



MLSC

MARYLAND LEGAL SERVICES CORPORATION

IOLTA - INTEREST ON LAWYER TRUST ACCOUNTS

A Guide to the IOLTA Program for Financial Institutions

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An Introduction to MLSC and IOLTA

IOLTA stands for Interest on Lawyer Trust Accounts. IOLTA programs were first established in Australia and Canada in the late 1960s and early 1970s to generate funds for legal services to the poor. The first IOLTA program in the United States was established in Florida in 1981. Maryland's program created in 1982 was the fourth IOLTA program in the nation.

Maryland Legal Services Corporation (MLSC) was established by the Maryland General Assembly in 1982 to raise funds and make grants to nonprofit organizations for the provision of civil legal assistance to low-income people in Maryland. MLSC is governed by a nine-member Board of Directors appointed by the Governor and confirmed by the Maryland Senate.

At the time the Maryland legislature created MLSC, it also created Maryland's IOLTA program as MLSC's primary source of revenue. The IOLTA program, which was amended in 1989 from a voluntary to mandatory program, requires lawyers to place certain nominal and short-term client funds into pooled interest bearing accounts. The interest on these accounts is remitted by financial institutions to MLSC, and MLSC's Board of Directors awards grants to nonprofit legal services organizations to assist with civil legal problems throughout the state. The trust accounts are administered by the attorneys and law firms. All 50 states and the District of Columbia have IOLTA programs.

For 40 years, Maryland's IOLTA program has proved to be a valuable partnership between attorneys and financial institutions to fulfill a critical public need. Virtually every institution that has been approved by the Attorney Grievance Commission of Maryland to receive attorney escrow accounts under the Maryland Rules offers IOLTA to their attorney clients. The law requires that all attorneys, absent a waiver from MLSC, pool all qualified client trust funds (i.e. funds that are nominal in amount or will not be held long enough to generate net interest for the client) in IOLTA accounts with the interest payable to the MLSC Fund.

MLSC has created this manual to explain IOLTA to financial institutions and provide financial institutions with guidelines for participation in this important worthwhile program. All or any part of this guide may be duplicated as needed and should be distributed to all appropriate operations personnel. If you need further information or if the MLSC staff can be of any assistance to you in your implementation or operation of the IOLTA program, please visit our website at www.mlsc.org, or call us at (410) 576-9494, toll-free at 1-800-492-1340. E-mail inquiries may be sent to iolta@mlsc.org.

Complying With IOLTA Requirements

Bank Approval Process

Participation in IOLTA is voluntary for financial institutions, but a lawyer cannot keep attorney escrow funds in financial institutions unless the financial institution has been approved by the Attorney Grievance Commission to hold such funds pursuant to Maryland Rules of Procedure, Title 19, Chapter 400, governing attorney trust accounts.

Banks, credit unions, trust companies, savings banks or savings and loan associations authorized by law to do business in Maryland, in the District of Columbia, or a state contiguous to Maryland which are insured by an agency or instrumentality of the federal government may apply to become an "approved

financial institution.” (Rule 19-402(g)). The Attorney Grievance Commission requires that the bank has a physical branch in Maryland or a contiguous state.

If your institution has not yet been approved to hold escrow funds, you must submit a completed Financial Institution Compliance Agreement along with the IOLTA Addendum. These documents will be reviewed for compliance purposes. Specifically, the IOLTA Addendum serves to inform us as to how your financial institution will implement the interest rate provisions of Rule 19-411. It will be carefully reviewed by MLSC along with any additional supporting documentation that may be required, depending on the implementation method you choose. Once MLSC has certified your financial institution’s compliance with IOLTA, it will submit your application to the Maryland Attorney Grievance Commission for approval. Once you are approved, MLSC will return a fully executed copy of the Financial Institution Compliance Agreement to you.

Setting IOLTA Interest Rates

Pursuant to MD Rule 19-411(b)(1)(D), the interest rate paid on IOLTA accounts may not be less than the highest rate generally available from the financial institution to its non-IOLTA customers when the account meets the same minimum balance or other eligibility qualifications. The requirement can be met by implementing one of the following methods:

- 1) Paying the highest rate for which the particular IOLTA account qualifies
- 2) Offering a “safe harbor” rate that is equal to 55% *net yield* of the Federal Funds Target Rate as reported on the first calendar day of the month on high-balance IOLTA accounts (i.e. typically \$100,000 or greater)
- 3) Paying an agreed upon rate specified by MLSC which will be effective for 12 months from the date of the agreement

Important Note: Nothing in the Maryland Rules precludes an approved Financial Institution from paying higher rates than required on IOLTA. MLSC and the Maryland State Bar Association (MSBA) encourage favorable rates to help support the IOLTA program’s charitable purposes and are partners in the [IOLTA Honor Roll Program](#).

