

LSCV

Legal Services Corporation of Virginia

**VIRGINIA IOLTA PROGRAM
GUIDEBOOK**

FOR

**FINANCIAL INSTITUTIONS,
ATTORNEYS AND TITLE COMPANIES**

Revised February 2024

Legal Services Corporation of Virginia

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IOLTA GUIDEBOOK FOR FINANCIAL INSTITUTIONS AND ATTORNEYS

(Revised February 2024)

TABLE OF CONTENTS

IOLTA Introduction	3
Rulings from Government Agencies	4
IOLTA Accounts	5
Definition	5
Attorney Participation & Compliance	5
Exemptions from Participation	5
Low Balance Accounts	6
LSCV Tax Identification Number	6
IRS Reporting Not Required	6
Service Charges & Handling Fees	6
Negative Netting Prohibited	7
FDIC Protection	7
IOLTA Procedures at Financial Institutions	9
Enrollment	9
Remittance & Comparability Requirements	9
Safe Harbor Rate for Comparability	11
Conclusion	11
Frequently Asked Questions About IOLTA	12

INTEREST ON LAWYERS' TRUST ACCOUNTS PROGRAM (IOLTA)

Introduction

Legal Services Corporation of Virginia (LSCV) is a non-stock, 501(c)(3) non-profit corporation organized for law-related charitable purposes. LSCV promotes, coordinates and oversees the provision of civil legal aid services to individuals living in poverty in Virginia through licensed legal aid societies. LSCV is authorized by Section 54.1-3916 of the Code of Virginia and by Part Six, Section IV, Paragraph 20 of the Rules of the Supreme Court of Virginia to administer the Virginia IOLTA program and distribute the funds generated by it to local legal aid programs. A copy of LSCV's 501(c)(3) exemption letter is available on request.

LSCV was incorporated in 1975 and currently funds and oversees the work of ten legal aid programs with 35 offices providing services to eligible individuals in every city and county in Virginia. These programs are staffed by 225 highly skilled and dedicated attorneys and 210 support personnel. They handle more than 25,000 civil cases each year for Virginians.

In March 2022, the Supreme Court of Virginia amended Part Six, Section IV, Paragraph 20 (the IOLTA Rule) to require any Virginia lawyer who receives client or third-party funds to place those funds in pooled, interest-bearing IOLTA accounts, thus removing from the Rule the previous option of non-interest-bearing client trust accounts.¹ The Rule took effect July 1, 2022. The interest earned on such accounts is remitted directly by the participating financial institution to LSCV to fund its local legal aid programs.

The thousands of Virginia lawyers who already maintained IOLTA accounts didn't need to do anything to adjust to the new rule. Those lawyers or law firms that are holding client or third-party trust funds in non-interest-bearing trust accounts (including Real Estate Settlement Agent trust accounts) are now required to convert those non-interest-bearing accounts to IOLTA under the new Rule.

Converting accounts to be designated as IOLTA is simple. LSCV provides a "Request to Establish IOLTA" account form at www.lscv.org/IOLTA that allows any attorney, law firm or title company to open a new IOLTA account or convert an existing non-IOLTA account to IOLTA. The lawyer fills out the form and brings/transmits it to the financial institution who then sends it to LSCV after opening or converting the account. Each IOLTA account is opened in the name of the law firm or lawyer or title company with Legal Services Corporation added to

¹ Lawyers may still deposit client funds in non-IOLTA, interest-bearing trust accounts if the lawyer has established a procedure by which the lawyer pays the client interest at least quarterly. See Para. 20(A).

the account name as third-party beneficiary of the interest generated on the account.

Each account's tax ID for purposes of claiming income on the interest generated by the account is that of LSCV, thus avoiding any income tax liability for the lawyers and their clients.

The Rule change places no additional administrative or financial burden on lawyers beyond converting their currently non-interest-bearing accounts to IOLTA. Once established, the IOLTA account puts no additional requirements on the attorney. The bank holding IOLTA accounts takes care of reporting and remitting earned interest to LSCV.

