

NOTARIES TRUST ACCOUNTS RULES 1989

Citation and Commencement

These Rules may be cited as the Notaries Trust Accounts Rules 1989 and shall come into operation on the 1st day of April, 1990.

1. These Rules may be cited as the Notaries Trust Accounts Rules 1989.

2. (1) In these Rules unless the context otherwise requires-

"Client account" shall mean a current or deposit account at a bank or deposit account with a building society, in the title of which the word "client" appears, kept and operated in accordance with the provisions of the Notaries Accounts Rules 1989.

"Notary-trustee" shall mean a notary who is a sole trustee or co-trustee only with one or more of his partners or employees;

"Trust account" shall mean a current or deposit account kept at a bank or deposit account kept with a building society in the title of which the word "trustee" or "executor" appears or which is otherwise clearly designated as a trust account, and kept solely for money subject to a particular trust of which the notary is a notary-trustee;

"Bank" and "Building Society" shall have the meaning assigned to them by the Notaries Accounts Rules 1986;

"Public officer" shall mean an officer whose remuneration is defrayed out of moneys provided by Parliament, the revenues of the Duchy of Cornwall or the Duchy of Lancaster, the general fund of the Church Commissioners, the Forestry or the Development Fund;

"Statutory undertakers" shall mean any person authorised by or under an Act of Parliament, or an order having the force of an Act of Parliament, to construct, work,

or carry on any railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water or other public undertaking;

"Local authority" shall have the same meaning as is given to this expression by the Local Government Act 1972;

"The Faculty Office" shall mean the Court of Faculties of the Lord Archbishop of Canterbury and the words "Master" and "Registrar" shall mean the Master and Registrar thereof respectively.

(2) The Interpretation Act 1889 shall apply to these Rules in the same manner as it applies to an Act of Parliament.

3. Subject to the provisions of Rule 9 of these Rules every notary-trustee who holds or receives money subject to a trust of which he is a notary-trustee, other than money which is paid into a client account as permitted by the Notaries Accounts Rules 1989, shall without delay pay such money into the trust account of the particular trust.

4. There may be paid into a trust account-

(a) money subject to the particular trust

(b) such money belonging to the notary-trustee or to a co-trustee as may be necessary for the purpose of opening or maintaining the account; or

(c) money to replace any sum which for any reason may have been drawn from the account in contravention of Rule 8 of these Rules.

5. Where a notary holds or receives a cheque or draft including money subject to a trust or trusts of which the notary is notary-trustee-

(a) he shall where practicable split such cheque or draft and, if he does so, shall deal with each part thereof as if he had received a separate cheque or draft in respect of that part; or

(b) if he does not split the cheque or draft, he may put it into a client account as permitted by the Notaries Accounts Rules 1989.

6. No money, other than money which under the foregoing Rules a notary is required or permitted to pay into a trust account, shall be paid into a trust account, and it shall be the duty of a notary into whose trust account any money has been paid in contravention of this Rule to withdraw the same without delay on discovery.

7. There may be drawn from a trust account-

(a) money properly required for a payment in the execution of the particular trust;

(b) money to be transferred to a client account;

(c) such money, not being money subject to the particular trust, as may have been paid into the account under paragraph (b) of Rule 4 of these Rules; or

(d) money which may for any reason have been paid into the account in contravention of Rule 6 of these Rules.

8. No money other than money permitted by Rule 7 of these Rules to be drawn from a trust account shall be so drawn unless the Master upon an application made to him by the notary expressly authorise in writing its withdrawal.

9. Notwithstanding the provisions of these Rules a notary shall not be under obligation to pay into a trust account money held or received by him which is subject to a trust of which he is notary trustee-

(a) if the money is received by him in the form of cash and is without delay paid in cash in the execution of the trust to a third party; or

(b) if the money is received by him in the form of a cheque or draft which is without delay endorsed over in the execution of the trust to a third party and is not passed by the notary through a bank or building society account.

10. (1) Every notary-trustee shall at all times keep properly written up such accounts as may be necessary-

(a) to show separately in respect of each trust of which he is notary trustee all his dealings with money received, held or paid by him on account of that trust; and

(b) to distinguish the same from money received held or paid by him on any other account.

(2) Every notary-trustee shall preserve for at least six years from the date of the last entry therein all accounts kept by him under this Rule.

11. (1) In order to ascertain whether these Rules have been complied with the Master acting either-

(a) on his own motion; or

(b) on a written statement and request transmitted to him by or on behalf of The Notaries' Society or The Society of Public Notaries of London; or

(c) on a written complaint lodged with him or his Registrar by a third party, may require any notary-trustee to produce at a time and place to be fixed by the Master, all books of account, bank and building society pass books, loose-leaf bank and building society statements, statements of account, vouchers and documents relating to all or any of the trusts of which he is a notary-trustee

for the inspection of any person appointed by the Master, and to supply to such person any necessary information and explanations and such person shall be directed to prepare for the information of the Master a report on the result of such inspection.

Such report may be used as a basis for proceedings in the Faculty office.

(2) Upon being required so to do a notary-trustee shall produce such books of account, bank and building society pass books, loose-leaf bank and building society

statements, statements of accounts, vouchers and documents at the time and place fixed.

(3) In any case in which The Notaries' Society or The Society of Public Notaries of London are of opinion that an inspection should be made under this Rule of books of account, bank and building society pass books, loose-leaf bank and building society statements, statements of account, vouchers and documents relating to all or any of the trusts of which a notary is notary-trustee it shall be the duty of such Society to transmit to the Master a statement containing all relevant information in their possession and a request that such an inspection be made.

(4) Before instituting an inspection on a written complaint lodged with them by a third party, the Master shall require prima facie evidence that a ground of complaint exists, and may require the payment by such party to the Master of a reasonable sum to be fixed by him to cover the costs of the inspection, and the costs of the notary-trustee against whom the complaint is made. The Master may deal with any sum so paid in such manner as he thinks fit.

12. Every requirement to be made by the Master of a notary-trustee under these Rules shall be made in writing and sent by recorded or registered delivery service to the last address of the notary-trustee appearing in the Roll or in the Register kept by the Faculty Office, and, when so made and sent, shall be deemed to have been received by the notary-trustee within 48 hours (excluding Saturdays, Sundays and Bank Holidays) of the time of posting.

13. Nothing in these Rules shall deprive a notary of any recourse Or right whether by way of lien, set-off, counterclaim, charge or otherwise, against money standing to the credit of a trust account.

14. These Rules shall not apply to a notary acting in the course of his employment as (a) a public officer, or (b) an officer of statutory undertakers, or (c) an officer of a local authority.