Fees and Service Charges

Because IOLTA accounts contain client funds held in trust by attorneys, any transaction fees or service charges on these accounts MUST NOT be deducted from the principal in these accounts. Allowable fees and charges as described below can be deducted from interest earned. All other fees and charges are the responsibility of the attorney or law firm maintaining the account and may be charged to the attorney or firm or waived by the financial institution pursuant to Maryland Rule 19-411(b)(1)(D)(iii).

“**Allowable Reasonable Fees**” consists of fees in amounts customarily charged to non-IOLTA customers with the same type of accounts and balances and may be deducted from interest earned on IOLTA accounts, except for “safe harbor” rate accounts, which are already deemed to be net of allowable reasonable fees.

Fees or service charges are NOT allowable:

- 1) If they are charged for the convenience of the account owner
- 2) If they arise due to errors or omissions by the account owner or the account owner's clients
- 3) If they are other fees, including, but not limited to wire transfers, certified checks, account reconciliation services, presentations against insufficient funds, overdrafts, or deposits of dishonored items

See Maryland Rule 19-411(b)(1)(D)(i)(c)(iii).

In accordance with MD Rule 19-408, attorneys may deposit non-client funds into an attorney trust account to pay any fees, service charges, or minimum balances required by the financial institution to open or maintain the account, including those fees that cannot be charged against interest remitted to MLSC. A general guideline for the attorney is to maintain approximately \$100 in the account to cover the above-stated fees, but the actual amount deposited is at the sole discretion of the attorney. In the alternative, the attorney may enter into an agreement with the financial institution to have any fees or charges deducted from an operating account maintained by the attorney or law firm.

Important Note: Nothing in the Maryland Rules precludes an approved Financial Institution from waiving fees and service charges on IOLTA. MLSC and the MSBA encourage favorable rates and fee waivers to help support the IOLTA program's charitable purposes and are partners in the IOLTA Honor Roll Program.

Attorney Enrollment

All lawyers must be in compliance with Maryland's IOLTA law, but compliance does not necessarily require having an IOLTA account. Maryland's mandatory IOLTA program (Maryland Business Occupations Code, Section 10-303) requires all Maryland attorneys holding qualified client funds (i.e. funds that are nominal in amount or funds that will not be held long enough to generate net interest for the individual client) to establish an IOLTA account. Thus, not every lawyer's trust account will be an IOLTA account.

For example, if the deposit is large enough and/or will be held long enough to generate net interest for the client, the attorney should hold those trust funds in a separate interest-bearing account for the individual client.

Also, a lawyer holding IOLTA-eligible funds may request a waiver from participation in the IOLTA program if the bank assesses allowable reasonable fees on the account and the lawyer believes that such fees will consistently exceed interest earned on the account (Maryland Business Occupations Code, Section 10-303(c)). However, because of the infrequency and minimal nature of service charges being assessed on IOLTA accounts, it is more prudent for the attorney to establish the escrow account as an IOLTA from its inception.

Lawyers and law firms – not financial institutions – have the responsibility for deciding which account type they should open. If the attorney or law firm has questions regarding which types of accounts to open or where funds must be deposited, they should be directed to call our office.

Attorneys should complete a Notice of New IOLTA Account/IOLTA Enrollment Form and submit it to an approved IOLTA financial institution. The financial institution must send a copy of the completed form to MLSC along with the periodic remittance report.

This form is one way that attorneys give authority to the financial institution to:

- Establish IOLTA accounts for lawyer/law firm customers
- Set up (if new) or change the status of an existing (non-interest-bearing) pooled account to an interest-bearing account
- Use MLSC's tax identification number (52-1266744) on each IOLTA account instead of the lawyer/law firm's tax identification number
- On a monthly or quarterly basis remit interest for each IOLTA account, less allowable reasonable fees, if any, directly to MLSC's depository bank

After the form is complete the financial institution will establish an IOLTA account according to its own procedures with interest payable to MLSC.

Account Establishment

An IOLTA Account may be established as a basic interest-bearing checking account or any other suitable interest-bearing checking account offered by the financial institution to its other non-IOLTA customers or a business checking account with an overnight sweep investment feature into repurchase agreements fully collateralized by U.S. Government securities, if such accounts are offered to similarly situated non-IOLTA customers.

Regardless of which product is used for the particular IOLTA account, it is important that these accounts are **clearly and easily identified as IOLTA accounts** so that the regulations for IOLTA accounts cannot be overlooked in the future by personnel not familiar with the IOLTA program, especially in the case of financial institution mergers and acquisitions.

Special Characteristics of IOLTA Accounts

Account funds must be subject to withdrawal or transfer upon request and without delay, or as soon as permitted by law. The rate of interest payable on the account shall not be less than the rate paid by the financial institution to its regular depositors with similarly situated accounts.

