8. TRUST ACCOUNT MANAGEMENT
PDF Supplement

- Rules 5-1.1 and 5-1.2, Rule Regulating the Florida Bar
- Reconciling Your Trust Account article including Reconciling with QuickBooks 2019
- ALTA Rapid Response Plan for Wire Fraud Incidents (Sep. 2020)

CHAPTER 5. RULES REGULATING TRUST ACCOUNTS
5-1. GENERALLY
RULE 5-1.1 TRUST ACCOUNTS

(a) Nature of Money or Property Entrusted to Attorney.

(1) *Trust Account Required; Location of Trust Account; Commingling Prohibited.* A lawyer must hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, must be kept in a separate federally insured bank, credit union, or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account except:

(A) A lawyer may maintain funds belonging to the lawyer in the lawyer's trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account; and

(B) A lawyer may deposit the lawyer's own funds into trust to replenish a shortage in the lawyer's trust account. Any deposits by the lawyer to cover trust account shortages must be no more than the amount of the trust account shortage, but may be less than the amount of the shortage. The lawyer must notify the bar's lawyer regulation department immediately of the shortage in the lawyer's trust account, the cause of the shortage, and the amount of the replenishment of the trust account by the lawyer.

(2) *Compliance with Client Directives.* Trust funds may be separately held and maintained other than in a bank, credit union, or savings and loan association account if the lawyer receives written permission from the client to do so and provided that written permission is received before maintaining the funds other than in a separate account.

(3) *Safe Deposit Boxes*. If a lawyer uses a safe deposit box to store trust funds or property, the lawyer must advise the institution in which the deposit box is located that it may include property of clients or third persons.

(b) Application of Trust Funds or Property to Specific Purpose. Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over the property on demand is conversion.

(c) Liens Permitted. This subchapter does not preclude the retention of money or other property on which the lawyer has a valid lien for services nor does it preclude the payment of agreed fees from the proceeds of transactions or collection.

(d) Controversies as to Amount of Fees. Controversies as to the amount of fees are not grounds for disciplinary proceedings unless the amount demanded is clearly excessive, extortionate, or fraudulent. In a controversy alleging a clearly excessive, extortionate, or fraudulent fee, announced willingness of an attorney to submit a dispute as to the amount of a fee to a competent tribunal for determination may be considered in any determination as to intent or in mitigation of discipline; provided, such willingness shall not preclude admission of any other relevant admissible evidence relating to such controversy, including evidence as to the withholding of funds or property of the client, or to other injury to the client occasioned by such controversy.

(e) Notice of Receipt of Trust Funds; Delivery; Accounting. On receiving funds or other property in which a client or third person has an interest, a lawyer must promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer must promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, on request by

the client or third person, must promptly render a full accounting regarding the property.

(f) Disputed Ownership of Trust Funds. When in the course of representation a lawyer is in possession of property in which 2 or more persons (1 of whom may be the lawyer) claim interests, the property must be treated by the lawyer as trust property, but the portion belonging to the lawyer or law firm must be withdrawn within a reasonable time after it becomes due unless the right of the lawyer or law firm to receive it is disputed, in which event the portion in dispute must be kept separate by the lawyer until the dispute is resolved. The lawyer must promptly distribute all portions of the property as to which the interests are not in dispute.

(g) Interest on Trust Accounts (IOTA) Program.

(1) *Definitions*. As used in this rule, the term:

(A) "Nominal or short term" describes funds of a client or third person that the lawyer has determined cannot earn income for the client or third person in excess of the costs to secure the income.

(B) "Foundation" means The Florida Bar Foundation, Inc. which serves as the designated IOTA fund administrator and monitors and receives IOTA funds from eligible institutions and distributes IOTA funds consistent with the obligations and directives in this rule.

(C) "IOTA account" means an interest or dividend-bearing trust account benefiting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

(D) "Eligible institution" means any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Deposit Insurance Corporation, any state or federal credit union authorized by federal or state laws to do business in Florida and insured by the National Credit Union Share Insurance Fund, or any successor insurance corporation(s) established

by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

(E) "Interest or dividend-bearing trust account" means a federally insured checking account, business or consumer deposit account or sub account, business or consumer deposit account or sub account that does not have a maturity date (non-maturing deposit), or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations. An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and have total assets of at least $250 million. The funds covered by this rule are subject to withdrawal on request and without delay.

(F) A "qualified grantee organization" is a charitable or other nonprofit organization that facilitates or directly provides qualified legal services by qualified legal services providers and that has experience in successfully doing so.

(G) "Qualified legal services" are free legal services provided directly to low-income clients for their civil legal needs in Florida, and includes post-conviction representation, programs that assist low-income clients in navigating legal processes, and the publication of legal forms or other legal resources for use by pro se litigants.

(H) A "qualified legal services provider" is a member of The Florida Bar or other individual authorized by the Rules

Regulating The Florida Bar or other law to provide qualified legal services.

(I) "Direct expenses required to administer the IOTA funds" means those actual costs directly incurred by the foundation in performing the obligations imposed by this rule. Direct expenses required to administer the IOTA funds must not exceed 15% of collected IOTA funds in any fiscal year without the court's prior approval. These costs include preparation of the foundation's annual audit on IOTA funds, compensation of staff who exclusively perform the required collection, distribution, and reporting obligations imposed by this rule and overhead expenses of the foundation directly related to fulfilling its obligations under this rule. Direct expenses required to administer the IOTA funds also include:

(i) actual costs and expenses incurred by the foundation to increase the amount of IOTA funds available for distribution;

(ii) funding of reserves deemed by the foundation to be reasonably prudent to promote stability in distribution of IOTA funds to qualified grantee organizations;

(iii) direct costs related to providing training and technology to qualified grantee organizations, as specified below; and

(iv) direct costs to administer the Loan Repayment Assistance Program and to distribute funds in connection with the program (but not the program funds themselves).

(J) "The court" means the Florida Supreme Court.

(2) *Required Participation.* All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing law from an office or other business location within the state of Florida must be deposited into one or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in

this chapter. Only trust funds that are nominal or short term must be deposited into an IOTA account. The Florida Bar member must certify annually, in writing, that the bar member is in compliance with, or is exempt from, the provisions of this rule.

(3) *Determination of Nominal or Short-Term Funds*. The lawyer must exercise good faith judgment in determining on receipt whether the funds of a client or third person are nominal or short term. In the exercise of this good faith judgment, the lawyer must consider such factors as the:

(A) amount of a client's or third person's funds to be held by the lawyer or law firm;

(B) period of time the funds are expected to be held;

(C) likelihood of delay in the relevant transaction(s) or proceeding(s);

(D) lawyer or law firm's cost of establishing and maintaining an interest-bearing account or other appropriate investment for the benefit of the client or third person; and

(E) minimum balance requirements or service charges or fees imposed by the eligible institution.

The determination of whether a client's or third person's funds are nominal or short term rests in the sound judgment of the lawyer or law firm. No lawyer will be charged with ethical impropriety or other breach of professional conduct based on the exercise of the lawyer's good faith judgment.

(4) *Notice to Foundation*. Lawyers or law firms must advise the foundation, at its current location posted on The Florida Bar's website, of the establishment of an IOTA account for funds covered by this rule. The notice must include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar number of the lawyer, or of each member of The

Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established the IOTA account.

(5) *Eligible Institution Participation in IOTA*. Participation in the IOTA program is voluntary for banks, credit unions, savings and loan associations, and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) Interest Rates and Dividends. Eligible institutions must maintain IOTA accounts that pay the highest interest rate or dividend generally available from the institution to its non-IOTA business or consumer account customers, or its non-maturing deposit account customers when IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(B) Determination of Interest Rates and Dividends. In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that these factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account. When the Wall Street Journal Prime Rate ("indexed rate") is between 325 and 499 basis points (3.25% and 4.99%), the minimum interest rate paid net of all fees and service charges ("yield") must be no less than 300 basis points (3.00%) below the indexed rate in effect on the first business day of each month. When the indexed rate is 500 basis points (5.00%) or above, the yield must be no less than 40% of the indexed rate in effect on the first business day of each month.

(C) Remittance and Reporting Instructions. Eligible institutions must:

(i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the foundation;

(ii) transmit with each remittance to the foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA account number as assigned by the institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

(iii) transmit to the depositing lawyer or law firm, for each remittance, a statement showing the amount of interest or dividend paid to the foundation, the rate of interest applied, and the period for which the statement is made.

(6) *Small Fund Amounts*. The foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short term when their nominal or short-term trust funds cannot reasonably be expected to produce or have not produced interest income net of reasonable eligible institution service charges or fees.

(7) *Confidentiality and Disclosure*. The foundation must protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the foundation must, on an official written inquiry of The Florida Bar made in the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts.

(8) *Distribution of IOTA Funds by the Foundation.* No later than 6 months after the fiscal year, the foundation must distribute to 1 or more qualified grantee organizations all IOTA funds collected that fiscal year except for direct expenses required to administer the IOTA funds, funds required to fund the Loan Repayment Assistance Program, and an additional reserve amount if requested by the foundation and approved by the court. Prior to distribution, the foundation must maintain IOTA funds separate from other foundation funds. The foundation may not condition distribution of IOTA funds to a qualified grantee organization on payment to the foundation for any purpose, including training or technology. The foundation must select qualified grantee organizations based on objective standards it develops. When adopted, the foundation must provide those standards to both The Florida Bar and the court and also prominently publish those standards on the foundation's website. The standards must require that IOTA funds be used to facilitate or directly provide qualified legal services by qualified legal services providers and, to ensure fair distribution of IOTA funds across Florida, must consider relevant data, including:

(A) demographic data provided by an appropriate governmental agency, such as the U.S. Bureau of Labor Statistics; and

(B) data provided by the qualified grantee organization on the use of any IOTA funds previously received.

