

External examiner's program

Trust accounts

September 2023

External examiner's program

Law practice trust accounts

Version 4 | September 2023

Copyright

All intellectual property in relation to this material (including any copyright notice and disclaimer) belongs to Queensland Law Society (QLS) and is protected by Australian and international copyright and other intellectual property laws. You may not do anything which interferes with or breaches those laws or the intellectual property rights in the content. The material cannot be used, reproduced by any process, electronic or otherwise, or adapted without the specific permission of QLS apart from any use permitted under the *Copyright Act 1968*.

QLS logo is a trademark of QLS. QLS does not grant any licence or right to use, reproduce or adapt QLS logo without express written permission of QLS.

Queensland Law Society

179 Ann Street, Brisbane, Qld 4000
GPO Box 1785, Brisbane Qld 4001
1300 367 757 | qls.com.au

Disclaimer

The Queensland Law Society has prepared this examiner's program to guide and assist accountants to properly discharge their duties when examining trust accounts kept by Queensland law practices.

It is emphasised that it is a guide only. It sets out the steps that the Queensland Law Society recommends external examiners take to properly discharge their duties but it must be tailored and adapted, using professional judgment, to meet the individual engagement circumstances.

Pursuant to Section 268 of the *Legal Profession Regulation 2017* an external examiner is required to have due regard to the relevant auditing procedures and standards.

Auditing and Assurance Standards Board pertinent to the audit of solicitors' trust accounts include but are not restricted to ASA 220: Quality Control for Audits of Historical Financial Information; ASA 230: Audit Documentation; ASA 240: The Auditor's Responsibility to Consider Fraud in an Audit of a Financial Report; ASA 530: Audit Sampling and Other Means of Testing.

Table of Contents

- 1. General Trust Account.....5**
- 2. Computerised Accounting Systems (Regulations 31 and 32)5**
- 3. Trust Account Statements (Regulation 53).....5**
- 4. Trust Account Receipts (Regulation 34)5**
- 5. Deposit Records (Regulation 35)5**
- 6. Payments by Trust Cheque and Electronic Funds
Transfer (EFT) (Regulations 37 & 38)..... 5**
- 7. Trust Account Cash Books (Regulations 40 & 41) 6**
- 8. Trust Account Journals (Regulation 43) 6**
- 9. Trust Ledger Accounts (Regulation 42) 6**
- 10. Reconciliations (Regulation 44) 6**
- 11. Controlled Money (Sections 251 & 252 and Regulations 47 to 51)..... 7**
- 12. Power Money (Section 254 and Regulation 56 & 57) 7**
- 13. Investment of Trust Money (Section 238(3) and Regulation 55) 7**
- 14. General Account..... 8**
- 15. Client Matters 9**
 - 15.1 Purchase Transaction..... 10
 - 15.2 Sale Transaction 11
 - 15.3 Deceased Estate & Power of Attorney Transaction 12
 - 15.4 Personal Injury Transaction 13
 - 15.5 Property Settlement Transaction 14
 - 15.6 Private Mortgage Lending Transaction 15
- 16. External Examiner’s Report 15**
 - 16.1 Lodgment of External Examiner’s Report..... 15
 - 16.2 Format of External Examiner’s Report..... 15

Records to be kept (section 261)

Introduction

The objective is to form a view, from analysing internal controls and test checking transactions, as to whether the records have been kept in accordance with the legislative requirements and good accounting practices.

The *Legal Profession Act 2007* ("Act") commenced on 1 July 2007. The *Legal Profession Act 2007* introduced a number of important reforms in the handling of trust money entrusted to a law practice.

The *Legal Profession Regulation 2017* ("Regulation"), which details the recording requirements for law practices that receive trust money, also commenced on 1 July 2007.

Unless otherwise stated, references to the Act are references to the *Legal Profession Act 2007* and references to the Regulation are references to the *Legal Profession Regulation 2017*.

Section 261 of the Act provides:

1. *A law practice must keep in permanent form trust records in relation to trust money received by the practice.*
2. *The law practice must keep the trust records—*
 - a. *in the way prescribed under a regulation; and*
 - b. *in a way that at all times discloses the true position in relation to trust money received for any person; and*
 - c. *in a way that enables the trust records to be conveniently and properly investigated or externally examined; and*
 - d. *for the period prescribed under a regulation.*

In the external examiner's report, the external examiner is required to state whether the trust account has been properly kept in accordance with the provisions of the Act.

The doctrine of materiality is not observed in the audit of a law practice's trust account and all breaches of the Act and Regulations noted during the audit examination should be dealt with in the external examiner's report.

1. General Trust Account

The objective is to ensure a law practice that receives money that is required to be deposited into a general trust account maintains a general trust account in this jurisdiction, and that the general trust account is established and maintained in accordance with the Regulations.

Refer to Division 2, Section 1 of the External Examiner's Checklist.

2. Computerised Accounting Systems (Regulations 31 and 32)

The objective is to ensure the law practice computerised accounting system complies with the requirements of the Regulation.

Refer to Division 1, Section 2 of the External Examiner's Checklist.

3. Trust Account Statements (Regulation 53)

The objective is to establish that the law practice provides trust account statements to each person for whom or whose behalf trust money is held or controlled by the law practice.

Refer to Division 1, Section 3 of the External Examiner's Checklist

4. Trust Account Receipts (Regulation 34)

The objective is to ensure that a trust account receipt is issued promptly in respect of all trust money received and records sufficient information to enable the receipt of the money to be properly recorded in the cashbook and trust ledger.