Account service charges assessed against IOLTA interest, if any, must fall within the definition of "allowable reasonable fees" defined in MD Rule 19-411. (Pages 3 & 4 contain additional details on interest rates and service charges.)

Additionally, in accordance with MD Rule 19-410(b) "an instrument drawn on an attorney trust account may not be drawn payable to cash or to bearer, and no cash withdrawal may be made from an automated teller machine or by any other method. All disbursements from an attorney trust account shall be made by check or electronic transfer."

"No funds from an attorney trust account shall be disbursed if the disbursement would create a negative balance with regard to an individual client matter or all client matters in the aggregate." Rule 19-410(c)

Title Designation and Address for IOLTA Accounts

Maryland Rules of Procedure, Section 19-406 authorizes ONLY three designations for attorney trust accounts: “**Attorney Trust Account**,” “**Attorney Escrow Account**,” or “**Clients’ Funds Account**.” One of these three designations MUST be included in one of the naming lines on the account and should appear on all check and deposit slips. This requirement applies to all IOLTA accounts. It is also very important that IOLTA accounts be identified in such a way as to be **easily recognized by financial institution personnel**.

The address listed on the account should be that of the attorney or law firm owner and NOT that of MLSC. As such, the monthly/quarterly account detail statements should be sent to the attorney or law firm owner of the account. Only the combined remittance statement for all MD IOLTA accounts is sent to MLSC.

Tax Consequences

Because MLSC is a 501(c)(3) charitable organization, the Internal Revenue Service has ruled that there are no tax consequences to the client, the lawyer or MLSC. The IRS has advised that a financial institution does not need to report interest income generated by a pooled IOLTA account. In fact, in order to minimize administrative problems, a **Form 1099 should not be prepared** on these accounts. If for some reason it is necessary to prepare the form, MLSC should be shown as the recipient of the interest (MLSC Tax I.D. number 52-1266744), and the form should be mailed directly to MLSC. The attorney or law firm’s Tax I.D. number should *never* be used on a form 1099.

Many financial institutions have the internal ability to attach two tax identification numbers to the IOLTA account: MLSC’s as owner of the interest and the attorney’s tax identification number as owner of the account.

Maryland Affordable Housing Trust (MAHT) Program

Financial Institutions often confuse IOLTA and MAHT. It is important to understand the difference.

In 1992, the Maryland General Assembly enacted a program, modeled on IOLTA, to help fund affordable housing in Maryland. The Maryland Affordable Housing Trust (MAHT) statute requires real estate title companies to place their small or short-term client trust funds which are held in escrow into a MAHT account generating interest for affordable housing. MAHT is administered by the Maryland Department of Community Development.

Attorneys who maintain private real estate law practices have a choice whether to place a client escrow deposit into their IOLTA or MAHT account. MLSC encourages attorneys to deposit all eligible trust funds into their IOLTA as a way to help with the provision of critically needed legal service to low-income Marylanders in keeping with attorney obligations under Rule 6.1 of the Maryland Lawyers’ Rules of Professional Conduct. However, attorneys who own or operate title companies must place those client escrow deposits into a MAHT account.

Remitting Interest and Bank Reporting

Interest generated on IOLTA deposits, net of allowable reasonable fees, must be remitted either monthly or quarterly to the MLSC depository bank by ACH transfer. One remittance amount should be made per period for all IOLTA accounts.

Financial institutions must use the Excel remittance report format provided by MLSC. An Excel file with this information must be submitted via email to iolta@mlsc.org no later than the 15th day after the reporting period ends.

Important Note: The Notice of New IOLTA Account/IOLTA Enrollment Forms should be submitted to MLSC for each new account along with the monthly/quarterly remittance report.

OVERDRAFT NOTICES

Non-Sufficient Funds Notices (NSF) must be sent to the Attorney Grievance Commission. This procedure is included in the Agreement that is executed by the financial institution when applying for approval.

Contact information:

Maryland Attorney Grievance Commission
200 Harry S Truman Parkway, Suite 300
Annapolis, MD 21401
Phone: (410) 514-7051

Benefits of Participating in the Maryland IOLTA Honor Roll Program

The IOLTA Honor Roll is a joint program of MLSC and the Maryland State Bar Association to encourage financial institutions to pay premium rates on IOLTA accounts. Financial institutions are not required to join the Honor Roll, but such participation is strongly encouraged to assist in IOLTA's charitable purposes.

This program gives financial institutions the opportunity to be recognized both locally and statewide for significantly benefiting their communities. Honor Roll members are actively promoted to attorney members in a variety of ways, and participation is an excellent way for financial institutions to attract new attorney and law firm clients. Attorneys are excellent sources of referral business including loans, deposits and trust services.

