

Amended Rules and Procedures for Unclaimed and Unidentified IOLTA Funds



PRESENTATION TO REAL ESTATE BAR
ASSOCIATION'S PARALEGAL & RESIDENTIAL
CONVEYANCING SECTIONS

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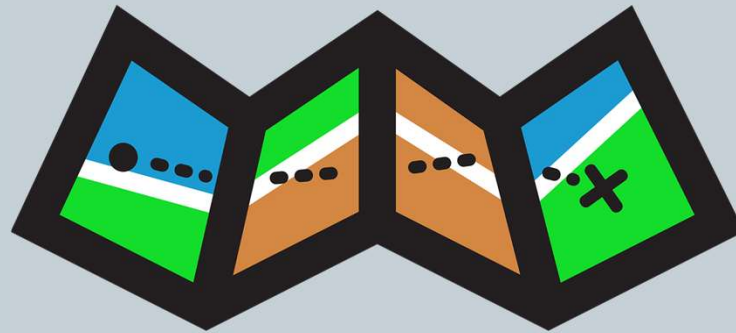


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Road Map for Today's Session



- Overview of Rule 1.15 Amendments
- New Rules about Inactive IOLTA Accounts
- Process to Remit Funds to IOLTA Committee
- Returning Unclaimed Funds to Owners
- Tips/FAQs
- Resources
- Q&A



What is the Purpose of the Amendments to Rule 1.15?



- To encourage Massachusetts lawyers to identify and remit unclaimed and unidentified IOLTA funds to the owners of those funds.
- To transfer funds that cannot, after diligent efforts, be returned to the owners of such funds, to the important organizations and for the uses set out in Mass. R. Prof. C. 1.15(g)(4).
- The IOLTA Committee distributes funds to three charities: Massachusetts Legal Assistance Corporation (67%); Massachusetts Bar Foundation (26%); and Boston Bar Foundation (7%). These charities use IOLTA funds to make grants to programs that provide civil legal help to Massachusetts residents who cannot afford a lawyer and to initiatives that improve the administration of justice.

The New Provisions of Mass. Rule P. Conduct 1.15



The new rules and comments are found at [Mass.gov](https://www.mass.gov):

- Mass. R. Prof. C. 1.15(h)(5) through (9)
- Mass. R. Prof. C. 1.15 (i)
- Mass. R. Prof. C. 1.15, comments 15- 18
- Mass. R. Prof. C. 1.15A (e)(4)

