



Q & As re: Real Time Transfers for e-regTM

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What is "Real Time Transfers for e-regTM"?

Bank of Montreal (the "Bank") has a technology solution that can facilitate the electronic transfer of closing proceeds in a real time, real value fashion, assuming that both the sending and receiving firms have trust accounts with the Bank. The firm disbursing the money is able to see, online, that the money has left its account, and the firm receiving the money is able to see that the funds have been deposited.

Why is LAWPRO involved in this issue?

Despite discussions at various times in the past, the lending community as a whole has not yet developed a solution that would allow for the remote, real time electronic transfer of closing proceeds directly between bank accounts, as a companion to the e-regTM workflow. As a result, lawyers have to (a) meet physically, thereby losing much of the convenience of e-regTM, or (b) send closing proceeds by courier in escrow. The latter solution often will not work because of the distances between the law firms, and is not necessarily the most secure way of delivering the closing proceeds. The challenges will only increase as e-regTM expands throughout Ontario, and lawyers undertake conveyancing more distant from their offices.

Why do both accounts have to be located at the Bank?

While it is possible to transfer money electronically between different financial

institutions, the Real Time Transfers program is designed to ensure that the transfer of funds occurs "real time, real value", allowing the firm receiving the funds to transfer them immediately to another law firm for a purchase deal. That is why LAWPRO worked with the Bank to provide an "account to account" solution **within** a single institution.

How does the process work?

- (a) If participating law firms already have a trust account with the Bank, they can establish their own electronic access by completing the required set-up forms available at www.lawpro.ca and returning them to the Bank at the address provided. If participating law firms do not already have a trust account with the Bank, they must first open a trust account at the nearest Bank of Montreal branch before signing up for this program. Electronic access can then be established by completing the required set-up forms (referred to above).
- (b) The purchaser's law firm ("PLF") receives funds (for example, certified cheque, bank draft or money order) from the purchaser and/or the new mortgage lender.
- (c) The PLF attends at the Bank branch and deposits the funds into the Account.
- (d) The PLF obtains Account details for the vendor's law firm ("VLF") and confirms that the Document Registration Agreement¹

¹ As approved by the Joint Committee on the Electronic Registration of Title Documents and available at www.lsuc.on.ca.

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(the “DRA”) is in place to provide for an escrow closing.

(e) The PLF logs into the Bank’s electronic system, confirms that the money is in the Account and transfers it to the VLF. In the course of undertaking the transfer, the system will ask for an additional confirmation (i.e. a Yes/No answer) when the name of the recipient appears on the screen and the amount to be transferred has been input. The system will return an error message if there are insufficient “cleared” funds to complete the transaction.

(f) When the transaction is completed, the PLF will see a message on the screen confirming the transaction. The PLF can print that screen for its records, or make a menu choice and print the “Transfer Summary Report”. In addition, any firm on the system can print its own account history for up to 45 days.

(g) The VLF logs into the electronic system, confirms receipt of the funds, and releases the transfer for registration by the PLF.

When will Real Time Transfers for e-reg. transactions be available?

A pilot project will commence in the Middlesex area during the summer of 2002. There should be widespread availability in late 2002.

Does the Law Society have any special requirements that apply?

Section 7.1 of By-law 19 applies to these transactions. A copy is attached as Appendix “A”. In particular, note that for each transaction you are required to prepare a paper “electronic trust transfer requisition” in the form attached to the By-law as Form 19C.

If I open a Bank trust account for Real Time Transfer purposes, do I have to use it for all transactions?

Any use of the system is completely optional. The program is intended to give law firms a way to move funds quickly over a distance and not necessarily to replace escrow closings undertaken by courier pursuant to the DRA or meeting at the Registry Office (or elsewhere) to exchange funds in paper form, if desired.

The Law Society of Upper Canada allows multiple mixed trust accounts under By-law 19 (Section 2(5)).

I already have a trust account with the Bank. Can I use it for this purpose?

Existing trust accounts with the Bank may be used for the purposes of this program. Make sure to include the existing account number on the required set-up forms available at www.lawpro.ca.

As the purchaser’s lawyer, what type of funds can I put in the Account?

The funds must be in a form that could, in the paper world, be immediately approved for withdrawal by you in certified form, with no hold placed on them by the Bank branch receiving the deposit. We assume this means (in most cases) certified cheques or bank drafts from recognized Canadian financial institutions.

Branch staff make the decision that the funds can be deposited into the Account without a “hold”, in accordance with normal Bank procedures and standards applicable to lawyers’ trust accounts. In other words, there is no difference in terms of this issue whether you operate electronically or with paper certified cheques.

Furthermore, what is my liability for the funds to the Bank?

The liability of the purchaser's lawyer remains the same as any time a lawyer introduces funds into his/her trust account and immediately draws upon them for a certified cheque.

As the vendor's lawyer, how do I know that the funds are good?

Under the agreement between LAWPRO and the Bank, the funds will be treated as "cleared" funds in the hands of the transferee within the Bank's system.

Currently purchasers' lawyers deposit money directly to my trust account, often at a different branch of my bank. What is different under this system?