Additionally, MLSC will provide a Community Reinvestment Act (CRA) statement verifying participation in this important program and provide other public recognition of IOLTA Honor Roll members and significant promotion as appropriate.

More information regarding the IOLTA program and MLSC's activities is available at www.mlsc.org.

Forms

Please visit www.mlsc.org/iolta/iolta-for-financial-institutions for the most up-to-date forms.

Appendix

IOLTA Statute — Maryland Annotated Code, Business Occupations and Professions

§ 10-303. Duty of lawyer to deposit trust money in interest bearing accounts

(a) Subject to this section a lawyer shall deposit trust money in an attorney trust account, all interest on which is payable to the Maryland Legal Services Corporation Fund established under § 11-402 of the Human Services Article.

(b) A lawyer shall deposit trust money in an interest bearing account under this section whenever the lawyer reasonably expects that, for the period that the lawyer expects to hold the trust money, the interest that it would earn:

(1) would not exceed \$50; or

(2) (i) would exceed \$50; but

(ii) would not cover the cost of administering an interest bearing account on which interest is payable to the client or beneficial owner.

(c) The Administrative Office of the Courts, in consultation with the Maryland Legal Services Corporation, may waive the provisions of subsection (b) of this section with respect to a lawyer or law firm that demonstrates that it will cost the Maryland Legal Services Corporation Fund more in service charges to open and maintain an attorney trust account with the interest payable to the Maryland Legal Services Corporation Fund than will be generated in interest by the attorney trust account.

(d) (1) At least quarterly, each financial institution that has an account described under this section shall:

(i) deduct from the total interest accumulated in the account any service charge due on the account; and

(ii) pay the net interest to the Maryland Legal Services Corporation Fund.

(2) A financial institution:

(i) may not charge against the individual accounts of a lawyer any service charges for trust money in an account under this section; and

(ii) may charge the Maryland Legal Services Corporation Fund.

§ 10-304. Deposits into attorney trust account

(a) Except as provided in subsection (b) of this section, a lawyer expeditiously shall deposit trust money into an attorney trust account.

(b) Subsection (a) of this section does not apply if there is a court order to the contrary.

(c) Notwithstanding subsection (a) of this section or any other law, a lawyer may disburse, at settlement in a real estate transaction, trust money that the lawyer receives in the transaction.

Maryland Rules of Procedure
Title 19 - Attorneys
Chapter 400 - Attorney Trust Accounts

Rule 19-401. APPLICABILITY

The Rules in this Chapter apply to all trust accounts required by law to be maintained by attorneys for the deposit of funds that belong to others, except that these Rules do not apply to a fiduciary account maintained by an attorney as personal representative, trustee, guardian, custodian, receiver, or committee, or as a fiduciary under a written instrument or order of court.

Rule 19-402. DEFINITIONS

In this Chapter, the following definitions apply, except as expressly otherwise provided or as necessary implication requires:

- (a) Approved Financial Institution. "Approved financial institution" means a financial institution approved by the Commission in accordance with these Rules.
- (b) Attorney. "Attorney" means any individual admitted by the Court of Appeals to practice law.
- (c) Attorney Trust Account. "Attorney trust account" means an account, including an escrow account, maintained in a financial institution for the deposit of funds received or held by an attorney or law firm on behalf of a client or third person.
- (d) Bar Counsel. "Bar Counsel" means the individual appointed by the Commission as the principal executive officer of the disciplinary system affecting attorneys. All duties of Bar Counsel prescribed by these Rules shall be subject to the supervision and procedural guidelines of the Commission.
- (e) Client. "Client" includes any individual, firm, or entity for which an attorney performs any legal service, including acting as an escrow agent or as a legal representative of a fiduciary. The term does not include a public or private entity of which an attorney is a full-time employee.
- (f) Commission. "Commission" means the Attorney Grievance Commission of Maryland, as authorized and created by Rule 19-702.
- (g) Financial Institution. "Financial institution" means a bank, credit union, trust company, savings bank, or savings and loan association authorized by law to do business in this State, in the District of Columbia, or in a state contiguous to this State, the accounts of which are insured by an agency or instrumentality of the United States.
- (h) IOLTA. "IOLTA" (Interest on Lawyer Trust Accounts) means interest on attorney trust accounts payable to the Maryland Legal Services Corporation Fund under Code, Business Occupations and Professions Article, § 10-303.
- (i) Law Firm. "Law firm" includes a partnership of attorneys, a professional or nonprofit corporation of attorneys, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, the Rules in this Chapter apply only to the offices in this State.

