

1995—No. 495

LEGAL PROFESSION ACT 1987—REGULATION

(Relating to the keeping of trust money and controlled money)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Legal Profession Act 1987, has been pleased to make the Regulation set forth hereunder.

J. W. Shaw
Attorney General.

Commencement

1. This Regulation commences on 1 September 1995.

Amendments

2. The Legal Profession Regulation 1994 is amended:
(a) by renumbering clauses 27-41 as clauses 69-83;
(b) by inserting after Part 7 the following Part:

PART 7A—TRUST ACCOUNTS AND CONTROLLED MONEY

Division 1—General

Definitions

27. (1) In this Part:

“associate”, in relation to a solicitor, has the same meaning as it has in Part 6 of the Act;

“bill of costs” has the same meaning as it has in section 173 (1) of the Act;

“computer control records” means the records required to be kept under clause 29;

“controlled money” has the same meaning as it has in section 61 (8) of the Act;

“controlled money records” means a Controlled Money Register maintained under clause 43, a controlled money ledger maintained under clause 44, a listing of accounts under clause 45 and any pass books, statements (including duplicate copies of statements of account kept under clause 31 (7)) or other documents relating to controlled money;

“Investments Register” means the register kept under Division 5;

“trust money” has the same meaning as it has in section 61 (8) of the Act;

“trust records” includes records of the following:

- (a) original receipts (if not delivered to the person from whom trust money is received, or if cancelled) and duplicate receipts;
- (b) bank deposits;
- (c) cheques;
- (d) withdrawals by electronic funds transfer;
- (e) bank statements;
- (f) daily receipt and cheque transactions;
- (g) ledger account journal transfers and adjustments;
- (h) ledger transactions;
- (i) ledger trial balance statements;
- (j) monthly bank reconciliations;
- (k) duplicate copies of statements of account kept under clause 31 (7);
- (l) authorities obtained under clause 55 (1);

“visible form” means any record of information by means of which the information can be produced on demand in permanent legible form in the English language.

(2) A reference in this Part to money received by a solicitor has the same meaning as it has in section 60 (4) of the Act.

(3) A reference in this Part to an account or deposit of controlled money includes a reference to:

- (a) an account established in respect of controlled money at a bank, building society or other financial institution; and
- (b) an interest bearing deposit or other deposit of controlled money.

Keeping of records

28. (1) A solicitor must maintain, or cause to be maintained, in visible form at an office at which the solicitor's practice is conducted and of which the Law Society has been notified (pursuant to clause 6 (1) (b) or 12):

- (a) trust records and controlled money records; and
- (b) if those records are maintained by means of a computer system-computer control records.

(2) A solicitor may, at any other office at which the solicitor's practice is conducted and of which the Law Society has been notified (pursuant to clause 6 (1) (b) or 12), maintain, or cause to be maintained, for that office in visible form separate records of the kind referred to in subclause (1).

(3) A solicitor who maintains records under subclause (2) must, within 21 days after the end of each named month:

- (a) compile with the records kept under subclause (1) the original, or a true copy, of each trial balance statement prepared by the solicitor in accordance with clauses 39 and 45 for that month; and
- (b) maintain a monthly summary of the total of trust money and controlled money disclosed in the trial balance statements.

(4) A solicitor who has maintained, or caused to be maintained, a record, statement or summary referred to in subclause (1), (2) or (3) or who has lawfully acquired possession of any such record, statement or summary must retain it for not less than 6 years after it is made.

(5) However, subclause (4) does not apply to the solicitor if the record, statement or summary has passed to the lawful possession of another solicitor as a consequence of the disposal of the solicitor's practice.

Computer systems control

29. (1) Without limiting any other provision of this Part, if a solicitor maintains trust records or controlled money records by means of a computer system, the solicitor must comply with this clause in relation to the records.

(2) The solicitor must maintain a record, compiled in chronological sequence, of all changes (by creation, amendment or deletion) to any of the following information:

- (a) name of person for whom or on whose behalf trust money or controlled money is held;
- (b) address of the person;
- (c) matter number;
- (d) matter description;
- (e) identification number of the person;
- (f) bank account number.

(3) The solicitor must ensure in respect of any journal that:

- (a) entries balance before entries are made to the ledger; and
- (b) any journal reference numbers are allocated in sequence under program control.

(4) The solicitor must ensure in respect of any ledger that no program is capable of accepting the entry of a transaction resulting in a debit balance to an account unless a contemporaneous record of the transaction is made in such a manner as to enable the production in permanent legible form, on demand, of a separate chronological report of all such occurrences.

(5) The solicitor must ensure that no program enables the deletion of a ledger account unless:

- (a) a permanent record of the account, as it was immediately before its deletion, is retained in visible form; and
- (b) in the case of a trust ledger account, the balance of the account is zero.

(6) The solicitor must ensure that any entry in a record produced in visible form appears in chronological sequence.

(7) The solicitor must ensure that a report, or each page or entry in a report, is numbered sequentially under program control in a manner that enables the completeness of the records required to be kept by this Part to be conveniently verified.

(8) The solicitor must ensure that no amendment to the particulars of a transaction already recorded can be made otherwise than by a separate transaction effecting the amendment.

(9) The solicitor must ensure that each program requires input in each field of a data entry screen that is intended to receive information required by this Part to be included in trust records or controlled money records.

(10) The solicitor must ensure that:

- (a) a back-up copy of all records to which this clause refers is made not less frequently than once each month; and
- (b) the most recent back-up copy is kept in a separate location such that any incident that could adversely affect the records would not also affect the back-up copy.

Money in transit

30. (1) A solicitor who is authorised or instructed by another person, from whom or on whose behalf the solicitor has received money, to pay or deliver the money to a third party (not an associate of the solicitor) free of the solicitor's control must comply with subclause (2).

(2) The solicitor complies with this subclause if the money is paid or delivered:

- (a) before the end of the next banking day or, if that is not practicable, as soon as practicable after the next banking day; or
- (b) no later than the day allowed by the solicitor's authority or instructions if it is a day that is later than the day allowed under paragraph (a).

Statements of account

31. (1) A solicitor who is required to maintain a trust ledger or a controlled money ledger must deliver to each person for whom, or on whose behalf, money is held or controlled by the solicitor, a separate statement of account in respect of each ledger account maintained for the person.

(2) A statement of account is to contain particulars of the following:

- (a) the money received and held or controlled by the solicitor for or on behalf of the person;
- (b) the disbursement of the money;
- (c) the remaining balance (if any) of the money.

(3) A statement of account is to be delivered as soon as practicable after:

- (a) completion of the matter to which the ledger account relates; or
- (b) the solicitor receives a written request for the statement from the person for whom, or on whose behalf, the money is held or controlled; or
- (c) except as provided by subclause (4), 30 June in each year.

(4) A solicitor is not required to furnish a statement of account under subclause (3) (c) in respect of a ledger account if, at 30 June:

- (a) the ledger account has been open for less than 6 months; or
- (b) the balance of the ledger account is zero and no transaction affecting the account has taken place within the last preceding 12 months; or
- (c) a statement of account has been delivered within the last preceding 12 months and there has been no subsequent transaction affecting the account.

(5) If a statement of account has been delivered in respect of the same ledger account within the preceding 12 months, the opening balance of the new statement of account may be the closing balance of the previous statement of account.

