

Gouvernement du Québec

O.C. 995-2002, 28 August 2002

Professional Code
(R.S.Q., c. C-26)

Notaries
— **Trust accounting**

Regulation respecting trust accounting by notaries

WHEREAS, under section 89 of the Professional Code (R.S.Q., c. C-26), the Bureau of the Chambre des notaires du Québec, whose members are called upon to hold sums of money or other securities for the account of their clients, must determine by regulation the terms, conditions and standards for receipt, custody and disposition of the sums of money and securities so held;

WHEREAS the Regulation must also determine the standards relating to the keeping and auditing of trust accounts, establish an indemnity fund and determine the terms and conditions applicable to the filing of claims addressed to the fund and to the payments made by the latter;

WHEREAS the Bureau of the Chambre des notaires du Québec made the Regulation respecting trust accounting by notaries;

WHEREAS, pursuant to section 95.3 of the Professional Code, amended by section 8 of chapter 34 of the Statutes of 2001, the draft Regulation was sent to every member of the order at least 30 days before its adoption by the Bureau;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the draft Regulation was published in Part 2 of the *Gazette officielle du Québec* of 24 October 2001 with a notice that it could be submitted to the Government for approval upon the expiry of 45 days following that publication;

WHEREAS, in accordance with section 95 of the Professional Code, the Office des professions du Québec made its recommendations;

WHEREAS it is expedient to approve the Regulation, with amendments;

IT IS ORDERED, therefore, upon the recommendation of the Minister responsible for the administration of legislation respecting the professions:

THAT the Regulation respecting trust accounting by notaries, attached to this Order in Council, be approved.

JEAN ST-GELAIS,
Clerk of the Conseil exécutif

**Regulation respecting trust accounting
by notaries**

Professional Code
(R.S.Q. c. C-26, s. 89)

DIVISION I
GENERAL

1. Every notary shall record and account for all funds, securities, and other property entrusted to him in the practice of his profession, and use them for the purposes for which they were entrusted.

2. No notary shall deposit or leave personal funds in a trust account.

3. A notary may deduct his fees from funds entrusted to him if he is authorized in writing.

4. The funds, securities, and other property entrusted to a notary include cash, negotiable instruments payable to the notary or payable to the notary in trust and endorsed to his order or to his order in trust or to bearer, and all instruments and securities payable to bearer or registered in the name of the notary or in the name of the notary in trust.

5. No notary shall endorse a cheque or other negotiable instrument payable to the order of a client without the client's written authorization and unless the endorsement is solely for deposit in the notary's trust account.

6. A notary may accept only funds, securities, or other property in trust that are related to the execution of a lawful, clearly defined contract for services or mandate in the practice of his profession.

DIVISION II
**GENERAL TRUST ACCOUNT AND SPECIAL
TRUST ACCOUNT**

7. All funds entrusted to a notary by a client must, as soon as possible after receipt, be deposited in a general trust account that has been opened in the notary's name and may be withdrawn solely by him. The account may nevertheless be held jointly by two or more notaries.

A notary may give another notary a mandate to deposit funds into or withdraw funds from his trust account.

Neither the funds nor the interest accrued belong to the notary.

8. General trust accounts are accounts that are opened as such in the name of a notary, and contain deposits insured by deposit insurance under the Canada Deposit Insurance Corporation Act (R.S.C., 1985, c. C-3) or guaranteed under the Deposit Insurance Act of Québec (R.S.Q., c. A-26).

The account must be opened in Québec in a financial institution governed by the Act respecting trust companies and savings companies (R.S.Q., c. S-29.01), the Bank Act (S.C., 1991, c. 46), the Act respecting financial services cooperatives (2000, c. 29), or the Trust and Loan Companies Act (S.C., 1991, c. 45).

9. Where the client's interest so requires, or the client expressly requests that the income from the funds entrusted to the notary be remitted to him, the notary shall immediately transfer the funds from his general trust account into a special trust account. The notary shall ensure that the name of the client for whom the account is opened appears in the name of the account.

10. Special trust accounts are accounts that are opened as such in the name of a notary, and contain deposits insured by deposit insurance under the Canada Deposit Insurance Corporation Act or guaranteed under the Deposit Insurance Act of Québec, or presumed sound investments within the meaning of paragraphs 2 and 3 of article 1339 of the Civil Code of Québec registered in the name of the notary in trust on behalf of a client.

