

27 NCAC 01D .1316 IOLTA ACCOUNTS

(a) **IOLTA Account Defined.** Pursuant to order of the North Carolina Supreme Court, every general trust account, as defined in the Rules of Professional Conduct, must be an interest or dividend-bearing account. (As used herein, "interest" shall refer to both interest and dividends.) Funds deposited in a general, interest-bearing trust account must be available for withdrawal upon request and without delay (subject to any notice period that the bank is required to reserve by law or regulation). Additionally, pursuant to G.S. 45A-9, a settlement agent who maintains a trust or escrow account for the purposes of receiving and disbursing closing funds and loan funds shall direct that any interest earned on funds held in that account be paid to the North Carolina State Bar to be used for the purposes authorized under the Interest on Lawyers' Trust Account Program according to Section .1316(d) below. For the purposes of these rules, all such accounts shall be known as "IOLTA Accounts" (also referred to as "Accounts").

(b) **Eligible Banks.** Lawyers may only maintain an IOLTA Account at banks and savings and loan associations chartered under North Carolina or federal law, as required by Rule 1.15 of the Rules of Professional Conduct, that offer and maintain IOLTA Accounts that comply with the requirements set forth in this Subchapter (Eligible Banks). Settlement agents shall maintain any IOLTA Account as defined by G.S. 45A-9 and Paragraph (a) above only at an Eligible Bank; however, a settlement agent that is not a lawyer may maintain an IOLTA Account at any bank that is insured by the Federal Deposit Insurance Corporation and has a certificate of authority to transact business from the North Carolina Secretary of State, provided the bank is approved by NC IOLTA. The determination of whether a bank is eligible shall be made by NC IOLTA, which shall maintain (i) a list of participating Eligible Banks available to all members of the State Bar and to all settlement agents, and (ii) a list of banks approved for non-lawyer settlement agent IOLTA Accounts available to non-lawyer settlement agents. A bank that fails to meet the requirements of this Subchapter shall be subject only to termination of its eligible or approved status by NC IOLTA. A violation of this Rule shall not be the basis for civil liability.

(c) **Notice Upon Opening or Closing IOLTA Account.** Every lawyer/law firm or settlement agent maintaining IOLTA Accounts shall advise NC IOLTA of the establishment or closing of each IOLTA Account. Such notice shall include (i) the name of the bank where the account is maintained, (ii) the name of the account, (iii) the account number, and (iv) the names and bar numbers of the lawyers in the firm and/or the names of any non-lawyer settlement agents maintaining the account. The North Carolina State Bar shall furnish to each lawyer/law firm or settlement agent maintaining an IOLTA Account a notice to clients explaining the program, which shall be exhibited in the office of the lawyer/law firm or settlement agent.

(d) **Directive to Bank.** Every lawyer/law firm or settlement agent maintaining a North Carolina IOLTA Account shall direct any bank in which an IOLTA Account is maintained to:

- (1) remit interest, less any deduction for allowable reasonable bank service charges or fees, (as used herein, "service charges" shall include any charge or fee charged by a bank on an IOLTA Account) as defined in Paragraph (e), at least quarterly to NC IOLTA;
- (2) transmit with each remittance to NC IOLTA a statement showing for each account: (i) the name of the lawyer/law firm or settlement agent maintaining the account, (ii) the lawyer/law firm's or settlement agent's IOLTA Account number, (iii) the earnings period, (iv) the average balance of the account for the earnings period, (v) the type of account, (vi) the rate of interest applied in computing remittance, (vii) the amount of any service charges for the earnings period, and (viii) the net remittance for the earnings period; and
- (3) transmit to the lawyer/law firm or settlement agent maintaining the account a report showing the amount remitted to NC IOLTA, the earnings period, and the rate of interest applied in computing the remittance.

(e) **Allowable Reasonable Service Charges.** Eligible Banks may elect to waive any or all service charges on IOLTA Accounts. If a bank does not waive service charges on IOLTA Accounts, allowable reasonable service charges may be assessed but only against interest earned on the IOLTA Account or funds deposited by the lawyer/law firm or settlement agent in the IOLTA Account for the purpose of paying such charges. Allowable reasonable service charges may be deducted from interest on an IOLTA Account only at the rates and in accordance with the bank's standard practice for comparable non-IOLTA accounts. Allowable reasonable service charges for IOLTA Accounts are: (i) a reasonable Account maintenance fee, (ii) per check charges, (iii) per deposit charges, (iv) a fee in lieu of a minimum balance, (v) federal deposit insurance fees, and (vi) automated transfer (Sweep) fees. All service charges other than allowable reasonable service charges assessed against an IOLTA Account are the responsibility of and shall be paid by the lawyer/law firm or settlement agent. No service charges in excess of the interest earned on the Account for any month or quarter shall be deducted from interest earned on other IOLTA Accounts or from the principal of the Account.

*History Note: Authority G.S. 84-23;
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