Although financial institutions are not required to participate in the IOLTA program, over 90 financial institutions currently offer IOLTA accounts to their attorney customers and are approved by the Virginia State Bar. A listing of the approved institutions can be obtained from LSCV or the Bar.

This Guidebook is designed to provide information about the Virginia IOLTA program and to assist participating financial institutions, attorneys and title companies in establishing and maintaining IOLTA accounts. You will find a list of frequently asked questions (FAQs) at the end of this guidebook. If you need further information or if the LSCV staff can be of assistance to you as you administer IOLTA accounts at your institution or in your law firm, please give us a call at (804) 782-9438. You can e-mail queries to our IOLTA Coordinator, Carolyn Lawrence at Lawrence@lscv.org.

FROM GOVERNMENTAL AGENCIES

The relevant statute governing the operation of the Virginia IOLTA program is section 54.1-3916 of the Virginia Code as amended. The relevant Rules of the Supreme Court of Virginia governing attorney trust accounts are Part 6, Section II, Rule 1.15 (Safekeeping Property) and Part 6, Section IV, Paragraph 20 (IOLTA Rule).

IOLTA ACCOUNTS

Definition

An IOLTA (Interest on Lawyers' Trust Accounts) account is an interest-bearing account that an attorney, law firm or title company maintains for client or third-party funds, including legal fees that have not yet been earned. The account is issued in the name of the attorney, law firm or title company, and is referred to as an LSCV IOLTA trust account. All interest earned on the IOLTA account (less allowable fees) is remitted to the Legal Services Corporation of Virginia at 919 East Main Street, Suite 615, Richmond, Virginia 23219.

Attorney and Title Company Participation and Compliance

Under the Supreme Court Rule, attorneys are required to participate in the IOLTA program if they hold client or third-party funds in trust and the administrative costs of calculating and paying interest are likely to exceed the value of the anticipated interest. Title companies that have no attorneys participate on a voluntary basis. Attorneys who do not maintain client trust accounts are exempt from participation in the IOLTA program.

Exemption from Participation

An attorney may be eligible for exemption from participation in the Virginia IOLTA program if:

1. the attorney never receives client or third-party funds that would require the establishment of a trust account; or
2. the attorney is not engaged in the practice of law in Virginia, does not receive client funds in Virginia, and does not receive funds from Virginia clients; or
3. the attorney/law firm maintains an IOLTA account in a neighboring jurisdiction where their law practice is located and certifies as such on the Virginia IOLTA compliance form; or
4. the attorney is a full-time judge, government attorney, military attorney, or an associate member of the Virginia State Bar.

In order to receive an exemption, an attorney must check the appropriate box on the IOLTA compliance form on the VSB.org website.

Low Balance Accounts

Some attorneys only occasionally receive client funds that must be held in trust leading to a situation where the IOLTA account may have a minimal balance for most of a given year. In those cases, the attorney will still need to maintain their IOLTA account. This will be easier than opening a new account each time the attorney receives client trust funds. Most banks now waive fees in recognition of the IOLTA program's charitable purpose or at least waive the fees of low balance accounts, so exemptions for low balance accounts should not be necessary.

Remittance fees and service charges should be waived on inactive IOLTA trust accounts. LSCV staff monitors institution reports to identify inactive accounts and will endeavor to eliminate these accounts from the IOLTA program if an exceptionally long period of time has passed without activity in the accounts.

Tax Identification Number

The tax identification number for all IOLTA accounts is LSCV's CORPORATION TIN: #51-0175735. The Corporation is a tax-exempt, non-profit Virginia corporation and qualifies as such under Section 501(c)(3) of the Internal Revenue Code. IOLTA accounts are therefore exempt from any backup withholding tax. The tax identification number will not match the name on the account **unless the account name includes "Legal Services Corporation of Virginia, IOLTA Trust Account for attorney/law firm."** A penalty will not be imposed by the Internal Revenue Service for an incorrect tax identification number if the account is not required to report (IRS Publication 1281 Rev. 10-86, "TIN Penalty Backup Withholding," page 6).