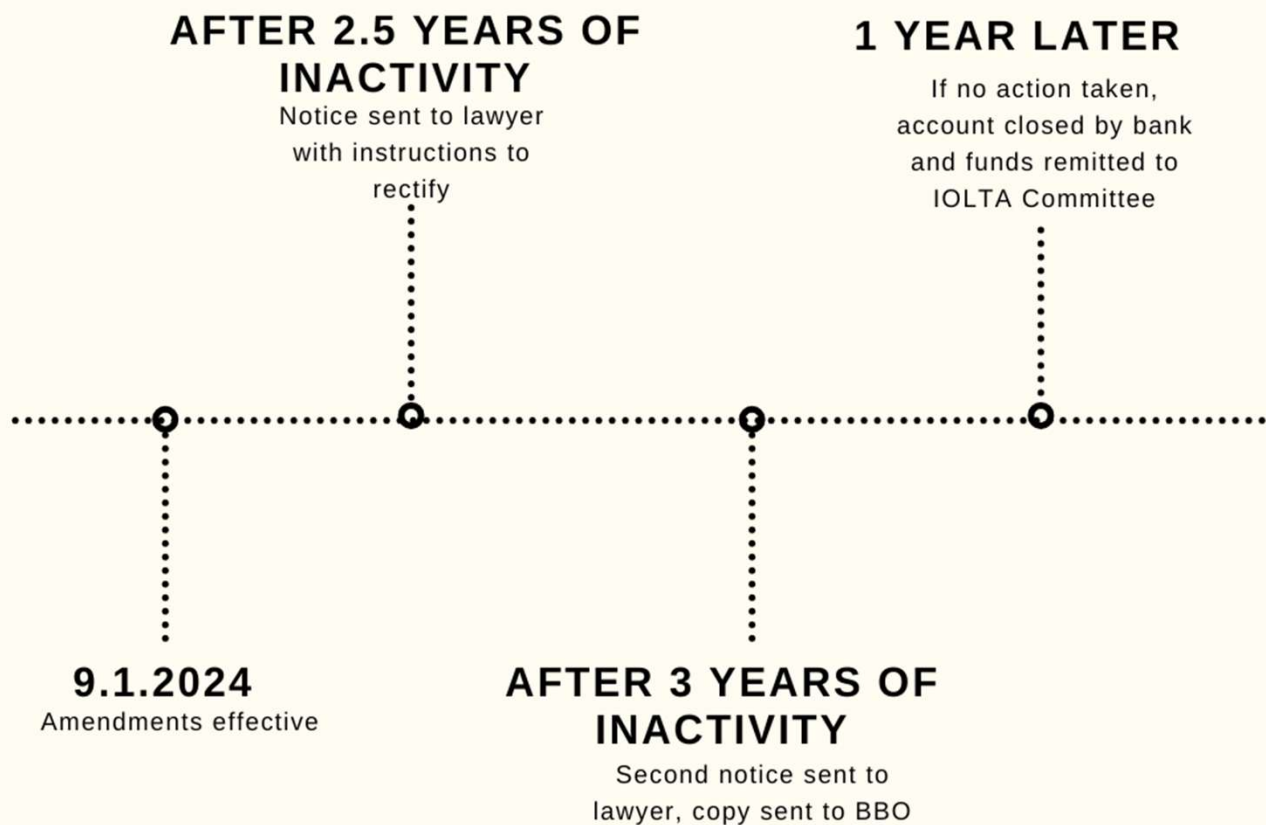


Rule 1.15(h) – New Rules About Inactive IOLTA Accounts



- If there is no activity (other than accrual and disbursement of interest) in an IOLTA account for two and one-half years, financial institution to inform lawyer that it will notify BBO if inactivity continues for six more months. Rule 1.15(h)(5)(i)
- After three years of inactivity, financial institution must notify the BBO, with copies to lawyer and law firm at which lawyer last practiced. Rule 1.15(h)(5)(ii)
- After receiving a three-year inactivity notice, lawyer must:
 - Close the account and distribute the funds to owners (if known) or to IOLTA Committee, and notify the BBO of the action taken; or
 - If funds are in the account for a valid reason and the account should remain open, explain to BBO and financial institution.
- If lawyer takes no action for one year following issuance of the three-year inactivity notice, financial institution must distribute the funds to IOLTA Committee and close the account. Rule 1.15(h)(7)

Rule 1.15 Amendments - Implementation Timeline



Duty to Dispose of Unclaimed and Unidentified Funds



Rule 1.15(i) creates new duties for lawyers holding unclaimed and unidentified funds in an IOLTA account:

- Discovery of unclaimed and/or unidentified funds in IOLTA triggers duty to act.
- Lawyers must promptly make reasonable and diligent efforts to identify and locate owners of funds. (Mass. R. Prof. C. 1.15(i)(1))
- After completing such efforts, lawyers **may** remit funds to IOLTA Committee at any time. (Mass. R. Prof. C. 1.15(i)(2))
- Three years after discovery of unclaimed or unidentified IOLTA funds, lawyers **must** remit funds to IOLTA Committee. (Mass. R. Prof. C. 1.15(i)(3))

Process to Remit Funds to IOLTA Committee



- To remit funds to the IOLTA Committee, a lawyer or the lawyer's agent must complete an online affidavit and make an electronic transfer of funds. The affidavits and further instructions are available on the IOLTA Committee website: [Undistributable IOLTA Funds \(maiolta.org\)](https://maiolta.org). **Affidavits and payments cannot be mailed.**
- Use Chrome or Edge internet browser, not Firefox.
- There are two affidavits:
 - Safe Harbor Affidavit: Remitting \$500 or less to the IOLTA Committee within a 12-month period.
 - Over \$500 Affidavit: Remitting more than \$500 within a 12-month period.
- Affidavits are account-specific.
- A copy of all Over \$500 Affidavits will be automatically provided to the BBO.

Submitting Online Affidavit



- Webpage: <https://www.maiolta.org/for-attorneys/undistributable-iolta-funds>
- Scroll to bottom of the page and click here:
 - When you are ready, enter the **UNCLAIMED AND UNIDENTIFIED FUNDS REMITTANCE PORTAL** below. Note that your progress cannot be saved. Be prepared to complete the affidavit and the electronic funds transfer in a single session. Please double check your IOLTA account number before entering as there is no automatic validation.

UNCLAIMED AND UNIDENTIFIED FUNDS REMITTANCE PORTAL



If you have any questions about the portal or have any difficulty submitting your information or completing the electronic funds transfer, please contact us using the information below. Thank you.