(9) *Use of IOTA Funds by Qualified Grantee Organizations.* A qualified grantee organization must expend at least 85% of the IOTA funds received to facilitate qualified legal service providers providing or facilitating the provision of qualified legal services or, if such expenditures in any given year constitute less than 85% of the IOTA funds received, provide to the foundation a written justification. A qualified grantee organization must expend no more than 15% of the IOTA funds received for general administrative expenses not directly supporting the provision of qualified legal services and establishing reserves or, if such expenditures in any given year constitute more than 15% of the

IOTA funds received, provide to the foundation a written justification. Except as provided below, general administrative expenses include rent, training, and technology. Expenditures to facilitate qualified legal service providers providing or facilitating the provision of qualified legal services are limited to:

(A) compensation paid to qualified legal service providers;

(B) compensation paid to support staff who are directly assisting qualified legal services providers, such as paralegals;

(C) compensation paid to staff necessary for coordinating volunteer qualified legal service providers; or

(D) expenses that otherwise directly facilitate providing qualified legal services, including training, legal research, and technology necessary to the provision of qualified legal services.

Compensation includes benefits such as health insurance and bar membership fees.

(10) *Reporting by the Foundation.* In addition to providing the court with a copy of the annual audit of IOTA funds, the foundation must annually certify to the court its compliance with this rule's requirements on the use of IOTA funds. This certification must include, but not be limited to:

(A) the amount of IOTA funds received;

(B) a detailed breakdown of direct expenses required to administer the IOTA funds;

(C) the name of each qualified grantee organization to which distributions were made;

(D) the amount of distribution received by each qualified grantee organization;

(E) a description of the process for determining eligibility and selection of each qualified grantee organization, including the objective standards developed for that purpose;

(F) the total amount received from sources other than IOTA funds;

(G) a detailed summary of the information provided to the foundation from qualified grantee organizations as required by subdivision (11) of this rule;

(H) the total amount distributed under the Loan Repayment Assistance Program and the number of qualified legal services providers to whom distributions were made; and

(I) any other information the court determines is relevant.

(11) *Reporting by Qualified Grantee Organizations.* Qualified grantee organizations must annually certify to the foundation their compliance with this rule's requirements on the use of IOTA funds. This certification must include, but not be limited to:

(A) the number of qualified legal services providers compensated or facilitated by the use of IOTA funds;

(B) the number of clients receiving qualified legal services paid for or facilitated by the use of IOTA funds;

(C) the number of low-income Floridians who, while not directly represented, are nevertheless assisted by qualified legal services paid for or facilitated by the use of IOTA funds;

(D) the number of hours expended delivering qualified legal services paid for or facilitated by the use of IOTA funds;

(E) the types of matters for which clients received qualified legal services paid for or facilitated by the use of IOTA funds;

(F) an accounting of the use of IOTA funds, including the amount used to establish reserves and pay for overhead and other general administrative expenses;

(G) the total amount received from sources other than IOTA funds by the qualified grantee organization; and

(H) any other information the court determines is relevant.

(12) *Required Review.* The court will cause a review of the amendments to rule 5-1.1(g) finally adopted by the court on June 18, 2021, to be conducted to advise the court regarding their overall efficacy 2 years after their effective date. The scope of this review may also include any other matters related to the IOTA program.

(h) Interest on Funds That Are Not Nominal or Short-Term. A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined in this subchapter may not receive benefit from any interest on funds held in trust.

(i) Unidentifiable Trust Fund Accumulations and Trust Funds Held for Missing Owners. When a lawyer's trust account contains an unidentifiable accumulation of trust funds or property, or trust funds or property held for missing owners, the funds or property must be designated as unidentifiable or held for missing owners. The lawyer must make a diligent search and inquiry to determine the beneficial owner of any unidentifiable accumulation or the address of any missing owner. If the beneficial owner of an unidentified accumulation is determined, the funds must be properly identified as trust property in the lawyer's possession. If a missing beneficial owner is located, the trust funds or property must be paid over or delivered to the beneficial owner if the owner is then entitled to receive the funds or property. Trust funds and property that remain unidentifiable and funds or property that are held for missing owners must be disposed of as provided in applicable Florida law after diligent search and inquiry fail to identify the beneficial owner or owner's address.

(j) Disbursement against Uncollected Funds. A lawyer generally may not use, endanger, or encumber money held in trust for a client for purposes of carrying out the business of another client without the permission of the owner given after full disclosure of the circumstances. However, certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on these deposits without disclosure to and permission of affected clients. Except for disbursements based upon any of the 6 categories of limited-risk uncollected deposits enumerated below, a lawyer may not disburse funds held for a client or on behalf of that client unless the funds held for that client are collected funds. For purposes of this provision, "collected funds" means funds deposited, finally settled, and credited to the lawyer's trust account. The lawyer may disburse uncollected funds from the trust account in reliance on the deposit when the deposit is made by a:

(1) certified check or cashier's check;

(2) check or draft representing loan proceeds issued by a federally or state-chartered bank, savings bank, savings and loan association, credit union, or other duly licensed or chartered institutional lender;

(3) bank check, official check, treasurer's check, money order, or other instrument issued by a bank, savings and loan association, or credit union when the lawyer has reasonable and prudent grounds to believe the instrument will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;

(4) check drawn on the trust account of a lawyer licensed to practice in the state of Florida or on the escrow or trust account of a real estate broker licensed under applicable Florida law when the lawyer has a reasonable and prudent belief that the deposit will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;

(5) check issued by the United States, the state of Florida, or any agency or political subdivision of the state of Florida;

(6) check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the state of Florida and the lawyer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time.

A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those set forth above, when it results in funds of other clients being used, endangered, or encumbered without authorization, may be grounds for a finding of professional misconduct. In any event, disbursement is at the risk of the lawyer making the disbursement. If any of the deposits fail, the lawyer, on obtaining knowledge of the failure, must immediately act to protect the property of the lawyer's other clients. However, the lawyer will not be guilty of professional misconduct if the lawyer accepting any check that is later dishonored personally pays the amount of any failed deposit or secures or arranges payment from sources available to the lawyer other than trust account funds of other clients.

(k) Overdraft Protection Prohibited. A lawyer must not authorize overdraft protection for any account that contains trust funds.

Comment

A lawyer must hold property of others with the care required of a professional fiduciary. This chapter requires maintenance of a bank or savings and loan association account, clearly labeled as a trust account and in which only client or third party trust funds are held.

Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances.

All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if money, in 1 or more trust accounts, unless

requested otherwise in writing by the client. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities.

A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter should hold the funds in a separate interest-bearing account with the interest accruing to the benefit of the client or third person unless directed otherwise in writing by the client or third person.

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds must be promptly distributed.

Third parties, such as a client's creditors, may have lawful claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect these third-party claims against wrongful interference by the client. When the lawyer has a duty under applicable law to protect the third-party claim and the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, and, where appropriate, the lawyer should consider the possibility of depositing the property or funds in dispute into the registry of the applicable court so that the matter may be adjudicated.

The Supreme Court of Florida has held that lawyer trust accounts may be the proper target of garnishment actions. *See Arnold, Matheny and Eagan, P.A. v. First American Holdings, Inc.*, 982 So. 2d 628 (Fla. 2008). Under certain circumstances lawyers may have a legal duty to protect funds in the lawyer's trust account that have been assigned to doctors, hospitals, or other health care

providers directly or designated as Medpay by an insurer. *See The Florida Bar v. Silver*, 788 So. 2d 958 (Fla. 2001); *The Florida Bar v. Krasnove*, 697 So. 2d 1208 (Fla. 1997); *The Florida Bar v. Neely*, 587 So. 2d 465 (Fla. 1991); Florida Ethics Opinion 02-4.

The obligations of a lawyer under this chapter are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule. However, where a lawyer is an escrow agent and represents a party to a transaction involving the escrowed funds, the Supreme Court of Florida has held that lawyers acting as escrow agents have a fiduciary duty to protect the interests of all parties having an interest in escrowed funds whether the funds are in a lawyer's trust account or a separate escrow account. *The Florida Bar v. Golden*, 566 So. 2d 1286 (Fla. 1990); *See also The Florida Bar v. Hines*, 39 So. 3d 1196 (Fla. 2010); *The Florida Bar v. Marrero*, 157 So. 3d 1020 (Fla. 2015).

Each lawyer is required to be familiar with and comply with the Rules Regulating Trust Accounts as adopted by the Supreme Court of Florida.

Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over the property on demand must be a conversion. This does not preclude the retention of money or other property on which a lawyer has a valid lien for services or to preclude the payment of agreed fees from the proceeds of transactions or collections.

Advances for fees and costs (funds against which costs and fees are billed) are the property of the client or third party paying same on a client's behalf and are required to be maintained in trust, separate from the lawyer's property. Retainers are not funds against which future services are billed. Retainers are funds paid

to guarantee the future availability of the lawyer's legal services and are earned by the lawyer on receipt. Retainers, being funds of the lawyer, may not be placed in the client's trust account.

The test of excessiveness found elsewhere in the Rules Regulating The Florida Bar applies to all fees for legal services including retainers, nonrefundable retainers, and minimum or flat fees.