Rule 19-403. DUTY TO MAINTAIN ACCOUNT

An attorney or the attorney's law firm shall maintain one or more attorney trust accounts for the deposit of funds received from any source for the intended benefit of clients or third persons. The account or accounts shall be maintained in this State, in the District of Columbia, or in a state contiguous to this State, and shall be with an approved financial institution. Unless an attorney maintains such an account, or is a member of or employed by a law firm that maintains such an account, an attorney may not receive and accept funds as an attorney from any source intended in whole or in part for the benefit of a client or third person.

Rule 19-404. TRUST ACCOUNT – REQUIRED DEPOSITS

Except as otherwise permitted by rule or other law, all funds, including cash, received and accepted by an attorney or law firm in this State from a client or third person to be delivered in whole or in part to a client or third person, unless received as payment of fees owed the attorney by the client or in reimbursement for expenses properly advanced on behalf of the client, shall be deposited in an attorney trust account in an approved financial institution. This Rule does not apply to an instrument received by an attorney or law firm that is made payable solely to a client or third person and is transmitted directly to the client or third person.

Rule 19-405. DUTY OF ATTORNEY TO NOTIFY INSTITUTION

An attorney may not exercise any authority to sign checks or disburse or withdraw funds from an attorney trust account until the attorney in writing:

- (a) Requests the financial institution to designate the account on its records as an attorney trust account, and
- (b) Authorizes the financial institution to report to Bar Counsel any dishonored instruments or overdrafts in the account as required by the agreement under Rule 19-411 between the institution and the Commission.

Rule 19-406. NAME AND DESIGNATION OF ACCOUNT

An attorney or law firm shall maintain each attorney trust account with a title that includes the name of the attorney or law firm and that clearly designates the account as “Attorney Trust Account”, “Attorney Escrow Account”, or “Clients' Funds Account” on all checks and deposit slips. The title shall distinguish the account from any other fiduciary account that the attorney or law firm may maintain and from any personal or business account of the attorney or law firm.

Rule 19-407. ATTORNEY TRUST ACCOUNT RECORD-KEEPING

(a) Creation of Records. The following records shall be created and maintained for the receipt and disbursement of funds of clients or of third persons:

- (1) *Attorney Trust Account Identification.* An identification of all attorney trust accounts maintained, including the name of the financial institution, account number, account name, date the account was opened, date the account was closed, and an agreement with the financial institution establishing each account and its interest-bearing nature.
- (2) *Deposits and Disbursements.* A record for each account that chronologically shows all deposits and disbursements, as follows:
 - (A) for each deposit, a record made at or near the time of the deposit that shows (i) the date of the deposit, (ii) the amount, (iii) the identity of the client or third person for whom the funds were deposited, and (iv) the purpose of the deposit;
 - (B) for each disbursement, including a disbursement made by electronic transfer, a record made at or near the time of disbursement that shows (i) the date of the disbursement, (ii) the amount, (iii) the payee, (iv) the identity of the client or third person for whom the disbursement was made (if not the payee), and (v) the purpose of the disbursement;
 - (C) for each disbursement made by electronic transfer, a written memorandum authorizing the transaction and identifying the attorney responsible for the transaction.
- (3) *Client Matter Records.* A record for each client matter in which the attorney receives funds in

trust, as follows:

(A) for each attorney trust account transaction, a record that shows (i) the date of the deposit or disbursement; (ii) the amount of the deposit or disbursement; (iii) the purpose for which the funds are intended; (iv) for a disbursement, the payee and the check number or other payment identification; and (v) the balance of funds remaining in the account in connection with the matter; and

(B) an identification of the person to whom the unused portion of a fee or expense deposit is to be returned whenever it is to be returned to a person other than the client.

(4) *Record of Funds of the Attorney.* A record that identifies the funds of the attorney held in each attorney trust account as permitted by Rule 19-408 (b).

(b) **Monthly Reconciliation.** An attorney shall cause to be created a monthly reconciliation of all attorney trust account records, client matter records, records of funds of the attorney held in an attorney trust account as permitted by Rule 19-408 (b), and the adjusted month-end financial institution statement balance. The adjusted month-end financial institution statement balance is computed by adding subsequent deposits to and subtracting subsequent disbursements from the financial institution's month-end statement balance.

(c) **Electronic Records.** Whenever the records required by this Rule are created or maintained using electronic means, there must be an ability to print a paper copy of the records upon a reasonable request to do so.

(d) **Records to be Maintained.** Financial institution month-end statements, any canceled checks or copies of canceled checks provided with a financial institution month-end statement, duplicate deposit slips or deposit receipts generated by the financial institution, and records created in accordance with section (a) of this Rule shall be maintained for a period of at least five years after the date the record was created.

Rule 19-408. COMMINGLING OF FUNDS

(a) **General Prohibition.** An attorney or law firm may deposit in an attorney trust account only those funds required to be deposited in that account by Rule 19-404 or permitted to be so deposited by section (b) of this Rule.