The Massachusetts IOLTA Committee
18 Tremont Street, Suite 1010
Boston, MA 02108-2316
Email: questions@maiolta.org Phone: 617-723-9093

Submitting Online Affidavit



- Enter email and generate email to you with a One-Time Password (OTP). If password not received, check your spam/junk mail folders or your email quarantine.
- Enter OTP.
- Select \$500 or Less (“Safe Harbor”) or Over \$500 Affidavit.

Please select the type of form you want to submit below.



\$500 or less



Over \$500

Safe Harbor Affidavit - \$500 and Under (in 12 months)



Section 1

1. I am Attorney or *, the authorized agent of Attorney , and wish to remit **4** to the IOLTA Committee from the IOLTA Account of Attorney , because [check all that apply]. Amounts below must match the total remitted.

- ☐ I am unable to determine the owner(s) of **1** of these funds.
- ☐ I am unable to locate the owners(s) of **2** of these funds.
- ☐ The owner(s) of **3** of these funds can be located but the funds cannot be disbursed.

1 + **2** + **3** + **4**

* Authorized signer on the IOLTA account or personal representative of an attorney's estate

Section 2

2. Including these funds, Attorney or the authorized agent(s) of Attorney has/have transferred to the IOLTA Committee in the preceding twelve-month period.

Must match type of Affidavit selected

Section 3

3. Attorney is/was licensed to practice in the Commonwealth of Massachusetts, BBO Number , and maintain(s)/maintained an IOLTA Account pursuant to the Massachusetts Rules of Professional Conduct and the IOLTA Guidelines as follows:

Name of IOLTA Account:	<input type="text"/>
Account Number:	<input type="text"/>
Confirm Account Number:	<input type="text"/>
Routing Number:	<input type="text"/>
Bank Name:	<input type="text" value="Select"/>
Bank Address1:	<input type="text"/>
Bank Address2:	<input type="text"/>
City:	<input type="text"/>
State:	<input type="text" value="Select"/>
Zip Code:	<input type="text"/>
Approximate date of account opening:	<input type="text"/>
If account is closed, approximate date of closing:	<input type="text"/>

Section 4

4. I discovered that these funds are unidentified in approximately and/or unclaimed in approximately . Since that time, despite reasonable and diligent efforts, I have been unable to identify the owner(s) of unidentified funds and/or locate the owner(s) of unclaimed funds and disburse the funds to the owner.

Section 5

5. For UNCLAIMED FUNDS : provide each owner's name, last known mailing address, date of birth, and amount belonging to that owner.

Please enter each owner's information below and click 'Save Owner' button to save the owner's information. Repeat the steps to add all of the owners:

First Name/Business

Country:

United States ▼

Name of Owner:

Address1:

Last Name of

Address2:

Owner:

City:

Owner's Date of
Birth:

State/Province:

Select ▼

Amount
Unclaimed(\$):

Zip/Postal Code:

Phone:

Email:

Save Owner

Click to add 1st owner,
then enter additional
owners if needed

*** Please enter the details of all the unclaimed fund owners above and be sure to hit "SAVE OWNER" prior to submission.**

Note: Information from this paragraph will be published on a webpage maintained by the Board of Bar Overseers to allow the owner to reclaim his or her funds from the IOLTA Committee.

Section 6

6. I attest that this transfer complies with Massachusetts Rule of Professional Conduct 1.15 and the Comments to that Rule, including Comment 15 regarding the required reasonable and diligent efforts to identify or locate the owner(s) and remit the funds to the owner(s).

Section 7

7. I understand that pursuant to Massachusetts Rule of Professional Conduct 1.15(i)(5)(iii), if I identify or locate the owner of funds previously remitted to the IOLTA Committee or I am able to disburse to the rightful owner unclaimed funds previously remitted to the IOLTA Committee, I will notify the IOLTA Committee and the Board of Bar Overseers and make reasonable and diligent efforts to assist the owner in reclaiming the funds.

Section 8

8. I understand that the IOLTA Committee may, in its discretion, decline to accept some or all of these funds pending further efforts by me to distribute such funds to the rightful owner or owners, or for any other reason.

Electronic Signature & Submittal

SIGNED UNDER THE PENALTIES OF PERJURY

☐ I certify under penalties of perjury that the foregoing statements are true to the best of my knowledge and belief.

Signature:

Please complete the CAPTCHA verification below. This helps us reduce SPAM submissions. Note: If you are using the audio CAPTCHA verification option, press "SPACE" to begin audio playback; press "R" to replay audio CAPTCHA; type in the numbers you hear and press the "Enter" key when done.