Foundation Provision of Training and Technology; Grantees' Funds from Non-IOTA Sources

While the foundation may use IOTA funds to provide training and technology to qualified grantee organizations, and qualified grantee organizations may use disbursed IOTA funds to pay the foundation for that training and technology, the foundation may not condition a grant on payment for these, or any, services provided by the foundation to the qualified grantee organization. For instance, the foundation may arrange for bulk purchasing of technology which can then be provided to a qualified grantee organization at a lower cost than would be otherwise available to the qualified grantee organization, but the foundation may not, as a grant condition, require the grantee to pay the foundation for such services. A qualified grantee organization should, but is not required to, receive funds from sources other than IOTA funds to support its overall mission.

Amended July 20, 1989, effective Oct. 1, 1989 (547 So.2d 117); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); July 20, 1995 (658 So.2d 930); April 24, 1997 (692 So.2d 181); June 14, 2001, effective July 14, 2001 (797 So.2d 551); April 25, 2002 (820 So.2d 210); May 20, 2004 (SC03-705) (875 So.2d 448); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); December 20, 2007, effective March 1, 2008 (SC06-736), (978 So.2d 91); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a); amended July 7, 2011, effective October 1, 2011 (SC10-1968). Amended June 11, 2015, effective October 1, 2015 (SC14-2088), amended November 9, 2017, effective February 1,

2018; amended June 18, 2021, effective July 1, 2021 (SC20-1543); amended March 16, 2023, effective May 15, 2023 (SC22-1292).

RULE 5-1.2 TRUST ACCOUNTING RECORDS AND PROCEDURES

(a) Applicability. The provisions of these rules apply to all trust funds received or disbursed by members of The Florida Bar in the course of their professional practice of law as members of The Florida Bar except special trust funds received or disbursed by a lawyer as guardian, personal representative, receiver, or in a similar capacity that as trustee under a specific trust document where the trust funds are maintained in a segregated special trust account and not the general trust account and where this special trust position has been created, approved, or sanctioned by law or an order of a court that has authority or duty to issue orders pertaining to maintenance of such special trust account. These rules apply to matters in which a choice of laws analysis indicates that the matters are governed by the laws of Florida.

As set forth in this rule, "lawyer" denotes a person who is a member of The Florida Bar or otherwise authorized to practice in any court of the state of Florida. "Law firm" denotes a lawyer or lawyers in a private firm who handle client trust funds.

(b) Minimum Trust Accounting Records. Records may be maintained in their original format or stored in digital media, as long as the copies include all data contained in the original documents and may be produced when required. The following are the minimum trust accounting records that must be maintained:

(1) a separate bank or savings and loan association account or accounts in the name of the lawyer or law firm and clearly labeled and designated as a "trust account";

(2) original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all trust funds received and the client or matter for which the funds were received;

(3) original canceled checks or clearly legible copies of original canceled checks for all funds disbursed from the trust account, all of which must:

(A) be numbered consecutively

(B) include all endorsements and all other data and tracking information, and

(C) clearly identify the client or case by number or name in the memo area of the check;

(4) other documentary support for all disbursements and transfers from the trust account including records of all electronic transfers from client trust accounts, including:

(A) the name of the person authorizing the transfer;

(B) the name of the recipient;

(C) confirmation from the banking institution confirming the number of the trust account from which money is withdrawn; and

(D) the date and time the transfer was completed;

(5) original or clearly legible digital copies of all records regarding all wire transfers into or out of the trust account, which, at a minimum, must include the receiving and sending financial institutions' ABA routing numbers and names, and the receiving and sending account holder's name, address, and account number. If the receiving financial institution processes through a correspondent or intermediary bank, then the records must include the ABA routing number and name for the intermediary bank. The wire transfer information must also include the name of the client or matter for which the funds were transferred or received, and the purpose of the wire transfer (e.g., "payment on invoice 1234" or "John Doe closing").

(6) a separate cash receipts and disbursements journal, including columns for receipts, disbursements, transfers, and the account balance and containing at least:

(A) the identification of the client or matter for which the funds were received, disbursed, or transferred;

(B) the date on which all trust funds were received, disbursed, or transferred;

(C) the check number for all disbursements; and

(D) the reason for which all trust funds were received, disbursed, or transferred;

(7) a separate file or ledger with an individual card or page for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balance and containing:

(A) the identification of the client or matter for which trust funds were received, disbursed, or transferred;

(B) the date on which all trust funds were received, disbursed, or transferred;

(C) the check number for all disbursements; and

(D) the reason for which all trust funds were received, disbursed, or transferred; and

(8) all bank or savings and loan association statements for all trust accounts.

(c) Responsibility of Lawyers for Firm Trust Accounts and Reporting.

(1) Every law firm with more than 1 lawyer must have a written plan in place for supervision and compliance with this rule for each of the firm's trust account(s), which must be disseminated to each lawyer in the firm. The written plan must include the name of each signatory for the law firm's trust accounts, the name of each lawyer who is responsible for reconciliation of the law firm's trust account(s) monthly and annually, and the name of each lawyer who is responsible for answering any questions that lawyers in the firm may have

about the firm's trust account(s). This written plan must be updated and re-issued to each lawyer in the firm whenever there are material changes to the plan, such as a change in the trust account signatories or lawyer(s) responsible for reconciliation of the firm's trust account(s).

(2) Every lawyer is responsible for that lawyer's own actions regarding trust account funds subject to the requirements of chapter 4 of these rules. Any lawyer who has actual knowledge that the firm's trust account(s) or trust accounting procedures are not in compliance with chapter 5 may report the noncompliance to the managing partner or shareholder of the lawyer's firm. If the noncompliance is not corrected within a reasonable time, the lawyer must report the noncompliance to staff counsel for the bar if required to do so under the reporting requirements of chapter 4.

(d) Minimum Trust Accounting Procedures. The minimum trust accounting procedures that must be followed by all members of The Florida Bar (when a choice of laws analysis indicates that the laws of Florida apply) who receive or disburse trust money or property are as follows:

(1) The lawyer is required to make monthly:

(A) reconciliations of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal; and

(B) a comparison between the total of the reconciled balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the 2 totals and reasons for these differences.

(2) The lawyer is required to prepare an annual detailed list identifying the balance of the unexpended trust money held for each client or matter.

(3) The above reconciliations, comparisons, and listings must be retained for at least 6 years.

(4) The lawyer or law firm must authorize, at the time the account is opened, and request any bank or savings and loan association where the lawyer is a signatory on a trust account to notify Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, in the event the account is overdrawn or any trust check is dishonored or returned due to insufficient funds or uncollected funds, absent bank error.

(5) The lawyer must file with The Florida Bar, between June 1 and August 15 of each year, a trust accounting certificate showing compliance with these rules on a form approved by the board of governors. If the lawyer fails to file the trust accounting certificate, the lawyer will be deemed a delinquent member and ineligible to practice law. The Florida Bar will send written notice to the last official bar address of each member who has not completed and filed the trust accounting certificate with The Florida Bar by August 15. Written notice may be by registered or certified mail, or by return receipt electronic mail. The member is considered a delinquent member on failure to file the trust accounting certificate with The Florida Bar by September 30.

(e) Electronic Wire Transfers. Authorized electronic transfers from a lawyer or law firm's trust account are limited to:

(1) money required to be paid to a client or third party on behalf of a client;

(2) expenses properly incurred on behalf of a client, such as filing fees or payment to third parties for services rendered in connection with the representation;

(3) money transferred to the lawyer for fees that are earned in connection with the representation and that are not in dispute; or

(4) money transferred from one trust account to another trust account.

(f) Record Retention. A lawyer or law firm that receives and disburses client or third-party funds or property must maintain the records required by this chapter for 6 years after the final conclusion of each representation in which the trust funds or property were received.

(1) On dissolution of a law firm or of any legal professional corporation, the partners must make reasonable arrangements for the maintenance and retention of client trust account records specified in this rule.

(2) On the sale of a law practice, the seller must make reasonable arrangements for the maintenance and retention of trust account records specified in this rule consistent with other requirements regarding the sale of a law firm set forth in chapter 4 of these rules.

(g) Audits. Any of the following are cause for The Florida Bar to order an audit of a trust account:

(1) failure to file the trust account certificate required by this rule;

(2) report of trust account violations or errors to staff counsel under this rule;

(3) return of a trust account check for insufficient funds or for uncollected funds, absent bank error;

(4) filing of a petition for creditor relief on behalf of a lawyer;

(5) filing of felony charges against a lawyer;

(6) adjudication of insanity or incompetence or hospitalization of a lawyer under The Florida Mental Health Act;

(7) filing of a claim against a lawyer with the Clients' Security Fund;

(8) request by the chair or vice chair of a grievance committee or the board of governors;

(9) on court order; or

(10) on entry of an order of disbarment, on consent or otherwise.

(h) Cost of Audit. Audits conducted in any of the circumstances enumerated in this rule will be at the cost of the lawyer audited only when the audit reveals that the lawyer was not in substantial compliance with the trust accounting requirements. It will be the obligation of any lawyer who is being audited to produce all records and papers concerning property and funds held in trust and to provide explanations as may be required for the audit. Records of general accounts are not required to be produced except to verify that trust money has not been deposited in them. If it has been determined that trust money has been deposited into a general account, all transactions pertaining to any firm account will be subject to audit.

(i) Failure to Comply With Subpoena for Trust Accounting Records. Failure of a member to timely produce trust accounting records will be considered as a matter of contempt and process in the manner provided in subdivision (d) and (f) of rule 3-7.11, Rules Regulating The Florida Bar.

