



**Law Society of Alberta**  
**Trust Safety:**  
**Responsible Lawyer**  
**& Trust Account**  
**Approval Protocol**

January 1, 2022

## Table of Contents

Introduction .....	2
Definitions .....	1
Considerations for Approval – Responsible Lawyer Status .....	2
Responsibilities .....	2
Minimum Requirements.....	2
Additional Considerations .....	3
Considerations for Approval –Operate a Trust Account.....	4
Minimum Requirements.....	4
Additional Considerations .....	5
Process.....	6
Initial application – Decision by Executive Director or Manager, Trust Safety .....	6
Appeal to Trust Safety Committee .....	6
Potential Conditions .....	7
Resignation of a Responsible Lawyer .....	8
Revocation of Approval to be a Responsible Lawyer or to Operate a Trust Account.....	8

### Approval & Amendment History

- This Protocol came into effect on June 11, 2016.
- This Protocol was amended September 29, 2016.
- This Protocol was amended March 2, 2017.
- This Protocol is amended as of January 1, 2022, with the approval of the Executive Director, to reflect amendments to Part 5, Trust Account Rules and Client Identification, of the *Rules of the Law Society of Alberta*.

## Introduction

- 1) Section 126 of the *Legal Profession Act* states that “subject to the Rules, every active member shall maintain an interest-bearing trust account”. This section applies not only to active members but to professional corporations and law firms. The *Rules of the Law Society of Alberta* place restrictions on this section in fulfillment of the Law Society of Alberta’s mandate. It is in the public interest to ensure that members of The Law Society of Alberta do not pose a risk to the public related to the handling of trust money and trust property.
- 2) The Law Society of Alberta (The Law Society or the Society) has the responsibility to set standards for approving members to become a Responsible Lawyer and qualify to open, operate and maintain a Trust Account. Those decisions fall under Part 5 of the *Rules of The Law Society of Alberta* (the Rules).
- 3) This Protocol should be read in conjunction with the relevant provisions of the *Legal Profession Act* (the Act) and the Rules. To the extent any provision in this Protocol appears to be inconsistent with the Act or the Rules, parties should rely on the Act and the Rules.
- 4) This Protocol first describes the Responsibilities, Requirements and Considerations for Responsible Lawyer status and approval to open, operate and maintain a Trust Account. It then discusses the process regarding the approval of the designation of Responsible Lawyer and qualifying to maintain a Trust Account.
- 5) A majority of applications are decided by the Executive Director and/or Manager, Trust Safety upon an initial review. In some cases, an application requires a more thorough review by the Executive Director, Manager, Trust Safety and/or Trust Safety Committee and additional information may be required.
- 6) This Protocol is intended to support decision makers to make effective and consistent decisions. It is also intended to offer information to lawyers and other interested parties to help them understand some of the criteria which may be applied to various applications and to clarify the procedures involved.

## Definitions

- 7) Applicant: The term applicant includes an appellant where the applicant is involved in an appeal to the Trust Safety Committee.
- 8) Application: The term application includes an appeal to the Trust Safety Committee where notice has been filed.
- 9) Law Firm: Law firm as defined in Rule 2, means
  - (a) a sole practitioner,
  - (b) a professional corporation that is not part of a partnership, or

- (c) a partnership consisting wholly or partly of active members or professional corporations or a combination of both

that owns and carries on a law practice in Alberta, and includes an LLP.

- 10) Responsible Lawyer: Responsible Lawyer means a lawyer approved to be a responsible lawyer under Rule 119.11.
- 11) Trust Account: Trust Account means a pooled trust account or a separate interest-bearing account.

## Considerations for Approval – Responsible Lawyer Status

### Responsibilities

- 12) In accordance with Rule 119.10, a Responsible Lawyer

is accountable for

- (a) the controls in relation to and the operation of all law firm trust accounts and general accounts;
- (b) ensuring compliance with this Part of the Rules;
- (c) documenting evidence of review and oversight of the actions taken to ensure compliance with this Part of the Rules;
- (d) the accuracy of all reporting and filing requirements of the law firm;
- (e) ensuring all reporting and filing requirements of the law firm are met; and
- (f) ensuring all payment requirements of the law firm, related to this Part of the Rules, are met.

and “[t]here must be only one responsible lawyer acting for a law firm at any one time, unless otherwise authorized by the Executive Director.”

