USE OF ATTORNEY IOLTA ACCOUNTS
FOR REAL ESTATE SETTLEMENT TRANSACTIONS

I. Introduction and Summary

Many attorneys conduct real estate settlements and closings as a service of their law firms. As part of the settlement process, the attorneys deposit funds received into a bank account from which they disburse the funds to the parties involved in the transaction, as well as to realtors, taxing authorities, and numerous other entities.

This Opinion explains that, consistent with Pennsylvania Rule of Professional Conduct 1.15, attorneys must deposit any funds received while conducting real estate settlements and related transactions into their IOLTA accounts and may not deposit those funds into non-IOLTA accounts unless the funds are Nonqualified Funds which must be deposited in Non-IOLTA accounts.

II. Discussion

IOLTA (Interest on Lawyers’ Trust Accounts) Accounts are “a method of raising money for charitable purposes, primarily the provision of civil legal services to indigent persons,” with IOLTA programs currently operating in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands.1 Pennsylvania’s IOLTA program was created by a July 17, 1996 Order of the Pennsylvania Supreme Court amending Pennsylvania Rule of Professional Conduct 1.15 and directing the Interest on Lawyers Trust Account (“IOLTA”) Board to administer the IOLTA program. Pennsylvania’s IOLTA program “makes grants annually to non-profit organizations, law school clinical programs, and administration of justice projects that provide civil legal services free of charge to the poor and disadvantaged.”2

A. Pennsylvania Rule of Professional Conduct 1.15 (Safekeeping Property)

1 https://www.americanbar.org/groups/interest_lawyers_trust_accounts/overview/
2 https://www.paiolta.org/about-pa-iolta/
Pa.R.P.C. 1.15 defines the types of funds attorneys must deposit into their IOLTA accounts. The Rule states in relevant part:

(a) The following definitions are applicable to Rule 1.15: …

(5) **Interest On Lawyer Trust Account (IOLTA) Account.** An IOLTA Account is an income producing Trust Account from which funds may be withdrawn upon request as soon as permitted by law. Qualified Funds are to be held or deposited in an IOLTA Account. …

(7) **Non-IOLTA Account.** A Non-IOLTA Account is an income producing Trust Account from which funds may be withdrawn upon request as soon as permitted by law in which a lawyer deposits Rule 1.15 Funds. Only Nonqualified Funds are to be held or deposited in a Non-IOLTA Account. A Non-IOLTA Account shall be established only as:

(i) a separate client Trust Account for the particular client or matter on which the net income will be paid to the client or third person; or

(ii) a pooled client Trust Account with subaccounting by the Eligible Institution or by the lawyer, which will provide for computation of net income earned by each client’s or third person’s funds and the payment thereof to the client or third person.

(8) **Nonqualified Funds.** Nonqualified Funds are Rule 1.15 Funds, whether cash, check, money order or other negotiable instrument, which are not Qualified Funds.

(9) **Qualified Funds.** Qualified Funds are Rule 1.15 Funds which are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient income will not be generated to justify the expense of administering a segregated account.

(10) **Rule 1.15 Funds.** Rule 1.15 Funds are funds which the lawyer receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer’s status as such. …

(o) An account shall not be considered an IOLTA Account unless the Eligible Institution at which the account is maintained shall:

(1) Remit at least quarterly any income earned on the account to the IOLTA Board;

(2) Transmit to the IOLTA Board with each remittance and to the lawyer who maintains the IOLTA Account a statement showing at least the name of the account, service charges or fees deducted, if any, the amount of income remitted from the account, and the average daily balance, if available; and

(3) Pay a rate of interest or dividends no less than the highest interest rate or dividend generally available from the Eligible Institution to its Non-
IOLTA customers when the IOLTA Account meets the same minimum balance or other eligibility qualifications, and comply with the Regulations of the IOLTA Board with respect to service charges, if any. (emphasis supplied)

Comment 1 to Pa.R.P.C. 1.15 states:

(1) A lawyer should hold property of others with the care required of a professional fiduciary. The obligations of a lawyer under this Rule apply when the lawyer has come into possession of property of clients or third persons because the lawyer is acting or has acted as a lawyer in a client-lawyer relationship, or when the lawyer is acting as a Fiduciary, or as an escrow agent, a settlement agent or a representative payee, or as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer’s status as such. Securities should be appropriately safeguarded.

B. Pennsylvania Rule of Professional Conduct 5.7 (Responsibilities Regarding Nonlegal Services)

Pa.R.P.C. 5.7 states in relevant part:

(a) A lawyer who provides nonlegal services to a recipient that are not distinct from legal services provided to that recipient is subject to the Rules of Professional Conduct with respect to the provision of both legal and nonlegal services.

(b) A lawyer who provides nonlegal services to a recipient that are distinct from any legal services provided to the recipient is subject to the Rules of Professional Conduct with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship.

(c) A lawyer who is an owner, controlling party, employee, agent, or is otherwise affiliated with an entity providing nonlegal services to a recipient is subject to the Rules of Professional Conduct with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship.