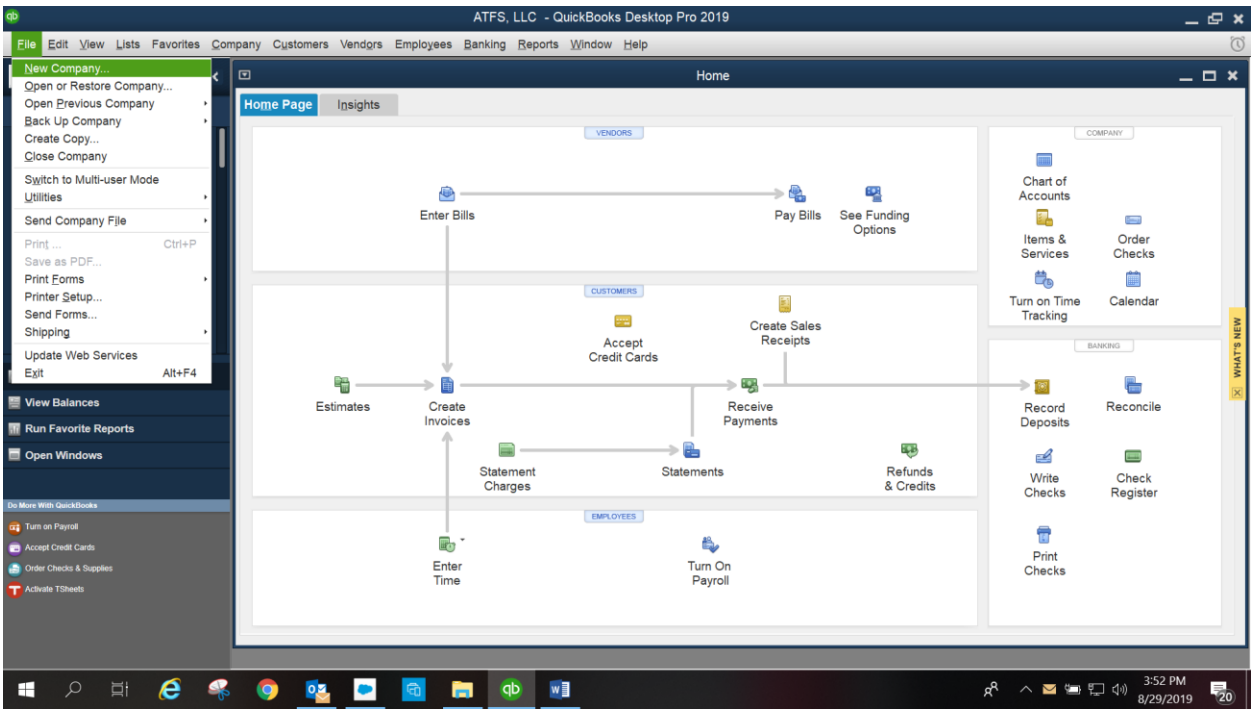
Amended Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); April 25, 2002 (820 So.2d 210); July 3, 2003 (850 So.2d 499); May 20, 2004 (SC03-705) (875 So.2d 448); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended May 29, 2014, effective June 1, 2014 (SC12-2234). Amended June 11, 2015, effective October 1, 2015 (SC14-2088), amended November 9, 2017, effective February 1, 2018; amended March 3, 2022, effective May 2, 2022 (SC20-1467).