(6) A statement of account is to be delivered in the same way in which a bill of costs may be given to a person under section 195 of the Act.

(7) A solicitor must retain a copy of a statement of account delivered under this clause.

Receipt and withdrawal of money for costs and disbursements

32. (1) For the purposes of section 61 (3) (b) of the Act, the prescribed procedure to be followed by a solicitor for withdrawing or receiving, from trust money or controlled money:

- (a) reimbursement for disbursements paid by the solicitor; or
- (b) money for disbursements to be paid by the solicitor; or
- (c) money due, or to accrue due, to the solicitor for costs, is the procedure set out in this clause.

(2) A solicitor who has disclosed information about the costs of legal services in accordance with section 175 of the Act to a person from whom the solicitor has received trust money or

controlled money, or who can reasonably claim, in terms of section 180 of the Act, that the disclosure was not required because, in the circumstances, it was not reasonably practicable, may withdraw or receive, from that money, money for a purpose referred to in subclause (1) if any of the following circumstances apply:

- (a) the solicitor has delivered to the person a bill of costs in accordance with Part 11 of the Act and the person has authorised the withdrawal or receipt; or
- (b) the solicitor has delivered to the person such a bill of costs together with written notice that, unless the person objects, the solicitor intends to withdraw the money and to apply it towards payment of the bill at the expiration of 30 days after the delivery, and that period has expired without an objection being made to the solicitor; or
- (c) an objection having been made, neither the person nor the solicitor has referred the bill of costs for assessment within the time limited by section 192 (1) or 201 (2) of the Act and at least 30 days have passed since the objection was made to the solicitor; or
- (d) a determination of the solicitor's costs has been made under Part 11, a certificate setting out the determination has been served on the person and the time limited for an appeal against the determination has expired.

(3) In any case other than a case referred to in subclause (2), a solicitor must not withdraw or receive, from trust money or controlled money, money for a purpose referred to in subclause (1) unless a determination of the solicitor's costs has been made under Part 11, a certificate setting out the determination has been served on the person and the time limited for an appeal against the determination has expired.

Division 2—Trust Accounts

Deposits

33. (1) A solicitor who receives trust money must pay it into his or her trust bank account:

- (a) before the end of the next banking day after the day of its receipt, if that is practicable; or
- (b) if that is not practicable, as soon as practicable after that day.

(2) A solicitor who makes a deposit to his or her trust bank account must ensure that:

- (a) a bank deposit record is produced to the bank at the time the deposit is made; and
- (b) the particulars referred to in subclause (3) are then entered in the record.

(3) A bank deposit record must include provision for the entry of particulars of the following:

- (a) the date of the deposit;
- (b) the amount of the deposit;
- (c) whether the deposit consists of cheques, notes or coins; and
- (d) in the case of cheques, the name of the drawer, bank and branch and the amount of each cheque.

(4) A bank deposit record is not required in the case of money credited directly to a bank account electronically or otherwise.

Receipts

34. (1) A solicitor must, as soon as practicable after receipt of trust money (not being a transfer by journal entry), make out, or cause to be made out, a receipt that complies with subclause (2).

(2) Receipts must be in duplicate, must be machine numbered in series, must contain the name of the solicitor's firm and the expression "Trust Account" or "Trust A/c" and must include provision for, and on being made out must include the following:

- (a) the date of the receipt;
- (b) the amount of money received and the form in which it is received;
- (c) the name of the person from whom, and of the person on whose behalf, the money is received;
- (d) details identifying the ledger account to be credited;
- (e) particulars sufficient to identify the purpose for which the money is received.

(3) If the solicitor maintains an accounting system that (at the same time as that at which, and in the same operation as that in which, a receipt is made out) causes the particulars required by subclause (2) to be entered in the cash book required to be kept under clause 36, the entry of the particulars in the cash book is a sufficient compliance with the requirement of subclause (2) for a duplicate receipt.

(4) A solicitor must issue receipts in the numerical order of the series to which they belong.

(5) The original of a receipt is to be delivered, on demand, to the person from whom the trust money is received.

(6) A solicitor must retain the following:

- (a) any original receipt that is not delivered to the person from whom the trust money is received;
- (b) any original receipt that is cancelled after issue;
- (c) duplicate receipts.

Payment of trust money by cheque or electronic funds transfer

35. (1) Trust money must not be drawn from a solicitor's trust bank account otherwise than by cheque or electronic funds transfer in accordance with this clause.

(2) A cheque must:

- (a) be machine numbered in series; and
- (b) include a crossing that has effect as a direction to the drawee bank not to pay the cheque otherwise than to a bank; and
- (c) be payable to a named payee and not drawn to cash; and
- (d) contain the name of the solicitor's firm and the expression "Trust Account" or "Trust A/c"; and
- (e) be signed by the solicitor, a partner of the solicitor or 2 persons authorised under clause 40 to sign the cheque.

(3) A solicitor is to draw cheques in the numerical order of the series to which they belong and, in respect of each cheque drawn, must make and retain a record of the following:

- (a) the number and date of the cheque, the name of the payee and the amount for which the cheque is drawn;
- (b) details identifying the ledger account to be debited and the name of the person on whose behalf the cheque is drawn;
- (c) particulars of the purpose for which the cheque is drawn.

(4) If the solicitor maintains an accounting system that (at the same time as that at which, and in the same operation as that in which, a cheque is drawn) causes the particulars required by subclause (3) to be entered directly in the cash book required to be kept under clause 36, the entry of the particulars in the cash book is a sufficient compliance with subclause (3).

(5) An electronic funds transfer is to be effected by, or under the direction or with the authority of:

- (a) the solicitor; or
- (b) a partner of the solicitor; or
- (c) 2 persons authorised under clause 40 to effect an electronic funds transfer from the trust account concerned.

(6) The solicitor must ensure that, for each electronic funds transfer, a record is kept of the following particulars:

- (a) the name of the person effecting the transfer and, if the transfer is effected under the direction or with the authority of some other person, of the person under whose direction or with whose authority the transfer is effected;
- (b) details identifying the ledger account debited and name of the person on whose behalf the amount is transferred;
- (c) brief particulars of the subject-matter and purpose for which the money is transferred;
- (d) the reference number or other means of identification of the transfer;
- (e) the name or style of the bank account to which the money is paid, its number and the identifying numbers of the receiving bank and its branch;
- (f) the date of the transfer and the amount transferred.

Daily receipt and payment transactions

36. (1) A solicitor must keep a record of daily receipt and payment transactions.

(2) The records must be in the nature of a cash book the pages of which are consecutively numbered and on the respective pages of which are shown the consecutive numbers of receipts issued or cancelled or cheques drawn or cancelled or, in the case of money received or disbursed by means of electronic funds transfer, the reference number or other means of identification of the transfer.

(3) The solicitor must:

- (a) in respect of receipt of money—enter in the cash book the particulars required by clause 34 (2) to be entered in a receipt for the money together with the date of the deposit of the money to the trust bank account and the amount of the deposit; and

- (b) in respect of a payment of money—enter in the cash book the particulars required by clause 35 (3) to be recorded for a cheque or required by clause 35 (6) (b)–(f) to be recorded for an electronic funds transfer.
- (4) At the end of each named month, the solicitor must balance the cash book and:
 - (a) carry forward the balance to the commencement of the next month; or
 - (b) carry forward the balance to a ledger account, entitled the “Cash Book Control Account”, provided for the purpose.
- (5) The solicitor must, at the end of each named month, prepare a statement reconciling the balance of his or her trust bank account with the balance of the related cash book.

