QLD LEGAL FINANCE

QUICK ANSWER · TRUST ACCOUNTING

Trust-to-office transfers — *what should be on file?*

The three withdrawal routes in regulation 58, what each one requires before the money moves, and the record that has to survive an examination.

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QLD Legal Finance Pty Ltd

ABN 44 697 013 906 · ACN 697 013 906
PO Box 25, Bald Hills QLD 4036 · 07 3261 2833 · enquiries@qldlf.com.au · qldlf.com.au

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A transfer from trust to office should be capable of being justified from the file before the payment is released.

The issue is not simply whether the firm has earned the fee. The applicable withdrawal pathway under regulation 58 must also have been satisfied, and the records should show that clearly.

Regulation 58 of the Legal Profession Regulation 2017 (Qld) sets out three principal pathways for withdrawing trust money for legal costs: after giving a bill, under a compliant costs agreement or instruction authorising withdrawal, or as reimbursement for money already paid by the practice.

> **QLF PERSPECTIVE**
>
> The strongest control is to identify the withdrawal pathway first, then check that the file contains the evidence required for that pathway.

1. First identify which withdrawal pathway applies

Do not treat every trust-to-office transfer as the same transaction.

The file should make clear which of the following is being relied upon:

- withdrawal after a bill has been given;
- withdrawal under a compliant costs agreement or instruction authorising the withdrawal;
- reimbursement of money already paid by the law practice;
- a combination of those pathways where the Regulation permits it.

> **RED FLAG**
>
> The payment is prepared first and the practice works backwards afterwards to decide what authority supported it.

2. Pathway A — withdrawal after giving a bill

Where the practice relies on the bill pathway, regulation 58(2) requires *both* that a bill has been given *and* that one of three things is true. The three are alternatives, and the middle one is the limb most often missed: the person has not objected within seven days after being given the bill; *or* the person objected within seven days but has not applied for a costs assessment within sixty days after being given the bill; *or* the money has otherwise become legally payable.

Before the transfer is released, the file should allow the practice to establish:

- the bill that relates to the money;
- when and how the bill was given;
- that the relevant waiting period has passed where applicable;
- whether any objection has been received;
- the amount proposed to be transferred.

CONTROL QUESTION

Can the person authorising the transfer tell from the file that the bill pathway has matured, rather than merely assuming that it has?

3. Pathway B — costs agreement or instruction authorising withdrawal

Regulation 58(3) allows legal costs to be withdrawn where the practice has either a compliant costs agreement authorising the withdrawal or instructions authorising it.

In either case, before the withdrawal is made, the person must be given or sent a request for payment referring to the proposed withdrawal or a written notice of withdrawal.

The file should therefore contain:

- the compliant costs agreement clause or the instruction being relied upon;
- the request for payment or written notice of withdrawal;
- the amount to be withdrawn;
- evidence that the request or notice was given before the transfer.

IMPORTANT

An instruction alone is not enough for the regulation 58(3) pathway. Regulation 58(3)(b) requires the request for payment or the written notice of withdrawal to be given before the withdrawal.

4. If the authority was verbal, the confirmation still matters

A verbal instruction authorising withdrawal may be relied upon, but regulation 58(6)(b) requires it to be confirmed in writing either before the withdrawal or within five working days after it.

The written confirmation is a permanent trust record.

GOOD CONTROL

Where the practice can obtain the authority in writing before payment, do so. The five-working-day rule should not become a routine substitute for good file discipline.

5. Pathway C — reimbursement of money already paid

For reimbursement under regulation 58(4), the relevant money must already have been paid by the law practice.

Regulation 58(7) deems the money paid only when the practice's relevant account has actually been debited. If a cheque was used, it must have been presented and shown as a debit on the account statement.

Before the trust-to-office transfer, the file should therefore show:

- the underlying disbursement or cost;
- evidence the practice paid it;
- evidence the relevant office/general account was debited;
- a request for payment referring to the proposed withdrawal or a written notice of withdrawal.