### Minimum Requirements

- 13) In accordance with Rule 119.9:

To be or continue to be designated as a responsible lawyer a lawyer must

- (a) be an active member of the Society
  - (i) covered by the professional liability indemnity program,
  - (ii) covered by equivalent insurance in another province, or
  - (iii) exempt under Rule 148(1)(b);
- (b) be covered by the misappropriation indemnity program or equivalent insurance in another province; and
- (c) reside in Canada.

## Additional Considerations

- 14) The minimum requirements, as set out in the Rules, are the starting point for consideration of an application. The following additional information may also be considered. This list is not exhaustive and other information may be considered.
- a) Information provided on the application form, including:
- i. Number of lawyers that will be part of the law firm;
  - ii. Whether the law firm uses accounting software to record their financial transactions;
  - iii. Proposed area(s) of practice; and
  - iv. Answers to the questions on Section C of the application related to the member's disciplinary history and history of offences under Canadian laws.
- b) Practice history, including:
- i. Length of active, practicing status; area of practice; practice setting; previous Responsible Lawyer status;
  - ii. Suspensions, including reason(s) for any suspension;
  - iii. Restrictions imposed on practice, including nature of and reason(s) for any restrictions;
  - iv. Custodianship appointments, including reason(s) for any custodianship appointments;
  - v. Conduct history, including history of complaints, investigations and proceedings and the relevance to the management of the financial records and/or and oversight of trust monies and trust property;
  - vi. Practice Management history, including any reports on the law practice of the applicant prepared by The Law Society Practice Management department, as well as the relevance of the content of the report to the management and oversight of the financial records and/or trust monies and trust property;
  - vii. Any reporting that the member has made pursuant to Rule 119.42 – Notice of Bankruptcy Proceedings or Writ of Enforcement, including the length of time since the matter(s) has been resolved;
  - viii. Insurance claims history, including the number of claims, the date that the claim was opened, the nature of the claim, and the resolution of the matter, considered in the overall evaluation of risk;
  - ix. Assurance claims history, including the number of claims, the date that the claim was opened, the nature of the claim, and the resolution of the matter, considered in the overall evaluation of risk; and
  - x. Amounts owing to The Law Society, including any delinquencies in paying any dues, fees, insurance levies, or costs and fines, history of late payments or cheques for payments to The Law Society that have been returned due to insufficient funds.
- 15) Prior to approval of an application, the Practice Management department may conduct an assessment of an applicant's practice capacity to properly deal with accounting of trust money and property and the use of an accounting program.

- 16) Consideration will be given to the mandate of The Law Society as a regulator. It is in the public interest to ensure that members of The Law Society of Alberta do not pose a risk to the public related to the handling of trust money and trust property.
- 17) Factors that may indicate risk related to the approval of the member as a Responsible Lawyer are, but are not limited to, a history of:
- a) Complaints from The Law Society regarding failure on the part of the member to follow the Trust Safety Rules;
  - b) Complaints regarding breach of conditions related to handling of trust money;
  - c) Complaints where there were findings or allegations of integrity issues;
  - d) A large number of complaints regarding failure to serve clients;
  - e) Failure to comply with the Trust Safety Rules;
  - f) Failure to properly organize his or her office with respect to financial records; and/or
  - g) Improper or insufficient staffing of the law office with respect to proper completion of financial records and filings.
- 18) Any open conduct proceedings or Practice Management files at the time of the member's application to be a Responsible Lawyer will generally result in a condition that the Responsible Lawyer's status should be reviewed once the conduct proceedings have come to a conclusion.
- 19) Any open files related to financial difficulty at the time of the member's application to be a Responsible Lawyer will generally result in one or all of the following conditions being imposed until the financial difficulty matters have come to a conclusion:
- a) Monthly or quarterly reporting of trust account bank reconciliations;
  - b) A second signatory on the law firm trust account.
- 20) Consideration will be given to the risk of the law firm selected under an approved arrangement under Rule 119.8, whereby "a lawyer approved as a responsible lawyer is permitted to receive trust money when (i) the trust money received will be held in the trust account of another law firm approved to operate a trust account, and (ii) the lawyer does not practise with that law firm". Any change to the selected law firm must be reported to the Law Society to maintain approval of such an arrangement and the Law Society can require the selection of a different law firm prior to or to maintain the approval of any arrangement.