(d) Paragraph (b) or (c) does not apply if the lawyer makes reasonable efforts to avoid any misunderstanding by the recipient receiving nonlegal services. Those efforts must include advising the recipient that the services are not legal services and that the protection of a client-lawyer relationship does not exist with respect to the provision of nonlegal services to the recipient.

(e) The term “nonlegal services” denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.
Paragraphs (b) and (c) specify that the Rules of Professional Conduct apply to a lawyer who directly provides or is otherwise involved in the provision of nonlegal services if there is a risk that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship. Neither the Rules of Professional Conduct nor paragraphs (b) or (c) will apply, however, if pursuant to paragraph (d), the lawyer takes reasonable efforts to avoid any misunderstanding by the recipient. In this respect, Rule 5.7 is analogous to Rule 4.3(c). …

C. IOLTA Board regulations generally require lawyers to deposit real estate settlement-related funds into an IOLTA Account

Rule 104(h)(ii) (Rule 1.15 Funds) of the Rules for Interest on Lawyers Trust Accounts states:

Conveying accounts/real estate closings: Funds generated from real estate closings are Rule 1.15 Funds. Generally, these funds will be Qualified Funds, as they are held for a short period of time and are not expected to provide income for the Third Party Owner.

D. Lawyers must normally deposit real estate settlement-related funds received by the lawyers into an IOLTA Account

Pa.R.P.C. 1.15 defines “Rule 1.15 Funds” as “funds which the lawyer receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer’s status as such.”

Consistent with Pa.R.P.C. 1.15, when lawyers receive real estate settlement funds, those monies are by definition funds of others. Pa.R.P.C. 1.15 does not distinguish between funds received by an attorney while providing legal services to clients and funds received by an attorney while providing real estate settlement services.

Pa.R.P.C. 1.15 also does not distinguish between funds received by an attorney as part of the attorney’s relationship with a law firm and funds received by an attorney as part of the attorney’s relationship with a separate business providing real estate settlement services although Rule 5.7 qualifies the attorney’s obligations if the funds are received as part of an attorney’s relationship with a separate business, such as funds handled by the attorney as a title agent or by a title agency owned by the attorney.

Real estate settlement funds fall within the plain language of Pa.R.P.C. 1.15, which applies to any funds a “lawyer receives” while acting as an escrow agent or a settlement agent. Thus, if a lawyer is an authorized signatory on a bank account into which settlement proceeds are deposited, then the attorney must designate the account as an IOLTA account.
E. When a lawyer provides nonlegal services through a separate entity that are not distinct from legal services provided to a recipient, the lawyer must deposit real estate settlement-related funds into an IOLTA Account unless the lawyer advises the recipient that the protection of a client-lawyer relationship does not exist or reasonably believes that the recipient does not believe that they are protected by a client-lawyer relationship.

Pa.R.P.C. 5.7 explains that a lawyer who provides nonlegal services to a recipient that are not distinct from legal services provided to a recipient is subject to the Rules of Professional Conduct with respect to the provision of both legal and nonlegal services. In that circumstance, and to avoid any confusion as to whether the recipient might believe that he or she is receiving the protection of a client-lawyer relationship, the lawyer must make a reasonable effort to avoid any misunderstanding by the recipient.

Pa.R.P.C. 5.7 also states that a lawyer who is an owner, controlling party, employee, agent, or is otherwise affiliated with an entity providing nonlegal services to a recipient is subject to the Rules of Professional Conduct with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship. If the lawyer knows or reasonably should know that the recipient does not believe that the recipient is receiving the protection of a client-lawyer relationship, for example, when the potential customer or client has been carefully advised, pursuant to Rule 5.7(d), that the services of the lawyer and the entity cannot be regarded as legal services, then the settlement funds do not have to be deposited into an IOLTA account. Consequently, this Opinion does not apply to situations when a lawyer is affiliated with a third party and there is no reasonable basis for a recipient to believe or to conclude that he or she is receiving the protection of a client-lawyer relationship.

In addition, when possession of the closing costs and other expenses of the transaction have been given to the affiliated third party, and the attorney has an ownership interest in the affiliated third party, but the attorney does not have signatory authority over the affiliated third party's accounts, the IOLTA requirements are not applicable. If the attorney has signatory authority over those accounts, the IOLTA rules apply.

III. Conclusion

As outlined above, this Committee concludes that, under the Pennsylvania Rules of Professional Conduct, in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, an attorney must deposit funds received when conducting real estate settlements or closings into accounts designated as IOLTA Accounts under the Rules of Professional Conduct and the IOLTA Rules, consistent with Pa.R.P.C. 1.15 and 5.7, and the Comments to those Rules.

CAVEAT: THE FOREGOING OPINION IS ADVISORY ONLY AND IS NOT BINDING ON THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA OR ANY COURT. THIS OPINION CARRIES ONLY SUCH WEIGHT AS AN APPROPRIATE REVIEWING AUTHORITY MAY CHOOSE TO GIVE IT.