

PAYMENT OF REGISTRATION FEES AND LAND TRANSFER TAX

Background

The Teraview Electronic Registration Systems Agreement (“the Teraview agreement”) requires an account holder to designate an account from which Teranet is authorized to withdraw registration fees and land transfer tax which are incurred when the account holder uses Teraview to submit documents for registration. The Teraview agreement refers to this account as “the electronic registration bank account” or “ERBA”.

The Teraview agreement provides that the submission of instructions for registration of documents on-line in electronic format is deemed to be an authorization to Teranet to debit predetermined sums representing registration fees and land transfer tax from the electronic registration bank account.

With the roll-out of the Teraview Electronic Registration System (“Teraview”), the Law Society had to consider payment methods which adhered to our regulatory and statutory scheme for the payment of land transfer tax and registration fees.

Designation of a trust account as the Electronic Registration Bank Account

The Law Society By-laws have always permitted the payment of registration fees and land transfer tax from a lawyer's *general* account. With the roll-out of e-reg., the Law Society was asked to consider how these payments could be made from a lawyer's *trust* account.

Designation of Mixed Trust Account

The designation of the lawyer's existing mixed trust account as the electronic registration bank account was determined not to be a viable alternative for two reasons:

- (1) The Law Society By-laws (except in exceptional circumstances) do not permit non- lawyers to transact trust funds. In electronic registration, non- lawyers would be registering documents and thereby would be transacting trust funds; and
- (2) The Law Society By-laws prohibit a third party from having unilateral access to a lawyer's trust account. In electronic registration, Teranet would have the authorization to debit the electronic registration bank account. The Law Society was faced with the task of determining a method that would both preserve a comparable degree of protection and integrity over client funds in the trust account and provide flexibility for lawyers.

In 1999, Convocation approved amendments to the By-Laws to permit the use of a special trust account for the payment of registration fees and land transfer taxes.

Special Trust Account

What is a special trust account?

The special trust account acts as a clearing account. From a banking perspective, this account resembles the mixed trust account commonly operated by lawyers. All the requirements and restrictions applicable to lawyers' trust accounts apply to this account.

This account, however, has some special features. These features are contained in sections 15 and 16 of By-Law 9.

Requirements and Restrictions of the Special Trust Account

The following are some of the requirements and restrictions of the special trust account:

Deposit of Monies

- (1) A lawyer shall only deposit into the special trust account money received in trust for a client for the purposes of paying the document registration fees and land transfer tax - section 16 (1)(b)(i) of By-Law 9;
- (2) A lawyer shall only deposit into the special trust account exact sums of money required to pay the document registration fees and land transfer tax related to the client's real estate transaction - section 16 (3), By-Law 9;
- (3) The money deposited into the special trust account must relate to a particular client(s) and his, her or their real estate transaction - section 16 (1)(b)(i), By-Law 9;

Length of Time that Monies may Remain on Deposit

- (1) Money that is deposited into the special trust account shall not be kept in the account for more than five days - section 16 (4), By-Law 9;
- (2) If the money is not properly withdrawn from the account by Teranet within five days after the day on which it is paid into the account, the lawyer shall transfer the money from that account into another trust account that is not a special trust account (eg. mixed trust account) - section 16 (4), By-Law 9;

Errors relating to Deposits

- (1) If more money than required to pay the document registration fees and land transfer tax, through inadvertence, is paid into the special trust account, the lawyer shall transfer the excess money from the special trust account into another trust account that is not a special trust account - section 16 (3), By-Law 9;

Authorization of Withdrawal by Teranet - Form 9B

- (1) A lawyer prior to authorizing Teranet to withdraw the document registration fees and land transfer tax from the special trust account, must prepare and sign an authorization form as evidence that the lawyer has authorized the transfer of funds. The authorization form must be in Form 9B - sections 15 (5) and (6), By-Law 9;

Confirmation from Teranet

- (1) A lawyer shall not authorize Teranet to withdraw document registration fees and land transfer tax from the special trust account unless Teranet agrees to provide the lawyer with a confirmation of the withdrawal. The confirmation must be received by the lawyer not later than 5 p.m. on the day immediately after the day on which the withdrawal is authorized by the lawyer - sections 15 (2) and (3), By-Law 9 .
- (2) The confirmation shall contain the amount of money withdrawn from the special trust account, the time and date that the authorization to withdraw is received by Teranet and the time and date that the confirmation is sent to the lawyer - section 15 (4), By-Law 9.