(b) **Exceptions.**

(1) An attorney or law firm shall either (A) deposit into an attorney trust account funds to pay any fees, service charges, or minimum balance required by the financial institution to open or maintain the account, including those fees that cannot be charged against interest due to the Maryland Legal Services Corporation Fund pursuant to Rule 19-411 (b)(1)(D), or (B) enter into an agreement with the financial institution to have any fees or charges deducted from an operating account maintained by the attorney or law firm. The attorney or law firm may deposit into an attorney trust account any funds expected to be advanced on behalf of a client and expected to be reimbursed to the attorney by the client.

(2) An attorney or law firm may deposit into an attorney trust account funds belonging in part to a client and in part presently or potentially to the attorney or law firm. The portion belonging to the attorney or law firm shall be withdrawn promptly when the attorney or law firm becomes entitled to the funds, but any portion disputed by the client shall remain in the account until the dispute is resolved.

(3) Funds of a client or beneficial owner may be pooled and commingled in an attorney trust

account with the funds held for other clients or beneficial owners.

Rule 19-409. INTEREST ON FUNDS

(a) Definition. In this Rule, (1) "AIS" means the Attorney Information System created in Rule 19-801, (2) "AOC" means the Administrative Office of the Courts, and (3) "Client Protection Fund" means the Client Protection Fund of the Bar of Maryland.

(b) Generally. Any interest paid on funds deposited in an attorney trust account, after deducting service charges and fees of the financial institution, shall be credited and belong to the client or third person whose funds are on deposit during the period the interest is earned, except to the extent that interest is paid to the Maryland Legal Services Corporation Fund as authorized by law. The attorney or law firm shall have no right or claim to the interest.

(c) Duty to Report IOLTA Participation.

(1) As a condition precedent to the practice of law, each attorney admitted to practice in Maryland shall report in accordance with this Rule information concerning all IOLTA accounts.

(2) On or before July 10 of each year, AOC shall send electronically to each attorney on active status a notice requiring the attorney to complete an IOLTA Compliance Report on or before September 10 of that year. The report shall require disclosure of the name, address, location, and account number of each IOLTA account maintained by the attorney as of July 10 of each year.

(3) If all IOLTA eligible trust funds of all attorneys in a law firm are deposited in shared law firm IOLTA accounts, the firm shall designate an attorney to be its "IOLTA Reporting Attorney." The Reporting Attorney shall report on all law firm IOLTA accounts by submitting one report listing the specific account information for the firm with the Reporting Attorney's signature. Each attorney at the law firm other than the firm's IOLTA Reporting Attorney shall submit a report that includes the attorney's name, law firm address and phone number, and the name of the IOLTA Reporting Attorney. The report need not include account information.

(4) On or before September 10 of each year, the attorney, through AIS, shall file electronically a completed IOLTA Compliance Report with AOC.

(5) *Enforcement.*

(A) Notice of Default. As soon as practicable after February 10 of each year, AOC shall electronically notify each defaulting attorney of the attorney's failure to file the required Report. The notice shall (i) state that the attorney has not filed the required IOLTA Compliance Report and (ii) state that continued failure to file the Report may result in an order by the Court of Appeals prohibiting the attorney from practicing law in Maryland.

(B) Additional Discretionary Notice. In addition to the electronic notice, AOC may give additional notice in other ways to defaulting attorneys. This discretion shall be liberally construed with respect to notices given in 2019.

(C) List of Defaulting Attorneys. As soon as practicable after February 10 of each year but no later than March 10, AOC shall:

(i) prepare, certify, and, transmit to the Court of Appeals a list that includes the name and, unless the attorney has elected to keep the address confidential, the address of each attorney engaged in the practice of law who has failed to file the IOLTA Compliance Report for the preceding reporting period;

(ii) include with the list a proposed Decertification Order stating the name and, unless the attorney has elected to keep the address confidential, the address of each attorney who has failed to file the IOLTA Compliance Report; and
(iii) at the request of the Court, furnish additional information from its records or give further notice to the defaulting attorneys.

(D) Decertification Order. If satisfied that AOC has given the required notice to the attorneys named in the proposed decertification order, the Court of Appeals shall enter a decertification order prohibiting each of them from practicing law in Maryland until such time as a Recertification Order applicable to a listed attorney is entered pursuant to subsection (c)(4)(F) of this Rule. If the Court concludes that an attorney was not given the required notice, it shall delete that attorney's name from the proposed Order.

(E) Transmittal of Decertification Order. AOC shall transmit a copy of the decertification order to each attorney named in the Order.