The account must be opened in Québec in a financial institution contemplated in the second paragraph of section 8. In the case of a presumed sound investment, the account may also be opened with a securities broker who is acting as principal and is a member of the Investment Dealers Association of Canada.

In the case of a presumed sound investment, the notary must obtain the prior written authorization of the client specifying the nature, date of maturity, and terms and conditions of the investment.

11. Upon opening a general trust account, the notary shall fill out the form approved for such purpose by the Bureau. The form must contain a declaration by the notary under his oath of office stating :

(1) the name, address, postal code, and transit number of the depository institution, as well as the number of the account and the date of its opening ;

(2) an irrevocable waiver of the interest and other income from the account in favour of the notarial studies fund and an authorization allowing the financial institution to transfer the interest and other income from such account, less administration costs, if any, directly into the notarial studies fund ;

(3) an irrevocable authorization entitling the Administrative Committee, the president, the secretary, the assistant secretary, an inspector, the syndic, or an assistant or corresponding syndic to undertake any action provided for in sections 36 or 37 ;

(4) an indication that the account complies with the Notaries Act (2000, c. 44) and regulations adopted pursuant thereto ;

(5) an irrevocable authorization entitling the Administrative Committee or the president of the Order, upon recommendation by the syndic, an assistant syndic, or the professional inspection committee of the Order, to require that the notary obtain, at his expense, the joint signature of another notary designated by the Administrative Committee to draw cheques and other payment orders against the account.

12. Upon opening a special trust account, the notary shall fill out the form approved for such purpose by the Bureau. In addition to the information required under section 11, the form must contain a declaration by the notary under his oath of office indicating that the interest and other income from the account belongs to the client.

13. The notary shall immediately forward a duly filled out copy of the form prescribed in sections 11 and 12 to the financial institution where the account has been opened, as well as to the secretary of the Order ; he shall retain a copy thereof together with the other documents enumerated in section 15.

This section applies *mutatis mutandis* where the account is opened with a securities broker.

14. Where a notary closes a general trust account, he must immediately notify the secretary of the Order, using the form approved for this purpose by the Bureau. The form must contain the name, address, postal code and transit number of the depository institution, as well as the number of the account, the date on which it was opened, and the effective date on which it was closed.

This section applies *mutatis mutandis* where a notary withdraws as joint holder of a trust account.

Where a special trust account is no longer required, the notary shall transfer the funds and accrued interest into the general trust account.

DIVISION III KEEPING OF TRUST ACCOUNTS

15. The accounting records in which the funds, securities, and other property are entered and recorded must be in single-entry or double-entry form and consist of official receipts, passbooks or statements of the financial institution or the securities broker, cheques and other payment orders, and registers and other vouchers conforming to generally accepted accounting principles, in addition to the cash book and the general ledger.

16. All trust accounting must:

- (1) ensure data confidentiality;
- (2) ensure data security;
- (3) allow the notary and the Order to have access to the data at all times;
- (4) include all information pertaining to the control and administration of funds received.

Trust accounting using media based on information technologies must allow the transmission of data and forms contemplated in this regulation.

17. All data inscribed on media based on information technologies must be transcribable in paper form.

18. The electronic transfer of funds is subject to this regulation.

19. The account books and records and the statements from the financial institution or the securities broker that are contemplated herein must be kept by the notary at his professional domicile for at least 10 years and in accordance with the regulation adopted under section 91 of the Professional Code (R.S.Q., c. C-26).

20. Upon the receipt of funds, securities, and other property entrusted to him, the notary shall remit to the client for whom they are held an official receipt drawn up in accordance with the form approved for that purpose by the Bureau and on which are indicated the date of receipt, the name and address of the client, the description of the item deposited, the purpose for which it is entrusted, and the name of the depository notary.

21. The official receipt must indicate that the funds, securities, or other property are deposited in trust and are subject to the provisions of the Notaries Act and regulations adopted pursuant thereto.

22. Official receipts must be pre-numbered and copies thereof must be kept by the notary.

23. The cheques and other payment orders drawn against a trust account must bear the mention "trust account in accordance with the Notaries Act and regulations adopted pursuant thereto". Cheques must be pre-numbered.

24. Trust account records must be kept up to date.

25. A notary shall keep at the disposal of each client who entrusts him with funds, securities, or other property an up-to-date account showing, on a day-by-day basis, all entries made in the account the balance of the account after each entry, and all vouchers for such entries.