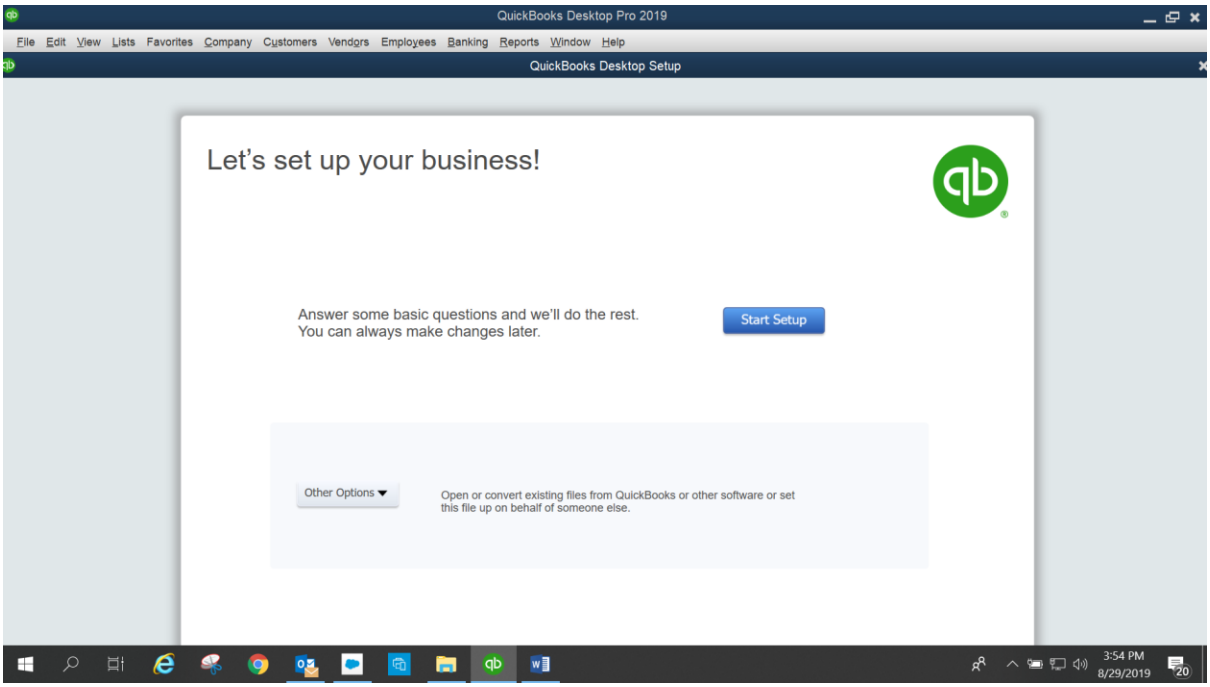
QUICKBOOKS 2019

How to set up account reconciliation

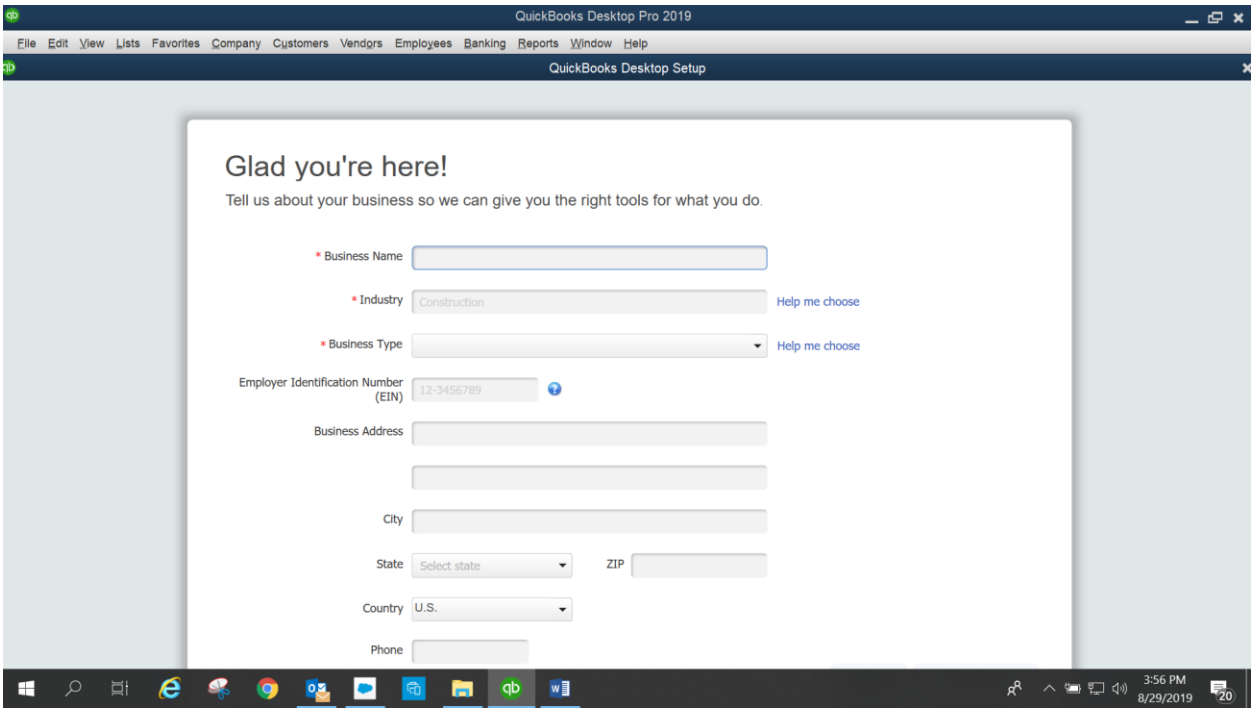
Initial Setup

- Select: “File” New Company

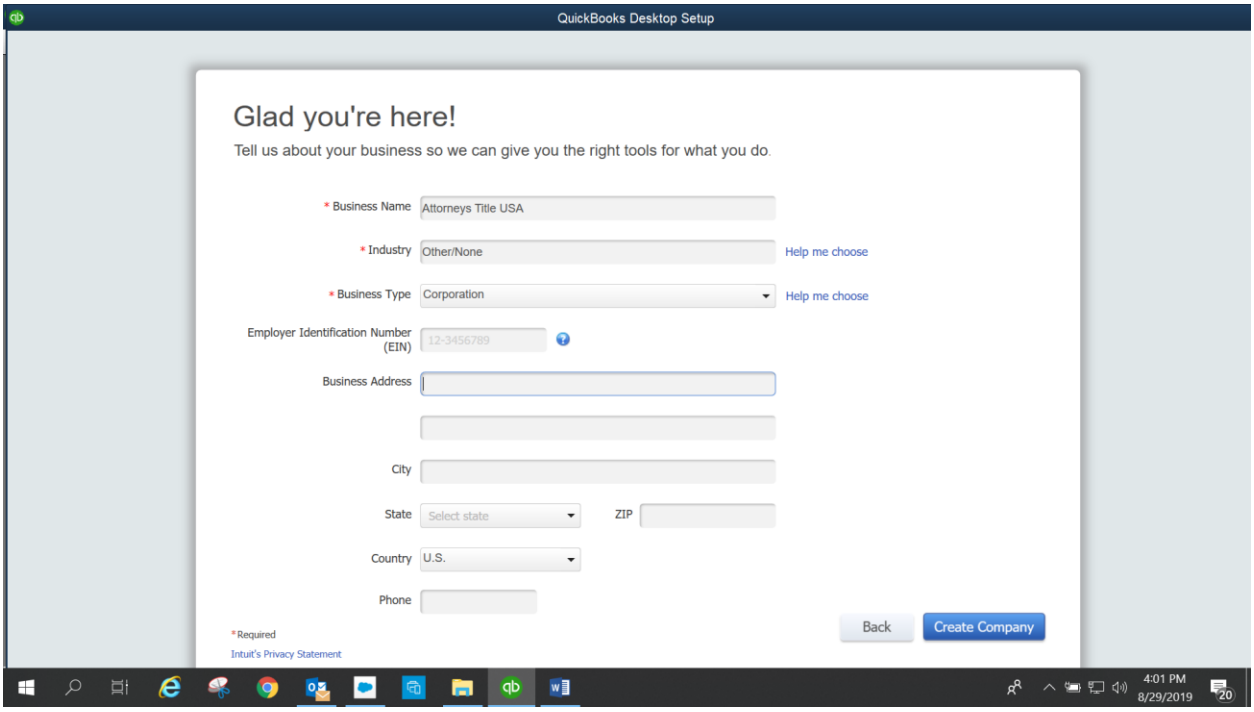




Click “Start Setup”

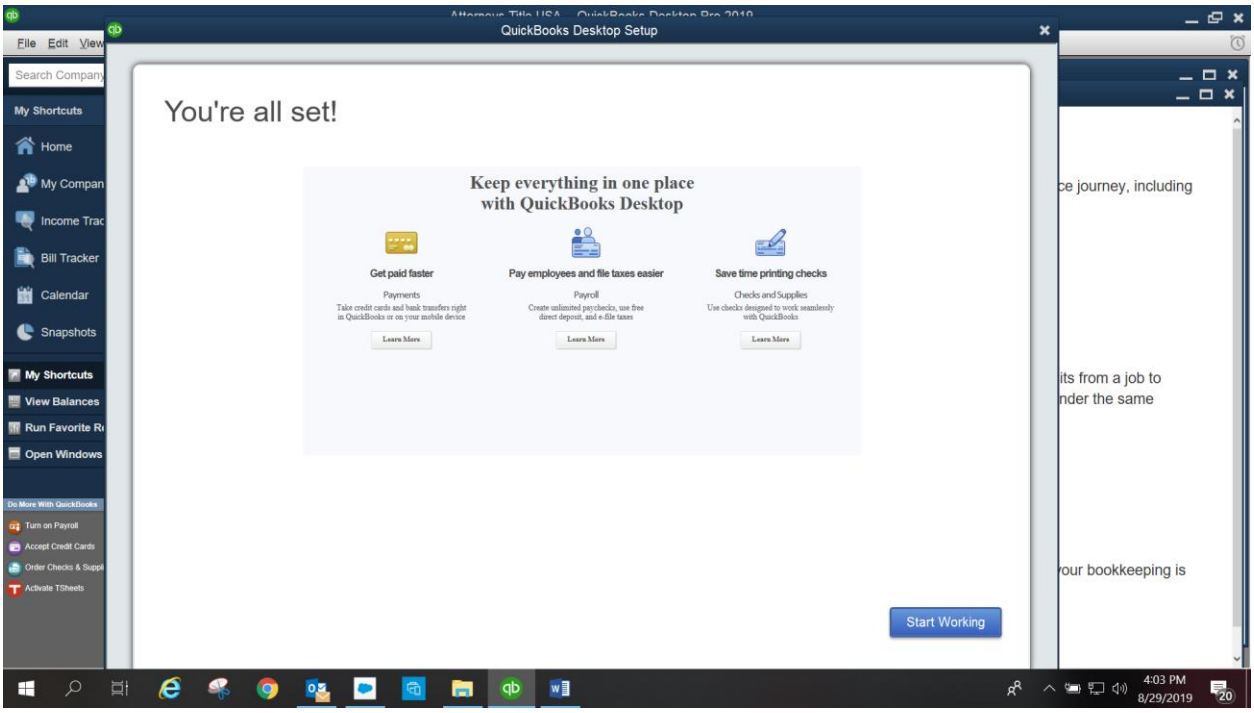


Fill in information

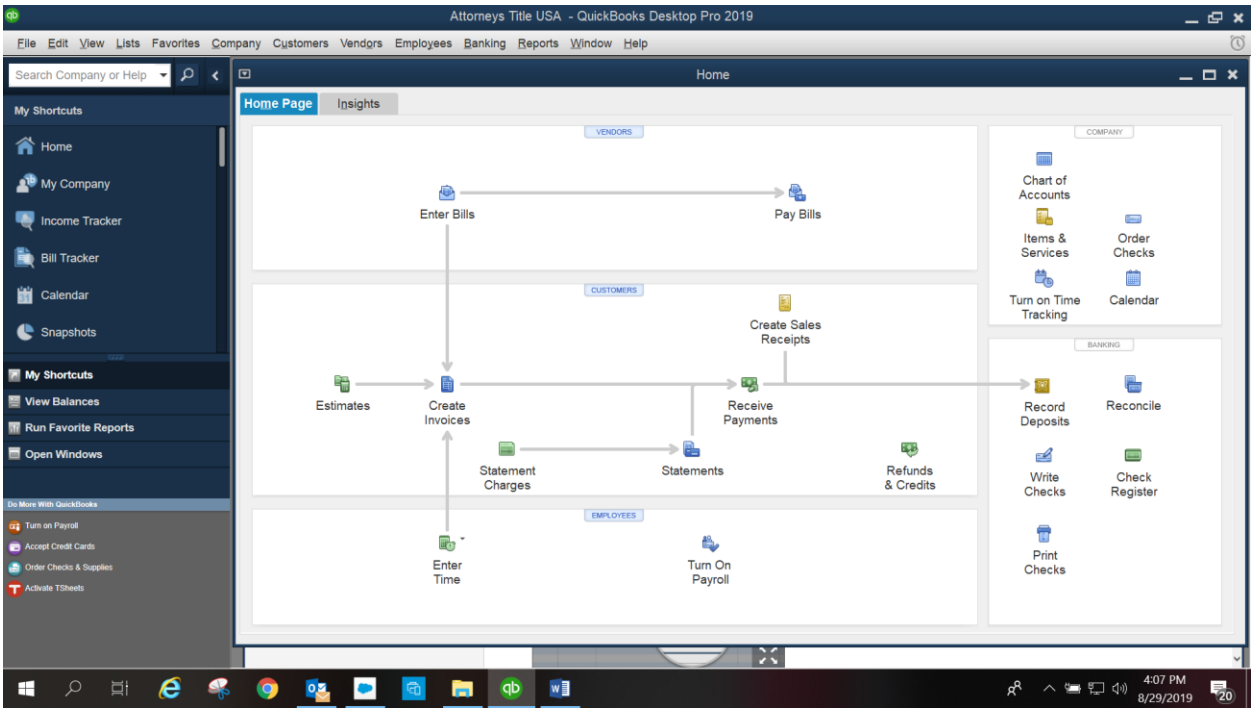


Click “Create Company” this will take a minute to save and create the company.

