

Practice Guideline No. 6

Payment of Clients' Stamp Duty Following Endorsement Online

1. The Council of the Law Society ("Council") is aware that:
 - 1.1 Several law practices are not making appropriate arrangements when making payments of disbursements on behalf of clients of the law practice. All practitioners are reminded of the provisions of the *Legal Profession Act, 2007* and the *Legal Profession Regulations, 2008* when dealing with money held in trust on behalf of clients of the law practice.

In particular, where trust money is held for the payment of stamp duty or other disbursements on behalf of a client, it is not permissible to transfer that money to the firm's practice account for subsequent payment of the disbursement from the practice account. It should be retained in the trust account until payment in accordance with the client's instructions.
 - 1.2 Under Part 6 of the *Taxation Administration Act 1997*, the Commissioner of State Revenue ("CSR") is empowered to require a law practice to make an arrangement with CSR for the law practice on behalf of its clients to lodge returns of its clients' dutiable transactions under the *Duties Act 2001* and to pay the stamp duty upon those transactions.
 - 1.3 Typical features of such an arrangement are that:
 - 1.3.1 The law practice is entitled to endorse a selected dutiable instrument as sufficiently stamped in advance of the payment by the law practice of the stamp duty on that instrument under a later periodic invoice in which particulars of the instrument are recorded.
 - 1.3.2 Each periodic invoice is required to be satisfied by a payment (whether effected online or by cheque) that can be evidenced within the account records of the law practice by only a single debit entry.
 - 1.3.3 Each payment of a periodic invoice that a law practice makes ("a pooled payment") is therefore likely to satisfy the stamp duty liability, and to have been sourced from the funds, of several different clients.

2. At its meeting on 1 October 2012, the Council resolved that:
 - 2.1 The profession be informed that:
 - 2.1.1 Where a law practice is a party to an arrangement with CSR that requires it on behalf of clients to make periodic pooled payments of stamp duty, for the purpose of facilitating those pooled payments it is acceptable practice on the undermentioned conditions to create within the general trust account of the law practice a trust ledger entitled “Clients’ Stamp Duty Settlement Account” (“CSDSA”), to serve as a repository of those stamp duty funds that have been paid by clients and are intended to form part of the next periodic pooled payment of stamp duty that the law practice will be required to make.
 - 2.1.2 The following conditions apply to the operation of a CSDSA:
 - 2.1.2.1 Whenever the law practice completes a dutiable transaction for a client on whose trust ledger it holds funds for the payment of the duty upon that transaction, it may transfer by journal transfer, from that client’s trust ledger to the CSDSA, the amount of stamp duty which it expects on behalf of that client to include in its next pooled payment;
 - 2.1.2.2 All funds so transferred to the CSDSA are to be retained there until the day when the next pooled payment of which they are expected to form a part falls due when they are to be debited with the amount of a single cheque or a single online funds transfer for the amount of the required pooled payment.
 - 2.1.3 A journal transfer effecting a debit entry in the CSDSA may be made only to the credit of the trust ledger of the client from whose trust ledger funds have previously been transferred to the CSDSA, but in this instance the amount of the journal transfer must not exceed the unexpended balance within the CSDSA of that client’s funds.
 - 2.1.4 The CSDSA must be reviewed and reconciled as at the end of each named month by preparing within fifteen (15) working days after the end of that month a statement:
 - 2.1.4.1 Identifying in relation to any credit balance recorded in the CSDSA:
 - 2.1.4.1.1 The name of each client whose unexpended funds form part of that credit balance; and
 - 2.1.4.1.2 The amount of that client’s funds that remain unexpended in the CSDSA; and
 - 2.1.4.2 Showing the date the statement was prepared.



**THE LAW
SOCIETY**
OF TASMANIA

- 2.1.5 The statement referred to in paragraph 2.1.4, together with a copy of every periodic invoice that relates to a pooled payment which the law practice has made during the month to which the statement relates, must be retained by the law practice as part of the trust records relating to its general trust account.

Approved 1 October 2012