

# Vermont Bar Foundation

## The IOLTA Program

In 1984, the Vermont Supreme Court approved a voluntary IOLTA program. On November 30, 1989, the Vermont Supreme Court, acting on a petition filed by the Vermont Bar Association, amended DR 9-103 of the Code of Professional Responsibility. The revised rule, effective as of March 1, 1990, required Vermont lawyers and law firms to hold pooled client trust funds in a special interest-bearing account (known as an “IOLTA”) for the benefit of the Vermont Bar Foundation (“VBF” or “Foundation”).

The Foundation uses funds generated on IOLTA accounts to support legal services to the disadvantaged and for public education relating to the courts and legal matters.

This brochure has been designed to assist lawyers in understanding their obligations under Rule 1.15B of the Vermont Rules of Professional Conduct and to answer commonly asked questions concerning trust accounts and the Foundation.

### **Q. What is IOLTA?**

**A.** “Interest on Lawyers’ Trust Accounts,” or IOLTA, is a program mandated by the Vermont Supreme Court. It requires lawyers or law firms to establish pooled interest-bearing accounts for client deposits which are nominal in amount or expected to be short-term (colloquially known as an “IOLTA” account).

### **Q. How does a lawyer or law firm determine which client funds should be deposited in an IOLTA account and which should be invested on behalf of individual clients?**

**A.** When a particular client’s funds are so nominal or are expected to be held for such a short period of time that it is not practical to earn or account for income on the individual deposit, such funds should be deposited in an IOLTA account.

No lawyer may be disciplined for placing client funds in an IOLTA account if the lawyer makes a good faith determination that the funds fit the provisions of Rule 1.15B.

### **Q. What are a few of the reasons someone would be exempt from having an IOLTA account?**

**A.** A few of the reasons someone would be exempt are, but not limited to: Not in private practice; No legal activities in Vermont; Do not hold client funds/retainers; Retired. Contact the Foundation for other possible exemptions.

### **Q. May a lawyer continue to invest individual client funds into separate interest-bearing accounts for the benefit of clients?**

**A.** Absolutely. Lawyers should continue to establish separate, interest-bearing accounts for individual client funds where the sum is large enough or when the time of the deposit is of sufficient duration to justify the cost of opening, administering and closing the account. Any interest accrued on such an account then becomes the property of the client.

**Q. May a lawyer place client trust funds in an interest-bearing account and keep the interest?**

**A.** No. Such practice is unethical. The lawyer cannot derive any personal benefit from client funds.

**Q. Who pays taxes on the interest earned on IOLTA accounts?**

**A.** No one pays any taxes on this money. The IRS has ruled that the interest generated on IOLTA accounts is not taxable to the lawyer, the law firm or the client. Participating banks are instructed to report the income to the IRS as received by the Foundation, a nonprofit corporation.

**Q. Are lawyers required to notify clients that their funds will be placed in an IOLTA account?**

**A.** No notice is required. Nor do clients have any input or control over the destination of interest earned on IOLTA funds. However, these facts should not diminish the matters traditionally raised with a client when a lawyer is determining whether the client's funds should be placed in an interest-bearing account.

**Q. Do all financial institutions participate in IOLTA?**

**A.** Most do. An IOLTA account must be maintained only in a financial institution approved by the Vermont Professional Responsibility Board ("Board"). To be considered an approved financial institution, the institution must enter an agreement with the Board agreeing to provide the Board with written notification of any overdrafts in an IOLTA account. (See the next page for approved financial institutions.)

**Q. Do different financial institutions have different fee schedules and interest rates for IOLTA accounts?**

**A.** Yes. Interest rates and service charges vary from institution to institution. You may contact the Foundation for the latest bank survey of rates and charges. You will also find this information on the Bar Association's website: [www.vtbar.org](http://www.vtbar.org) under Current IOLTA Rates.

**Q. We are holding funds for a client but cannot locate the client or the client is not responding to letters. Can we turn these funds over to the Foundation?**

**A.** No. Vermont's Unclaimed Property Act, 27 V.S.A. Chapter 13, states that all fiduciaries are required to report and remit all personal property that has been unclaimed for five years to the Abandoned Property Division of the Office of the State Treasurer.

## **Approved Financial Institutions**

Bank of Bennington  
Berkshire Bank (VT Branches)  
Brattleboro Savings & Loan  
Chittenden Bank  
Citizens Bank (VT Branches)  
Community National Bank  
Connecticut River Bank, N.A.  
Heritage Family Federal Credit Union  
Key Bank (VT Branches)  
Lake Sunapee Bank (VT Branches)  
Ledyard National Bank (VT Branches)  
Mascoma Savings Bank (VT Branches)  
Merchants Bank  
National Bank of Middlebury  
New England Federal Credit Union  
North Country Federal Credit Union  
Northfield Savings Bank  
Passumpsic Savings Bank  
Peoples Trust  
Randolph National Bank  
TD Bank (VT Branches)  
Union Bank  
Vermont Federal Credit Union  
Vermont State Employees Credit Union  
Wells River Savings Bank  
White River Credit Union