IRS Reporting Not Required

Neither the bank nor the law firm is required to report interest earned on the IOLTA account. The IRS granted the Legal Services Corporation of Virginia tax-exempt status; thus, a Form 1099 need not be prepared. If, however, your financial institution's data processing system automatically issues a Form 1099, the form should indicate the name of the attorney or law firm and the tax identification number of the Legal Services Corporation of Virginia. If you have any questions, LSCV would be happy to provide you with the IRS Letter Ruling governing reporting.

Service Charges and Handling Fees

The Virginia IOLTA program covers customary, routine account maintenance charges assessed against IOLTA accounts. These fees, however, may not exceed those charged to non-attorney depositors. Such fees include per check/per deposit charges and a monthly maintenance fee. While some banks do assess a small monthly maintenance fee, typically from \$2 to \$5 per account, **most banks (over**

90% of participating banks) waive all fees on IOLTA accounts given their charitable nature. The few banks that do assess a monthly maintenance fee do not assess other fees typical of account analysis.

Attorneys should contact Legal Services Corporation of Virginia (LSCV) to find out which banks waive fees and offer the best interest rates. Fees for wire transfer, insufficient funds, bad checks, stop payment, account reconciliation, negative collected balances, and check printing are not considered customary account maintenance charges and are not covered by the Virginia IOLTA program. Such non-routine fees must be brought to the attention of the lawyer or law firm, who in turn may absorb these specific costs or pass along those fees to the client(s) being served by the transaction (in accordance with attorney/client agreements).

The financial institution should deduct applicable fees for IOLTA accounts solely from the interest earned. The principal of the account should never be used to offset the service charges or handling fees imposed on an IOLTA account. Since these accounts contain client funds held in trust by attorneys, any invasion of the principal would be improper.

“Negative Netting” of Accounts Prohibited

Most financial institutions have waived or reduced minimum balance requirements and related service charges for IOLTA accounts. “Negative” interest earnings are strictly prohibited on IOLTA accounts. This would result from service charges which exceed interest earned and would constitute an invasion of principal. **Nor may a financial institution collect these negative charges from the “positive” interest earned by other IOLTA accounts.** This would constitute payment of fees of one account with earnings from another account without the account holder’s consent.

Service charges may only be imposed to the extent of interest earned on an individual account. Example: An IOLTA account earned \$2 in interest for a given month. The institution charges a monthly maintenance fee of \$5. The fees collected for this period cannot exceed the \$2 earned. The excess service charge amount is waived by the financial institution and net interest paid is reported as “zero” (\$0.00) on the IOLTA Interest Remittance Report form (sample available from LSCV).

FDIC Protection

An IOLTA account must disclose that the funds in the account are held by the nominal account holder (the lawyer or title company) on behalf of others. If this disclosure requirement is met, the FDIC will then be able to ascertain the interests of other parties in the IOLTA account from the records of the insured depository institution or from the records of the lawyer (or from some person/entity whom the lawyer has engaged to perform that task).

If this record-keeping requirement is satisfied, funds attributable to each client will be insured to the client in whatever right and capacity that the client owns those funds. For example, if an IOLTA account contains funds that belong to an individual, they will be insured up to \$250,000. These funds will be aggregated and insured to the statutory limit, however, with any other funds the client may hold individually at the same insured depository institution. The accrued interest attributable to the tax-exempt entity (LSCV), will also be recognized as separately insured interest if the disclosure and record keeping requirements are met.

IOLTA PROCEDURES AT FINANCIAL INSTITUTIONS

IOLTA Enrollment/Virginia State Bar Trust Account Notification Agreement

Attorneys may only open client trust accounts at banking institutions approved by the Virginia State Bar. No banking institution is required to provide attorney client trust accounts. If a banking institution wants to provide client trust account products to attorney account holders, it must be approved to do so by the Virginia State Bar. To be approved by the Virginia State Bar, the banking institution must enter into a trust account notification agreement with the Bar. In doing so, the banking institution agrees to abide by the regulations promulgated by the Bar and by the IOLTA program (LSCV) and comply with the Rules of the Supreme Court of Virginia as they apply to attorney trust accounts. The Trust Account Notification Agreement should be obtained directly from the Virginia State Bar by contacting Stephanie Blanton in the Virginia State Bar's Office of Bar Counsel at 804-775-0576. That office also provides Regulations for the Approval of Financial Institutions as a Depository for Attorney Trust Accounts in Virginia.