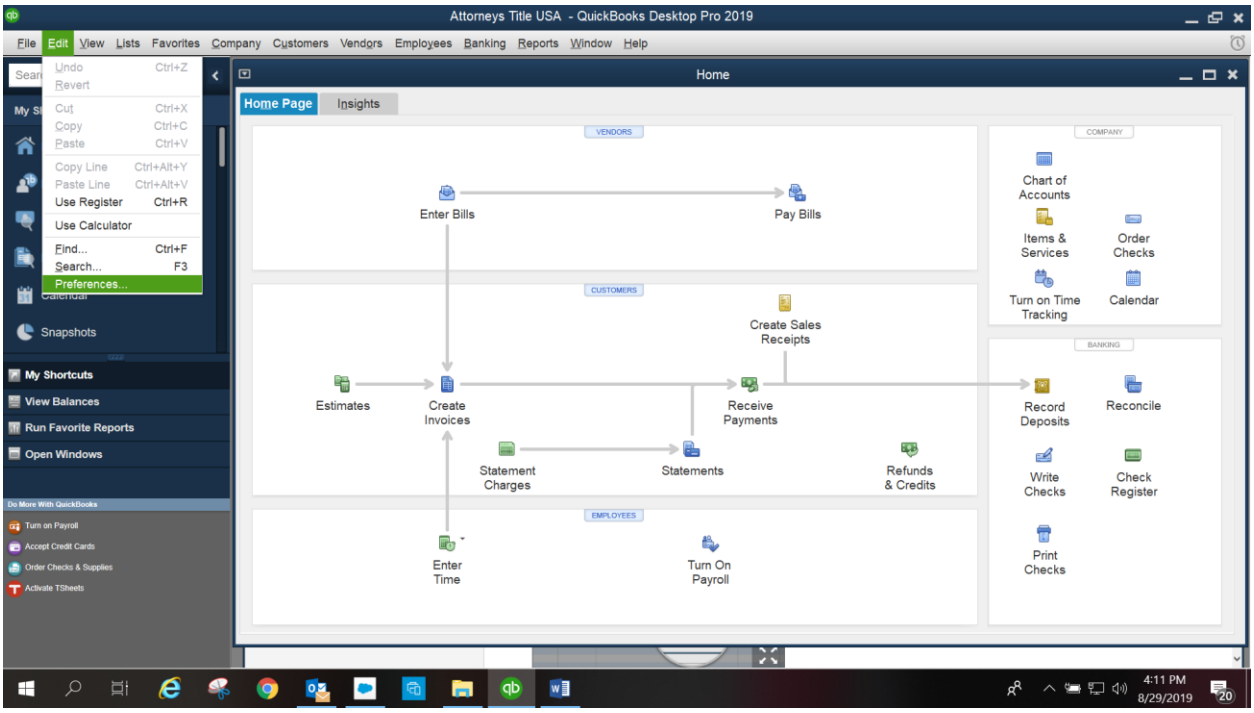
This screen comes up after the Company information is saved. Click “Start Working”.



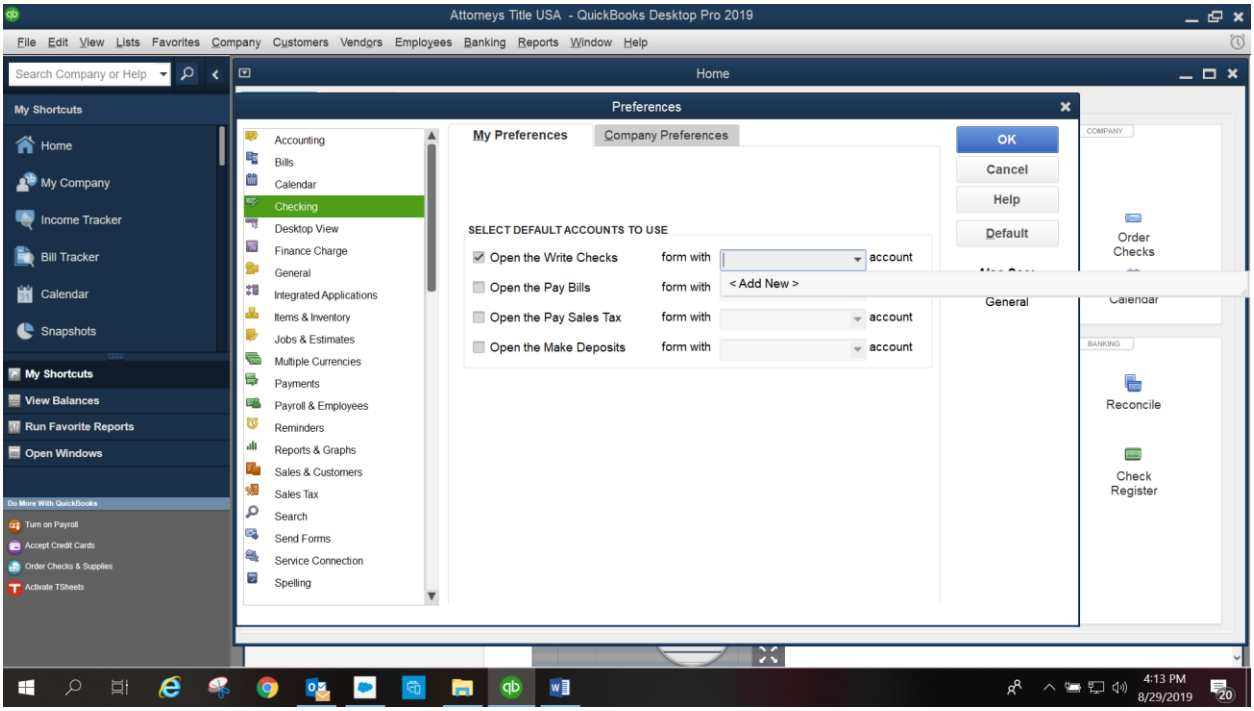
This screen will appear after the new company has been saved.



Select: Edit – Preferences

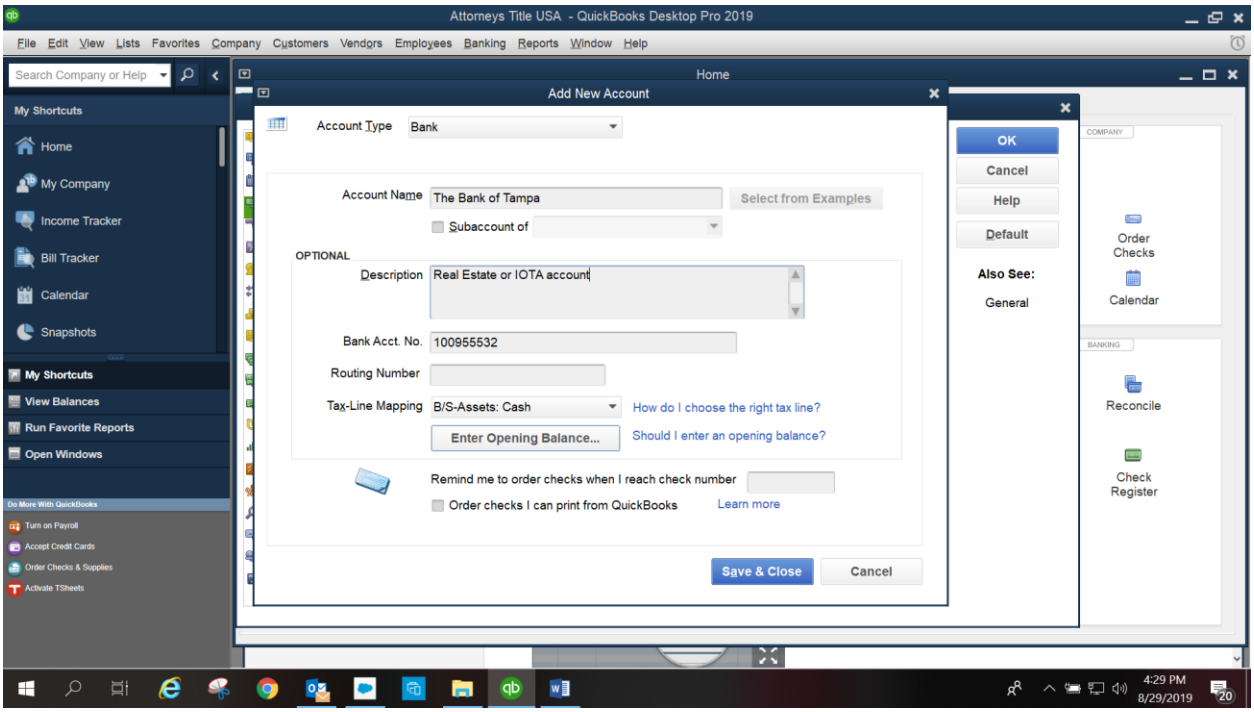


Click – Checking, then place “checkmark” in the box “Open the Write Checks” form with pull down the drop down select “Add New”

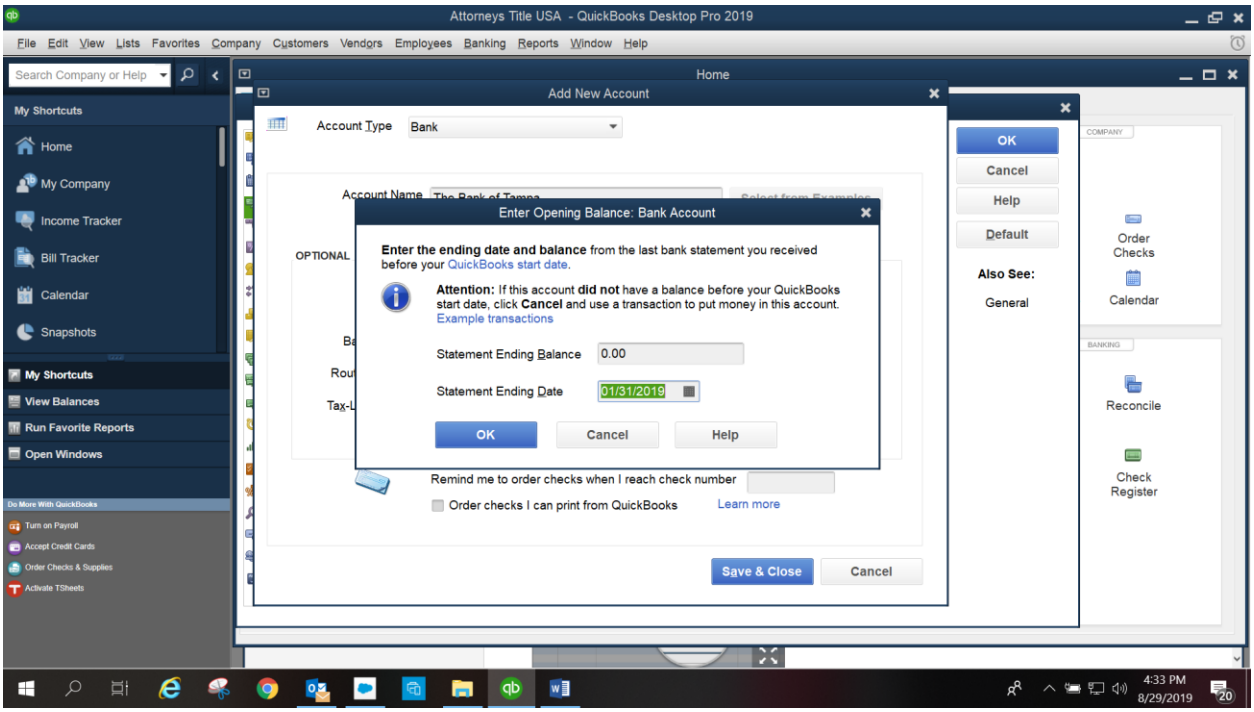


Below window will open – Account Type should state “Bank”

Fill in the Bank name. Enter description of account either “Real Estate or IOTA account” and fill in the bank account number. Select “Enter Opening balance” (which should be either “Zero” $0.00 or the initial deposit place into the account when opened.