Refer to Division 2, Section 2 of the External Examiner's Checklist.

5. Deposit Records (Regulation 35)

The objective is to confirm that each deposit record is made out in duplicate, that completed deposit records are securely retained and the general trust money received has been promptly banked.

Refer to Division 2, Section 3 of the External Examiner's Checklist.

6. Payments by Trust Cheque and Electronic Funds Transfer (EFT) (Regulations 37 & 38)

The objective is to ensure that sufficient information has been recorded on the relevant cheque butt, or cheque requisition, EFT requisition or other initiating disbursement document to enable details of payments to be properly recorded in the cashbook and trust ledger.

Refer to Division 2, Section 4A of the External Examiner's Checklist for trust cheques.

If the law practice has made EFT payments from the trust account check that the law practice has been authorised by the Queensland Law Society and that they have adhered to the Electronic Funds Transfer Guidelines, located on the Society's website qls.com.au.

Refer to Division 2, Section 4B of the External Examiner's Checklist for EFT payments.

7. Trust Account Cashbooks (Regulations 40 & 41)

The objective is to ensure that trust account cashbooks have been properly kept.

Refer to Division 2, Section 5 of the External Examiner's Checklist.

8. Trust Account Journals (Regulation 43)

The objective is to ensure that there are no transfers without the use of the trust journal and the required details are recorded for each trust journal.

Refer to Division 2, Section 6 of the External Examiner's Checklist.

Journal entries must be authorised in writing by an authorised principal, or authorised signatory to the trust account. Note: If not a legal practitioner associate then must be authorised by 2 or more associates jointly.

9. Trust Ledger Accounts (Regulation 42)

The objective is to ensure that the trust account ledger has been properly kept and in particular details of money received, disbursed and transferred are recorded in a trust ledger account kept for the persons on whose behalf the money is held.

Refer to Division 2, Section 7A of the External Examiner's Checklist.

Check that no trust ledger accounts were overdrawn during the financial period.

If any accounts were overdrawn, obtain explanations and report as pursuant to Section 259, namely:

- The date the trust ledger account was overdrawn;
- The amount by which the account was overdrawn;
- The date the account reverted to a credit or nil balance;
- The reason why the account was overdrawn;
- Whether the overdrawing was promptly corrected;
- If the overdrawing was not promptly corrected, the reason for the delay;
- Did the law practice have a reasonable excuse for the deficiency?

If there is a trust ledger in the name of the law practice or legal practitioner associate complete Division 2, Section 7B of the External Examiner's Checklist.

10. Reconciliations (Regulation 44)

Reconciliation of the trust account records is one of the most effective controls for the proper operation of the trust account in that it will promptly identify errors that have occurred. The objective is to ensure that the trust records of each general trust account are prepared within 15 working days of the end of each month and errors and deficiencies are identified.

It is essential to the reconciliation statement to be reviewed by a principal of the law practice and evidence of the review should be annotated.

Refer to Division 2, Section 8 of the External Examiner's Checklist.

11. Controlled Money (Sections 251 & 252 and Regulations 47 to 51)

The objective is to ensure that controlled money is properly accounted for and is in accordance with the client's written instructions.

11.1 Check that controlled money received by the law practice has been deposited into a controlled money account as directed.

Refer to Division 3, Section 1 of the External Examiner's Checklist

11.2 Check that a controlled money receipt has been issued promptly in respect of all controlled money received and the required particulars are properly recorded.

Refer to Division 3, Section 2 of the External Examiner's Checklist

11.3 Check that all withdrawals of controlled money are carried out in accordance with the Regulation and that a written record disclosing the required particulars is kept for each withdrawal of controlled money.

Refer to Division 3, Section 3 of the External Examiner's Checklist

11.4 Check that all records relating to controlled money accounts are properly kept in the controlled money register.

Refer to Division 3, Section 4 of the External Examiner's Checklist

11.5 Check that the listing of controlled money is prepared within 15 working days of each month for the period under review.

Refer to Division 3, Section 5 of the External Examiner's Checklist

12. Power Money (Section 254 and Regulation 56 & 57)

The objective is to ensure that power money is properly accounted for and, if applicable, that relevant details are recorded to the power money register.

The law practice or associate who is required to act jointly with one or more persons who are not associates of the law practice, does not need to keep a register of powers.

Power money is where a law practice or associate of the practice is given a power to deal with trust money for or on behalf of another person.

Refer to Division 5 & Division 6 of the External Examiner's Checklist

13. Investment of Trust Money (Section 238(3) and Regulation 55)

The objective is to ensure that investments of clients' trust money are properly invested in accordance with the client's written instructions, under the Legislation. The law practice must keep a register of the investment of the clients' investment money.

Refer to Division 7 of the External Examiner's Checklist.

14. General Account

There are two means by which trust money can be improperly dealt with.

First, the money can be improperly disbursed from the trust account to a person who is not entitled to it.

Secondly, the money may not be banked to the trust account in which case it will, in most cases, be deposited to the law practice's general account.

As such, the general account should be examined.

