



## NATIONAL UNDERWRITING BULLETIN

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As we continue to see bank failures in the news, and continuing economic malaise, the rules about FDIC coverage of trust accounts continue to evolve. As title agents and Attorney-Agents, we have always given serious thought to the sanctity of our trust accounts and our responsibilities to our customers.

While we would all hope that no court would impose liability on an escrow agent for having held its trust account in a failed bank, such a claim WILL be made and we can all envision scenarios resulting in escrow agent liability. Regardless of the ultimate ruling, this will be an expensive case to defend and devastating to an agent's ongoing business and reputation. Please keep in mind that no title insurer, WFG included, guaranties or back-stops your trust account in the event of a bank failure.

While the specific duties owed by an attorney or title agent in selecting among banks are far from clear – and fortunately haven't been tested in Florida courts -- this bulletin summarizes the current FDIC insurance coverages.

For a number of years, the Federal Deposit Insurance Corporation ("FDIC") has protected insured deposits of up to \$100,000 (with greater coverage for some retirement accounts). Unfortunately, \$100,000 of FDIC coverage is not enough to cover even an average home sale. Because attorneys and title agents hold funds belonging to many different customers in a single escrow account, we routinely far exceed these limits.

The limit was "temporarily" increased to \$250,000 through December 31, 2009 and later extended through December 31, 2013. Unlimited coverage was extended to certain non-interest bearing accounts, IOLTA accounts and some low interest NOW accounts under the Temporary Liquidity Guaranty Program and Transaction Account Guarantee Program, which were set to expire December 31, 2010.

As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act the amount of FDIC coverage was **permanently** raised to \$250,000.

The unlimited coverage for non-interest bearing accounts was also modified by Dodd-Frank. After December 31, 2010 and through December 31, 2012, deposits held in noninterest-bearing transaction accounts will be fully insured, regardless of the amount in the account. **However, the proposed rule implementing Dodd-Frank emphasizes that as of Jan. 1, 2011, low-interest consumer checking accounts and Interest on Lawyer Trust Accounts (IOLTAs) (both of which are currently protected under the TAG Program) will no longer be eligible for the unlimited guarantee.** <http://fdic.gov/news/board/10Sept27no8.pdf>

If you are holding your trust account in a currently insured, low interest NOW account, consider moving to a non-interest bearing account in order to maximize your FDIC coverage. For our attorney-agents,

who are required to keep their escrows in an IOLTA account, look for further guidance from your Bar Association.

Many banks have a practice of waiving fees or providing fee-reducing credits in lieu of interest. Under the proposed FDIC rule interpreting Dodd-Frank, such account features would not prevent an account from qualifying as a noninterest-bearing transaction account, as long as the account otherwise satisfies the definition of a noninterest-bearing transaction account.

While it is ultimately a business decision for our agents, as WFG does not guaranty or back-stop your trust accounts against bank failure, we recommend:

1. Move your trust accounts to a “Safe” Bank. You simply don’t want the headaches and uncertainty of dealing with a bank failure.
2. Structure the Account to Maximize the Extent of your FDIC coverage – even if the unlimited coverage for non-interest bearing transactions is phased out.
3. Expressly limit your liability to clients for matters beyond your control.

As is always the case, you should consult your bank and your own legal counsel for specific guidance on this subject and your unique fact situations.

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