

CONTENTS

TRUST ACCOUNT SUPERVISOR TRAINING PROGRAMME.....	1
REFERENCES.....	1
NOTE ON APPENDICES	2
<i>Appendix 1 – Accounting software</i>	2
<i>Appendix 2 – Representing a client making a claim on the Fidelity Funds</i>	2
GLOSSARY	2
INTRODUCTION TO TRUST ACCOUNTING.....	3
TRUST ACCOUNT LAW.....	3
TRUST ACCOUNT SUPERVISOR.....	3
GUIDELINES	3
WHAT IS TRUST MONEY?	3
WHAT IS A TRUST ACCOUNT?.....	4
<i>Nominated trust bank account charges</i>	4
<i>Opening a trust account</i>	4
TRUST BANK ACCOUNTS	5
TRUST ACCOUNT RECORDS	5
FINANCIAL INFORMATION	5
ELECTRONIC TRUST ACCOUNTING SYSTEMS	6
VALUABLE PROPERTY AND TRUST MONEY.....	6
CONTROLLED CLIENT BANK ACCOUNTS.....	7
INFORMATION ON THE NEW ZEALAND LAW SOCIETY TE KĀHUI TURE O AOTEAROA WEBSITE	7
INTRODUCTION – OBLIGATIONS OF LAW PRACTICES UNDER THE REQUIREMENTS OF THE NEW ZEALAND LAW SOCIETY FINANCIAL ASSURANCE SCHEME.....	9
COMPETENCIES.....	9
THE FUNDAMENTAL OBLIGATIONS ARE:	9
TRUST ACCOUNT SUPERVISOR.....	10
VALUABLE PROPERTY OF A CLIENT.....	10
TRUST ACCOUNTS NOT TO BE OVERDRAWN	10
RESTRICTIONS ON CERTAIN TRANSACTIONS.....	11
PERSONAL TRANSACTIONS.....	11
FEES.....	11
CLIENT BANK ACCOUNTS	12
RETENTION OF RECORDS.....	12
RECEIPT OF TRUST MONEY	13
PAYMENT OF TRUST MONEY.....	13
REPORTING TO CLIENTS	13
RECONCILIATIONS	13
REPORTING TO THE NEW ZEALAND LAW SOCIETY	14
PRACTICE REQUIRED TO GIVE NOTICE IN CERTAIN CASES.....	15
CESSATION OF PRACTICE	15
REVIEWS BY THE NEW ZEALAND LAW SOCIETY INSPECTORATE	15
INVESTMENT OF TRUST MONEY.....	15
UNCLAIMED MONEY IN TRUST ACCOUNT	16
ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM (AML/CFT) ACT 2009.....	16
AML/CFT: SUSPICIOUS TRANSACTIONS AND ACTIVITIES.....	16
FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA).....	16
NON-COMPLIANCE	17
UNIT 1 – RECEIPTING AND BANKING TRUST ACCOUNT TRANSACTIONS.....	19
COMPETENCIES.....	19
RECEIPT OF TRUST MONEY	19
<i>Information required on a trust account receipt: reg 13(3)</i>	20
<i>Cash</i>	21
<i>Electronic</i>	21
<i>Foreign currency in the trust account</i>	22
BANKING	22
<i>Bank deposit supplements</i>	22

UNIT 2 – PAYMENTS AND FEES.....	25
COMPETENCIES	25
<i>Sufficient available monies</i>	25
<i>Authority</i>	25
<i>Certainty of payee</i>	26
REQUISITIONS	26
<i>Overseas payment</i>	28
<i>Fees</i>	29
UNIT 3 – PROCESSING TRUST ACCOUNT TRANSACTIONS.....	33
COMPETENCIES	33
CONTROL ACCOUNT/CASH BOOK.....	33
JOURNALS.....	35
REVIEW OF TRUST JOURNALS	37
LEDGERS.....	37
FIRM’S INTEREST IN TRUST LEDGER “FIT” (FLOAT ACCOUNT).....	40
INTEREST BEARING DEPOSIT ACCOUNT “IBD”	40
UNIT 4 – TRUST ACCOUNT RECONCILIATION	43
COMPETENCIES	43
RECONCILIATIONS	43
<i>Introduction</i>	43
<i>1 – Agreeing the control account with the ledger balances</i>	43
<i>2 – Reconciling the control account with the bank statement balance</i>	44
<i>Steps to achieve a trust account bank reconciliation</i>	45
<i>Bank statements</i>	47
<i>IBD Reconciliation</i>	48
<i>What reports should you receive and retain</i>	48
BANK RECONCILIATION CHECKLIST	50
UNIT 5 – KEY INTERNAL CONTROLS OF THE TRUST ACCOUNT	51
COMPETENCIES	51
REVIEW OF TRUST LEDGER BALANCES/EXCEPTION REPORTING.....	51
<i>Introduction</i>	51
<i>Inactive/dormant balances</i>	52
<i>Hanging balances</i>	53
<i>Inactive IBD balances</i>	53
<i>Large balances</i>	54
<i>Debit balances</i>	54
<i>Balances which should have been cleared</i>	55
CLIENT FILES	55
<i>Files – live reviews</i>	55
<i>File closure</i>	56
<i>A file closure may include the following procedures:</i>	56
<i>Inadequate file closure procedures</i>	57
<i>File reviews</i>	58
<i>A file review may include the following questions:</i>	59
CONTROL PROCEDURES FOR PROTECTING THE TRUST ACCOUNT	59
<i>Introduction</i>	59
<i>Separation of responsibilities</i>	60
<i>Email monitoring</i>	61
<i>Bank statements</i>	61
EFFECTIVE SUPERVISION	61
PAYMENTS.....	62
CONTROLS	63
<i>Internal control systems – summary</i>	63
<i>The control environment</i>	63
<i>Controls external to the trust account</i>	63
COMPUTERISATION	64
<i>Computer system design</i>	64
<i>System access</i>	65