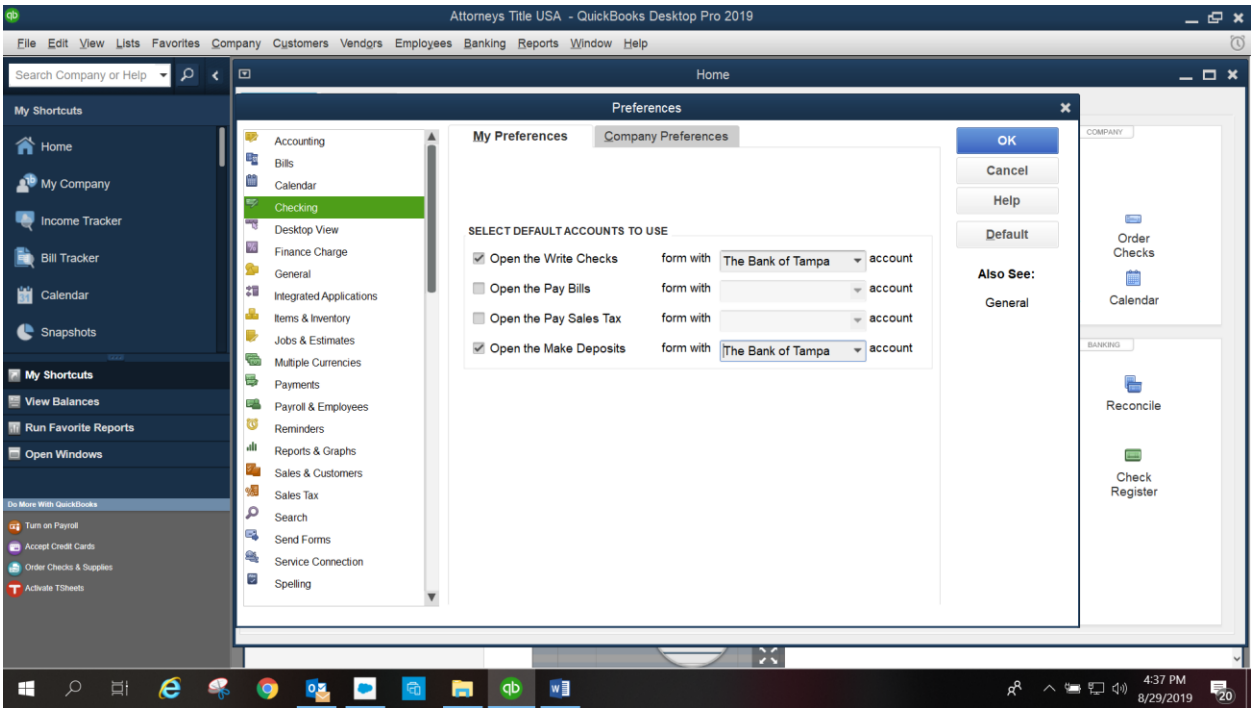


Place your Statement “ending balance” which again should be either “Zero” or initial deposit when the account was opened” and place “Statement Ending Date”.

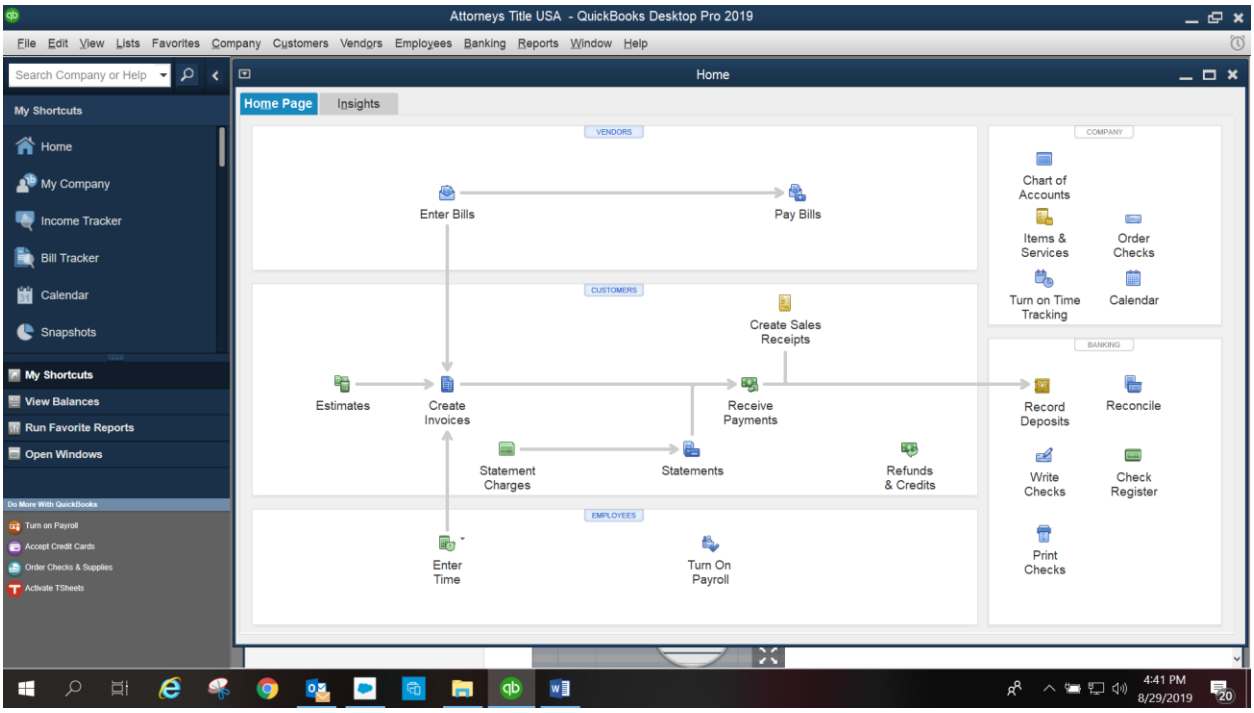


Click “OK” then “Save & Close”.

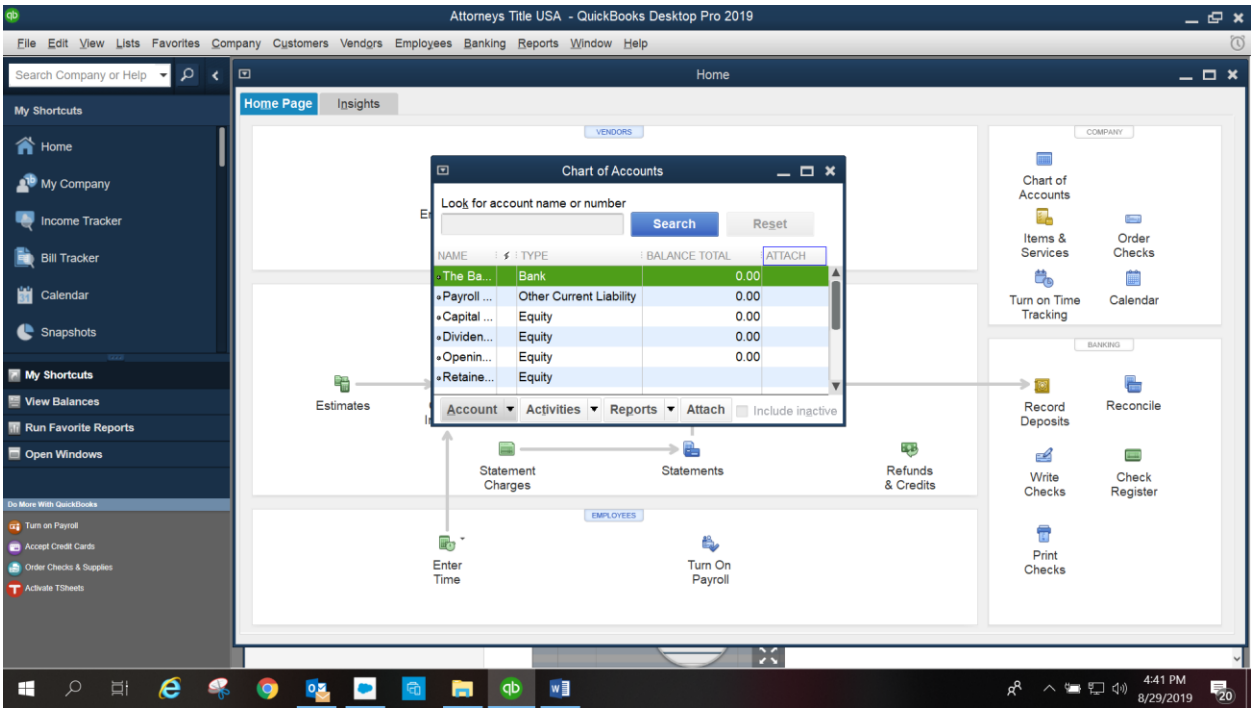
Follow the same procedure as above for “Open the Make Deposits” form with “Select your bank name”, then click “OK”. It will bring you back to the “Home Page”.