- 14.1** If the practice maintains general (debtors) ledger accounts, end of month listings of general (debtors) ledger account balances should be examined to identify matters that recorded credit balances. Those matters, or a selection of them, should be examined to determine whether the credit balance represents trust money improperly held in the general account or failure to record details of all professional costs and expended outlays.
- 14.2** The general account ADI statements should be perused and a number of the larger deposits to the account examined to ensure that the deposit did not include money that should have been deposited to the trust account.
- 14.3** The general account ADI statements should be perused to ensure that the general account banker has not dishonoured any payments from the general account.
- 14.4** Check that the law practice's general account operates with a credit balance. If not, check the limit of the overdraft facility and if on average does the law practice comply with the overdraft facility. If not, this may suggest that the law practice may have poor management systems.
- 14.5** Check what general account records the firm maintains (e.g. receipt book, deposit book, cheque book, cashbook and general (debtors) ledger accounts).
- 14.6** Check whether the law practice maintains a file register or archive register. File registers may assist in the selection of client files for examination.
- 14.7** Check whether the law practice is an agent for Office of State Revenue, or if not, how the law practice deals with stamp duty on purchase transactions.
- 14.8** Check whether all professional costs received by the law practice are banked to the general account.
- 14.9** If the law practice does not operate a general account answer the following questions:
 - a. Does the law practice pay all outlays and is subsequently then reimbursed by the client? If the law practice receives funds from trust or from the client for reimbursement of outlays prior to expenditure, then these funds are considered trust funds under Section 58(4) of the Regulations, being unexpended outlays.
 - b. What happens with settlement monies in sale and purchase contracts? Settlement monies, which have a trust content, should be received to a general trust account or in the form of transit moneys.
 - c. What happens with settlement monies from litigation actions? Settlement monies, which have a trust content, should be received to a general trust account or in the form of transit moneys.
 - d. What happens with estate monies? Estate funds, which have a trust content, should be received to a general trust account, a controlled money account, a power money account or in the form of transit moneys.

Transaction files

15. Client Matters

The objective is to form an opinion as to whether trust money has been receipted and banked into a trust account and disbursed to the entitled beneficiaries, or in accordance with their instructions.

Careful examination of trust ledger accounts can identify instances where trust money may not have been properly disbursed. Examination of the relevant transaction file in conjunction with the trust and general accounting records will enable an external examiner to form an opinion as to whether trust money has been banked into a trust account and properly disbursed.

The doctrine of materiality should not be applied to the audit of a law practice's trust account. Most improper disbursements from law practice's trust accounts are disbursements of relatively small amounts (less than \$10,000.00). It is much harder to conceal one large improper disbursement than it is to conceal a number of smaller disbursements.

In an audit period, the number of matters subject to audit are those that have trust balances at the end of the audit period and those which were reduced to a nil balance during the audit period (hereinafter referred to as relevant files).

A number of the relevant files for the period should be examined and at least 75% of the files examined should represent closed matters.

The file selection process should:

- a. ensure that files for all areas of law are examined;
- b. include a number of files that have been selected by Random Number Generation;
- c. include a number of files that have been selected by random selection of files contained on
- d. the law practice's premises; and
- e. the law practice has provided appropriate disclosure pursuant to s294 of the Act.

Deceased Estate files present the greatest opportunity for fraudulent misappropriation. In selecting files for examination, a weighting should be applied to deceased estate files to ensure that they receive greater representation in the audit sample than any other type of matter.

“Disclosure to clients – money not received or held as trust money”

Section 294 of the Act provides that if money is entrusted to a law practice and the money is not, at the time of entrustment, trust money due to the provisions of Section 238 of the Act, the practice must notify the person who entrusted the money to the practice that:-

- a. the money is not treated as trust money under the Act and is not subject to any supervision, investigation or audit requirements of the Act; and
- b. a claim against the Fidelity Guarantee Fund cannot be made in relation to the money.

Section 294 further provides that if money entrusted to the practice was trust money at the time of entrustment but subsequently becomes non-trust money, the practice must, after the money becomes non-trust money, notify the person as above.

Section 238(2) provides that money entrusted to a law practice for a managed investment scheme, or mortgage financing, or for investment purposes, is not trust money.

For example, if a client entrusts a sum of a money to a law practice for the purpose of making a loan to a third party in circumstances where the law practice has introduced the lender to the borrower, the money has been entrusted to the law practice for investment purposes and is not trust money.

On the other hand, if a money lending client has decided to lend money to a third party in circumstances where the law practice has had no part in the introduction of the money lending client to the borrower and the money lending client merely engages the law practice to prepare the documentation in respect of the loan (in the ordinary course of legal practice), the money being advanced to the borrower would, if received into the law practice's trust account, be trust money.

Section 238(3) provides as follows:-

“Without limiting subsections (1) and (2), money entrusted to or held by a law practice for investment purposes, whether on its own account or as agent, is not trust money under this Act, unless-----

- a. the money was entrusted to or held by the practice-----
 - i. in the ordinary course of legal practice; and
 - ii. primarily in connection with the provision of legal services to or at the direction of the client; and
- b. the investment is or is to be made-----
 - i. in the ordinary course of legal practice; and
 - ii. for the ancillary purpose of keeping or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.”

For example, if a client is purchasing a property and provides the balance purchase money to the law practice prior to settlement and instructs the law practice to invest the money pending settlement, the money continues to be trust money pursuant to the provisions of the Act with the result that disclosure pursuant to Section 294 of the Act is not required.

The rest of the program is intended to assist in the selection and examination of files.

15.1 Purchase Transaction

Attached as Appendix 1 is a copy of a trust ledger account for a typical purchase transaction.