Journal

37. (1) A solicitor must record in a journal, maintained exclusively for his or her trust account, all transfers between accounts in the trust account ledger that are not effected by cheque.

- (2) The recording must include the following:
 - (a) the date of the transfer;
 - (b) the amount transferred to and from each ledger account;
 - (c) the names of all ledger accounts to be debited or credited;
 - (d) the relevant reference number or other identification;
 - (e) sufficient particulars to identify the transfer and the reason for the transfer.

(3) The pages of the journal are to be numbered consecutively, and the record of each transfer, when entered in the journal, is to be numbered consecutively.

Ledger

38. (1) A solicitor must maintain a separate ledger account for each matter for each person for whom, or on whose behalf, trust money is held.

(2) The ledger account must include the name of the person, a reference number or other identification and particulars of each transaction affecting trust money in relation to the matter, including the following:

- (a) the date of the transaction;
- (b) a description of the transaction;

(c) particulars sufficient to identify the trust record originating the transaction;

(d) the amount of the transaction;

(e) the resulting current balance of account arising from the transaction.

(3) The name of the person entered in the ledger account must be the name that the person claims is the person's name or the name that the person usually uses in the conduct of his or her business or professional affairs and must not be a name that the solicitor knows:

(a) is false; or

(b) is calculated to prevent the identification of the person for whom, or on whose behalf, the money credited to the account is held.

(4) A solicitor must maintain in a separate account in his or her trust ledger for any trust money deposited by the solicitor with the Law Society in compliance with section 64 of the Act and the solicitor must record in the account particulars of all transactions affecting it.

Ledger trial balance statement

39. (1) A solicitor must, within 21 days after the end of each named month, prepare a trial balance statement disclosing each account in his or her trust ledger (including an account for any trust money deposited by the solicitor with the Law Society in compliance with section 64 of the Act), effective as at the end of that month.

(2) However, a solicitor is not required to disclose in the trial balance an entry of account particulars in respect of any account that has a zero balance at the end of the month concerned.

(3) The trial balance statement must:

(a) state the month to which it refers and the date of its preparation; and

(b) list each ledger account at the end of that month by stating the name of the person for whom the account is maintained, the reference number or other identification and the balance of the account at the end of that month; and

(c) show the total of the ledger account balances at the end of that month; and

(d) show a comparison between that total and the balance in the cash book reconciled with the balance in the trust bank account as required by clause 36 (5).

Delegation

40. (1) A solicitor who complies with the requirements of this clause may delegate his or her authority to sign a cheque drawn on, or to effect an electronic funds transfer from, the trust bank account maintained by the solicitor or his or her firm under section 61 of the Act:

(a) if the solicitor is practising on his or her own account and is unable to sign the cheque or effect the transfer with due expedition because of his or her illness, injury or absence for good reason; or

(b) if the solicitor is practising in partnership and neither the solicitor nor any partner of the solicitor is able to sign the cheque or effect the transfer with due expedition because of the illness, injury or absence for good reason of the solicitor and any partner of the solicitor.

(2) The delegation must be in writing signed by the solicitor, and may be to any 2 of the following persons only:

(a) a solicitor holding a current practising certificate;

(b) a registered company auditor within the meaning of the Corporations Law;

(c) the manager of the branch of the bank at which the solicitor's trust bank account is maintained;

(d) a person approved of or nominated by the Law Society Council for the purposes of the delegation before the delegation is made.

(3) The delegation may authorise the signing of a cheque or the effecting of an electronic funds transfer by 2 delegates only.

(4) A solicitor must give the Law Society written notice of the delegation immediately it is made.

(5) A delegation ceases to have effect if the Law Society Council resolves that the delegation should be cancelled and serves notice of the resolution on the delegates and the branch of the bank at which the trust bank account, the subject of the delegation, is maintained.

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(6) Sufficient service of the resolution is effected on the delegates if a copy of the resolution is delivered to the office that the delegating solicitor has notified the Law Society is the principal place at which the solicitor carries on business.

Account in the name of a solicitor

41. (1) A solicitor may maintain in his or her trust ledger an account in his or her name:

- (a) for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the solicitor for costs and disbursements; and
- (b) in respect of money in which the solicitor has a personal and beneficial interest as a vendor, purchaser, mortgagor, mortgagee, lessor, lessee or other similar capacity.

(2) A solicitor must withdraw the money held in an account under subclause (1) (a) not later than 7 days after the day on which the money is transferred to the account.

(3) A solicitor must withdraw money held in an account under subclause (1) (b):

- (a) at the conclusion of any matter to which the money relates; or
- (b) if it comprises rent, interest, instalments of principal or other periodic payment—not later than 6 months after the date on which the money was credited to the account.

Division 3—Controlled Money**Notice to person on whose behalf controlled money is received**

42. (1) A solicitor must, as soon as practicable after receiving controlled money, issue to the person on whose behalf it was received, a notice that is in or to the effect of Part 1 of Form 4 and contains the particulars required to complete the Form.

(2) If the solicitor, as authorised or instructed by the person, pays any controlled money to a third party while continuing to control the money directly or through an associate, the solicitor must, as soon as practicable after the payment, complete in duplicate, and issue to the person the original of, a notice that is in or to the effect of Part 2 of Form 4 and contains the particulars required to complete the Form.

(3) A notice under subclause (2) must, if appropriate and practicable, be included as part of and be issued at the same time as the notice under subclause (1).

(4) If:

- (a) a solicitor pays controlled money to a third party as referred to in subclause (2); and
- (b) while the solicitor continues to control the money directly or through an associate, a change occurs in the arrangements under which the money is held or deposited,

the solicitor must, as soon as practicable after the change, complete in duplicate, and issue to each person on whose behalf the controlled money was received, the original of a notice in or to the effect of Form 4 containing such of the particulars specified in Parts 1 and 2 of the Form as are applicable.

(5) Forms of notice kept by a solicitor for issue under this clause:

- (a) must comprise both Parts 1 and 2 of Form 4; and
- (b) must be in duplicate; and
- (c) must be machine numbered in series.

(6) A solicitor need not issue to a person a notice under subclause (1) or (2) in respect of money received by way of interest or for deposit if:

- (a) the money is, as soon as practicable, credited to, or deposited in, an account for which an initial notice has been issued and for which a ledger account has been opened; and
- (b) the particulars of the money received are recorded in the ledger account as soon as practicable.

Controlled Money Register

43. A solicitor must maintain a Controlled Money Register comprising a compilation in numerical sequence of the duplicate copies of the notices issued under clause 42.

Controlled money ledger

44. (1) A solicitor must, for each person on whose behalf controlled money is received and in accordance with this clause, open and maintain a separate ledger account for each account or deposit of controlled money received on behalf of, or held for, the person.

(2) The ledger account must bear the name of the person and any relevant reference number or other identification.

(3) If the controlled money received is a specific sum, the initial entry to the ledger account must record:

- (a) the amount of money, its source and the date of receipt; and
- (b) the date and amount of any payment or deposit from the money to or with a third party, the identity of the third party and the terms on which the money was so paid or deposited.