(F) Recertification; Reinstatement. If a decertified attorney thereafter files the outstanding IOLTA Compliance Report, AOC shall inform the Court of Appeals and request the Court to enter an order that recertifies the attorney and terminates the decertification. Upon the entry of that order, AOC promptly shall transmit confirmation to the attorney. After an attorney is recertified, the fact that the attorney had been decertified need not be disclosed by the attorney in response to a request for information as to whether the attorney has been the subject of a disciplinary or remedial proceeding.

(G) Duty of Clerk of Court of Appeals. Upon entry of each Decertification Order and each Recertification Order entered pursuant to this Rule, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(H) Certain Information Furnished to the Maryland Legal Services Corporation. AOC promptly shall submit to the Maryland Legal Services Corporation the data from the IOLTA Compliance Reports.

(I) Confidentiality. Except as provided in subsections (c)(4)(H) and (c)(4)(I) of this Rule, IOLTA Compliance Reports are confidential and are not subject to inspection or disclosure under Code, General Provisions Article, § 4-301. Neither AIS nor AOC shall release those Reports to any person, except as provided in this Rule or upon order of the Court of Appeals. Non-identifying information and data contained in an attorney's IOLTA Compliance Report are not confidential.

Rule 19-410. PROHIBITED TRANSACTIONS

(a) Generally. An attorney or law firm may not borrow or pledge any funds required by the Rules in this Chapter to be deposited in an attorney trust account, obtain any remuneration from the financial institution for depositing any funds in the account, or use any funds for any unauthorized purpose.

(b) No Cash Disbursements. An instrument drawn on an attorney trust account may not be drawn payable to cash or to bearer, and no cash withdrawal may be made from an automated teller machine or by any other method. All disbursements from an attorney trust account shall be made by check or electronic transfer.

(c) Negative Balance Prohibited. No funds from an attorney trust account shall be disbursed if the disbursement would create a negative balance with regard to an individual client matter or all client matters in the aggregate.

Rule 19-411. APPROVAL OF FINANCIAL INSTITUTIONS

(a) Written Agreement to be Filed with Commission. The Commission shall approve a financial institution upon the filing with the Commission of a written agreement with the Maryland Legal Services Corporation (MLSC), complying with this Rule and in a form provided by the Commission, applicable to all branches of the institution that are subject to this Rule. The Commission may extend its approval of a previously approved financial institution for a reasonable period to allow the financial institution and the MLSC the opportunity to enter into a revised agreement that complies with this Rule.

(b) Contents of Agreement.

(1) Duties to be Performed. The agreement shall provide that the financial institution, as a condition of accepting the deposit of any funds into an attorney trust account, shall:

(A) Notify the attorney or law firm promptly of any overdraft in the account or the dishonor for insufficient funds of any instrument drawn on the account.

(B) Report the overdraft or dishonor to Bar Counsel as set forth in subsection (b)(1)(C) of this Rule.

(C) Use the following procedure for reports to Bar Counsel required under subsection (b)(1)(B) of this Rule:

(i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the institution's other regular account holders. The report shall be mailed to Bar Counsel within the time provided by law for notice of dishonor to the depositor and simultaneously with the sending of that notice.

(ii) If an instrument is honored but at the time of presentation the total funds in the account, both collected and uncollected, do not equal or exceed the amount of the instrument, the report shall identify the financial institution, the name and address of the attorney or law firm maintaining the account, the account name, the account number, the date of presentation for payment, and the payment date of the instrument, as well as the amount of the overdraft created. The report shall be mailed to Bar Counsel within five banking days after the date of presentation, notwithstanding any overdraft privileges that may attach to the account.

(D) Pay interest on its IOLTA accounts at a rate no less than the highest non-promotional interest rate generally available from the institution to its non-IOLTA customers at the same branch when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications for its non-IOLTA accounts at that branch. In determining the highest interest rate generally available from the institution to its IOLTA customers at a particular branch, an approved institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution at that branch when setting interest rates for its non-IOLTA customers; provided, however, that these factors shall not discriminate between IOLTA accounts and non-IOLTA accounts, nor shall the factors include or consider the fact that the account is an IOLTA account.

(i) An approved institution may satisfy the requirement described in subsection (b)(1)(D) of this Rule by establishing the IOLTA account in an account paying the highest rate for which the IOLTA account qualifies. The approved institution may deduct from interest earned on the IOLTA account Allowable Reasonable Fees as defined in subsection (b)(1)(D)(iii) of this Rule. This account may be any one of the following product option types, assuming the particular financial institution offers these account types to its non-IOLTA customers, and the

particular IOLTA account qualifies to be established as this type of account at the particular branch:

(a) a business checking account with an automated investment feature, which is an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities, including securities of government-sponsored entities;

(b) checking accounts paying interest rates in excess of the lowest-paying interest-bearing checking account;

(c) any other suitable interest-bearing checking account offered by the approved institution to its non-IOLTA customers.