The matters that should be checked are:-

- 15.1.1 In relation to search fees was the law practice entitled to receive the money into the general account because it had already paid it from the general account, or had client authority to take for incurred but not yet paid outlays?
- 15.1.2 If money was not received into the trust account for stamp duty, did the practice receive the money into its general account or did the client provide a cheque payable to the Queensland Revenue Office?
If the money was received into the general account and the practice had not already paid the stamp duty from the general account the matter should be reported.
 - a. If the practice is an approved stamping agent and stamp duty was paid from the general account the date of payment of stamp duty can be determined by the date of presentation of the general account cheque to the approved ADI account.
 - b. If the practice is not an approved stamping agent, the date of stamping will be stamped on the contract of sale as part of the stamping process.
 - c. If the practice is an approved stamping agent trace the stamped document to the law practice's lodgment record. In particular check the following and ensure that the information recorded on the document matches the information recorded in the law practice's lodgment record with the Queensland Revenue Office (QRO).
 - i. Record the QRO transaction number on the document.
 - ii. Record the date the document was stamped / issued with the QRO transaction number.
 - iii. Record the amount of stamp duty recorded on the stamped document. Confirm that this amount was lodged with the QRO.
 - iv. Confirm that that QRO transaction number recorded matches the transaction number stamped on the document.
 - v. Confirm that the matter name which appears on the QRO return agrees to the transaction name.

If there is a discrepancy in the information this may be evidence of fraudulent activity. Any discrepancies or evidence for the document not appearing on the QRO return should be investigate and explanations should be obtained from the law practice.

- 15.1.3 If purchase money was received into the trust account from the purchasing client, have registration fees been paid from the trust account. If they have not, check the general account records to ensure that money was not paid into the general account for registration fees before the practice paid them. If they were, the matter should be reported.
- 15.1.4 Check that any money received for an outlay that has not been expended has been refunded to the client or otherwise properly accounted to the client.
- 15.1.5 Check that professional costs have not been paid to the practice in breach of Regulation 58 of the Regulations.
 - a. Was a written authority held in respect to the transfer of professional costs?
 - b. If a written authority was not held did the firm wait 7 days after the delivery of the bill prior to transferring costs from trust to general? If no, report.
 - c. Has a bill of costs and outlays been delivered or was a request for payment or written notice of withdrawal given before the withdrawal? If no, report.
- 15.1.6 Check that the purchase money has been paid to the vendor or in accordance with the vendor's instructions and that the amounts paid are the correct amounts. It is not always possible to do this. The money can be disbursed in accordance with the vendor's verbal instructions. As solicitor for the purchaser, it is the law practice's responsibility to hand over no more than the amount due to the vendor and to receive from the vendor in exchange for that money signed transfer documents to enable the property to be transferred into the client's name.
- 15.1.7 If the client provided all the purchase money (i.e. not financed by a mortgage advance) check that the property has been transferred into the purchaser's name and remains registered in the purchaser's name and that there are no mortgages registered over the property.
- 15.1.8 Is the law practice currently charging or previously charged a surcharge/administration fee in respect to outlays? If yes, go to question (a).
 - a. Has the law practice made appropriate refunds to the client in accordance with Legal Services Commission Guidelines for Charging Outlays and Disbursements. If no, report.

15.2 Sale Transaction

Attached as Appendix 2 is a copy of a trust ledger account for a typical sale transaction.

The matters which should be checked are:-

- 15.2.1 If sale proceeds have not been received into the trust account, the practice should hold a written client authority, or direction, to receive the costs and outlays for the sale transaction direct into the general account.
- 15.2.2 If the sale proceeds were received into the trust account, check that professional costs have not been paid to the practice in breach of Regulation 58.
 - a. Was a written authority held?
 - b. If a written authority was not held did the firm wait 7 days after the delivery of the bill prior to transferring costs from trust to general? If no, report.
 - c. Has a bill of costs and outlays been delivered or was a request for payment or written notice of withdrawal given before the withdrawal? If no, report.
- 15.2.3 Is there evidence that the sale proceeds were paid to the client or dealt with in accordance with the client's instructions? If the sale proceeds were not received into the trust account, check the file to see whether there is any evidence of the sale proceeds having been received by the client or applied in accordance with the client's instructions. The client may have used the sale proceeds as part of the purchase price of another property and the sale proceeds may have been received by the law practice in the form of a financial institution cheque payable to the party selling the other property to the client.

The trust account cheque/s issued to pay the sale proceeds to the client should be sighted to confirm that the sale proceeds have been properly disbursed to the clients.

Particular care should be exercised if the sale proceeds are recorded as having been paid to the client by a financial institution cheque. There is no need to pay by financial institution cheque. A financial institution cheque may have been purchased to hide a fraudulent disbursement of the sale proceeds to the law practice or a third party. If the sale proceeds are recorded as having been paid to the client by a financial institution cheque the financial institution should be requested to produce the financial institution cheque, or advise in writing, the name of the payee.

- a. If paid trust account cheques have not been called does the file support payments to the client or at the client's instructions?

15.2.4 Check that sale proceeds have been promptly paid from the trust account to the client. The retention of money for no apparent reason should be questioned as it provides an opportunity for that money to be fraudulently misappropriated.

15.3 Deceased Estate & Power of Attorney Transaction

As stated earlier deceased estates provide the greatest opportunity for fraudulent misappropriation. The administration of a client's affairs pursuant to a Power of Attorney also provides an opportunity for fraudulent misappropriation.

