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Seven most common trust account mistakes and how to avoid them

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Trust accounts bring a lot of stress and worry to attorneys. Attorneys are told over and over, "Don't screw up your trust account." However, the education that goes along with properly keeping a trust account seems to be lacking. Leaving attorneys to ask, "Ok, I got that, now how do I not screw it up?"

This article highlights seven of the most common mistakes that I have seen many times over. I hope it helps you avoid these mistakes to have a cleaner trust account with less stress and less worries.

1. Not Replacing CC Fee

In today's world, credit and debit cards and electronic payments are way more common than cash. However, along with those types of payments come merchant processing fees. This brings me to my first most common trust mistake which is not replacing the merchant fee in your trust account or switching over the account that your fees are taken out of.

This section also includes interest and bank fees. I have seen instances where banks have taken a service fee out of a trust account, which by law they are not allowed to do. I have also seen instances where banks have said they refuse to pay interest on a trust account. This is obviously also illegal.

Solution

For credit card processors, I love LawPay (*www.lawpay.com*). LawPay was built specifically for attorneys. They know and understand trust accounts and they never take merchant processing fees from your trust account! Additionally, they have the lowest processing fees I have found. If you don't use LawPay I would suggest contacting your merchant processor and asking them to always take their fees from your operating account.

For working with banks if you have problems with interest or fees, I recommend working with your representative at the bank.

2. Wrong State

Another common mistake is when you have operations in more than one state, and you accept trust funds to the wrong state trust account. Obviously, this type of error is critical as it affects the interest that should be paid to each state. This type of error is most common in cities that border another state. I am looking at you New York, Chicago, Philadelphia and Kansas City. I am sure that there are several others I haven't mentioned but those are some of the biggest cities on a border.

Solution

If this error is made in your practice, make a transfer from the wrong state to the right one. Ideally, this transfer would happen before month end, so interest is right at the beginning of the next month. Other than that, it is super important to stress the detail to your staff that the state does matter.

3. Taking Funds Too Early-Settlement

When you are accepting payments with credit and debit cards, it is not uncommon for funds to take a couple of days after the card has been charged before they settle into your trust account. Especially if this is the first time you are charging this customer and maybe their credit card company flags the transaction because it is a large charge.

A common mistake is to accept the card payment and make a transfer immediately to accept a portion of the funds you have already earned. However, if the funds have not settled in your account yet, you are shorting your trust account. Even if it is only for a day or two, your trust account is still shorted if the funds have not settled. Additionally, this does not even address chargebacks and disputes.

Solution

For cash flow purposes, I typically recommend to the attorneys that I work with that they bill consistently and ideally weekly. With that being said, I also recommend that they make trust transfers for earned funds a week after they have billed. This allows time for funds to settle into their account and make sure they are not shorting their trust account.

4. Taking Funds Too Early-Before Earned

Another common mistake is taking funds out of the trust account before bills have been issued. This is a definite no by bar standards, and I do not recommend to any attorney to start this practice. If you have not issued an invoice to your customer, you have not earned the funds!

Solution

See solution for Mistake 3.

5. Taking Too Many Funds Because of Previous Transfer Not Being Recorded

I have seen on several occasions that an attorney will make an invoice, apply the trust funds to the invoice and then not record when they make the trust transfer. Something comes up in the office and they get distracted, happens all the time. Then a few days later, when the attorney comes back, they make another transfer. This mistake is very hard to catch because often the trust funds are applied to the invoice properly. However, making the same transfer twice underfunds your trust account.

Solution

Make trust transfers immediately after you bill! And record all those transfers immediately! Then after you have completed all three steps (bill then apply then transfer), then you can move those invoices aside and mark them as complete.

6. Writing Check from Wrong Account

Often attorneys carry checks with them to the courthouse to pay for filing fees or other court related fees. It is fine to pay for these costs from your trust account if that client has available trust funds. However, it is a very common mistake to grab the wrong check book and write a check for something that is not related to a client. This effectively underfunds your trust account.

Solution

I highly recommend attorneys do away with any checkbook for your trust account. If you need to pay for a court fee, pay for it out of your operating account and bill your client later. If you need to cut checks from your account for settlement disbursement, I recommend you print them out of your accounting software and again avoid having a checkbook.

7. Depositing to Wrong Account

If you still accept checks or cash in your office, it is a common mistake to deposit these funds to the wrong account to start with. It is also a common mistake to send funds to the wrong account when accepting a debit or credit card payment manually. These are both common mistakes.

Solution

This solution is a lot like the wrong state error. You must pay attention to the detail and educate your staff on the importance of this detail. It is very hard to catch these errors. Especially if the deposit is properly booked in your ledger. Often you should catch that type of an error at the end of the month when you compare your liability balance to your bank balance and find your liability balance is higher than the bank balance. That means it is time to transfer funds to your trust account!

Conclusion

I hope this guide has provided some great insight into the common mistakes that I have encountered with trust accounts. I hope that this guide helps you avoid these mistakes and helps you keep your trust account as clean as a whistle.

If you need more help with trust accounting, please don't hesitate to reach out. I will be happy to help you in any way that I can.

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