

The State Bar of California
Client Trust Accounts and Bank Stability Concerns
FAQs

Q: How does FDIC insurance protect client trust funds?

A: Selecting a bank that is regulated by a federal or state agency and that carries deposit insurance from an agency of the federal government is an important consideration. As a client's fiduciary, a lawyer is responsible for protecting client funds.

Until December 31, 2012, all funds held in an IOLTA account were insured in full by the FDIC under the Dodd-Frank Wall Street Reform and Consumer Protection Act as a "noninterest-bearing transaction account." With the expiration of this temporary policy, an IOLTA account now is subject to standard FDIC insurance limits. Generally, the limit will be \$250,000 per owner of the funds (client), per financial institution, assuming that the account is properly designated as a trust account and proper accounting of each client's funds is maintained. Refer to the [FDIC website](#) for detailed information, including a specific example of how the limit applies to an IOLTA account.

While the presence of FDIC insurance is important, a lawyer should note that even if all of a client's funds are covered, by the time the FDIC pays a client their money, that client's interests might be adversely impacted.

For example, the delay may result in a missed business opportunity. Similarly, FDIC coverage will not help with the problem that could arise if a bank goes under and copies of a client's trust bank account records need to be retrieved from that bank.

Q: Isn't FDIC insurance an express requirement for IOLTA deposits?

A: Effective January 1, 2008, [Business and Professions Code Section 6213\(j\)](#) was amended to define an IOLTA account as an account or investment product that is:

- 1) an interest-bearing checking account;
- 2) an investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money-market fund; or,
- 3) any other investment product authorized by the California Supreme Court.

Consistent with that legislation, the California Supreme Court rescinded its 1982 order that previously required IOLTA accounts be held in an institution that has its deposits insured by the federal government.

The legislation provides for strictly defined conservative safe investment sweep products, which are sometimes held on the investment side of the bank and therefore are not necessarily covered by the FDIC.

The Court's new order is silent on federal insurance for deposits, but the State Bar is working on regulatory requirements with respect to financial institutions either through a rule or revised legislation. Monitor the [IOLTA](#) pages on the State Bar's Web site for ongoing developments.

Q: Given the limits on FDIC insurance, should I attempt to divide-up deposits among several banks?

A: Refer to the [FDIC website](#) for detailed information on the current \$250,000 limit on FDIC insurance coverage applicable to IOLTA accounts. FDIC insurance coverage issues also should be considered if client funds are placed in an account other than an IOLTA account, for example in an interest bearing account or other dividend-paying trust investment established pursuant to [Business and Professions Code Section 6211\(b\)](#) where the interest or dividends inure to the benefit of the client.

The State Bar's Ethics Hotline is not aware of any authority in California mandating the approach of dividing-up client deposits as an absolute disciplinary standard. Prudence and good client communication should be exercised in electing to take this approach. [Rule 3-500](#) of the Rules of Professional Conduct requires a lawyer to keep a client reasonably informed about "significant developments" and the approach of dividing deposits may be something to consider with a particular client given that client's specific situation.

However, depending on the number of banks and clients involved, this approach could lead to accounting and record-keeping challenges.

Bear in mind that the goal is to maintain client funds in a financially stable institution and that FDIC insurance for a deposit is one factor to consider but it is not determinative. (See the above discussion of investment sweep products for IOLTA deposits.)

In addition, you should realize that civil liability is a separate concern from State Bar disciplinary or regulatory standards. You may want to contact your professional liability insurance carrier for guidance on the pros and cons of attempting to divide-up trust fund deposits.

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