



# New Insurance Policy Allows for an “All-In-One” Trust Account

It is now possible to have just one trust account that permits electronic transactions!

SCR 20:1.15 (f)(3)<sup>1</sup> permits lawyers to conduct electronic transactions with only one trust account and one business account. Thus, a lawyer using this alternative could accept an electronic payment of advanced fees directly into the lawyer’s only trust account and electronically transfer the fees to the lawyer’s only business account when the fees were earned.

The new option requires a “bond or crime policy,” which is **NOT** cyber insurance or malpractice insurance. It is a policy specifically designed to protect against theft or loss of funds from computer fraud or employee theft.

## Crime Coverage Policy NOW Available to State Bar of Wisconsin Members!

To address this issue, the State Bar worked with Office of Lawyer Regulation and insurance companies to develop a product that meets the requirements of SCR 20:1.15(f)(3). Complete information is located at [wisbar.org/crimepolicy](http://wisbar.org/crimepolicy).

Because this was collaborative effort with the Office of Lawyer Regulation, they have agreed that the policy meets the requirements of SCR 20:1.15(f)(3)c.2, and a statement to that effect may be found on the Bar’s website.

The availability of this tailored insurance policy through the State Bar of Wisconsin removes one the major obstacles to lawyers taking full advantage of the modernizing provisions of the current trust account rule.

## What Is Commercially Reasonable Account Security?

While there is no definition of “commercially reasonable account security,” lawyers can demonstrate compliance by consulting with their financial institution and documenting the steps taken to reasonably ensure the security to the account. Additional information is available in the sidebar to the right.

### Guidance From the OLR on Commercially Reasonable Account Security

With respect to “commercially reasonable account security,” the rule does not provide specifics. SCR 20:1.15(f)(1), however, states:

Security of transactions. A lawyer is responsible for the security of each transaction in the lawyer’s trust account and shall not conduct or authorize transactions for which the lawyer does not have commercially reasonable security measures in place. A lawyer shall establish and maintain safeguards to assure that each disbursement from a trust account has been authorized by the lawyer and that each disbursement is made to the appropriate payee. Only a lawyer admitted to practice law in this jurisdiction or a person under the supervision of a lawyer having responsibility under SCR 20:5.3 shall have signatory and transfer authority for a trust account.

The Office of Lawyer Regulation provides the following guidance:

This new rule requires lawyers to communicate with their financial institution as to what is “commercially reasonable” based upon the specific types of e-banking that a lawyer plans to use. It is very likely that security measures will evolve over time in response to the evolution of cyber threats and that minimum security requirements for the lawyer or law firm to follow will be identified in an agreement with the financial institution. At this time, commercially reasonable security measures may include some or all of the following:

- 1) A dedicated computer for e-banking that is not connected to the firm’s server that has software protection against malware, spyware, and viruses;
- 2) Education of lawyers and law firm staff on corporate account takeover, social engineering techniques, and other cyber threats;
- 3) ACH Debit blocks;
- 4) ACH Positive pay;
- 5) On-line review of account activity at least daily;
- 6) Security Tokens for two factor authentication (Tokens are small hardware devices with a PIN number and a time sensitive code to conduct transactions);
- 7) Dual controls (Two people must authorize a transfer); and
- 8) Creation of a contingency plan to mitigate and/or recover unauthorized transfers in the event of a cyberattack or corporate account takeover.

## 1 SCR 20:1.15 (f)(3)

This rule, which authorizes the all-in-one trust account, reads:

c. Alternative to E-Banking Trust Account. A lawyer may deposit funds paid by credit card, debit card, prepaid or other types of payment cards, and other electronic deposits into a trust account, and may disburse funds from that trust account by electronic transactions that are not prohibited by sub. (f)(2)c., without establishing a separate E-Banking Trust Account, provided that all of the following conditions are met:

1. The lawyer or law firm maintains commercially reasonable account security for electronic transactions.

2. The lawyer or law firm maintains a bond or crime policy in an amount sufficient to cover the maximum daily account balance during the prior calendar year.
3. The lawyer or law firm arranges for all chargebacks, ACH reversals, monthly account fees, and fees deducted from deposits to be deducted from the lawyer’s or law firm’s business account; or the lawyer or law firm replaces any and all funds that have been withdrawn from the trust account by the financial institution or card issuer within 3 business days of receiving actual notice that a chargeback, surcharge, or ACH reversal has been made against the trust account; and the lawyer or law firm reimburses the account for any shortfall or negative balance caused by a chargeback, surcharge, or ACH reversal. The lawyer shall reimburse the trust account for any chargeback, surcharge, or ACH reversal prior to disbursing funds from the trust account.