(ii) In lieu of the options provided in subsection (b)(1)(D)(i) of this Rule, an approved financial institution may: (a) retain the existing IOLTA account and pay the equivalent applicable rate that would be paid at that branch on the highest-yield product for which the IOLTA account qualifies and deduct from interest earned on the IOLTA account Allowable Reasonable Fees; (b) offer a "safe harbor" rate that is equal to 55% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first calendar day of the month on high-balance IOLTA accounts to satisfy the requirements described in subsection (b)(1)(D) of this Rule, but no fees may be deducted from the interest on a "safe harbor" rate account; or (c) pay a rate specified by the MLSC, if it chooses to specify a rate, which is agreed to by the financial institution and would be in effect for and remain unchanged during a period of twelve months from the agreement between the financial institution and MLSC to pay the specified rate. Allowable Reasonable Fees may be deducted from the interest on this "specified rate" account as agreed between MLSC and the financial institution.

(iii) "Allowable Reasonable Fees" means fees and service charges in amounts customarily charged to non-IOLTA customers with the same type of account and balance at the same branch, including per-check charges, per-deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, and sweep fees, plus a reasonable IOLTA account administrative fee. Allowable Reasonable Fees may be deducted from interest earned on an IOLTA account only in amounts and in accordance with the customary practices of the approved institution for non-IOLTA customers at the particular branch. Fees or service charges are not Allowable Reasonable Fees if they are charged for the convenience of or arise due to errors or omissions by the attorney or law firm maintaining the IOLTA account or that attorney's or law firm's clients, including fees for wire transfers, certified checks, account reconciliation services, presentations against insufficient funds, overdrafts, or deposits of dishonored items.

(iv) Nothing in this Rule shall preclude an approved institution from paying a higher interest rate than described herein or electing to waive any fees and service charges on an IOLTA account.

(v) Fees that are not Allowable Reasonable Fees are the responsibility of, and may be charged to, the attorney or law firm maintaining the IOLTA account.

(E) Allow reasonable access to all records of an attorney trust account if an audit of the account is ordered pursuant to Rule 19-731 (Audit of Attorney Accounts and Records).

(2) Service Charges for Performing Duties Under Agreement. Nothing in the agreement shall preclude an approved financial institution from charging the attorney or law firm maintaining an

attorney trust account (A) a reasonable fee for providing any notice or record pursuant to the agreement or (B) fees and service charges other than the "Allowable Reasonable Fees" listed in subsection (b)(1)(D)(iii) of this Rule.

(c) Termination of Agreement. The agreement shall terminate only if:

- (1) the financial institution files a petition under any applicable insolvency law or makes an assignment for the benefit of creditors; or
- (2) the financial institution gives thirty days' notice in writing to the MLSC and to Bar Counsel that the institution intends to terminate the agreement and its status as an approved financial institution on a stated date and that copies of the termination notice have been mailed to all attorneys and law firms that maintain trust accounts with any branch of that institution; or
- (3) after a complaint is filed by the MLSC or on its own initiative, the Commission finds, after prior written notice to the institution and adequate opportunity to be heard, that the institution has failed or refused without justification to perform a duty required by the agreement. The Commission shall notify the institution that the agreement and the Commission's approval of the institution are terminated.

(d) Exceptions. Within 15 days after service of the notice of termination pursuant to subsection (c)(3) of this Rule, the institution may file with the Court of Appeals exceptions to the decision of the Commission. The institution shall file eight copies of the exceptions, which shall conform to the requirements of Rule 8-112. The Court shall set a date for oral argument, unless oral argument is waived by the parties. Oral argument shall be conducted in accordance with Rule 8-522. The decision of the Court of Appeals is final and shall be evidenced by an order of the Court.

Rule 19-412. NOTICE OF APPROVED INSTITUTIONS

The Commission shall cause to be posted on the Judiciary's website, at six-month intervals, a list that identifies:

- (a) all currently approved financial institutions; and
- (b) any financial institution whose agreement has terminated.

Rule 19-413. ENFORCEMENT

Upon receipt of a report of overdraft on or dishonored instrument drawn on an attorney trust account, Bar Counsel shall contact the attorney or law firm maintaining the account and request an informal explanation for the overdraft or dishonored instrument. The attorney or law firm shall provide any records of the account necessary to support the explanation. If Bar Counsel has requested but has failed to receive a satisfactory explanation for any overdraft or dishonored check, or if good cause exists to believe that an attorney or law firm has failed to perform any duty under these Rules, Bar Counsel may secure compliance with these Rules by appropriate means approved by the Commission, including application for an audit pursuant to Rule 19-731 (Audit of Attorney Accounts and Records).