The main difference is the status of the funds. Most vendors' lawyers report that it is difficult to determine the type of funds deposited, and they are nervous about closing in case the funds were not certified. Sometimes the remote branch (where the deposit is made) will not provide information immediately to your home branch.

With the new system you know that the funds will be treated by the Bank as "cleared" funds in your trust account and you can immediately forward them, if necessary.

What will this cost me?

At present, electronic access to the Account costs \$15.00 per month, plus \$5.00 for each authorized user. A transfer of funds costs \$15.00. Included in those amounts is the ability to make unlimited inquiries regarding the account balance and transactions. Normal bank charges will apply for any certified cheques in paper form.

How will I pay the Bank fees?

The fees cannot be debited to the subject Account, since it is a trust account. The fees

in payment of this service would be automatically debited to a "general" account. However, the general account in question does not have to be maintained at the Bank.

What about the funds going to pay out the existing institutional mortgagee?

Normally the purchaser's lawyer would provide a certified cheque made payable directly to the institutional mortgagee which is being paid out, as assurance that those funds will actually be used to discharge the mortgage. The Law Society is changing its guideline on mortgage payouts. For e-regTM transactions using this type of funds transfer program (that is, with real time, "cleared" funds transfer capability), it will be acceptable to pay the entire proceeds into the vendor's lawyer's trust account. This assumes that you are receiving an appropriate undertaking from the vendor's lawyer regarding forwarding the monies to the applicable lender.²

Why Bank of Montreal?

Bank of Montreal is the financial institution for both the Law Society and LAWPRO. Its representatives worked with us to develop a solution, in terms of both technology and account provisions, that meet the requirements of the Law Society and LAWPRO.

By-law 19's requirements do not limit you to a Bank of Montreal account, but LAWPRO is not aware of any other system currently meeting the requirements of the by-law and providing the level of protection negotiated with Bank of Montreal, as well as giving real time "account to account" transfer capability.

² For private mortgages, the mortgage discharge itself must comprise one of the documents to be registered under the DRA.

Appendix "A"

Extract from By-law 19 Handling of Money and Other Property

Please refer to the full text of the By-law, available at www.lsuc.on.ca, for a complete analysis of its requirements.

Definitions

7.1 (1) In this section,

"closing funds" means the money necessary to complete or close a transaction in real estate;

"transaction in real estate" means,

(a) a charge on land given for the purpose of securing the payment of a debt or the performance of an obligation, including a charge under the *Land Titles Act* and a mortgage, but excluding a rent charge, or

(b) a conveyance of freehold or leasehold land, including a deed and a transfer under the *Land Titles Act*, but excluding a lease.

Withdrawal by electronic transfer: closing funds

(2) Despite section 7, closing funds may be withdrawn from a trust account by electronic transfer in accordance with this section.

When closing funds may be withdrawn

(3) Closing funds shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the member must be one to which access is restricted by the use of at least one password or access code.
2. The electronic transfer system used by the member must be one that will produce immediately after the electronic transfer of funds a confirmation of the transfer.
3. The confirmation required by paragraph 2 must contain,
 - i. the name of the person or entity in whose name the account from which money is drawn is kept,
 - ii. the number of the trust account from which money is drawn,
 - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
 - iv. the number of the account to which money is transferred, and
 - v. the date the transfer is carried out.

4. Before the electronic transfer system used by the member is accessed to carry out an electronic transfer of funds, an electronic trust transfer requisition must be signed by,

- i. the member, or
- ii. in exceptional circumstances, a person who is not the member if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

5. The data entered into the electronic transfer system describing the details of the electronic transfer of funds must be as specified in the electronic trust transfer requisition.

Additional requirements relating to confirmation

(4) Not later than 5 p.m. on the day immediately after the day on which the electronic transfer of funds is carried out, the member shall,

- (a) produce a printed copy of the confirmation required by paragraph 2 of subsection (3);
- (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
- (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and
- (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(5) In exceptional circumstances, the tasks required by subsection (4) may be performed by a person other than the member, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition: closing funds

(6) The electronic trust transfer requisition required under paragraph 4 of subsection (3) shall be in Form 19C [Electronic Trust Transfer Requisition: Closing Funds].

Application of subss 8.1 (2) and (4) to (7)

(7) Subsections 8.1 (2), (4), (5), (6) and (7) apply, with necessary modifications, with respect to the doing of any act under this section.

Form 19C

Electronic Trust Transfer Requisition: Closing Funds

Requisition (*number*)

Amount of funds to be transferred: (*Specify amount.*)

Re:

(*Specify name of client.*)

(*Specify file reference number.*)

Reason for payment: (*Give reason for payment.*)

Trust account to be debited:

Name of financial institution: (*Specify name.*)

Account number: (*Specify number.*)

Name of recipient: (*Specify name.*)

Account to be credited:

Name of financial institution: (*Specify name.*)

Branch name and address: (*Specify name and address.*)

Account number: (*Specify number.*)

Person requisitioning electronic trust transfer: (*Print the person's name.*)

(*Date*) (*Signature of person requisitioning electronic trust transfer*)

Person carrying out electronic trust transfer:

Name: (*Print person's name.*)

(*Signature of person carrying out electronic trust transfer.*)