

THE E-BANKING TRUST ACCOUNT

(AND HOW IT WORKS)

SCR 20:1.15(f)(3)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 SCR 20:1.15(f)(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 SCR 20:1.15(f)(3) 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 SCR 20:1.15(f)(3) a. and 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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Account Requirements:	<p>1. Primary IOLTA Account: An IOLTA in which no electronic transactions are permitted other than transfers to and from the secondary IOLTA.</p> <p>2. Secondary IOLTA Account: An IOLTA that must be titled "E-Banking Trust Account"</p>	<p>Note: Most lawyers and law firms already maintain an IOLTA, which can become the Primary IOLTA</p> <p>Note: A pre-existing Credit Card Trust Account may be converted to an E-Banking Trust Account</p>
Security Requirements:	E-Banking Trust Account must have commercially reasonable security for electronic transactions	
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:	<p>Credit card and other payments are subject to fees and surcharges by financial institutions and card issuers.</p> <p>All funds withdrawn by financial institutions or card issuers must be replaced within 3 business days</p>	<p>To cover fees and surcharges, lawyer must either:</p> <ol style="list-style-type: none">1. Hold law firm funds in E-Banking TA (per SCR 20:1.15(b)(3)); or2. Arrange for fees and surcharges to be deducted from business account
Availability of Deposits:	Request your financial institution's availability policies for credit card and other e-deposits	<p>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.</p>
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	<p>To transfer "gross amount" of a deposit, law firm funds [held in E-Banking TA per SCR 20:1.15(b)(3)] may need to be included in the transfer amount to cover any shortfall caused by fees or surcharges</p> <p>Note: This is unnecessary if such charges are deducted from business account</p>

Transfers by Nature of Funds:

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 primary IOLTA*] or SCR 20:1.5(h) [*Deposit in business account*].

Earned Fees 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.

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.

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

Cost Reimbursements must be transferred to business account.

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

Permitted Disbursements:

Electronic transfers and checks

Checks can be purchased for E-Banking Trust Account, but are not necessary if funds will be electronically transferred to primary IOLTA or business account

Card reader will be needed for card payments

Prohibited Disbursements:

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

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

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 accepting new deposits or transferring funds from primary IOLTA