Law Society
of Saskatchewan

Practice Resource
Disbursing the Un-disbursable:
What to Do with Unclaimed Trust Funds

Law firms occasionally hold trust funds for extended periods of time when they cannot locate the clients or other parties to whom the funds belong. A firm must maintain proper oversight, accounting, tracking and management of matters on which the firm is retaining inactive or unclaimed trust funds. It is the responsibility of the Designated Representative and members in the firm — not the bookkeeper, legal assistant, office manager or accountant — to safeguard client funds.

In certain circumstances, the *Law Society of Saskatchewan Rules* allow firms to pay unclaimed funds to the Law Society. Before paying the funds to the Law Society, **the firm must have held the trust funds for more than two years and be unable to locate the funds' owners despite reasonable efforts to do so** (Rule 1702 and section 14 of *The Legal Profession Act, 1990).*

When to Submit an Unclaimed Trust Fund Request

A request should be submitted to the Law Society if:

- the law firm has held the funds for at least two years (client ledger cards are to be included with submission); and
- the firm has made reasonable efforts to locate, identify and pay the owners of the funds.

When a firm submits an *Unclaimed Trust Funds - Payment Application Form* to the Law Society, the Law Society will review the steps taken by the firm to locate and contact the funds' owners and may request further information about the firm's efforts.

Where the Law Society determines that the information in the request is insufficient, or the law firm has not made reasonable efforts to locate the owners and distribute the funds, the Law Society will reject the request.

Reasonable Efforts

Law firms are required to make three unique attempts to locate the owners of the trust funds. Reasonable efforts may include the law firm using one or more of the following approaches to locate the owners of unclaimed trust funds:

- internet (e.g., Google) or social media (e.g., Facebook, Instagram, LinkedIn, “X” (formerly Twitter)) search
- written correspondence (e.g., mail or courier)
- email correspondence
- speak to other individuals with information (keep in mind client confidentiality)
- retain a private investigator or process server
- search public records (e.g., obituaries and death notices, court records, land titles, personal property registries, corporate registries)

Sending the returned cheque or stale-dated cheque back to the client's last known address is insufficient and does not constitute reasonable efforts.

The law firm should document the efforts taken to locate the funds' owners and submit that documentation to the Law Society with *Unclaimed Trust Funds – Payment Application Form*.

If the law firm incurs reasonable expenses in locating and contacting the funds' owner, it may render an account and apply it against the trust funds. The expenses incurred should be commensurate with the value of the funds held in trust.

Please note that if the funds are held under trust conditions or if it is unclear who the owner of the funds are and it would require legal work to determine the owner, then the application will be rejected.

Submitting a Request

Firms must submit a form to the Trust Safety department to obtain approval to remit funds to the Law Society. The appropriate request depends on the amount being remitted:

Amount Under $50

For amounts under $50, firms must submit a list that includes the name of the client, date of payment and the amount held and send it to the Trust Safety department along with a cheque for the sum of all such funds.

Amount Over $50

For amounts over $50, firms must complete the *Unclaimed Trust Funds – Payment Application Form* and send it to the Trust Safety department. In completing the form, please be prepared to provide:

- a copy of client ledger card;
- details if the funds are subject to trust conditions; and
- information on three unique attempts to contact the client over the past two years (methods involved including **proof of such efforts and responses to those efforts**).

Making a Payment

If the application is approved, the Law Society will deposit the cheque included with the submission and the funds will be held in a Law Society account until the expiry of the retention period, if unclaimed.

Retention Period

After the Law Society receives unclaimed funds from a law firm, the funds are held in a Law Society account on the owners' behalf for **ten years**. The Law Society does not attempt to locate or initiate contact with the owners of unclaimed trust funds as the law firm must make those efforts before submitting the funds to the Law Society. If no one claims the funds within the ten-year period, the Law Society remits the funds to the Law Foundation of Saskatchewan.

Making a Claim

Anyone who claims ownership of funds held by the Law Society may contact the Law Society's Trust Safety department. The claim must be submitted within ten years of the Law Society receiving the trust funds.

Please contact auditor@lawsociety.sk.ca or call 306-569-8242 with any further questions.