

# Trust Accounts and the New Rules for Real Estate Closings

By Paul Sullivan



Among other things, Illinois Supreme Court Rule 1.15 requires lawyers to set up a separate account for client funds. This rule is designed to eliminate the commingling of an attorney's operating funds with money that eventually will be distributed as part of a legal settlement or other transaction. There are three types of trust accounts: one for short-term or nominal funds, one for longer-term funds, and a third for real-estate transactions.

The rule states that nominal or short-term funds must be deposited in one or more pooled interest-bearing trust fund accounts, while long-term funds go into an account where interest can be paid to the client. The longer-term-funds accounts may also be pooled, as long as the bank has the ability through subaccounting to calculate and pay interest earned to the client. The interest earned on the nominal or short-term funds account should be sent directly to the Lawyers Trust Fund of Illinois.

Each lawyer decides whether a fund is nominal/short-term or long-term. The determination should be based on the amount of interest that can be earned, the cost of establishing the account, and the capability of the financial institution to account for and pay the interest to the client.

## Strict interpretation

The Attorney Registration and Disciplinary Commission (ARDC) interprets the rule strictly to read that an attorney may not use client funds for any purpose other than as directed by the client. Because of this strict reading, an attorney may only distribute client funds after they have been deposited and have cleared the trust account. Thus, an attorney who writes a check before the

*Now lawyers can conduct real estate closings and distribute checks before the buyer's check has cleared, putting them on a level field with title companies and lenders. But they have to follow the letter of recently amended Rule 1.15.*

funds clear is actually spending another client's money, and if the deposited check bounced, the attorney would be in violation of Rule 1.15.

Prior to October 1, 1998, this rule actually prohibited lawyers from closing real estate transactions according to standard industry practice in many parts of the state. The standard practice is that the closer receives a check from the buyers, then gives out checks to the recipient parties before the incoming funds actually clear the bank. Because

of the rule, attorneys were effectively prevented from closing real estate deals as efficiently as commercial title companies or lenders, who faced no ARDC sanction for their practices. (Note, however, that there is no public record of an attorney having been sanctioned for such conduct.)

## The new rule

The rule was meant to keep lawyers from misusing funds, not from performing an essential service. As a result, the ISBA's Real Estate Law Section and its Professional Conduct Committee proposed to the Illinois Supreme Court that the reasonable practice of distributing checks prior to their clearing in a real estate matter should be allowed.

On October 1, 1998 the Supreme Court amended Rule 1.15 of the Rules of Professional Conduct to add a section allowing attorneys conducting real estate closings to distribute checks before the buyer's check has cleared if the following conditions are met.

1. The attorney must establish a separate real estate funds account maintained solely for real estate closing funds and where receipts from real estate transactions are deposited.

2. The financial institution must agree in writing to honor all disbursements drawn on the real estate account up to a specified amount.

3. Only the following forms of deposit are allowed: a certified check; a check issued by the state of Illinois or political subdivision; a check issued by United States government; a cashiers check, tellers check, or bank money order; an official bank check drawn on or issued by a financial institution insured by FDIC or a comparable agency of the federal or state government; a check drawn on the trust account of any lawyer or real estate broker who is

licensed under the laws of any state; personal check(s) not exceeding \$5,000 per closing if the lawyer has prudent and reasonable grounds to believe the check won't bounce; a check drawn on an account or issued by a lender approved by HUD; a check from a title insurance company licensed in the state of Illinois; a check from an agent of a title insurance company, provided the company guarantees the funds of the agent. If for any reason the funds are not collected, the lawyer must reimburse the trust account.

### **Lawyers' role preserved**

This change will help preserve the lawyer's role in real estate transactions. The ISBA argued that attorneys should be encouraged to work as disbursing agents to keep them present in real-estate transactions because of the increasing competition from lenders, title insurers, and brokers who ultimately offer less service to the buyers.

Lawyers' obligation to preserve and protect their clients' property is strict and any violation embarrasses the profession as a whole. Because of this the ARDC is uncompromising in upholding the integrity of Supreme Court Rule 1.15. The change in the real estate portion of the rule does not undermine the rule as a whole but rather specifies "that these longstanding reasonable practices are not what the rule is intended to prohibit."  $\Delta$

---

*Paul Sullivan is the administrator of Quinn Johnston Henderson & Pretorius with offices in Peoria and Springfield. He is a charter member and immediate past president of the Central Illinois Chapter of the Association of Legal Administrators and a member of the ISBA Law Office Economics Section Council. For more practice management tips read The Bottom Line, the LOE section newsletter (available free of charge to LOE section members).*