Deceased estates in respect of which a solicitor is the sole executor and the residual beneficiaries are charitable institutions are those most at risk. The next most vulnerable administrations are those when the affairs of a client with no living relatives are being administered by a solicitor as the client's attorney and the client's will nominates charitable institutions as the residual beneficiaries.

Files for some active administrations (both deceased estates and administrations pursuant to powers of attorney) should be checked in addition to files for finalised administrations to ensure that the proceeds of realised assets have been received into the trust account and that payments from the trust account have been properly made for the benefit of the deceased estate, or the donor of the power of attorney.

Attached as Appendix 3 is a copy of a trust ledger account for a typical deceased Estate. The trust ledger account for the administration of the affairs of a client pursuant to a power of attorney will generally consist of the receipt of money from a financial institution account and the payment of accounts on behalf of the client. The practice should be asked to provide details of all financial institution accounts in the name of the client as these accounts can be operated by the appointed attorney and pursuant to Section 254 of the Act are power money accounts.

Matters that should be checked are:-

- 15.3.1 Identify the assets of a deceased estate and check whether all assets have been realised and the proceeds received into the trust account to the credit of the trust ledger account for the estate.
- 15.3.2 Check that there is evidence that bills of costs and trust account statements have been sent to the executor/s of the Estate, or the person whose affairs are being administered.
- 15.3.3 Check that the details in trust account statements provided to the executor/s of the Estate, or the person whose affairs are being administered, accurately record details of all receipts and disbursements recorded in the relevant trust accounting records.
- 15.3.4 Check that professional costs have not been paid to the practice in breach of Regulation 58.
 - a. Was a written authority held?
 - b. If a written authority was not held did the firm wait 7 days after the delivery of the bill prior to transferring costs from trust to general? If no, report.
 - c. Has a bill of costs and outlays been delivered or was a request for payment or written notice of withdrawal given before the withdrawal? If no, report.
- 15.3.5 Check that client money has been received into the general account for expended outlays. If outlays have not been expended prior to receipt to general, or the law practice does not hold an authority to reimburse for incurred but not paid outlays, report.
- 15.3.6 Check that Estate proceeds have been disbursed in accordance with the provisions of the Will of the deceased.
- 15.3.7 Sight paid cheques for payments made to estate beneficiaries and creditors, or the person whose affairs are being administered.

Particular care should be exercised if funds are recorded as having been paid by financial institution cheques. There is no need to pay the money by financial institution cheque. A financial institution cheque may have been purchased to hide a fraudulent disbursement to the law practice or a third party. If funds are recorded as having been paid to a person by a financial institution cheque, the financial institution should be requested to produce the financial institution cheque, or advise in writing, the name of the payee.

- a. If paid cheques have not been called does the examined file support payments to the beneficiaries and creditors?
- 15.3.8 If the amount charged for professional costs appears to be exorbitant, report the matter. Also, consider requesting the law practice to provide trust account statements, showing details of all moneys received and disbursed, signed by the executors/beneficiaries, or person whose affairs are being administered, acknowledging that the statements represent a true and correct record of the receipt and disbursement of funds for the matter.
- 15.3.9 If there have been four or more transfers of costs and outlays to the general account this may indicate excessive charging or fraudulent misappropriation of trust funds. Law practices generally do not transfer money from the trust account to the general account in payment of their costs and outlays more than three times in an Estate administration. Particular care should be exercised if costs and outlays have been transferred to the general account on a fortnightly, or more regular, basis.
- 15.3.10 Check that Estate funds have been promptly disbursed to the Estate beneficiaries. The retention of money for no reason should be questioned as it provides an opportunity for that money to be fraudulently misappropriated.

15.4 Personal Injury Transaction

Attached as Appendix 4 is a copy of a trust ledger account for a typical personal injuries action.

Matters that should be checked are:-

- 15.4.1 Check that there is evidence that bills of costs and trust account statements have been sent to the client.
- 15.4.2 Check that professional costs have not been paid to the practice in breach of Regulation 58.
 - a. Was a written authority held?
 - b. If a written authority was not held did the firm wait 7 days after the delivery of the bill prior to transferring costs from trust to general? If no, report.
 - c. Has a bill of costs and outlays been delivered or was a request for payment or written notice of withdrawal given before the withdrawal? If no, report.
- 15.4.3 Check that the details in trust account statements provided to the client accurately record details of all receipts and disbursements in respect of the matter.
- 15.4.4 Check that any recovered party and party costs and outlays have been received into the trust account.
- 15.4.5 Check that money received into the general account for an outlay that has been expended from the general account or that the law practice holds client authority to reimburse for incurred by not paid outlays.
- 15.4.6 Sight paid cheques for payments made to the client. Particular care should be exercised if payments are recorded as having been made to the client by financial institution cheques. There is no need to pay the money by financial institution cheque. A financial institution cheque may have been purchased to hide a fraudulent disbursement to the law practice or a third party. If funds are recorded as having been paid to a person by a financial institution cheque, the financial institution should be requested to produce the financial institution cheque, or advise in writing, the name of the payee.
 - a. If paid cheques have not been called does the examined file support payments to the client?
- 15.4.7 If the amount charged for professional costs appears to be exorbitant, report the matter. Also, consider requesting the practitioner to provide trust account statements, showing details of all moneys received and disbursed (including recovered party and party costs and outlays), signed by the client acknowledging that the statement represents a true and correct record of the receipt and disbursement of funds. Alternatively recommend to the Trust Investigations Manager that direct contact be made with the client to confirm that funds have been dealt with in accordance with the client's instructions.

