

Nevada Law Foundation Interest on Lawyers Trust Accounts (IOLTA) FAQs

What is IOLTA? Nevada Supreme Court Rule 217 (the IOLTA Rule) requires that Nevada attorneys place client funds that will be held for too short a time or are too nominal to generate interest for the client in an Interest on Lawyers Trust Account (IOLTA), held at a participating financial institution.

The Nevada Law Foundation is the tax-exempt entity responsible for receiving and distributing the interest earned on IOLTAs. Since its inception, the Foundation has distributed over \$5 million in direct grants to qualified organizations across the state. The Nevada Law Foundation Board of Directors grants IOLTA funds in a competitive grant process. The majority of Nevada's IOLTA funds are given to organizations with programs that provide direct, legally-related services to the poor, victims of domestic violence, senior citizens, children protected by or in need of protection by the juvenile court, and other persons who may be denied access to justice. The remainder is allocated to providing law-related educational programs for the public.

What is the difference between a trust account and an IOLTA? Trust accounts, whether IOLTAs or accounts set up for individual clients, are designed to keep client money separate from the lawyer's funds. However, IOLTAs are appropriate only for those funds that cannot earn interest or dividend income for the client or third party in excess of the costs that would be incurred by securing such income during the time the funds are held.

All fiduciary funds are trust funds which are subject to the requirements of SCR 78.5. SCR 78.5 provides the threshold requirements for funds held in a fiduciary capacity in connection with a representation, whether as a trustee, agent, guardian, executor, advocate, or otherwise. The rule also provides for disciplinary oversight, and requires that trust accounts be held in financial institutions which agree to meet certain reporting requirements. SCR 217, the IOLTA Rule, provides *additional* requirements for IOLTAs, which are a separate class of interest-bearing trust funds that are nominal in amount or to be held for a short period of time. IOLTAs pool money that would not otherwise generate interest, leveraging these funds for the public good. SCR 219 permits interest-bearing trust accounts which inure to the benefit of a client. Funds which are capable of generating interest for a client's benefit are not appropriate for an IOLTA.

Is it mandatory that I have an IOLTA? Participation in IOLTA is mandatory in Nevada. Pursuant to Nevada Supreme Court Rule 217, client or third-party property in an attorney's possession in connection with a representation *must* be kept in a trust account separate from attorney funds, and the IOLTA Rule *requires* that those funds that are nominal or held for a short time be deposited in an IOLTA. The IOLTA Rule further requires IOLTAs to be held at participating financial institutions. These financial institutions have agreed to meet certain minimum account and reporting standards required by the IOLTA Rule. The State Bar of Nevada maintains a current list participating financial institutions on its [website](#) to facilitate attorney compliance with the IOLTA Rule.

Are there exemptions to the IOLTA requirement? The requirement that IOLTAs be held at participating financial institutions can be waived only if an attorney or law firm does not maintain an office within 20 miles of a financial institution that meets the Rule's minimum standards. Attorneys wishing to waive the requirement must report the waiver to the State Bar each year with his or her annual membership fee statement. This waiver is limited to the requirement to hold your IOLTA at a participating financial institution; you must still hold qualifying funds in an IOLTA that generates interest and meets the reporting requirements of the IOLTA rule and the Nevada Law Foundation.

Inactive members and active members who otherwise do not process fiduciary funds in this jurisdiction remain exempt from the requirement to have a trust account, IOLTA or otherwise.

Who determines which funds qualify for an IOLTA? Supreme Court Rule 221 gives each attorney or firm the discretion to determine whether a client's funds are nominal in amount or are to be held for such a short period of time that they belong in an IOLTA. The rule goes on to state that "no charge of ethical impropriety or other breach of professional conduct shall attend the member's good faith exercise of judgment in that regard." Attorneys should make these decisions as they would any other fiduciary decision.

What must I do to be in compliance with the IOLTA Rule? There are four things you must do to be in compliance with the IOLTA Rule: 1) At least annually, verify your IOLTA is in a participating financial institution; 2) report your IOLTA information on your annual member dues statement; 3) Notify the state bar within 30 days if you move or open new IOLTAs throughout the year, on the form provided; and 4) Establish and follow reasonably prudent procedures during the year to make sure all trust accounts, including IOLTA, are operating within the requirements of the rules of professional conduct.

My firm has an IOLTA. Can I use theirs and still comply with the IOLTA Rule? Yes. On your annual dues statement you will report your firm's IOLTA information.

I'm closing my practice; what do I do with the money in my trust account? My IOLTAs? The money in your trust accounts and IOLTAs belongs to your clients, and must eventually be returned to them or used on their behalf according to their instructions. Disposition of the money in your trust accounts and IOLTAs will depend on the nature of your practice and how you plan to close it. Be sure to know and follow the Nevada Rules of Professional Conduct in handling the closure. You will need to determine whether you will be handing your current clients off to another attorney, or seeing your clients' matters through to their conclusion. In either case, nothing about your handling of client money should change: you still need to maintain written records of money deposited and withdrawn from your accounts, records of your notifications to clients of money received or paid out on their behalf, and written agreements between yourself and your clients regarding the use of money placed on their behalf in your trust accounts and IOLTAs.

What happens to the money in my IOLTA or trust accounts if I die? The money in your trust accounts and IOLTAs belongs to your clients. However, it will pass at your death according to the arrangements you make in advance. This may mean the money in these accounts becomes part of your estate and must go through probate or be managed by your executor if you fail to put in place other procedures. You are responsible for ensuring that you or your firm has a succession plan in place for handling your client's affairs after your death.

I do not reside in Nevada; however, I have a limited practice there. Am I required to have a trust account? An IOLTA? If you are a member of the State Bar of Nevada, you must conform to the requirements of Supreme Court Rule 217. This means that if you hold money or property for a client related to a Nevada representation, you must hold it in a clearly-designated trust account or IOLTA that meets the requirements of the trust account rules (SRC 78.5 and SRC 217). You must also meet the requirements of Nevada Rule of Professional Conduct 1.15, which mandates using a trust account to keep client funds separate from attorney funds.

Who pays taxes on the interest earned on IOLTAs? The income generated by IOLTAs is not taxable to either attorneys or their clients. The interest on funds held in IOLTAs is paid directly to the Nevada Law Foundation. As a tax exempt organization, the Foundation does not have to pay income tax on the funds it receives through the IOLTA program.

How does the State Bar of Nevada track compliance? Beginning in spring 2011, and at least annually thereafter, the State Bar of Nevada and the Nevada Law Foundation will work together to compare the information submitted on members' dues statements to the information reported by financial institutions. The State Bar of Nevada will then notify individual members of any inconsistencies and provide the member with an opportunity to remediate or otherwise respond. Failure to respond to or otherwise address a notice from the State Bar regarding your trust account can have serious consequences, including suspension by the State Bar of Nevada Board of Governors and a \$200 fine under Rule 17.