(4) The entry made under subclause (3) (b) must include particulars of the following:

- (a) the term and duration of the deposit;
- (b) the rate of interest;
- (c) the date from which the interest is calculated and the dates on which interest is payable;
- (d) a description of the security (if any) held for the deposit.

(5) If controlled money is comprised in one or more accounts or deposits in respect of which a solicitor or an associate has a power or authority exercisable independently of the person on whose behalf the solicitor has received the controlled money, or jointly and severally with the person or a nominee of the person, the initial entry to the ledger account must record particulars of the nature, description and date of the power or authority and particulars of the accounts or deposits including:

- (a) the name and address of the person holding each account or deposit; and
- (b) the name in which each account or deposit is maintained and any relevant identifying number; and
- (c) if applicable, the particulars required by subclause (4).

(6) All transactions affecting the receipt or disbursement of controlled money by the solicitor or an associate must be recorded in the ledger by the entry in the relevant account of the following:

- (a) the date of each transaction;
- (b) a description of each transaction;
- (c) a reference to the source of each transaction;
- (d) the amount of each transaction;
- (e) if it is ascertainable from the solicitor's records, the current balance of the account.

(7) If controlled money is deposited with a person who issues to the solicitor a document of record or pass-book that remains in the possession of the solicitor and in which are recorded all transactions affecting the money in a manner that, together with other written records of the solicitor, shows the required particulars of the transactions, those documents collectively may constitute a ledger account for the purposes of this clause.

Listing of accounts

45. (1) A solicitor must, within 21 days after the end of each named month, prepare a statement in the nature of a trial balance statement that relates to the ledger accounts required to be maintained under clause 44 and is effective at the end of that month.

(2) The statement must:

- (a) state the period to which it refers and the date of preparation; and
- (b) list each ledger account by the name of the person on whose behalf the controlled money is received, the reference number or other identification and, in the case of an account relating to a specific amount over which the solicitor has sole control, the balance of account at the end of the month.

(3) If controlled money is deposited with a person who issues periodical statements of account, those statements:

- (a) must be maintained with the trial balance statements prepared for the periods to which they relate; and
- (b) form part of the solicitor's controlled money records.

Payment of controlled money by cheque

46. Controlled money must not be withdrawn or received from any account in which it is held or deposited otherwise than by cheque or electronic funds transfer.

Delegation

47. Clause 40 applies in relation to an account in which controlled money is held or deposited by a solicitor in the same way as it applies in relation to a trust bank account maintained by the solicitor.

Division 4—Accountant's report**Accountant's report to be lodged with Law Society**

48. (1) If a solicitor received, held or disbursed money to which section 61 (1) of the Act applies at any time during the year ending on 31 March that last preceded an application by the solicitor for the issue or renewal of a practising certificate, the solicitor must ensure that, on or before the making of the application, there is lodged with the Law Society an accountant's report in respect of:

- (a) each practice conducted by the solicitor as a sole practitioner; and
- (b) each firm of which the solicitor was a partner, at any time during that year.

(2) The accountant's report is to be in or to the effect of Form 5, and is to be prepared by a registered company auditor within the meaning of the Corporations Law.

(3) If the Law Society Council so requires, a solicitor must:

- (a) obtain, and pay for, another report that complies with subclause (2); and
- (b) forthwith, OR its receipt, lodge the report with the Law Society.

(4) The Law Society Council may require the report under subclause (3) to be made by a registered company auditor nominated by the Law Society Council.

(5) It is a sufficient compliance with this clause by a solicitor practising in partnership if one accountant's report is lodged for the partnership.

Check list to be provided

49. The registered company auditor who makes a report under clause 48 must, at the time of making the report, complete and leave in the custody of the solicitor a check list in a form approved by the Law Society Council.

Duties regarding check list

50. A solicitor must:

- (a) retain a completed check list provided under clause 49 with his or her trust account records and controlled money records for the same period of time as those records are required to be retained; and

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(b) permit a trust account inspector of the Law Society to inspect the check list at any time.

Adverse or qualified reports

51. A registered company auditor who makes an adverse or qualified report under clause 48 must, within 7 days after completing the report, forward a copy to the Chief Trust Account Inspector of the Law Society.

Cessation of practice or change of partnership

52. (1) This clause applies to a solicitor who:

- (a) ceases to practice as a solicitor; or
- (b) enters into partnership with another solicitor; or
- (c) is a party to a dissolution or change of partnership.

(2) If a solicitor to whom this clause applies:

- (a) ceases to operate a trust account and the trust account is not continued; or
- (b) ceases to hold or control controlled money and the controlled money is not held or controlled by a former partner who is, or the former partners of the solicitor who are, continuing to practise,

the solicitor must, within the next 21 days, lodge with the Law Society a report by a registered company auditor that complies with clause 48 in respect of all trust money and controlled money held or controlled by the solicitor on behalf of another person.

(3) The report must be lodged in addition to the notification of change of practice under clause 12.

Information to be provided to Law Society Council

53. A solicitor must, at such time as the Law Society Council determines, furnish to the Law Society such information as the Law Society requires with respect to the following:

- (a) the amount of trust money or controlled money held or controlled by the solicitor;
- (b) the accounts or institutions in which the money is held;
- (c) the solicitor's records and books of account that relate to the money.

Division 5—Mortgage transactions**Definitions**

54. (1) In this Division:

“borrower” means a person by whom money is payable or repayable under a mortgage;

“contributor” means a person who lends, or proposes to lend, money on the security of a contributory mortgage arranged by a solicitor;

“contributory mortgage” means a mortgage to secure money lent by 2 or more contributors as tenants in common and held in the name of a nominee for or on behalf of those contributors;

“lender” means the person to whom money is payable or repayable under a mortgage;

“mortgage” means any instrument under which an interest in real property is charged or encumbered as security for the payment or repayment of money;

“nominee” means a person who holds a mortgage, as mortgagee, as a trustee for or on behalf of one or more persons;

“solicitor’s nominee company” means a corporation of which each member and each director is a solicitor, a partner of a solicitor or a person approved by the Law Society Council.

(2) For the purposes of this Division, 2 or more persons who are lenders on a joint account are to be regarded as one person.

Authority to secure by mortgage

55. (1) If a loan is to be, or is, secured by a mortgage and a solicitor acts for the mortgagee, the solicitor must not, whether alone or by an associate or otherwise, cause or permit the application to the loan of:

- (a) any money to which section 61 (1) of the Act applies; or
- (b) any money that is advanced, or to be advanced on the advice of the solicitor or an associate,

unless the solicitor has previously obtained from the person for whom or on whose behalf, the money is to be applied an authority in writing that is in or to the effect of Form 6 or 7.

(2) Subclause (1) does not apply if the money is applied pursuant to the written instructions of a lender who has nominated the borrower and specified the security, its priority and the terms of the loan independently of any advice given by the solicitor to the lender.

(3) A solicitor who is the attorney under power of a lender must not:

- (a) apply the funds of the lender to a loan not authorised in accordance with subclause (1); or
- (b) execute, on the lender's behalf, an authority referred to in subclause (1),

unless subclause (4) is complied with.