- 15.4.8 Check that the settlement moneys have been promptly disbursed to the client. The retention of money for no reason should be questioned as it provides an opportunity for that money to be fraudulently misappropriated.
- 15.4.9 In speculative actions ensure that the amount of professional costs charged to the client is not greater than:
 Client's entitled settlement less (refunds due by client (eg WorkCover, Legal Aid, etc) + disbursements payable by the client regardless of how or by whom those disbursements are paid (eg barrister fees, medical reports, etc) *.5
Note: In accordance with the judgement made in Legal Services Commissioner v. Dempsey [2007] QSC 270 the maximum amount of professional costs charged to the client is inclusive of GST payable by the law practice.
- 15.4.10 If the amount the practitioner/law practice seeks to recover from the client exceeds the amount calculated using the above formula, then the practitioner/law practice may make an application to the Council of the Queensland Law Society Incorporated, in writing, seeking approval to charge and recover this greater amount.
 The Council of the Queensland Law Society Incorporated may, in writing, approve an amount up to the greater amount. (Section 347 of the Act)

15.5 Property Settlement Transaction

Attached as Appendix 5 is a copy of a trust ledger account for a typical property settlement matter.

Matters that should be checked are:-

- 15.5.1 Check that there is evidence that bills of costs and trust account statements have been sent to the client.
- 15.5.2 Check that professional costs have not been paid to the practice in breach of Regulation 58.
- a. Was a written authority held?
 - b. If a written authority was not held did the firm wait 7 days after the delivery of the bill prior to transferring costs from trust to general? If no, report.
 - c. Has a bill of costs and outlays been delivered or was a request for payment or written notice of withdrawal given before the withdrawal? If no, report.
- 15.5.3 Check that the details in trust account statements provided to the client accurately record details of all receipts and disbursements recorded in the relevant trust accounting records.
- 15.5.4 Check that money received into the general account for an outlay that has been expended from the general account, or that the law practice holds client authority to reimburse for incurred but not yet paid outlays.
- 15.5.5 Sight paid cheques for payments made to the client and the client's spouse. Particular care should be exercised if the funds are recorded as having been paid to the client and/or the client's spouse by financial institution cheques. There is no need to pay the money by financial institution cheque. A financial institution cheque may have been purchased to hide a fraudulent disbursement to the law practice or a third party. If funds are recorded as having been paid to a person by a financial institution cheque, the financial institution should be requested to produce the financial institution cheque, or advise in writing, the name of the payee.
- a. If paid cheques have not been called does the examined file support payments to the client?
- 15.5.6 If the amount charged for professional costs appears to be exorbitant, report the matter. Also, consider requesting the practitioner to provide a trust account statement, showing details of all money received and disbursed, signed by the client acknowledging that it represents a true and correct record of the receipt and disbursement of settlement funds.
 Alternatively recommend to the Trust Investigations Manager that direct contact be made with the client to confirm that funds have been dealt with in accordance with the client's instructions.
- 15.5.7 Check that funds have been promptly disbursed to the entitled beneficiaries. The retention of money for no reason should be questioned as it provides an opportunity for that money to be fraudulently misappropriated.

15.6 Private Mortgage Lending Transaction

Law practices can still act in private mortgage transactions (provision of legal advice and preparation of instruments) if the lender decides independently of the law practice to invest in a private mortgage advance (i.e. if the law practice does not act as intermediary to match a prospective lender and borrower).

S41.1 of the *Australian Solicitors Conduct Rules 2012* states that a solicitor must not conduct a managed investment scheme or engage in mortgage financing as part of their law practice, except under a scheme administered by the relevant professional body and where no claim may be made against a fidelity fund.

Attached as Appendix 6 is a copy of a trust ledger account for a typical mortgage lending matter.

'Mortgage financing' is defined as facilitating a loan secured or intended to be secured by mortgage by:

- a. Acting as an intermediary to match a prospective lender and borrower; or
- b. Arranging the loan; or
- c. Receiving or dealing with payments under the loan;

but does not include:

- d. Providing legal advice, or preparing an instrument, for the loan; or
- e. Merely referring a person to a prospective lender or borrower, without contacting the prospective lender or borrower on that person's behalf; or
- f. Facilitating a loan secured by a mortgage:
 - i. Of which an Australia legal practitioner is the beneficial owner; or
 - ii. Held by an Australian legal practitioner or a corporation in his, her or its capacity as the trustee of any will or settlement, or which will be so held once executed or transferred.

16. External Examiner's Report

16.1 Lodgement of External Examiner's Report

The External Examiner's Report is required to be lodged with the Society on or before **30 May** of each year at the following:

Attention: Trust Account Investigations Professional Standards
The Queensland Law Society Incorporated GPO Box 1785
Brisbane Qld 4001

Email: managertai@qls.com.au

16.2 Format of External Examiner's Report

The approved form for Law Practice Declaration and Trust Money Statement (QLS Form 4 (LPR) and External Examiner's Report (QLS Form 5 (LPR) are approved forms can be downloaded from the Society's website at qls.com.au

The Law Practice Declaration and Trust Money Statement is to be completed by the law practice as it contains a certification from the law practice that the:

- details contained in the statement are complete and correct.
- records have been kept in accordance with the provisions of the LPA and LPR
- all trust money received has been dealt with in accordance with the requirements of the LPA and LPR

The Law Practice Declaration and Trust Money Statement upon completion by the law practice is to be provided to the External Examiner and becomes Schedule 2 to the External Examiner's Report.