IOLTA Remittance and Comparability Requirements

The participating financial institution is responsible for monthly or quarterly remittance of IOLTA funds in accordance with the following provisions:

1. Remit to the Legal Services Corporation of Virginia interest or dividends on the average monthly balance of each such account or as otherwise computed in accordance with such financial institution's standard accounting practice, provided that such rate of interest shall not be less than the rate paid by such financial institution to regular, non-attorney depositors with similarly sized accounts. An IOLTA account is a pooled client trust account held at an eligible institution that is comprised of client and third person funds that cannot otherwise earn income for the client or third person in excess of the costs incurred to secure such income, and which is:
 - a. An interest-bearing checking account;
 - b. A money market account with or tied to check-writing;
 - c. A sweep account which is a government money market fund or daily overnight financial institution repurchase agreement invested solely in or fully collateralized by United States government securities; or
 - d. An open-end money market fund with check writing solely invested in or fully collateralized by United States government securities.
2. Transmit with each remittance to LSCV a statement identifying the name of the lawyer or law firm from whose account the remittance is sent, the account number, the period for which remittance is made, the rate of interest applied, the total amount of interest earned, the service charges or other fees assessed the account, if any, and the net amount of interest remitted.

An IOLTA Interest Remittance Report (contact lawrence@lscv.org for a sample report) may be submitted, or the participating financial institution may utilize any form which contains the above-referenced information. Institutionally generated report formats should follow a sort order by account number first, customer name second, etc. LSCV encourages banks to remit their reports electronically. LSCV can download reports or receive the report by e-mail.

3. Transmit to the depositing lawyer or law firm at the same time, a report or statement, showing the amount paid to LSCV, the rate of the interest applied, the fees assessed, and the average account balance for the period for which the report is made. **An entry on the attorney/law firm's regular bank statement meets this requirement.**
4. Charge no fees against an IOLTA trust account that are greater than the fees charged to non-attorney depositors, except that a reasonable IOLTA remittance fee may be charged to defray the depository institution's administrative costs attributable to calculating and remitting the interest to the Corporation.
5. Collect no fees from the principal deposited in the IOLTA trust account.
6. Send a copy of the IOLTA Interest Remittance Report(s), along with a cashier's or bank check for the net interest payable to the Legal Services Corporation of Virginia, at the following address:

Legal Services Corporation of Virginia
919 East Main Street, Suite 615
Richmond, Virginia 23219

Or contact Carolyn Lawrence at LSCV to set up electronic reporting and ACH remittance of funds.

7. If your institution has IOLTA accounts for more than one lawyer or law firm participating in this program, you may submit one check or ACH remittance covering all accounts using the report form provided in this booklet or a suitable facsimile.
8. Report errors in remittance to LSCV's office address above. Upon notification and receipt of supporting documentation, refunds are made for excess IOLTA payments.

Comparability and Safe Harbor Rate

In order to comply with the “comparability” requirement stated above and avoid the analysis outlined below, financial institutions can elect to pay a “Safe Harbor” rate on all IOLTA accounts. The Safe Harbor rate is equal to 55% of the federal funds target rate (net of any fees) and is in effect as of the first of the month following any Fed change. Otherwise, financial institutions must pay no less on IOLTA accounts than the lesser of the highest interest rate or dividend generally available from the institution to its non-IOLTA customers for each IOLTA account that meets the minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the institution may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers if such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and these factors do not include that the account is an IOLTA account. The institution shall also consider all product option types for an IOLTA account offered by the financial institution to its non-IOLTA customers by either using the available account options as an IOLTA account or paying the comparable interest rate or dividend on the IOLTA checking account in lieu of actually establishing the comparable highest interest rate or dividend product.

