

# A Client's Guide – Understanding a Lawyer's Trust Account

## What is A Trust Account?

A trust account is a special bank account that a lawyer must maintain when the lawyer receives and holds money on behalf of the lawyer's clients or third parties.

## Why does a lawyer have a Trust Account?

A lawyer takes on the role of a fiduciary when representing a client. A fiduciary has a high level of responsibility to the person he or she represents. In this role, a lawyer may receive funds that belong to a client or third party. To reduce the risk of the lawyer using that money incorrectly, the lawyer must place it in a trust account. The lawyer does not put this type of money in his or her personal bank account.

## Key Features of the Trust Account:

- ✓ A lawyer may not commingle or mix any personal funds with funds received in the lawyer's role as a fiduciary on behalf of a client or third party. The trust account prevents commingling of different types of funds.
- ✓ A lawyer must maintain a separate client ledger for each client who has money in the lawyer's trust account. At any time, a client can ask to see his or her specific client ledger. The client ledger shows all transactions that flow in and out of the lawyer's trust account for that specific client. At a minimum, a lawyer must send each client that client's ledger once per year or as soon as all of that client's money held in the trust has been distributed.
- ✓ The NC State Bar provides comprehensive rules and regulations to guide lawyers and ensure that proper records are kept of money in a lawyer's trust account. The NC State Bar enforces these rules and regulations. A violation could result in disciplinary action by the NC State Bar. On a quarterly basis, the NC State Bar randomly selects 60 lawyers to audit and examines their trust accounts. The random audits encourage all lawyers to comply with these trust account rules and regulations.
- ✓ Lawyers cannot keep any interest earned on funds held in a general trust account. All interest earned by a trust account is remitted to the NC IOLTA program. IOLTA is a non-profit program that funds the provision of civil legal services for the indigent and sponsors other programs that further the administration of justice.

## Some Examples of When A Lawyer Uses a Trust Account:

- ✓ **Retainers:** Frequently, a lawyer will charge a retainer at the beginning of representation of a client. In many cases, this retainer acts as a security deposit to be used to pay future billings by the lawyer. For example, as a lawyer performs work for the client and generates an invoice, the lawyer will pay the invoice with the funds deposited in the trust account as a retainer. If a lawyer uses a retainer held in the trust account, there should be some agreement, usually an engagement letter that spells out how the lawyer will use it.
- ✓ **Legal Settlements:** Legal settlements, like a workers' comp award or personal injury settlement, often get paid by an insurance company directly to the lawyer on behalf of the client. The lawyer must deposit any settlements into a trust account. After the settlement money becomes available in the lawyer's trust account, the lawyer can distribute it as appropriate.
- ✓ **Real Estate Transactions:** A lawyer who performs real estate transactions will often have funds related to those transactions flow through the lawyer's trust account. In many circumstances, a lawyer will maintain a separate trust account in addition to the lawyer's general trust account for the sole purpose of handling real estate transactions. Examples of these transactions include escrow payments, loan payoffs, real estate agent commissions, home owners' insurance payment, etc.