Appendix 1

Trust Ledger Account

CLIENT:- F J Holden

ADDRESS:- 16 Boygone Avenue, Carina, Qld.

MATTER DESCRIPTION:- Purchase of house at 25 Modern Court, Carins

OTHER PARTY:- S J & K L Commodore

Date	Particulars	Ref	Debit	Credit	Balance
15/03/xy	Recd from F J Holden on account of search fees	R 0951		\$ 300.00	\$ 300.00
22/03/xy	To Brisbane City Council – search fee	C 99014	\$ 150.00		\$ 150.00
25/03/xy	To Solicitor's general account – reimbursement of search fees	C 99027	\$ 120.00		\$ 30.00
30/03/xy	Recd from F J Holden on account of costs & outlays: costs (500.00) S/D (1,800.00) regn fees (87.00) petties (50.00)	R0976		\$ 2,437.00	\$ 2,467.00
3/04/xy	Recd from F J Holden for settlement money	R 0998		\$ 180,000.00	\$ 182,467.00
9/04/xy	To Office of State Revenue – stamp duty	C 99058	\$ 1,650.00		\$ 180,817.00
10/04/xy	To S J & K L Commodore – settlement money	C 99063	\$ 179,650.00		\$ 1,167.00
13/04/xy	To Dept of Natural Resources – regn fee for release of mortgage & transfer	C99064	\$ 174.00		\$ 993.00
13/04/xy	To Solicitor's general account – costs (500.00) petties (50.00)	C99065	\$ 550.00		\$ 443.00
13/04/xy	To F J Holden – refund for o'paid search fees (30.00) o/paid s/d (150.00) o/paid settlement money (263.00)	C99066	\$ 443.00		\$ -
			\$ 182,737.00	\$ 182,737.00	

Appendix 2

Trust Ledger Account

CLIENT:- S J & K L Williams
ADDRESS:- 25 Tennis Court, Carindale, Qld
MATTER DESCRIPTION:- Sale of house at 25 Tennis Court, Carindale
OTHER PARTY:- R H Player

Date	Particulars	Ref	Debit	Credit	Balance
10/04/xy	Recd B/Cheq from R H Player – settlement money	R 0999		\$ 215,650.25	\$ 215,650.25
14/04/xy	To S J & K L Williams – net sale proceeds	C 99014	\$ 215,100.25		\$ 550.00
11/05/xy	To Solicitor's general account – costs (\$500.00) petties (\$50.00)	C 99027	\$ 550.00		\$ -
			\$ 215,650.25	\$ 215,650.25	

Appendix 3

Trust Ledger Account

CLIENT:- Mr Fred Survivor
ADDRESS:- 16 Peach Road, Sunny Vista, Qld 4217
MATTER DESCRIPTION:- Deceased Estate of O.Book
OTHER PARTY:-

Date	Particulars	Ref	Debit	Credit	Balance
26/05/xx	Recd from F Survivor – cash on hand as at date of death	R 0753		\$ 212.75	\$ 212.75
26/05/xx	Recd from F Survivor – advance for costs and outlays	R 0754		\$ 500.00	\$ 712.75
5/06/xx	To Solicitor's general account – reimbursement of Qld Gazette probate advertising fee (70.00), Qld Reporter probate advertising fee (75.00), Courier Mail probate advertising fee (350.00)	C 75063	\$ 495.00		\$ 217.75
5/06/xx	To Supreme Court – Probate filing fee	C 75066	\$ 150.00		\$ 67.75
12/08/xx	Recd from NAB Surfers Paradise – closure of term deposit account	R 0799		\$ 100,250.25	\$ 100,318.00
12/08/xx	Recd from NAB Surfers Paradise – closure of cheque account	R 0799		\$ 2,165.45	\$ 102,483.45
28/08/xx	Recd from Ord Minett – Sale of NAB shares	R 0826		\$ 250,467.75	\$ 352,951.20
3/09/xx	To F Survivor – reimbursement of advance for costs and outlays	C 76008	\$ 500.00		\$ 352,451.20
3/09/xx	To F Survivor – interim distribution	C 76009	\$ 115,000.00		\$ 237,451.20
3/09/xx	To G Survivor – interim distribution	C 76010	\$ 115,000.00		\$ 122,451.20
3/09/xx	To K Survivor – interim distribution	C 76011	\$ 115,000.00		\$ 7,451.20
5/10/xx	To Solicitor's general account – costs and outlays billed 03.09.96	C 76087	\$ 1,500.00		\$ 5,951.20
3/03/xy	From Bloggs & Bloggs Trust Account – settlement – sale of 306 Sharpe St Surfers Paradise	R 0927		\$ 348,750.25	\$ 354,701.45
11/03/xy	To F Survivor – final distribution	C 99002	\$ 117,900.49		\$ 236,800.96
11/03/xy	To G Survivor – final distribution	C 99003	\$ 117,900.48		\$ 118,900.48
11/03/xy	To K Survivor – final distribution	C 99004	\$ 117,900.48		\$ 1,000.00
16/04/xy	To Solicitor's general account – costs and outlays billed 11.03.97	C 99070	\$ 1,000.00		\$ 0.00
			\$ 702,346.45	\$ 702,346.45	