(4) This subclause is complied with only if:

- (a) the instrument granting the power was executed before 1 January 1987; or
- (b) the instrument granting the power contains a specific power enabling the solicitor to make the loan to which the authority relates; or
- (c) at the time the instrument granting the power was executed, the signature of the donor was witnessed by a solicitor instructed independently of the donee and that solicitor then certified in writing on the instrument that he or she had explained to the donor the donee's power of investment and that the donee had a discretion to choose the security and the terms for any investment.

(5) A solicitor who obtains the execution, by or on behalf of a lender, of an authority in or to the effect of Form 7 must not delete any of the contents of the Form (except if an alternative is provided in the Form) but may vary the Form if:

- (a) the variations and the prescribed contents are contained in legible form in the authority; and
- (b) the lender's signature to the authority is witnessed by a solicitor instructed independently of the solicitor to whom the authority is given; and
- (c) the solicitor attesting the signature certifies in writing on the authority that he or she explained to the lender executing the authority the nature of each variation.

Epitome of mortgage and Investments Register

56. (1) A solicitor who is required to obtain from a lender or contributor an authority under clause 55 must comply with subclause (2) within 21 days after the date on which the first advance under the mortgage concerned is made.

(2) This subclause is complied with if the solicitor:

- (a) prepares and issues to each lender and contributor whose money has been lent, or will be lent, under the mortgage a notice in respect of the money and its application that is in or to the effect of Form 8; and
- (b) includes a copy of the notice in an Investments Register kept by the solicitor.

Mortgage held by nominee

57. (1) A solicitor must not, whether alone or by an associate or otherwise, in a case to which clause 55 (1) applies, cause or permit the application to the loan of any money referred to in that subclause if the loan is to be secured by a mortgage to be held by a nominee unless the nominee is one of the following:

- (a) the solicitor;
- (b) one or more of the solicitor's partners, with or without the solicitor;
- (c) a solicitor's nominee company maintained by the solicitor and the solicitor's partners (if any) in the manner prescribed by clause 58.

Solicitor's nominee company

58. (1) If a solicitor's nominee company is a nominee, a solicitor who is a member or director of the company must not, while the company holds a mortgage for another person:

- (a) cause or permit any person to become a member or director of the company unless the person is a partner of the solicitor or, in the case of a sole practitioner, a person who is approved by the Law Society Council, holds only 1 share in the company and holds the share in trust for the solicitor as beneficial owner; or
- (b) cause or permit the company to act otherwise than as a nominee company holding mortgages, or an interest in mortgages, on trust for the beneficial owners; or

- (c) receive, or cause or permit the company to receive, any direct or indirect financial benefit from its activities other than any professional costs properly chargeable by the solicitor in respect of a mortgage held by the company; or
- (d) cause or permit the articles of association of the company, while any of its members or directors are persons other than the solicitor or his or her partner or partners, to contain a provision that:
 - (i) denies the solicitor a casting vote at a meeting of directors; or
 - (ii) entitles a director to appoint an alternate director or attorney to act in the place of the director; or
 - (iii) entitles a shareholder to appoint a proxy other than the solicitor.

Dealing with money through trust account

59. (1) A solicitor who has obtained from a lender or a contributor an authority under clause 55 (1) in respect of a mortgage to be held by a nominee must apply the money the subject of the authority only in accordance with this clause.

(2) The money must first be credited to an account in the name of the lender or contributor established in the solicitor's trust account ledger.

(3) Before any money is advanced under the mortgage to be held by the nominee, the solicitor must:

- (a) establish in his or her trust account ledger an account in respect of the mortgage in the name of the nominee; and
- (b) transfer to that account from the accounts of the lender, or of the contributors in the case of a contributory mortgage, the money to be lent.

(4) A separate account in the solicitor's trust account ledger must be established in the name of the nominee in respect of each mortgage loan held, or intended to be held, in the name of the nominee.

(5) All payments under the mortgage in respect of principal and interest are to be received by the solicitor unless, in the case of a sole lender under a mortgage or that of a contributory mortgage in which the number of contributors does not exceed 4, the solicitor

has been instructed by the lender or by the contributors that the borrower is to pay the lender or the contributors directly or as the lender or the contributors direct.

(6) Payments received under subclause (5) must be paid to the credit of the nominee's account in the trust account ledger relating to the mortgage and, as soon as is practicable, the amount credited to the nominee's account must be transferred:

- (a) to the lender's account in the solicitor's trust account ledger; or
- (b) in the case of a contributory mortgage, to the account of the contributors in the solicitor's trust account ledger in the proportions to which the contributors are respectively entitled.

Notice of variation of mortgage

60. A solicitor must, within 21 days after the day on which a variation of a mortgage referred to in clause 56 is executed by the borrower:

- (a) give written notice of the particulars of the variation to each lender or contributor; and
- (b) record the particulars of the variation in the solicitor's Investments Register.

Additional or substituted contributors

61. (1) A solicitor must, in respect of a contributory mortgage to which clause 56 applies:

- (a) issue the notice required to be issued by that clause to each person who becomes a contributor in addition to, or in substitution for, any other contributor to the loan secured by the mortgage; and
- (b) include a copy of the notice in the solicitor's Investment Register,

within 21 days after the day on which the new contributor's money is advanced.

(2) The requirements of this Division apply to a new contributor to a contributory mortgage and to money advanced by a new contributor in the same way as they apply to the original contributors to the contributory mortgage and to money advanced by the original contributors.

Declaration of trust

62. (1) A solicitor to whom clause 56 applies must, within 21 days after the clause becomes applicable to a mortgage held by a nominee, prepare and have executed by the nominee an instrument in writing sufficient to manifest and declare the trust on which the mortgage is held by the nominee in accordance with section 23C (1) (b) of the Conveyancing Act 1919.

(2) The original of the instrument declaring the trust must be retained by the solicitor.

Retention of documents under Division 5

63. (1) A solicitor must retain in his or her office any mortgage referred to in clause 56 together with all other documents of title and instruments declaring trusts relating to the mortgage until:

- (a) the mortgage is discharged; or
- (b) the solicitor is directed otherwise in writing by the lender or, in the case of a contributory mortgage, by all the contributors.

(2) The requirements of clause 28 as to the retention by a solicitor of trust records and controlled money records apply to an Investments Register maintained under this Part and the particulars of a mortgage recorded in the Investment Register must be retained in the Investment Register during the currency of the mortgage and for a period of 6 years following its discharge.

Practicability of completion of notice and Investments Register

64. A solicitor who for any good reason is unable to record within the prescribed time all of the prescribed particulars in a notice required by this Division to be given to a lender or contributor or in an entry required to be made in the Investments Register must:

- (a) record that portion of the prescribed particulars in the required notice and in an entry in the Investments Register as is then available; and
- (b) as soon as practicable after the omitted particulars are available, issue a duly completed notice to the persons who are entitled to receive it and complete the required entry in the Investments Register.

Application of Division 5

65. Clauses 56–64 do not apply to the following:

- (a) a mortgage of which a solicitor, or an associate of a solicitor, is the sole beneficial owner;
- (b) a mortgage held by a solicitor or an associate of a solicitor as the trustee of a will or settlement or a mortgage that, when executed or transferred, will be so held;
- (c) a mortgage to a mortgagee who is the subject of a notice, given by the Law Society Council to a solicitor, that exempts a mortgage to that mortgagee from the operation of those clauses.