<i>Controls on input</i>	66
<i>Controls on output</i>	66
<i>System back-up and recovery</i>	66
PRACTICAL HINTS FOR REPORTING TO CLIENTS.....	68
UNIT 6 – MONTH END REVIEW AND REPORTING TO THE NEW ZEALAND LAW SOCIETY	71
COMPETENCIES.....	71
MONTH END CHECKLIST OF DOCUMENTS TO REVIEW	71
<i>General trust bank</i>	71
<i>Some suggested review work (other than checking reconciliation)</i>	72
<i>Interest bearing deposit trust bank accounts (on call and/or term)</i>	72
<i>Controlled client bank accounts</i>	72
<i>Foreign currency bank accounts</i>	72
<i>Register of valuable property</i>	72
REPORTING TO THE NEW ZEALAND LAW SOCIETY TE KĀHUI TURE O AOTEAROA	73
<i>Monthly certificate</i>	73
<i>Ticking a “no” box on the monthly certificate</i>	73
<i>Online filing</i>	73
<i>What checks should be considered before ticking each box “yes” or “no”</i>	75
UNIT 7 – RISK MANAGEMENT	79
COMPETENCIES.....	79
ELEMENTS OF IRREGULARITIES.....	79
IRREGULARITIES INVOLVING THE TRUST ACCOUNT.....	80
STAFF ISSUES	80
COMPLAINTS FROM CLIENTS.....	80
INSPECTORATE REVIEW.....	81
INTERNAL OR EXTERNAL AUDIT	81
WHEN ISSUES MIGHT OCCUR.....	81
<i>Before funds reach the trust account</i>	81
<i>From the trust account</i>	82
<i>After the funds have left the trust account</i>	82
FRAUDULENT BEHAVIOUR	82
<i>Motive</i>	83
<i>Opportunity</i>	83
<i>Rationalisation</i>	83
INDICATORS OF FRAUD.....	84
<i>Traditional fraud indicators include:</i>	84
<i>Can you prevent fraud?</i>	84
<i>Fraud prevention strategies include:</i>	85
SIGNIFICANT CASE HISTORIES	85
<i>Case study 1</i>	85
<i>Case study 2</i>	86
<i>Case study 3</i>	88
UNIT 8 – PROFESSIONAL OBLIGATIONS WHEN IRREGULARITIES ARE SUSPECTED	89
COMPETENCIES.....	89
INTRODUCTION	89
REPORTING OBLIGATIONS	89
<i>Insurers</i>	90
<i>New Zealand Law Society Te Kāhui Ture o Aotearoa</i>	91
<i>Police</i>	91
<i>Clients directly affected</i>	91
<i>Former principals</i>	91
INVESTIGATING THE EXTENT OF LOSS	92
<i>New Zealand Law Society Te Kāhui Ture o Aotearoa role</i>	92
<i>Police or Serious Fraud Office (SFO) role</i>	92
<i>Insurer’s role</i>	92
<i>Practice’s role</i>	92
MINIMISING DAMAGE	92
<i>Other interested parties</i>	93

RECOVERY ACTIONS	93
PRINCIPAL RESPONSIBILITY	94
<i>Personal liability</i>	94
<i>Professional responsibility</i>	94
THE ROLE AND SCOPE OF THE LAWYERS' FIDELITY FUND (THE FUND).....	95
<i>What is the Fund?</i>	95
<i>Elements of a claim</i>	95
<i>The Fund's rights of recovery – subrogation issues</i>	96
REPRESENTING A CLIENT MAKING A CLAIM ON THE FIDELITY FUND.....	96
APPENDIX 1 – ACCOUNTING SOFTWARE.....	97
APPENDIX 2 – REPRESENTING A CLIENT MAKING A CLAIM ON THE FIDELITY FUNDS	101
INTRODUCTION	101
LAWYERS' FIDELITY FUND	101
SOLICITORS' FIDELITY GUARANTEE FUND	101
MANAGING CLAIMANTS' EXPECTATIONS	102
<i>Avenues of recovery</i>	102
<i>Carrying out a cost benefit analysis</i>	102
<i>Pro bono contribution</i>	102
<i>Liaising with the New Zealand Law Society</i>	103
<i>Recovery by individuals or group action</i>	103
<i>Communicating with the secretary of the Fidelity Funds</i>	103
WHEN CAN A CLAIM BE MADE?.....	103
<i>Procedure for lodging a claim</i>	103
<i>Lodgement of claims and inquiries</i>	104