> **RED FLAG**
> Reimbursing the office account merely because an invoice has been received. Under regulation 58(4)(a) the practice must already have paid the money.

6. Match the transfer amount to the authority

The amount being transferred should be capable of being reconciled directly to the supporting bill, request, notice, instruction or reimbursement evidence.

QLS adds a point the Regulation does not spell out: where an instruction authorises a stated amount and the proposed request or notice exceeds that amount, a fresh instruction must first be obtained.

> **CONTROL QUESTION**
> Can the reviewer explain exactly how the transfer amount was derived without doing a fresh calculation from scratch?

7. Keep the withdrawal record as part of the trust file

Requests for payment and notices of withdrawal are trust records under section 237 of the Act, and regulation 59 fixes how long trust records must be kept. Separately, regulations 37 and 38 require a written record of prescribed particulars for every trust payment — by cheque and by electronic funds transfer respectively — so the transfer file is not merely good practice, it is the record the Regulation requires. Written instructions and authorities dealing with trust money are also subject to long-term retention requirements.

A good transfer file should therefore contain the complete decision trail, not only the bank confirmation.

In practice, that usually means retaining together:

- the withdrawal pathway relied upon;
- bill, costs agreement clause or instruction;
- request for payment or notice of withdrawal;
- reimbursement evidence where relevant;
- client and matter reference;
- trust ledger balance check;
- payment record and bank confirmation.

The trust-to-office release test

BEFORE RELEASE	CONFIRM
☐ 1. Pathway	The file identifies the regulation 58 basis being relied upon
☐ 2. Authority	The bill, costs agreement, instruction or reimbursement basis is on file
☐ 3. Notice/request	Any required request for payment or notice of withdrawal has been given
☐ 4. Timing	Any applicable waiting period or sequencing requirement has been satisfied
☐ 5. Amount	The transfer amount matches the authority and supporting records
☐ 6. Ledger	The correct client trust ledger contains sufficient funds
☐ 7. Evidence	The complete transaction trail will be retained as a trust record

What happens if the process was not followed?

Where the regulation 58 requirements relied upon have not been complied with, the money **must be transferred back to trust** once the non-compliance is identified. That is not a discretionary remediation.

That is why the control belongs before release, not in a month-end review.

> **QLF PERSPECTIVE**
>
> A trust-to-office transfer is easiest to correct before it happens. Once the money has moved, the issue becomes a remediation exercise rather than a routine control check.

Where QLD Legal Finance fits

QLD Legal Finance can support the accounting and control side of trust-to-office transfers by checking the client ledger, assembling the supporting record, identifying the apparent withdrawal pathway and preparing the trust transaction for authorised review.

The legal basis for entitlement to costs and the firm's compliance with its professional obligations remain matters for the law practice.

The objective is that the person authorising the payment should not have to reconstruct the file to understand why the money is moving.

Important information

This guide is general information only and is not legal advice.

Law practices should refer to regulation 58 of the Legal Profession Regulation 2017 (Qld), the Legal Profession Act 2007 (Qld) and current Queensland Law Society guidance when withdrawing trust money for legal costs.

The seven-point release test is a QLD Legal Finance operational control framework. It is not a separate statutory checklist issued by Queensland Law Society.

The correct withdrawal pathway depends on the circumstances and the documents held by the practice. Where the legal basis for withdrawal is uncertain, the practice should obtain appropriate legal or Queensland Law Society guidance before transferring the money.

QLD Legal Finance supports Queensland law practices with trust accounting, financial control and advisory services. It is not affiliated with or endorsed by Queensland Law Society.

Source basis

Prepared by reference to Queensland Law Society, Trust Accounting Guide — Trust Money and Trust Accounts, Version 12, April 2024, sections dealing with regulation 58 withdrawals for legal costs.

WHERE THIS CAME FROM

This guide is part of the QLD Legal Finance resource library — practical material written for the people who run Queensland law practices, not for other accountants. If something here raises a question about your own firm, write to **enquiries@qldlf.com.au** or call **07 3261 2833**. A director will answer personally.

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