Division 6—Crown Solicitor**Application of Regulation to Crown Solicitor**

66. This Part (other than this Division) does not apply to the Crown Solicitor.

Crown Solicitor's Trust Account

67. (1) A Crown Solicitor's Trust Account must be established in a bank in New South Wales.

- (2) The Crown Solicitor:
 - (a) must cause to be kept in his or her office such records in relation to the Crown Solicitor's Trust Account; and
 - (b) must follow, or cause to be followed, such procedures in relation to operations on the Crown Solicitor's Trust Account,

as the Attorney General directs.

Report by Auditor-General

68. (1) An application by the Crown Solicitor for a practising certificate must be accompanied by a report of the Auditor-General stating:

- (a) that the Auditor-General has inspected the trust records kept under clause 67 during the year that ended on the last preceding 31 March; and
- (b) whether the Auditor-General is of the opinion that the trust records have been kept as directed under clause 67.

(2) A report under this clause may be provided by the Deputy Auditor-General or an Assistant Auditor-General if the Auditor-General so approves.

- (c) by omitting from clauses 72 (1) and 74 (1) and (3) (as renumbered) the matter “clause 31” wherever occurring and by inserting instead the matter “clause 73”;
- (d) by inserting after Form 3 the following Forms:

FORM 4

Legal Profession Act 1987
Legal Profession Regulation 1994

(Cl. 42)

NOTICE TO PERSON ON WHOSE BEHALF CONTROLLED MONEY IS RECEIVED

PART 1

(This notice is issued when a solicitor acquires control of a person’s money or deposits or invests money for a person and retains control of the money.)

- 1. Name and address of person on whose behalf controlled money is received:
- 2. [Where specific sum of money received]
 - (a) Amount of money received:
 - (b) When money received:
 - (c) From whom money received:
 - (d) How/where money is held by solicitor:

or

[Where solicitor has power or authority over money in person’s accounts/deposits]
 - (e) Names and numbers of accounts/deposits:
 - (f) Names and addresses of financial institutions or persons where or with whom accounts or deposits are held:
 - (g) Date, registration particulars (if any) and nature of instrument granting power or authority to solicitor:

3. Solicitor's instructions received from:
on:
to deal with money received or held in
accounts/deposits noted in paragraph 2,
as follows.

PART 2

Name and address of person on whose behalf controlled money is received:

1. Amount of money paid/invested:
2. Date of payment/deposit:
3. Name and address of person or institution holding the money paid or deposited:
4. Name and number of the account or deposit:
5. Terms on which money is deposited or invested:
 - (i) Term or maturity date of deposit:
 - (ii) The rate of interest:
 - (iii) Date from which interest is computed:
 - (iv) The deposit or investment is unsecured:

The deposit or investment is secured and particulars of the security are:

FORM 5

Legal Profession Act 1987

Legal Profession Regulation 1994

(Cl. 48)

ACCOUNTANT'S REPORT**FOR THE PERIOD / / TO / /**

TO: The Law Society of New South Wales

1. (a) Practice Name:

The name(s) of the solicitor(s) who at any time during the period carried on practice solely or in partnership under the above name and the period of practice are as follows:

	Name	Period
.....	From	To
.....	From	To
.....	From	To
.....	From	To

(b) The Trust Records referred to in this report relate to the Bank Account(s) conducted under the above practice name and described in Schedule 1 to this report.

(c) The Controlled Money Records referred to in this report relate to the accounts and money recorded in any controlled money ledger accounts closed during the 12 months ended 31/3/19 and in any controlled money ledger accounts current at that date and described in Schedule 2 to this report.

2. The limited examination of the Trust Records and Controlled Money Records conducted for the purpose of completing this Report does not constitute an audit.
3. Particulars of any letter of credit issued in respect of the deposit made under the provisions of section 64 of the Act are contained in Schedule 3 to this report.
4. I have completed and signed the Reporting Accountant's Check List in the form approved by the Council of the Law Society of New South Wales.
5. A true copy of the Summary of Breaches of Regulation from the Reporting Accountant's Check List is Schedule 4 to this report.

6. The Summary Review Memorandum is Schedule 5 to this Report.
7. In my opinion, based on appropriate examinations and sampling techniques,
*** throughout the period covered by the report, **and subject to the qualifications noted below:**

***** QUALIFICATIONS:**

(If qualifications are made/an adverse report is given, a copy of this report is to be forwarded direct to the Chief Trust Account Inspector c/- Law Society of N.S.W.)

(a) **Trust Money**

- (1) The accounting systems and internal controls used by the solicitor(s) to ensure that trust money has been properly accounted for were:
*** (1.1) appropriate/inappropriate for the practice conducted; and
*** (1.2) Operated/did not operate satisfactorily.
- (2) Trust money recorded as received, held and/or disbursed during the period has/had not been accurately recorded in the manner prescribed.
*** (3) The records prescribed for the recording of trust money have/have not been maintained regularly and properly.

(b) Controlled Money

(1) The accounting system and internal controls used by the solicitor(s) to ensure that controlled money has been properly accounted for were:

*** (1.1.) Appropriate/inappropriate for the practice conducted; and

*** (1.2) Operated/did not operate satisfactorily.

*** (2) Controlled money recorded as received, held and/or disbursed during the period has/not been accurately recorded in the manner prescribed.

*** (3) The records prescribed for the recording of controlled money have/ have not been maintained regularly and properly.

*** Delete as appropriate.

Dated this _____ day of _____ 19 ____.

Signed
(Block letters)

Full name
(Block letters)

Company Auditor's Registration No.

Firm Name (if any)

Postal Address

Phone No.

SCHEDULE 1

TRUST MONEY

1. Trust Bank Account Number:

Bank:

Branch Address:

B.S.B. Number:

1995—No. 495

Period from: to

Bank statement balance as at 31/3/19 \$

Total client funds as at 31/3/19 \$

(i.e. Cash book balance plus Statutory Deposit balance)

Number of Trust Ledger Accounts as at 31/3/19 (excluding zero balances):

2*. Trust Bank Account number:

Bank:

Branch Address:

B.S.B. Number:

Period from to

Bank statement balance as at 31/3/19 \$

Total client funds as at 31/3/19 \$

(i.e. Cash book balance plus Statutory Deposit balance)

Number of Trust Ledger Accounts as at 31/3/19

(excluding zero balances):

* Delete where appropriate/attach separate list if space is insufficient.

SCHEDULE 2**CONTROLLED MONEY/MORTGAGES**

(Where appropriate, show "NIL" or "NOT APPLICABLE")

Controlled Money Ledger

(1) Listing of accounts total as at
31/3/19 : \$

(2) Number of Ledger Accounts
as at 31/9/19 :

Investments Register

(1) Listing of Mortgages total as
at 31/3/19 : \$

(2) Number of Mortgages as at
31/9/19 :

SCHEDULE 3
LETTER OF CREDIT DETAILS

(Where appropriate, show "NIL" or "NOT APPLICABLE")

(a) Letter of Credit Details as at 31 March 19 .