26. A notary shall maintain strict control over the receipt, deposit, withholding, and use of funds entrusted to him. To that end, the notary shall, in particular,

(1) receive and deposit all sums required for the execution of the act for which he has been mandated, before the act is signed;

(2) ensure that the funds received are sufficient to cover all disbursements and to avoid an overdraft of the client's account;

(3) deposit receipts before any cheques or other payment orders issued are cashed, to avoid paying cheques issued for one client using sums belonging to another client;

(4) use the first disbursement from his trust account, in a file involving the execution of an act of sale of an immovable under construction, for the purchase of the immovable and the cancellation of all the charges, prior claims, or hypothecs not assumed by the purchaser;

(5) withhold funds, where applicable, until publication of the act creating or transferring rights and its indexation in the relevant registers without any entry detrimental to the rights created or transferred;

(6) cover any debit balance, whatever the cause, immediately and with his own money;

(7) transfer into the general trust account, before their disposition, all sums debited from a special trust account;

(8) follow up on cheques and other payment orders within 6 months from the date of their issue to ensure that they are cashed; and

(9) transfer to the Public Curator all funds, securities, or other property that have not been the subject of any claim, transaction, or written instruction as to their use, by any interested party, within three years following the date of their exigibility.

27. No notary may make cash withdrawals from his general or special trust accounts.

28. Each month, a notary shall, using the form approved for such purpose by the Bureau, draw up a report reconciling the previous month's transactions and indicating:

(1) the totals of receipts and disbursements for the month;

(2) a balanced reconciliation of the cash book and the general ledger with the relevant financial institution statements; the reconciliation must integrate the general and special trust accounts;

(3) a list of sums owing to clients, indicating for each the client's name or account number, the date of the last entry, and the balance of the account;

(4) a list of outstanding cheques, indicating the number, date, and amount of each cheque;

(5) a list of outstanding sums received, indicating the amount of each sum and the number and date of each receipt; and

(6) a list of the general and special trust accounts, indicating for each account the name of the financial institution, the account number, and the balance at the end of the month.

DIVISION IV **AUDITING OF TRUST ACCOUNTING RECORDS**

29. A notary's trust account records must be audited not later than March 31 each year for the previous year ending December 31.

Where a notary ceases to be entered on the roll of the Order, the audit must cover the period since the last audit and the notary must file with the secretary of the Order within three months of ceasing to be entered on the roll a report containing the information required under section 33, *mutatis mutandis*.

30. A notary shall appoint an accountant authorized by law to audit his trust account records. The appointment must include an irrevocable authorization allowing an inspector, the syndic, or an assistant or corresponding syndic, or the secretary of the Order to obtain from the accountant all information relating to the trust accounts subject to the audit.

31. The accountant verifies the accounting procedures followed during the year by the notary for the keeping of his trust account records, in accordance with the generally accepted auditing standards he deems necessary in the circumstances. To that end, he must verify, in particular,

(1) the receipts and disbursements affecting the cash book, the general ledger, the relevant financial institution passbooks or statements, and supporting documents, including related files and acts;

(2) the reconciliation of the general and special trust accounts with the notary's books; and

(3) the inventory of funds, securities, and other property entrusted to the notary as at December 31.

32. Upon completion of the audit, the accountant drafts a report certifying that the notary has complied with this regulation, using the form approved for such purpose by the Bureau and noting any restrictions and reservations he deems appropriate.

DIVISION V **ANNUAL REPORT**

33. Each year, not later than March 31, the notary shall forward to the secretary of the Order, together with the accountant's report and using the form approved for such purpose by the Bureau, a report containing:

(1) a declaration under his oath of office attesting that all funds, securities, and other property entrusted to him in the practice of his profession during the preceding year have been deposited, recorded, and used in accordance with the Notaries Act and the regulations adopted pursuant thereto or pursuant to the Professional Code;

(2) the totals of receipts and disbursements for each month;

(3) a balanced reconciliation of the cash book and the general ledger with the relevant financial institution statements;

(4) a list of sums owing to clients, indicating for each sum the client's name or account number, the date of the last entry, and the balance of the account ;

(5) a list of cheques outstanding as at December 31, indicating the number, date, and amount of each cheque ;

(6) a list of sums received that are outstanding as at December 31, indicating the date of receipt of each sum, and the amount and date of its subsequent deposit ; and

(7) a list of the general and special trust accounts held during the year, indicating for each the name of the depository institution, account number, and balance at the end of the year.