Appendix 4

Trust Ledger Account

CLIENT:- I V A Badback
ADDRESS:- 64 Easy Street Coorparoo Qld 4151
MATTER DESCRIPTION:- Personal Injuries Claim
OTHER PARTY:- E L Trunk

Date	Particulars	Ref	Debit	Credit	Balance
10/01/xx	Recd from I V A Badback on account of costs and outlays	R 0675		\$ 1,000.00	\$ 1,000.00
18/01/xx	To Department of Transport for motor vehicle search	C 74987	\$ 40.00		\$ 960.00
18/01/xx	To Qld Police Department for motor vehicle accident report	C 74988	\$ 50.00		\$ 910.00
22/02/xx	To Solicitor' general account – reimbursement of Dr G Grange medical report fee (\$75), Dr B Specialist's report fee (\$250) and B Barrister's fee for opinion on quantum (\$400)	C 75005	\$ 725.00		\$ 185.00
23/04/xx	To Supreme Court Registrar for filing fee on writ	C 75043	\$ 144.00		\$ 41.00
22/06/xx	Recd from I V A Badback on account of costs and outlays	R 0772		\$ 800.00	\$ 841.00
2/11/xx	To Solicitor' general account – reimbursement of Dr G Grange medical report fee (\$300), Dr B Specialist's report fee (\$450)	C 76042	\$ 750.00		\$ 91.00
21/05/xy	Recd from Suncorp in settlement of claim	R 1024		\$ 150,000.00	\$ 150,091.00
29/05/xy	To I V A Badback for settlement money	C 99123	\$ 130,000.00		\$ 20,091.00
18/06/xy	Recd from Suncorp for party and party costs and outlays	R 1062		\$ 15,255.80	\$ 35,346.80
06/07/xy	To I V A Badback for settlement money being party & party costs & outlays recovered	C 99169	\$ 15,255.80		\$ 20,091.00
06/07/xy	To Solicitor's general account for costs and outlays	C 99170	\$ 20,091.00		\$ 0.00
			\$ 67,055.80	\$ 167,055.80	

Appendix 5

Trust Ledger Account

CLIENT:- Mrs G Graham
ADDRESS:- 12 Heartache St Coorparoo Qld 4151
MATTER DESCRIPTION:- Divorce and Property Settlement
OTHER PARTY:- Mr R Graham

Date	Particulars	Ref	Debit	Credit	Balance
7/01/xx	Recd from G Graham on account of costs and outlays	R 0671		\$ 500.00	\$ 500.00
18/01/xx	To Family Court for filing fee	C 74989	\$ 300.00		\$ 200.00
25/05/xx	Recd from Wilson Wilson & Wilson sale proceeds of matrimonial home	R 0765		\$ 298,525.45	\$ 298,725.45
3/06/xx	To Commonwealth Bank – investment as Trustee for G Graham & R Graham	C 75053	\$ 297,100.45		\$ 1,625.00
3/07/xx	To Solicitor's general account for costs and outlays	C 75081	\$ 1,625.00		\$ -
21/05/xy	Recd from Commonwealth Bank – Closure of investment account	R 1025		\$ 307,200.55	\$ 307,200.55
26/05/xy	To G Graham – payment of settlement money in accordance with consent order	C 99118	\$ 213,500.00		\$ 93,700.55
26/05/xy	To R Graham – payment of settlement money in accordance with consent order	C 99119	\$ 91,500.00		\$ 2,200.55
3/07/xy	To Solicitor's general account for costs and outlays	C 99161	\$ 2,200.55		\$ -0.00
			\$ 606,226.00	\$ 606,226.00	

Appendix 6

Trust Ledger Account

CLIENT:- Private Lending Company Pty Ltd
ADDRESS:- 150 Old Cleveland Road, Stones Corner
MATTER DESCRIPTION:- Mortgage Advance to
OTHER PARTY:- Central Industries Pty Ltd

Date	Particulars	Ref	Debit	Credit	Balance
24 May 1997	Recd from Private Lending Company Pty Ltd – loan money	R1032		\$ 150,000.00	\$ 150,000.00
30 May 1997	To Tall Poppy Investments Pty Ltd for settlement of purchase of 57 Stone St Holland Park by Central Industries Pty Ltd	C99126	\$ 146,950.00		\$ 3,050.00
30 May 1997	To ABC Mortgage Brokers – payment of mortgage brokerage fee	C99127	\$ 1,500.00		\$ 1,550.00
2 June 1997	To Office of State Revenue – stamp duty	C99128	\$ 150.00		\$ 1,400.00
2 June 1997	To Dept of Natural Resources – registration fees	C99129	\$ 261.00		\$ 1,139.00
2 June 1997	To Solicitor's General Account – costs & outlays	C99130	\$ 1,139.00		\$ 0.00
12 March 1998	Recd from ANZ Bank for Central Industries Pty Ltd – Refinancing – payout of principal and 1 month's interest	R1112		\$ 151,540.00	\$ 151,540.00
16 March 1998	To Private Lending Company Pty Ltd – repayment of principal and payment of 1 month's interest	C99326	\$ 151,040.00		\$ 500.00
16 March 1998	To Solicitor's General Account – costs & outlays	C99329	\$ 500.00		\$ 0.00
			\$ 301,540.00	\$ 301,540.00	