Bank Letter of Credit \$
Number

(b) Movement Schedule \$ _____
Balance at 31 March 19

Balance at 31 March 19	Date	\$
Adjustment during period:

Balance at 31 March 19 \$

(c) April 19 Adjustment \$ _____
Balance at 1 April 19

Adjustments: Date \$

Balance and date of report / /

SCHEDULE 4
SUMMARY OF BREACHES OF REGULATION
(If no breaches, show “NIL”)

Regulation	Check List Item Reference	Description and Extent of Breach

SCHEDULE 5
SUMMARY REVIEW MEMORANDUM *

This memorandum summarises the reasons for issuing an unqualified, qualified or adverse Report and is to be completed after considering the results of all procedures conducted to complete the Report.

* Attach additional schedule if space is insufficient.

FORM 6

Legal Profession Act 1987

Legal Profession Regulation 1994

(Cl. 55)

SPECIFIC LENDING AUTHORITY

TO:

I/WE (insert name(s)) of
(insert address(es))

authorise and instruct you to invest on my/our behalf the sum of \$ on the conditions and subject to its being secured by the mortgage described below (in this form called "the mortgage").

DETAILS OF LENDER

1. My/Our full name(s) and address(es) for the description on the mortgage document:

.....

OR

The mortgage is to be registered in the following name as Mortgagee:

.....

DETAILS OF BORROWER

2. Full name and address of the Borrower:

.....

VALUE OF SECURITY

3. The estimated value of the security at the date of the loan will be at least \$.....

The value will be evidenced by

4. Total principal sum to be lent under the mortgage: \$

DETAILS OF SECURITY

5. The total principal sum must be secured by way of a registered mortgage over the security described in this Authority.

6. Details of the security:

(a) Term of Mortgage: months

(b) Address of the property:

(c) Nature of improvements:

7. Name and address of Guarantor

8. There are to be no prior mortgages or charges affecting the security.

OR

The prior mortgages or charges affecting the security are as follows:

(a) name and address of lenders:

(b) amount secured by all prior mortgages or charges:

CONTRIBUTION OF LENDER

9. My/Our contribution to the loan: \$

10. Unless otherwise specified in paragraph 17 of this Authority, I am/we are not entitled to the repayment of my/our contribution until the mortgage is discharged.

PAYMENT OF PRINCIPAL AND INTEREST

11. Method of payment:

(a) interest:

(b) principal:

12. The interest rate must not be varied during the term of the loan.

OR

The interest rate may be varied during the term of the loan on the following basis:

13. The interest rate applicable to the loan is to be per cent per annum payable in advance/arrears subject to a reduction to per cent per annum for any payment that is made within days after the due date for that payment.

14. The Borrower may in some circumstances repay the loan before the expiration of the period specified in 'paragraph 6 (a) of this Authority on the following conditions:

15. This Authority is given on the understanding that at the date of the making of the loan:

(a) the borrower will not be you or an associate, by which term is meant a person or company associated with a solicitor (as defined in section 60 (2) of the Legal Profession Act 1987); and

(b) you or any such associate will have no financial interest in the borrower unless you disclose the relationship or interest to me/us and I/we have received written advices from an independent solicitor in the prescribed form.

16. I am/We are aware that, in respect of any mortgage loan to which my/our money may be applied, you may also/will not act as solicitor for the borrower.

1995—No. 495

SPECIAL CONDITIONS

17. Special conditions or instructions not relating to the security:

[Before I/we signed this authority all of the required particulars had been inserted and all blank spaces had been filled up or ruled out.]

DATED this _____ day of _____ 19 _____.
(Handwritten signature)

Signed:.....

FORM 7

Legal Profession Act 1987

Legal Profession Regulation 1994

(Cl. 55)

GENERAL LENDING AUTHORITY

TO:

I/We

authorise and instruct you to invest on my/our behalf the sum of \$ in a

or loans secured by the mortgage of real property on the following conditions:

1. Any mortgage securing a loan, in which any part of my/our money is invested, must be a first registered mortgage.
2. The total principal sum secured by any mortgage must not exceed an amount equivalent to 66% of the value of the security.
3. The property comprising the security must be improved urban or suburban land on which all structures and buildings are satisfactorily completed and capable of immediate use or occupation and no money is to be applied to a loan that is to be advanced by progressive payments.
4. (a) No part of my/our said money is to be invested for a term longer than months, calculated from the date on which the money is advanced; and
(b) The date of repayment of any investment made pursuant to this authority should be not later than the day of 19 .
5. No part of my/our said money is to be invested at a rate of interest less than % p.a. and all interest due to me/us must be paid in the following manner:

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6. We authorise you to deduct from the interest payments that you receive on my/our behalf your fees for collecting and accounting for the money.
7. While any part of my/our said money is held by you pending its application to a mortgage secured loan, you may invest it on the basis that it is repayable at call or on no more than 30 days notice in an authorised trustee investment in accordance with the Trustee Act 1925.
8. This authority is given on the understanding that, in respect of any loans secured by mortgage, neither you nor any associate, by which term is meant a person or company associated with a solicitor (as defined in section 60 (2) of the Legal Profession Act 1987) will be the borrower or have any financial interest in the borrower.
9. I am/we are aware that, in respect of any mortgage loan to which my/our money may be applied, you may also/will not act as solicitor for the borrower.
10. Special conditions or instructions

[Before I/we signed this authority all of the required particulars had been inserted and all blank spaces had been filled up or ruled out.]

DATED this day of 19 ..
 Signed

FORM 8

Legal Profession Act 1987
 Legal Profession Regulation 1994

(Cl. 56)

EPITOME OF MORTGAGE

- (1) MORTGAGOR:
- Postal Address:
- (2) MORTGAGEE:
- Postal Address:

[Where principal sum contains contributions of more than one lender]

Name and address of Mortgagee to whom this epitome is sent

.....

Amount advanced by him/her

Total principal sum

(3) Principal \$

(4) Repayable

.....

(5) Interest per centum per annum (reducible to per centum per annum if paid within 14 days after due dates).

(6) Special Conditions

.....

.....

.....

(7) Particulars of security:

(i) General description:

(ii) Date of execution:

(iii) Registered number or dealing number:

(iv) Standing in order of priority to other mortgages or charges:
.....

(v) Total loan secured:

(8) Particulars of property comprising security:

(i) Real Property:

(a) Address:

(b) Shire/Municipality:

(c) Title reference:

(d) Improved/unimproved:

(e) Nature of improvements:

(f) Assessment of value:

 Issued by:

 Dated:

(g) Special conditions as to progress payments:
.....

(ii) Other:

(a) Description of property:

(b) Assessment of value:

 Issued by:

 Dated:

(c) Other relevant particulars:

(9) Prior encumbrances:

- (i) Encumbrances (described):
- (ii) Amount secured:
- (iii) Parties:
- (iv) Date:

This Notice/Epitome is issued to
 this day of 19 ..

.....
 (Signature)

.....
 (Name of Solicitor)

.....
 (Firm)

.....
 (Address)

Repeal

3. The Legal Profession (Trust Accounts and Controlled Money) Regulation 1988 is repealed.

EXPLANATORY NOTE

The objects of this Regulation are:

- to transfer provisions dealing with the keeping of trust money and controlled money from the Legal Profession (Trust Accounts and Controlled Money) Regulation 1988 to the Legal Profession Regulation 1994 and to amend certain of those provisions in the manner referred to below; and
- to repeal the Legal Profession (Trust Accounts and Controlled Money) Regulation 1988.