Affidavit for Over \$500 (in 12 months)



Section 5

5. For UNIDENTIFIED FUNDS : Please provide a detailed description of all efforts made to identify the rightful owner(s) of these funds, including, but not limited to:

- a) All steps taken by you to review and analyze all available trust account ledgers, reconciliation reports, bank statements and relevant client files ("records");
- b) The dates of the records that you reviewed;
- c) If you engaged an accountant or bookkeeper to perform an examination of all relevant financial records, please provide the name and contact information for the accountant or bookkeeper; and the findings made by that person or entity;
- d) All other efforts made to identify the owner(s) of the unidentified funds.

Please enter description of all efforts made to identify the rightful owner(s) of these funds in the box below:

Upload any documents reflecting the above efforts to identify the rightful owner(s) below. Please click 'Upload' after selecting a document to save the selected document. Repeat the steps to upload additional documents:

Select document:

Choose File No file chosen

Document description:

Enter brief description of the selected document here

Upload

Section 6

6. For UNCLAIMED FUNDS : Please provide each owner's name, last known contact information and amount belonging to that owner, as well as a detailed description of all efforts to made to locate each rightful owner of these funds and disburse the funds to that owner, including, but not limited to:

- a) Attempted contacts by telephone, mail, email, or text message; and dates thereof;
- b) Databases searched including internet, social media, public records, Westlaw and Lexis/Nexis;
- c) Attempted contact of known family members, co-workers, friends, or employers and the results of those contacts;
- d) If the owner can be located but the funds cannot be disbursed, please explain; and
- e) All other attempts to locate the owner and disburse the funds to the owner.

Please enter each owner's information below and click 'Save Owner' button to save the owner's information. Repeat the steps to add all of the owners:

First Name/Business

Country:

United States ▼

Name of Owner:

Address1:

Last Name of
Owner:

Address2:

Owner's Date of
Birth:

City:

Amount
Unclaimed(\$):

State/Province:

Select ▼

Zip/Postal Code:

Phone:

Email:

Save Owner

*** Please enter the details of all the unclaimed fund owners above and be sure to hit "SAVE OWNER" prior to submission.**

Please enter description of all efforts made to locate each rightful owner of these funds and disburse the funds to the owner(s) in the box below:

Upload any documents reflecting the above efforts to locate each rightful owner of these funds and disburse the funds to that owner. Please click 'Upload' after selecting a document to save the selected document. Repeat the steps to upload additional documents:

Select document:

Choose File No file chosen

Document description:

Enter brief description of the selected document here

Upload

Note: Information from this paragraph will be published on a webpage maintained by the Board of Bar Overseers to allow the owner to reclaim his or her funds from the IOLTA Committee.

Tips for Submitting Affidavit



- Progress cannot be saved. *Before starting the affidavit, be prepared:*
 - Review Rule 1.15, the Attorney Undistributable FAQs, blog, and sample affidavits on the IOLTA Committee's website, and the IOLTA Committee Instructions for the remittance portal.
 - Have the attorney's BBO number and information about the IOLTA account involved handy.
 - Know the approximate date you discovered the funds were unclaimed and unidentified.
 - If remitting unclaimed funds, have information regarding each owner: first/last name or business name; DOB (optional); contact information; and amount unclaimed.
 - Assemble the information and supporting documents regarding the funds and efforts to identify the owner of the funds or to locate the owner and remit the funds.
- Keep copies of the confirmation email you receive with an invoice number for the affidavit and a link to download a copy of your affidavit.

Payment Portal



Order Summary

Description	Massachusetts IOLTA Funds Remittance	Total	\$	10.00
Invoice Number	8PkzwEbeaL13			

Bank Name

Name On Account *

Account Number *

ABA Routing Number *

Bank Account Type

Personal Checking ▼

Submit Payment

Cancel

Confirm
Account No.

Select
Business
Checking

Tips for Submitting Payment



- If you are remitting \$10,000 or more, contact the IOLTA Committee for payment instructions (payment portal cannot be used \$10,000 or more).
- Before starting, confirm that your bank permits “ACH transfers” from your IOLTA account. If not, contact the bank to authorize a one-time ACH transfer to “e-check.net.”
- When making the electronic transfer, double check your IOLTA account number before submitting the payment.
- 1-2 days after making the electronic transfer, check your bank account to confirm the payment was processed. **If payment not processed, contact your bank.*

Returning Unclaimed Funds to Owners



- The BBO has published on its website and will continue to update a list of the owners of unclaimed funds Unclaimed IOLTA Funds - List (massbbo.org).
- If an owner finds their name on the list, the lawyer who transmitted the owner's funds to the IOLTA Committee may be asked and shall comply with any requests from the BBO to verify the owner's claims to the fund.
- If a lawyer transmits funds to the IOLTA Committee and later identifies and/or locates the owner of those funds, the lawyer must notify the IOLTA Committee and the BBO and assist in efforts to return those funds to the owner.
- Lawyers must maintain files (including IOLTA account records) related to unclaimed or unidentified funds transferred to the IOLTA Committee for at least 10 years. Mass. R. Prof. C. 1.15A (e)(4).

