

ALTERNATIVE TO THE E-BANKING TRUST ACCOUNT (AND HOW IT WORKS)

SCR 20:1.15(f)(3)c. Alternative to E-Banking Trust Account.

A lawyer may deposit funds paid by credit card, debit card, prepaid or other types of payment cards, and other electronic deposits into a trust account, and may disburse funds from that trust account by electronic transactions that are not prohibited by sub. (f)(2)c., without establishing a separate E-Banking Trust Account, provided that all of the following conditions are met:

1. The lawyer or law firm maintains commercially reasonable account security for electronic transactions.
2. The lawyer or law firm maintains a bond or crime policy in an amount sufficient to cover the maximum daily account balance during the prior calendar year.
3. The lawyer or law firm arranges for all chargebacks, ACH reversals, monthly account fees, and fees deducted from deposits to be deducted from the lawyer's or law firm's business account; or the lawyer or law firm replaces any and all funds that have been withdrawn from the trust account by the financial institution or card issuer within 3 business days of receiving actual notice that a chargeback, surcharge, or ACH reversal has been made against the trust account; and the lawyer or law firm reimburses the account for any shortfall or negative balance caused by a chargeback, surcharge, or ACH reversal. The lawyer shall reimburse the trust account for any chargeback, surcharge, or ACH reversal prior to disbursing funds from the trust account.

ALTERNATIVE TO THE E-BANKING TRUST ACCOUNT (AND HOW IT WORKS)

Account Requirements:

An IOLTA account that is located at IOLTA participating institution and subject to overdraft reporting

Note: Most lawyers and law firms already maintain an IOLTA, which meets this requirement

Checks must be purchased for disbursements that are not electronically transferred

Card reader will be needed for card payments

Security Requirements:

1) Commercially reasonable security for electronic transactions

2) Crime Insurance policy sufficient to cover the maximum daily IOLTA balance in the prior year

Permitted Deposits:

Credit card, debit card, prepaid or other cards, PayPal, electronic fund transfers, e-checks, e-transfers from primary IOLTA, and other ACH transactions

Prohibited Deposits:

Third-party deposits that can be withdrawn without lawyer's permission

Surcharges and Reversals:

Credit card and other payments are subject to fees, surcharges, chargebacks and reversals by financial institutions and card issuers.

Alternatives for payment of surcharges:

1) Arrange with financial institution and card issuer to have fees and surcharges deducted from business account, **or**

2) Replace all funds withdrawn by financial institutions or card issuers within 3 business days of receiving notice of chargeback, surcharge or ACH reversal, and make no disbursements until account is reimbursed for any shortfall or negative balance

Availability of Deposits:

Request your financial institution's availability policies for credit card and other e-deposits

CAUTION: *Due to proliferation of banking scams and the speed of e-banking transactions, exercise caution when accepting large sums from new clients who demand a quick distribution of funds.*

Permitted Disbursements:

Funds can be disbursed by **electronic transfer** or by **check**

Prohibited Disbursements:

Credit, debit, prepaid and other types of payment cards and any other e-transfer that can't be recorded in the financial institution's electronic payment system

Electronic withdrawals by 3rd parties

Recordkeeping:

E-Transfers: Date, amount, payee, client matter and reason for disbursements must be recorded in financial institution's e-payment system.

Transfers are prohibited if this information cannot be recorded in the e-payment system

Checks must include the client matter and reason for disbursement on the memo line

Each transaction should be recorded in:

1. Transaction Register (or similar record)
2. A Client Ledger (or similar record)

Shortfalls and Negative Balances:

Any shortfall of funds or negative balances caused by fees, surcharges, chargebacks or ACH reversals must be replaced within 3 business days

Shortfalls of funds must be replaced prior to making disbursements