1995—No. 495

The amendments of the provisions relating to the keeping of trust money and controlled money deal with the following:

- (a) the inclusion of a definition of “bill of costs” to accord with that inserted in the Legal Profession Act 1987 by the Legal Profession Reform Act 1993 in the place of the obsolete definition of “outline bill” (clause 27 (1) of the transferred provisions);
- (b) the expansion of the definitions of “controlled money records” and “trust records” to include reference to the duplicate copies of statements of account, delivered to persons for whom, or on whose behalf, trust money or controlled money is held, that solicitors are required to retain (clause 27 (1));
- (c) the expansion of the definition of “trust records” to include reference to:
 - both original receipts (if not given to a person, or if cancelled) and duplicate receipts, and not simply “receipts”, as was previously the case; and
 - mortgage lending authorities obtained from persons from whom, or on whose behalf, money is to be applied to loans to be secured by mortgages over real property (clause 27 (1));
- (d) a stipulation that solicitors who make or lawfully acquire trust records and controlled money records and certain other specified documents (and not simply solicitors who have “custody” of the documents) must retain them for not less than 6 years, while relieving solicitors who have disposed of their practices to other solicitors and who no longer hold the documents from this obligation (clause 28 (4) and (5));
- (e) the omission of a requirement for solicitors who maintain controlled money records by computer to keep a specific record of changes in certain particulars relating to the controlled money (such as the amounts of deposits and changes in interest rates);
- (f) requirements that no computer program is to enable the deletion of a ledger account:
 - unless a permanent, visible record of the account, as it was before deletion, is kept; and
 - in the case of a trust ledger account, (and not both a trust ledger account and a controlled money ledger account, as was previously the case) the account has a zero balance (clause 29 (5));
- (g) the revision of the requirements for the delivery of statements of account to persons for whom, or on whose behalf, solicitors maintain trust money or controlled money ledgers:
 - by omitting the requirement for statements of account to be provided on closure and removal of an account him the relevant ledger; and
 - by requiring that statements of account be provided, except in specified circumstances, as soon as practicable after 30 June in each year (rather than as soon as practicable after 31 March and 30 September in each year, as was previously the case); and

- by making a consequential amendment, from 6 to 12 months, for the period during which a statement of account need not be provided if the balance of a ledger account is zero and no transaction affecting it has taken place or if a statement has been delivered in that period and no subsequent transaction affecting it has taken place in that period; and
- by providing that, if a statement of account has been provided in the last 12 months, its closing balance may be adopted as the opening balance of a new statement of account (clause 31);

(h) the replacement of a provision dealing with the receipt and withdrawal of money for costs and disbursements from trust money or controlled money after delivery of an outline bill with a new provision, regarding disclosures as to costs, the delivery of bills of costs and the assessment of costs, to accord with amendments made to Part 11 of the Legal Profession Act 1987 by the Legal Profession Reform Act 1993 (clause 32);

(i) the manner of issue and delivery of receipts for trust money and the requirements as to the retention of trust account receipts (clause 34);

(j) the revision of requirements for the drawing of trust account cheques by stipulating that, among other things:

- cheques must include a crossing that directs the drawee bank not to pay the cheque otherwise than to a bank (in substitution for the previous requirement that cheques should include a general or special crossing); and
- cheques be payable to a named payee and not drawn to cash (in place of the previous requirement that cheques not be payable to cash); and
- cheques must be drawn in numerical order in the series to which they belong (clause 35);

(k) the inclusion in the cash book of the numbers of cancelled receipts and cheques (the previous provision referring only to the recording of receipts issued and cheques drawn) (clause 36);

(l) the inclusion of a requirement that the trust ledger account in which the monthly balances of the cash book are recorded be entitled the “Cash Book Control Account” (clause 36);

(m) provisions making it clear that only transfers relating to trust money are to be recorded in the trust account ledger and requiring that pages of, and entries in, the journal are to be consecutively numbered (clause 37);

(n) the obligations of solicitors concerning the names of persons entered in ledger accounts, solicitors being precluded from entering names that they know are false or that are calculated to prevent identification of the persons for whom, or on whose behalf, money in the accounts is held (clause 38);

(o) a requirement for solicitors to maintain a separate trust ledger account for trust money deposited with the Law Society in compliance with section 64 of the Legal Profession Act 1987, to record in the account particulars of all transactions affecting it and to prepare monthly trial balance statements in respect of the account (clause 39);

- (p) the revision of the requirement that a solicitor prepare a monthly trial balance statement of all ledger accounts by specifically providing that the trial balance must disclose each account in the trust ledger other than those with a zero balance at the end of the month concerned (clause 39);
- (q) the revision of a provision permitting delegation of a solicitor's authority to sign cheques on, or to effect electronic funds transfers from, his or her trust bank account:
 - by permitting delegation only if a sole practitioner, or a practitioner in partnership and each of his partners, is or are unable to sign the cheque or effect the transfer because of illness, injury or absence for good reason (the previous provision referring, in the case of a solicitor in partnership, only to the unavailability of the partners); and
 - by restricting delegation to the manager of the branch of the bank at which the trust bank account is maintained (rather than, as previously, to any bank manager); and
 - by amending the requirements as to the cancellation of a delegation by the Law Society Council (clause 40);
- (r) the omission of a previous requirement that, if a deposit or investment of controlled money is secured by mortgage, the solicitor must issue an epitome of mortgage to the person on whose behalf the money has been invested (while retaining the requirement for the issue of a notice setting out details of the money received and paid or invested) (clause 42);
- (s) the deletion of an obsolete transitional provision dealing with the keeping of a controlled money ledger for money received before 1 April 1988;
- (t) the extension of the previous obligation to provide an accountant's report when a solicitor has received money to which section 61 (1) of the Legal Profession Act 1987 relates to cases in which a solicitor has held or disbursed (as well as received) such money (clause 48);
- (u) the revision of certain definitions for the purposes of provisions dealing with mortgage transactions (clause 54);
- (v) the extension of the obligation on a solicitor to record, in an Investment Register, the giving of an epitome of mortgage in certain cases to all cases in which the solicitor is required to obtain a specific or general lending authority (clause 56);
- (w) the inclusion of a provision prohibiting a solicitor from applying money to a loan to be secured by a mortgage to a nominee as trustee for the lender or lenders unless the nominee is the solicitor, a partner or partners of the solicitor (with or without the solicitor) or a solicitor's nominee company maintained in accordance with the Regulation (clause 57);
- (x) the extension of a provision that permits the payment, to a sole lender in specified circumstances, of principal or interest under a mortgage in respect of which a solicitor has obtained a specific or general lending authority to the case of a contributory mortgage in which the number of contributors does not exceed 4 (clause 59);

- (y) the inclusion of a provision extending requirements of the Regulation that deal with mortgage transactions to new contributors to contributory mortgages and to money advanced by new contributors (clause 61);
- (z) changes by way of statute law revision, including the replacement of references to a public accountant (within the meaning of the now repealed Public Accountants Registration Act 1945) with references to a registered company auditor (within the meaning of the Corporations Law);
- (aa) other minor, consequential and ancillary matters, including the replacement of references to clients with references to persons for whom, or on whose behalf, money is received by solicitors.

This Regulation is made under the Legal Profession Act 1987, including sections 61—63 and 216 (the general regulation-making power).