Tips for Lawyers (Unclaimed Funds)



- Review your IOLTA accounts now for unclaimed funds.
- Make list of all checks that remain unnegotiated after 90 days.
- Attempt to determine why payee has not negotiated check.
- If checks were returned in the mail as “undeliverable”, use internet and other means to search for better addresses for payees.
- Stop checks and reissue them as appropriate.
- Retain records of all attempts to remit funds to owner.
- See Comment 15 to Rule 1.15 for discussion of reasonable efforts.
- See Christine Deshler, “What To Do When A Client Goes Missing”, September 2020 (BBO Webpage/resources/Article on Ethics), re locating missing clients.

Tips for Lawyers (Unidentified Funds)



- Do your three-way reconciliation of IOLTA check register, client ledgers, and bank statement balance.
- Determine if you are holding unidentified funds in your IOLTA account.
- Attempt to determine how long you have been holding the unidentified funds.
- Review your check register and client ledgers for any errors and correct them.
- Discuss the unidentified amounts with all attorneys and staff who have access to the account.
- If you are holding a significant amount of unidentified funds, consider hiring a bookkeeper or accountant to perform a forensic review.
- If you took over an IOLTA account that already held unidentified funds, contact former account signatories for information about those funds.

Frequently Asked Questions



- **Q. Who is an “authorized agent” who may submit an affidavit to transfer undistributable funds?**
 - A. In general, the affidavit should be completed by an attorney who is an authorized signatory on the IOLTA account. If such an attorney cannot complete the affidavit, it can be completed by an “authorized agent,” e.g. the personal representative of a deceased attorney. In certain circumstances, an authorized signatory on the IOLTA account who is not an attorney, such as a firm office manager or bookkeeper, may be an appropriate authorized agent. If an authorized signatory on the IOLTA account who is not an attorney or an attorney who is not an authorized signatory submits an Over \$500 Affidavit, the affidavit should explain why.
- **Q. How is the three-year deadline under Rule 1.15(i)(3) to transfer undistributable funds to the IOLTA Committee calculated?**
 - A. It is calculated from when the funds are discovered to be unclaimed or unidentified. For undistributable funds discovered prior to the effective date of the amendments, it is calculated from 9/1/24, although lawyers should make prompt efforts to return funds to their owner.
- **Q. What should a lawyer do if they receive a notice from their bank or credit union of an inactive IOLTA account?**
 - A. Review the notice carefully, and within six months, either disburse the funds and close the account if it is no longer needed or follow the financial institution’s instructions for reactivating the account.

Frequently Asked Questions



- **Q. When a lawyer's Over \$500 Affidavit has been sent to the BBO, what will the BBO do with it?**
 - A. The BBO will direct it to Bar Counsel, who will review the Affidavit to determine if the lawyer has made diligent efforts to identify and locate the owner of the funds or has engaged in a violation of Rule 1.15 meriting discipline.

- **Q. What are the usual sanctions for those violations?**
 - A. Where evidence indicates that the lawyer failed to engage in proper IOLTA record-keeping, failed to promptly deliver funds belonging to a client or third person, or engaged in another violation of Mass. R. Prof. C. 1.15, the most frequent sanctions have been private admonitions and public reprimands.

- **Q. What does "meriting discipline" mean?**
 - A. Bar Counsel does not prosecute every violation of the rules it discovers. When minor misconduct, causing no harm to a client is discovered, Bar Counsel may close the file without discipline, or propose a diversion agreement with a lawyer.

Resources



- Review IOLTA Committee's Client Funds Manual and FAQs: [For Attorneys \(maiolta.org\)](http://maiolta.org)
- Watch BBO Trust Account training webinar and review training slides: [IOLTA Resources \(massbbo.org\)](http://massbbo.org)
- Review Lawyers Concerned for Lawyers law practice management resources and schedule free & confidential consultation: [Resources - Lawyers Concerned for Lawyers | MA \(lclma.org\)](http://lclma.org)
- Useful Contacts
 - ✦ IOLTA Committee: 617-723-9093 or questions@maiolta.org
 - Jenna Miara, Executive Director: jmiara@maiolta.org
 - ✦ Office of Bar Counsel: 617-728-8750 or IOLTAfunds@massbbo.org

Remaining Questions?