A single report shall suffice for notaries who have a common trust account, provided that it indicates the names of all the notaries and is signed by all of them.

34. A notary who has not held or received funds, securities, or other property in trust shall forward to the secretary of the Order not later than March 31, using the form mentioned in section 33, a declaration under his oath of office to that effect.

DIVISION VI MISCELLANEOUS

35. A notary is subject to professional secrecy with respect to the account books and documents contemplated in this regulation.

However, an inspector, the syndic, or an assistant or corresponding syndic of the Order may obtain from the accountant appointed pursuant to this regulation any information that is relevant to the trust accounts subject to the audit.

36. The Administrative Committee, the president, the secretary, the assistant secretary, an inspector, the syndic, an assistant or corresponding syndic, or the secretary of the indemnity fund committee may :

(1) require and obtain at any time from the financial institution that is the depository of any general or special trust account all the information or explanations deemed necessary or useful for the purposes of this regulation ;

(2) require and obtain at any time from a financial institution in which funds belonging to clients are deposited and which should have been deposited by the notary in a general or special trust account all the information or explanations deemed necessary or useful for the purposes of this regulation ;

(3) block deposited funds ;

(4) take possession of any funds, securities, and other property entrusted to a notary, revoke his signature, or close the account.

This section applies *mutatis mutandis* to accounts opened with a securities broker.

37. Where a notary's permit is revoked or his right to practice is temporarily or permanently limited or suspended, or where he is provisionally, temporarily, or permanently struck off the roll, or in any situation where a provisional guardian may be appointed for his records, the Administrative Committee, the president, the secretary, the syndic, or the secretary of the indemnity fund committee may, subject to section 57, dispose of funds in trust for the purposes for which the notary received them.

38. Where the Administrative Committee is informed that a notary is failing to comply with any obligation under this regulation, it may appoint an accountant of its choice and charge him with the audit of the notary's trust account records at the notary's expense, even if he is no longer entered on the roll of the Order.

DIVISION VII ESTABLISHMENT OF THE INDEMNITY FUND

39. The Bureau shall establish an indemnity fund for the purpose of reimbursing sums of money or other securities used by a notary for purposes other than those for which they were entrusted to him in the practice of his profession.

40. The indemnity fund consists of :

(1) the sums of money already allocated for that purpose as at 31 October 1996 ;

(2) the sums of money allocated by the Bureau to the fund as needed ;

(3) the assessments levied for that purpose ;

(4) the sums of money recovered from notaries by subrogation or pursuant to section 159 of the Professional Code ;

(5) the income earned on the sums of money constituting the fund ; and

(6) the sums of money paid by an insurance company under a group insurance policy held by the Administrative Committee ;

less administration costs for the fund.

DIVISION VIII ADMINISTRATION OF THE FUND

§1. *Administrative Committee*

41. The Administrative Committee shall administer the fund. In particular, it is authorized to conclude any insurance or reinsurance contract for the purposes of the fund and to pay the premiums out of the fund.

42. The fund accounting of Administrative Committee shall be kept separate from the general accounting of the Order.

43. The sums of money constituting the fund shall be invested by the Administrative Committee as follows:

(1) the portion of the funds the Committee anticipates using in the short term shall be deposited in a financial institution described in section 8;

(2) the other portion shall be entrusted to an investment manager for investment in short term securities, fixed-interest securities, Canadian or foreign shares, in accordance with the investment policy adopted by the Administrative Committee.

§2. *Indemnity fund committee*

44. An indemnity fund committee, hereinafter called the “committee,” shall be established by the Bureau to examine all claims against the fund. It shall comprise no fewer than 5 members appointed by the Bureau from among the notaries entered on the roll of the Order for at least 10 years and the directors appointed to the Bureau by the Office des professions du Québec pursuant to section 78 of the Professional Code; at least one of the members must be a director.

The chairman of the committee is designated by the members.

The quorum of the committee is a majority of members.

45. Where the number of committee members so permits, the committee may sit in divisions comprising 5 members, one of whom shall be the chairman or another committee member designated by division members as chairman of the division, and another member chosen from among the directors appointed by the Office.

The quorum of a division is 3 members.

46. Committee members remain in office at the end of their mandate until they are reappointed or replaced by the Bureau.

47. The Bureau shall appoint the secretary of the committee and, as needed, one or more assistant secretaries, who perform the same duties as the secretary.

