraries. Notaries pay all interest and other income from general trust accounts to a notarial studies fund maintained by the Chambre des notaires du Quebec for similar purposes as well as for the compensation fund unless the client has requested the interest.</p>

<b>Does the regulator maintain a fund to compensate clients for the theft of client trust funds by a lawyer?</b>	Yes, every jurisdiction has a lawyers' fund for client protection. Lawyers' funds are generally funded through annual lawyer assessment. Per lawyer and per claim reimbursement limits vary by jurisdiction, but the goal is to make the client whole following a theft by a lawyer of client funds.	Regulators maintain compensation funds to compensate clients for the misappropriation or conversion of client trust funds. Generally compensation funds are funded through annual assessments on individual lawyers. The purpose of the fund is to indemnify clients for loss caused by theft, however the limits vary across jurisdiction with coverage per claim ranging from \$50,000 to unlimited coverage.
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\* IOLTA= Interest on Lawyers Trust Accounts

\*\* [Client Protection Resource Page](#)