## Considerations for Approval –Operate a Trust Account

### Minimum Requirements

- 21) In accordance with Rule 119.6:

Before beginning to operate its law practice, a law firm in Alberta must obtain, and thereafter maintain, the following approvals:

- (a) designation of a responsible lawyer, and
- (b) authorization to operate a trust account.

and in accordance with Rule 119.12(6):

The approval to operate a trust account will continue provided that the law firm

- (a) has a responsible lawyer approved by the Executive Director;
- (b) complies with any conditions imposed upon the approval to operate a trust account; and
- (c) complies with the Rules in this Part.

## **Additional Considerations**

22) The minimum requirements, as set out in the Rules, are the starting point for consideration of an application. The following additional information may also be considered. This list is not exhaustive and other information may be considered.

- a) Information provided on the application form;
- b) Practice history of the law firm and its members, including
  - i. Compliance with the Trust Safety Rules, including any deficiencies noted in the law firm Trust Account, which must be reported pursuant to Rule 119.39;
  - ii. Trust Safety annual filing history, including the accuracy and timeliness of filings, and the history of ratings;
  - iii. Compliance with conditions recommended in conjunction with approval to operate a Trust Account, including the accuracy and timeliness of compliance with conditions and all reports issued to the Responsible Lawyer in this regard;
  - iv. Audit history, including all audits performed by Society staff pursuant to the Trust Safety Rules and the results of those audits, which are rated based on the number of findings or exceptions noted;
  - v. History of other reporting to the Trust Safety department; and
  - vi. Relevant information from all Law Society departments.

23) As part of the information considered,

- a) Trust Safety filings are vetted and rated for compliance with the Rules and indications of risk; and
- b) Information submitted to the Trust Safety department in conjunction with conditions recommended is vetted and rated for compliance with the Rules and indications of risk.

24) Prior to approval of an application, the Practice Management department may conduct an assessment of an applicant's practice capacity to properly deal with accounting of trust money and property and the use of an accounting program.

25) Consideration will be given to the mandate of The Law Society as a regulator. It is in the public interest to ensure that members of The Law Society of Alberta do not pose a risk to the public related to the handling of trust money and trust property.

- 26) Consideration will be given to the risk associated with any approved arrangements under Rule 119.8 whereby “a lawyer approved as a responsible lawyer is permitted to receive trust money when (i) the trust money received will be held in the trust account of another law firm approved to operate a trust account, and (ii) the lawyer does not practise with that law firm”. The Law Society must be notified of any change to an approved arrangement to maintain the approval, including when a lawyer ceases to hold trust money with the law firm or when a lawyer begins to hold trust money with the law firm.

## Process

### Initial application – Decision by Executive Director or Manager, Trust Safety

- 27) Applicants must submit an application in the form and prescribed filing method designated by the Executive Director.
- 28) All applications will be reviewed. Reviews will assess minimum requirements and may use the additional considerations for approval listed above, as well as other relevant information.
- 29) Applications may:
- a) be approved, with or without conditions, or
  - b) be denied
- by the Executive Director or Manager, Trust Safety.
- 30) The Executive Director or Manager, Trust Safety, may require the applicant to answer any inquiries, furnish any records, and/or provide further information or documentation beyond that requested in the application form.
- 31) An applicant may appeal a decision of the Executive Director or Manager, Trust Safety, to the Trust Safety Committee.

### Appeal to Trust Safety Committee

- 32) An applicant can appeal a decision of the Executive Director or Manager, Trust Safety, regarding an application or revocation to the Trust Safety Committee.
- 33) Notice of intention to appeal must be provided in writing to the Tribunal Office no more than 14 days after notice of the decision of the Executive Director or Manager, Trust Safety, is provided to the applicant.
- 34) A panel of the Trust Safety Committee will be convened to determine the matter. The applicant must be served with a Letter of Appointment of the Trust Safety Committee panel and notice of the materials to be provided to the panel.
- 35) Panel decisions will be based on **written materials**.