CONCLUSION

These guidelines have been established by the Legal Services Corporation of Virginia for the Virginia IOLTA program. If your financial institution wishes to modify any of the procedures described herein, please contact the Corporation’s staff to discuss your individual needs and/or concerns. We strive to accommodate the needs of financial institutions offering IOLTA accounts to their lawyer customers.

The Legal Services Corporation of Virginia is very grateful to those financial institutions that offer IOLTA trust accounts to attorneys, especially the large majority that waive fees and charges.

LSCV and Legal Aid clients are extremely fortunate to have the dedication of thousands of Virginia attorneys participating in the IOLTA Program. They understand Legal Aid’s vital role in the provision of equal access to justice. Attorney customers throughout the state frequently ask LSCV about specific banking institution’s fees and charges relating to IOLTA accounts. It is our practice, in those instances, to inform them which banks pay the best rates and waive fees in recognition of IOLTA’s charitable nature. We pledge to work with you to make Virginia’s IOLTA program a success. Do not hesitate to raise any concerns you have with our staff at any time.

FREQUENTLY ASKED QUESTIONS ABOUT IOLTA

Q. WHERE DO I DEPOSIT CLIENT TRUST FUNDS THAT ARE LARGE ENOUGH AND/OR WILL BE HELD FOR A LONG ENOUGH TIME SUCH THAT THE CLIENT IS ENTITLED TO RECEIVE THE INTEREST?

A. Client trust funds for which the client should receive interest should be deposited in a separate client trust account to earn interest for the benefit of the individual client. The attorney must exercise her/his independent judgment in assessing whether opening a separate interest-bearing account on behalf of a particular client will provide income for the client after considering the amount of interest that will be earned versus the costs of maintaining the separate account including the fees and charges that might be associated with it and the administrative cost to the lawyer or law firm.

In exercising her/his independent judgment in this decision, the lawyer or law firm who deposits funds of a client in an IOLTA account in accordance with Paragraph 20(B) shall not be required to seek permission from such client or to compute or report to such client any payment to LSCV of interest dividends by the banking institution.

Q. HOW DO LAWYERS WHO PRACTICE IN A FIRM SETTING COMPLY?

A. While each lawyer is required to comply with the IOLTA Rule, lawyers who practice in a firm **may meet those requirements using a shared, law firm IOLTA account(s)**. Each lawyer at a firm is not required to maintain a separate account solely for his or her own clients.

Q. DO I HAVE TO PAY TO MAINTAIN THE IOLTA ACCOUNT?

A. No. **It is important to know that over 90% of IOLTA participating banks in Virginia waive all fees on IOLTA accounts in recognition of their charitable nature.** For the very few banks that do charge fees, LSCV covers reasonable service charges assessed on trust accounts because of the IOLTA program. Financial institutions may charge reasonable handling fees for the maintenance and remittance of IOLTA funds. Service charges and handling fees for IOLTA accounts are deductible solely from the interest earned. The principal of the account cannot be used to offset service charges or handling fees imposed on an IOLTA account. Since these accounts contain client funds held in trust by attorneys, any invasion of the principal or the interest earnings of other named accounts would be improper. Some charges and/or fees are not assessable against the IOLTA account interest dividends. These are fees that the lawyer or law firm can pass on to the client such as wire transfers. Other fees/charges assessed by the bank are not paid for by the IOLTA program even if not passable to the client, such as charges for overdrafts and insufficient fund notices.

Q. DOES THE IOLTA PROGRAM PAY FOR THE CHECKS, DEPOSIT SLIPS, AND OTHER RELATED ACCOUNT ANALYSIS FEES ON THE CLIENT TRUST ACCOUNTS?

A. No. The only fees allowed to be deducted from interest earnings are reasonable monthly service charges assessed by the bank. Other fees and charges, such as check printing charges, funds transfers, etc., are considered ordinary business expenses of the attorney or law firm.