DIVISION IX CLAIMS AGAINST THE FUND

48. Claims addressed to the fund must:

(1) be in writing;

(2) state all supporting facts and be accompanied by all relevant documents;

(3) indicate the amount claimed; and

(4) be filed with the secretary of the committee.

49. The secretary of the committee shall inform members of a claim against the fund at the first meeting after the claim is filed.

If the committee has not completed its examination of the case within 90 days after the claim is filed, the secretary of the committee shall, upon the expiry of that period, so notify the claimant in writing and report to him on the committee’s progress. Until the committee has completed its examination, the secretary of the committee shall, every 60 days following the expiry of the 90-day period, notify the claimant in writing that examination is continuing and report to him on the committee’s progress.

The obligation to notify the claimant as set out in the second paragraph does not apply to the situation contemplated in section 57.

50. To be admissible, a claim against the fund must be filed within one year of the claimant’s knowledge that sums of money or other securities have been used for purposes other than those for which they were entrusted to the notary in the practice of his profession.

Subject to section 51, a claim that is not filed within the prescribed period is inadmissible.

51. The period prescribed in section 50 may be extended if the claimant demonstrates that he was unable to file the claim within the prescribed period for reasons beyond his control.

52. An application by any person to the syndic for an investigation of facts likely to give rise to a claim against the fund is deemed to be a claim within the meaning of section 48, if the application is filed within the period prescribed in section 50.

DIVISION X INDEMNITY

53. The committee shall decide, in respect of any claim addressed to the fund not exceeding \$10,000, whether the claim should be allowed, in whole or in part, and if so, shall determine the indemnity. The decision of the committee is final.

54. The Administrative Committee, upon the recommendation of the committee, shall decide, in respect of any claim addressed to the fund exceeding \$10,000, whether the claim should be allowed, in whole or in part, and if so, shall determine the indemnity. The Administrative Committee may, if it deems necessary, consult with the syndic. The decision of the Administrative Committee is final.

55. A decision may be rendered in respect of a claim regardless of any action filed by the claimant in a civil court, any judgment rendered by such court, or any decision of the committee on discipline or the Professions Tribunal in respect of the notary in question.

56. The maximum indemnity payable out of the fund is \$100,000 per claim arising from a notary's use of sums of money or other securities, in connection with a contract for professional services or a mandate, for purposes other than those for which they were entrusted to him in the practice of his profession.

The maximum indemnity payable out of the fund is \$100,000 for the aggregate of claims addressed to the fund arising from a notary's use of sums of money or other securities, in connection with one or more contracts for professional services or mandates concluded with several persons for the same service, for purposes other than those for which they were entrusted to him in the practice of his profession. Where the total of the claims allowed in a case contemplated in this paragraph exceeds the maximum indemnity, the indemnity is distributed in proportion to the amount of each claim.

For the purposes of this section, service includes the performance of professional services by a notary pursuant to a contract for his services or a mandate for the benefit of two or more persons, including, in particular but without limiting the foregoing, the acquisition or

sale of a family residence or an undivided co-ownership, the settlement of a succession, the creation of a patrimony by appropriation or of the constitution of a legal person, and any investment of a movable or immovable nature.

57. The balance of a notary's general trust account the funds of which have been blocked or otherwise disposed of in accordance with sections 36 and 37 shall, at the expiry of 60 days following publication of a notice to that effect in a newspaper circulating in the place where the notary has or had his professional domicile, be distributed by the secretary of the committee among the claimants in proportion and up to the amount of each claim allowed, less the sum paid pursuant to section 56.

The secretary of the committee shall cause the notice to be published after one year has elapsed without a new claim exceeding \$100,000 against the fund in respect of that notary.

58. Upon receiving the indemnity, the claimant shall sign an acquittance in favour of the Order, with subrogation in all his rights in respect of his claim up to the amount of the indemnity against the notary concerned, the notary's successors, and any person, partnership, or legal person that is or might be held liable for such payment.

DIVISION XI TRANSITIONAL AND FINAL

59. This regulation replaces the Regulation respecting trust accounting by notaries, approved by order in council 823-95 dated June 14, 1995.

60. The Regulation respecting the indemnity fund of the Chambre des notaires du Québec (R.R.Q., 1981, c. N-2, r.8) is replaced by this regulation but continues to govern claims filed against the fund before 31 October 1996, and claims filed after, but relating to facts prior to, that date and concerning a notary in respect of whom one or more other claims have already been filed.

61. This Regulation comes into force on the fifteenth day following its publication in the *Gazette officielle du Québec*.