Comparison of Authorization and Confirmation

- (1) The lawyer must reconcile the information contained in the written authorization (Form 9B) to that contained in the confirmation no later than 5 p.m. on the day immediately after the day on which the confirmation is sent to the lawyer by:
 - producing a paper copy of the confirmation;
 - comparing the paper copy of the confirmation and the written authorization relating to the withdrawal (Form 9B) to verify that money was withdrawn from the special trust account by Teranet as authorized by the lawyer;
 - indicating on the paper copy of the confirmation the name of the client and the file number if the paper copy does not contain this information; and
 - signing and dating the paper copy of the confirmation if the amounts reconcile. If the amounts do not reconcile, Teranet must be contacted immediately and the error must be corrected - section 15 (7), By-Law 9.

Payment of Registration Fees and Land Transfer Tax from the Special Trust Account

Registration fees and land transfer tax may be paid from the special trust account as follows:

(1) ***Receipt of Funds From Client***

When a lawyer receives one cheque payable to the lawyer or law firm in trust from the client which comprises closing funds and money required for the payment of registration fees and land transfer tax, the cheque must be deposited into the lawyer mixed trust account. The lawyer then prepares a trust cheque drawn on his or her mixed trust account in the amount of the registration fees and land transfer tax and deposits this cheque into his or her special trust account.

If the lawyer receives a separate cheque in the amount of the registration fees and land transfer tax from the client, then the lawyer may deposit this cheque directly into the special trust account.

Monies deposited into the special trust account, however, may not be kept in this account for more than five days. If money is received more than five days prior to closing, the money must be deposited into the lawyer's mixed trust account and then transferred into the special trust account when required.

(2) ***Completion of Form 9B and Registration***

The lawyer completes and signs Form 9B and submits instructions to Teranet for registration.

(3) ***Comparison of Form 9B to Confirmation***

The lawyer prints the confirmation of registration and ensures that the amounts contained in Form 9B match those contained in the confirmation. The time requirement, contained in By-Law 9, for completion of this step must be complied with.

(4) ***Report to Client***

The lawyer reports to the client and provides the client with a bill and full explanation of the transaction of trust funds.

(Please refer to Appendix 1 - Diagram - Option 1 - Payment From New Mixed Trust Account)

General Account

Land transfer tax and registration fees may also be paid from a lawyer's general account. A lawyer may use either his or her existing general account or may set up a separate general account for this purpose. These expenses are treated like any other general client disbursements. Where a lawyer has sufficient monies in his or her trust account to the credit of the client in a particular matter and where the lawyer has properly incurred an expense on behalf of that client, the lawyer may reimburse himself or herself by withdrawing from his or her mixed trust account the amount of the expense incurred and by depositing it into his or her general account.

Procedure when paying registration fees and land transfer tax from the general account

Registration fees and land transfer tax may be paid from the general account as follows:

(1) ***Receipt of Funds from Client***

A lawyer receives the client's money and deposits the money into the lawyer's mixed trust account.

(2) ***Registration***

The lawyer submits instructions to Teranet to electronically register the documents and by so doing authorizes Teranet to debit the general account.

(3) ***Transfer from the Mixed Trust Account to the General Account***

A trust cheque is prepared to the law firm in the amount of the land transfer tax and registration fees and is deposited into the lawyer's general account. Please note that this transfer from the mixed trust account to the general account can only be done after Teranet has been authorized to withdraw funds from the general account.

(4) ***Report to the Client***

The lawyer provides the client with a report and an account. Although it would be preferable for the lawyer to send the client a disbursement account prior to reimbursing himself or herself for the expense incurred on behalf of the client, it is not a requirement.

Please note, it is permissible to prepare and deposit a single cheque payable to the lawyer or law firm for disbursements incurred by the lawyer relating to multiple transactions and multiple clients provided that the amount of the disbursement relating to each individual client is properly posted to that client ledger.

Which Option To Select - Trust Account or General Account

Both methods of payment are acceptable to the Law Society. A lawyer should select the method that best suits his or her practice. A lawyer may wish to consider the following in making a decision:

1. The firm's existing accounting procedures and systems;
2. The size of the firm (number of lawyers);
3. Whether the lawyer will be using support staff ;
4. The manner in which the lawyer conducts his or her practice;
5. The type of real estate practice that the lawyer operates - volume, types of transactions handled by the lawyer's office.
6. How easy will it be to do the banking - the distance and hours of operation of the bank.

March 6, 2001