36) In accordance with subrules 119.5(3) and (4),

the Trust Safety Committee panel will decide an appeal on the basis of

- (a) the materials that were before the Executive Director or Manager, Trust Safety, and
- (b) the written reasons for Executive Director or Manager, Trust Safety's decision.

and the Trust Safety Committee panel may also consider additional materials and submissions provided by the lawyer or the Executive Director

- (a) at the panel's request, or
- (b) if the panel consents to hear an application to admit fresh evidence and allows such evidence to be admitted.

37) In accordance with subrule 119.4, the panel deciding the matter shall determine the process to be followed in accordance with the Act, the Rules, the principles of natural justice and the circumstances of the matter.

38) In accordance with subrule 119.5(5),

Upon hearing an appeal, the panel may

- (a) allow or dismiss the appeal; and
- (b) add to, remove or amend any conditions imposed by the Executive Director.

39) The standard of review that the panel will apply is reasonableness.

40) The panel will provide a written decision and written reasons for the decision. These will be provided to the applicant.

41) A decision of the panel is final.

## Potential Conditions

42) Conditions that could be recommended in conjunction with approval of an application are, but are not limited to, requiring the Responsible Lawyer or law firm to :

- a) Convert to approved accounting software;
- b) File the Trust Safety Accounting Upload annually, quarterly or monthly;
- c) Submit monthly trust and general bank reconciliations, usually for a period of 3 months or 6 months;
- d) Hire qualified accounting staff;
- e) Complete education or training;
- f) Get a second signatory for the law firm trust account; and/or
- g) Pay for an annual field audit.

- 43) Compliance with conditions is mandatory. Failure to comply with conditions may result in the revocation of the approval to be a Responsible Lawyer or open, operate and maintain a Trust Account.

## Resignation of a Responsible Lawyer

- 44) In accordance with Rule 119.62, a minimum of 14 days before the date that a lawyer intends to cease to be a Responsible Lawyer, that individual must:
- (a) advise the Society, in writing, of
    - (i) their intention to cease to be the responsible lawyer, and
    - (ii) the effective date on which the lawyer will cease to be the responsible lawyer;
  - (b) prepare and file a responsible lawyer change filing, using the form and prescribed filing method approved by the Executive Director;
  - (c) if requested, prepare and file an interim reporting filing, using the form and prescribed filing method approved by the Executive Director;
  - (d) comply with any outstanding audit requirements; and
  - (e) ensure a replacement responsible lawyer is appointed by confirming
    - (i) the necessary application has been filed with and approved by the Executive Director, and
    - (ii) the necessary steps have been taken to enable the transfer of the responsible lawyer designation to another qualified member of the law firm.

- 45) An approved replacement Responsible Lawyer must be in place to assume the responsibilities of and to be accountable as the Responsible Lawyer for the law firm to continue to operate a Trust Account. If a replacement Responsible Lawyer is not in place by the responsible lawyer departure date or a date specified by the Executive Director or Manager, Trust Safety, approval to operate a Trust Account may be revoked.

## Revocation of Approval to be a Responsible Lawyer or to Operate a Trust Account

- 46) In accordance with subrule 119.61,

If the Executive Director determines that there is a lack of compliance with one or more of the clauses in subrules 119.11(6) or 119.12(6), or receives a notice pursuant to Rule 119.42, then the Executive Director may do one or more of the following:

- (a) attach conditions to the continued approval of the responsible lawyer;
- (b) revoke the approval to be a responsible lawyer;
- (c) require a new responsible lawyer to be put in place by the law firm;
- (d) attach conditions to the law firm's approval to operate a trust account;

- (e) revoke the law firm's approval to operate a trust account; or
- (f) refer the matter for review in accordance with section 53 of the Act.

47) All of the considerations for approval to be a Responsible Lawyer or to operate a trust account, noted in this document, may be considered in a decision to revoke status.