

E-BANKING TRUST ACCOUNTS

(AND HOW THEY WORK)

SCR 20:1.15(f) Security requirements and restricted transactions.

(3) Electronic Transactions

b. **E-Banking Trust Account.** A lawyer may accept funds paid by credit card, debit card, prepaid or other types of payment cards, and other electronic deposits, and may disburse funds by electronic transactions that are not prohibited by sub. (f)(2)c., provided that the lawyer does all of the following:

1. Maintains an IOLTA account, which shall be the primary IOLTA account, in which no electronic transactions shall be conducted other than those transferring funds from the primary IOLTA to the E-Banking Trust Account for purposes of making an electronic disbursement, or those transactions authorized by pars. (3)a., (3)b.4.a., and (3)b.4.d.
2. Maintains a separate IOLTA account with commercially reasonable account security for electronic transactions, which shall be entitled: "E-Banking Trust Account."
3. Holds lawyer or law firm funds in the E-Banking Trust Account, reasonably sufficient to cover monthly account fees and fees deducted from deposits and maintains a ledger for those account fees.
4. Transfers the gross amount of each deposit within 3 business days after the deposit is available for disbursement, and if necessary, adds funds belonging to the lawyer or law firm to cover any deduction of fees and surcharges relating to the deposit, in accordance with all of the following:
 - a. All advanced costs and advanced fees held in trust under SCR 20:1.5(f) shall be transferred to the primary IOLTA account by check or electronic transaction.
 - b. Earned fees, cost reimbursements, and advanced fees that are subject to the requirements of SCR 20:1.5(g) shall be transferred to the business account by check or by electronic transaction.
 - c. Any funds that the client has directed be disbursed by electronic transfer shall be promptly disbursed from the E-Banking Trust Account by electronic transaction.
 - d. All funds received in trust other than funds identified in pars. a., b., and c. shall be transferred to the primary IOLTA account by check or by an electronic transaction.
 - e. Except for funds identified in par. a. and par. b., a lawyer or law firm shall not be prohibited from deducting electronic transfer fees or surcharges from the client's funds, provided the client has agreed in writing to accept the electronic payment after being advised of the anticipated fees and surcharges.
5. Identifies the client matter and the reason for disbursement on the memo line of each check used to disburse funds; records in the financial institution's electronic payment system the date, amount, payee, client matter, and reason for the disbursement for each electronic transaction; and makes no disbursements by credit card, debit card, prepaid or other types of payment cards, or any other electronic payment system that does not generate a record of the date, amount, payee, client matter, and reason for the disbursement in the financial institution's electronic payment system.
6. Replaces any and all funds that have been withdrawn from the E-Banking Trust Account by the financial institution or card issuer, and reimburses the account for any shortfall or negative balance caused by a chargeback, surcharge, or ACH reversal within 3 business days of receiving actual notice that a chargeback, surcharge, or ACH reversal has been made against the E-Banking Trust Account; and reimburses the E-Banking Trust Account for any chargeback, surcharge, or ACH reversal prior to accepting a new electronic deposit or transferring funds from the primary IOLTA to the E-Banking Trust Account for purposes of making an electronic disbursement.

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| 1 Primary Account: | An IOLTA, a/k/a the “primary IOLTA,” in which no electronic transactions are permitted other than transfers to and from the secondary IOLTA. | Note: Most lawyers and law firms already maintain an IOLTA, which can become the primary IOLTA |
| 2 Secondary IOLTA must be titled:
“E-Banking Trust Account”

A pre-existing Credit Card Trust Account may be converted to an E-Banking Trust Account | An E-Banking TA is subject to overdraft reporting and must be an IOLTA.

Open account at IOLTA participating institution
File Overdraft Agreement with OLR
File IOLTA Agreement with WisTAF | Checks can be purchased, but are <u>not</u> necessary if funds will be electronically transferred to primary IOLTA or business account. Card reader will be needed for card payments |
| 3 Permitted Types of Deposit:

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

Credit card and other payments are subject to fees and surcharges by financial institutions and card processors. | To cover fees and surcharges, lawyer must either:

1. Hold law firm funds in E-Banking TA (per SCR 20:1.15(b)(3)); or
2. Arrange for fees and surcharges to be deducted from business account |
| 4. Availability of Deposits:

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

<i>CAUTION: Due to proliferation of banking scams and the speed of e-banking transactions, be very cautious about accepting large sums from new clients who demand a quick distribution of funds.</i> | Transfer Requirements:

Within 3 business days after a deposit is available, gross amount of that deposit must be transferred from E-Banking TA to primary IOLTA, business account, or another account if client so directs | “Gross Amount”

In order to transfer the “gross amount” of a deposit, law firm funds [held in E-Banking TA per SCR 20:1.15(b)(3)] may need to be added to the transfer amount to cover any shortfall caused by fees or surcharges

This is unnecessary if such charges are deducted from business account |

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5 Disbursements:

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

Advanced Fees must be transferred to primary IOLTA or business account, depending upon the lawyer's election to proceed under SCR 20:1.5(g) [*Deposit in trust account*] or SCR 20:1.5(h) [*Deposit in business account*].

Advanced Costs must be transferred to primary IOLTA. Such advances can only be disbursed as costs are incurred.

Earned Fees must be transferred to business account.

Cost Reimbursements must be transferred to business account.

Client-directed Electronic Transfers must be made from E-Banking TA to an individual or entity the client wants to pay electronically rather than by check. If funds are in primary IOLTA, they must be transferred to E-Banking IOLTA for electronic transfer.

Client Authorization: Client must agree, in writing, to accept responsibility for any fees or surcharges relating to electronic payments.

Other Transfers: All funds received in trust electronically, other than the fees, costs and client directed transfers referred to in subs. a., b., and c., must be transferred to the primary IOLTA.

6 Recordkeeping:

E-Transfers must identify the date, amount, payee, client matter and reason for disbursement in an appropriate field of the on-line banking system

Checks must include the same information on memo line

CAUTION: Do not combine the records for the two accounts.

Deposits and disbursements must be recorded in records of E-Banking TA and primary IOLTA.

Each transaction should be recorded in:

1. Transaction Registers (or similar record) of the E-Banking TA, the primary IOLTA or the business account.
2. A Client Ledger (or similar record) of the E-Banking TA as well as the primary IOLTA.