

Considerations Regarding IOLTA Accounts After Silicon Valley Bank Failure

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The recent failure of Silicon Valley Bank (SVB) has brought renewed attention to the ethical implications of protecting client property, namely trust accounts, from improper interference.

[Rule 1.15\(a\)](#) of the Utah Rules of Professional Conduct requires lawyers to hold client property in trust and separate from the lawyer's own funds. Utah's IOLTA (Interest On Lawyers Trust Accounts) [Rule 14-1001](#) requires, among other things, that the account be insured by the Federal Deposit Insurance Corporation (FDIC) or its equivalent (NCUA), see 14-1001(d)(3)(B).

The FDIC (or NCUA) is a government agency entrusted with protecting losses of insured deposits in the event that a bank or credit union fails. FDIC deposit insurance is backed by the full faith and credit of the United States government.

For FDIC insurance purposes, IOLTA accounts that are properly set up and titled as an attorney client trust account, are treated as Fiduciary accounts and qualify for pass through coverage to the underlying owner, as long as your firm has maintained accurate ownership records. This means, generally, that each client with funds in an IOLTA account is insured up to the FDIC maximum of \$250,000 (subject to other funds the client may separately maintain at the same financial institution).

You can read the FDIC information on Fiduciary accounts here:

<https://www.fdic.gov/resources/deposit-insurance/diguidebankers/fiduciary-accounts/index.html>

You can see a general brochure about FDIC insurance here:

<https://www.fdic.gov/resources/deposit-insurance/brochures/documents/your-insured-deposits-english.pdf>

The NCUA deposit insurances operates in the same manner as the FDIC for IOLTA accounts held at Credit Unions. For additional information, go here:

<https://www.federalregister.gov/documents/2015/12/28/2015-32164/pass-through-share-insurance-for-interest-on-lawyers-trust-accounts>

According to a 2008 article from the Florida State Bar titled "What Lawyers Need to Know About Bank Failures and Trust Accounts," it's also good practice to advise clients of the particulars regarding the banking institution in which their IOLTA account is housed, which...will enable the clients to determine if the clients may hold other funds at that same institution which, when combined with the funds held in the trust account on their behalf, will exceed FDIC coverage limitations."

While lawyers cannot predict all of the economic or business factors that may lead to a financial institution's demise, they are ethically obligated to protect client funds diligently. Ensuring that your firm is undergoing rigorous and proper accounting of client trust accounts should be undertaken along with a consideration of the financial status of your participating institution. Lawyers with concerns about the financial health of their banking institution should consult with the affected clients regarding how to maximize FDIC protections and protect against any potential losses.

FDIC Insurance and IOLTA Account Specifics and Examples:

Lawyers should be diligent in ensuring:

- The account is properly set up (the description of the account must indicate that it is an IOLTA or lawyer trust account and the lawyer has confirmed/performed due diligence with the cooperating banking institution).
- The account is properly managed (the lawyer must ensure they account for which client is assigned to particular accounts and perform regular auditing).

If the above steps have been taken, IOLTA deposits are insured up to the limits per client with funds at the institution, currently \$250,000. Note the maximum coverage applies to the financial institution not just the account, so if a client also banks with the bank where the lawyer has their IOLTA account, that might affect how much is insured – FDIC covers 250,000 per person or entity per financial institution no matter how many accounts it is spread across. These limits will change on March 31, 2024.

If there are two clients with funds in the same banking institution, the account will be insured up to \$250,000 per client. If both clients have less than \$250,000 in the IOLTA account and no other funds at the bank, they are fully covered.

Alternatively, if those two clients have a total of \$500,000 in the IOLTA account, but Client 1 has \$350,000 in the IOLTA account and client 2 has \$150,000 in the IOLTA account, then client 1 is covered up to 250,000 and client 2 is fully covered. The total coverage for the IOLTA account is 400,000 in this scenario.

If Client 1 has \$150,000 in the IOLTA account, and they use the same bank as their lawyer for their own banking and have \$200,000 in their own bank account, then Client 1 would only be covered up to \$250,000 total and exposed on \$100,000 (one might argue about the protection that is allocated between the accounts).

For questions specific to your IOLTA account or your client's situation, please contact Kim Paulding at the Utah Bar Foundation at kim@utahbarfoundation.org or 801-297-7046.