Q. WHAT ARE THE TAX CONSEQUENCES OF MY PARTICIPATION IN IOLTA?

A. There are no tax consequences to the client, attorney, or law firm. LSCV receives the interest earned on IOLTA trust accounts as a third-party beneficiary and is exempt from federal income tax. The Internal Revenue Service has ruled, with respect to the Virginia IOLTA program, that interest earned on client trust funds that is remitted to LSCV pursuant to a court-sanctioned interest on trust accounts program, is not attributable as income to the attorney or the client. **Attorneys have no tax withholding or reporting responsibilities as to the interest earned on IOLTA accounts.**

Q. WHAT DO I HAVE TO DO TO OPEN AN IOLTA ACCOUNT?

A. The attorney, law firm or title company should complete a simple Request to Establish IOLTA account form that can be obtained from LSCV at LSCV.org/IOLTA and should submit the form to the financial institution. This form instructs the financial institution to establish an IOLTA account or convert an existing non-interest-bearing client trust account to an IOLTA account. A copy of this form should also be sent to LSCV (lawrence@lscv.org) by the bank or the attorney once the account is opened or converted. LSCV staff is always happy to assist banks, attorneys and law firms with the completion of this form.

Q. WHY WAS THE IOLTA PROGRAM CREATED?

A. In authorizing this program, the Supreme Court of Virginia was responding to the demonstrated need for increased access to civil legal representation by legal aid programs for the more than 800,000 Virginians whose incomes fall below the poverty level.

Q. DO OTHER STATES REQUIRE IOLTA PARTICIPATION?

A. Yes, Virginia is now the 47th jurisdiction (46 states and D.C.) to require it.

Q. TO WHOM ARE THE IOLTA FUNDS DISTRIBUTED?

A. The Legal Services Corporation of Virginia distributes the funds to legal aid programs to provide civil legal assistance to low-income Virginians according to a funding formula that equally distributes the funds based on the number of income-eligible persons in each legal aid service region in the Commonwealth.

Q. ARE THE FUNDS IN IOLTA ACCOUNTS FDIC INSURED?

A. Yes. The FDIC provides unlimited insurance coverage for funds in IOLTA accounts up to \$250,000 per client whose funds are held in the pooled trust account.

Q. CAN OR SHOULD MY REAL ESTATE SETTLEMENT AGENT ACCOUNT OR OTHER REAL ESTATE CLIENT TRUST ACCOUNT OR TITLE COMPANY CLIENT TRUST ACCOUNTS PARTICIPATE IN THE IOLTA PROGRAM UNDER THE APPLICABLE REGULATIONS?

A. Yes. The VSB Attorney Settlement Agent regulations only forbid the interest generated on your real estate trust account from inuring to the benefit of the lawyer, settlement agent, or client. It does not forbid interest being generated on the account that is paid to a third-party beneficiary, i.e., the IOLTA program. **If the real estate trust account is a pooled account and currently non-interest bearing, it must be converted to an IOLTA account.**

Q. CAN I DEPOSIT LAW FIRM FUNDS INTO MY IOLTA ACCOUNT TO COVER ANTICIPATED SERVICE CHARGES, FEES OR MINIMUM BALANCE REQUIREMENTS SET BY MY BANK FOR MY IOLTA ACCOUNT?

A. Yes. Minimum balance requirements have become more common in recent years, and you are complying with ethical requirements if you need to add your own funds to the account just to cover those balance requirements or fees imposed by the financial institution. See Rule 1.15(a)(3)(i) of the Virginia Rules of Professional Conduct.

Q. MAY A POOLED TRUST ACCOUNT BE MAINTAINED THAT IS NOT ENROLLED IN IOLTA?

A. No. A lawyer or law firm engaged in the private practice of law that receives IOLTA-eligible client funds (those that cannot earn income for the benefit of the individual client in excess of the costs incurred to secure and distribute that income to the client) must use a pooled IOLTA account.

Q. WHEN I OPEN AN IOLTA ACCOUNT OR CONVERT MY NON-INTEREST-BEARING TRUST ACCOUNT, DO I HAVE ADDITIONAL ACCOUNTING OR OTHER ADMINISTRATIVE RESPONSIBILITIES THAT MAKE IT MORE BURDENSOME?

- A. No. Maintaining an IOLTA account rather than a non-interest-bearing trust account adds no additional accounting or administrative burdens to the attorney or law firm. Feel free to call us at LSCV (804-782-9438) with specific questions.