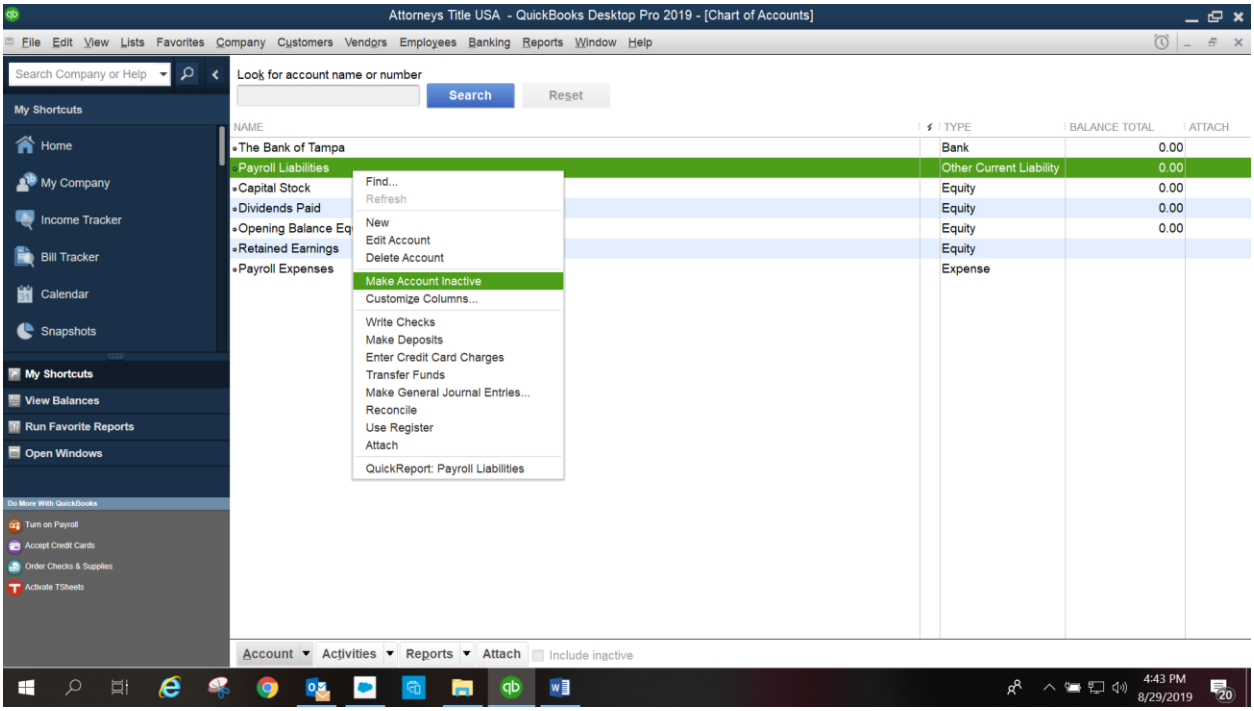
Select “Chart of Accounts”



The below window will open - Maximize the window to fill your screen

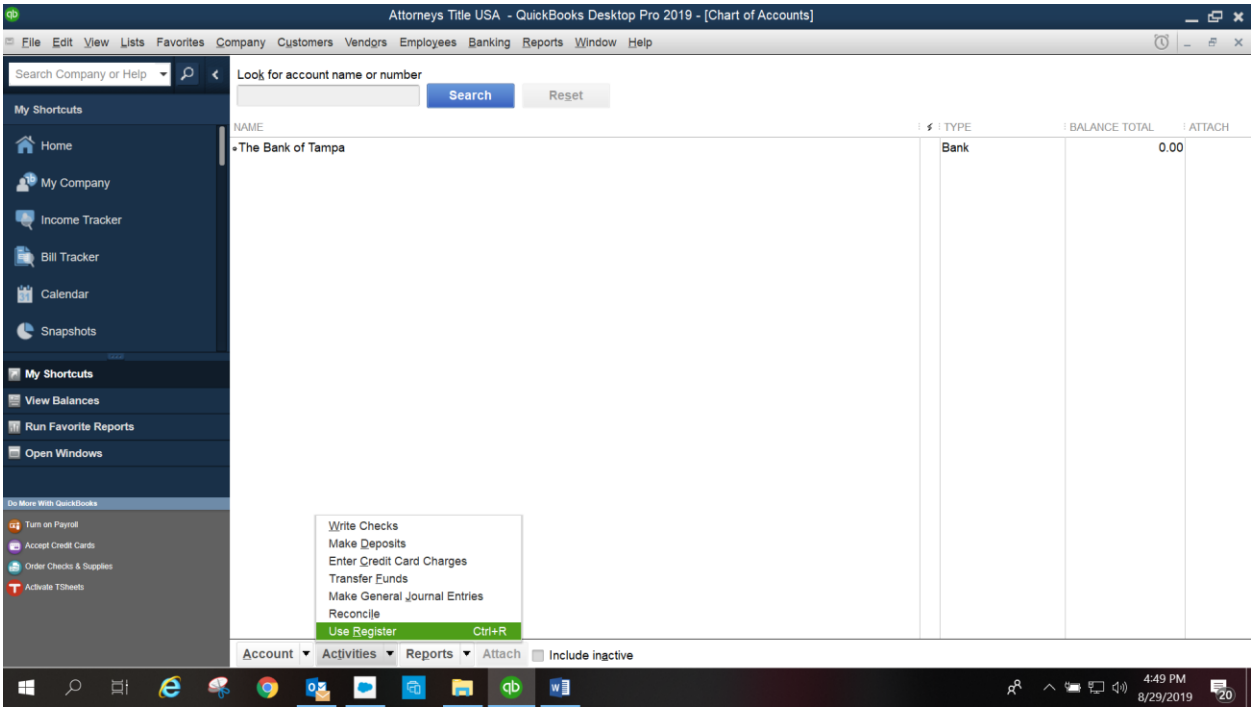


Highlight “Payroll Liabilities” and right click, Select “Make Account Inactive”. Do this for each account – Capital Stock, Dividends Paid, Opening Balance Equity, Retained Earnings and Payroll Expenses. Leave the bank account in the Chart of Accounts.

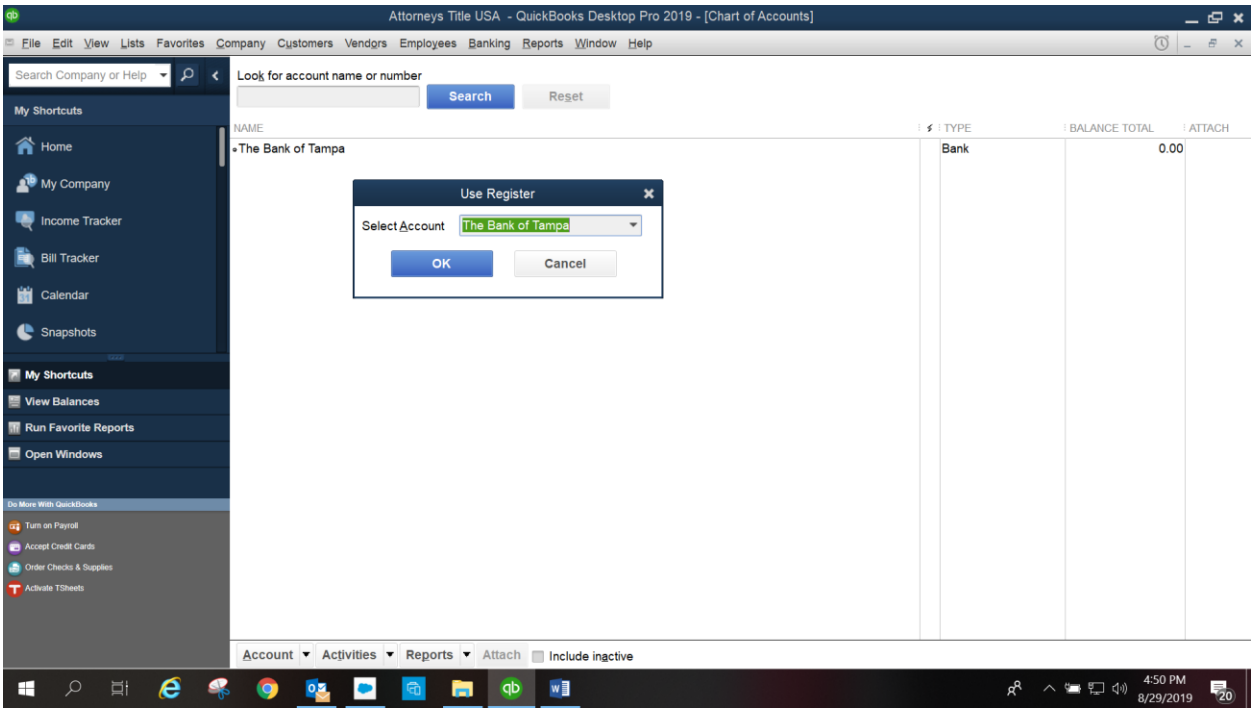


Go to the bottom of the screen and Select – “Activities”.

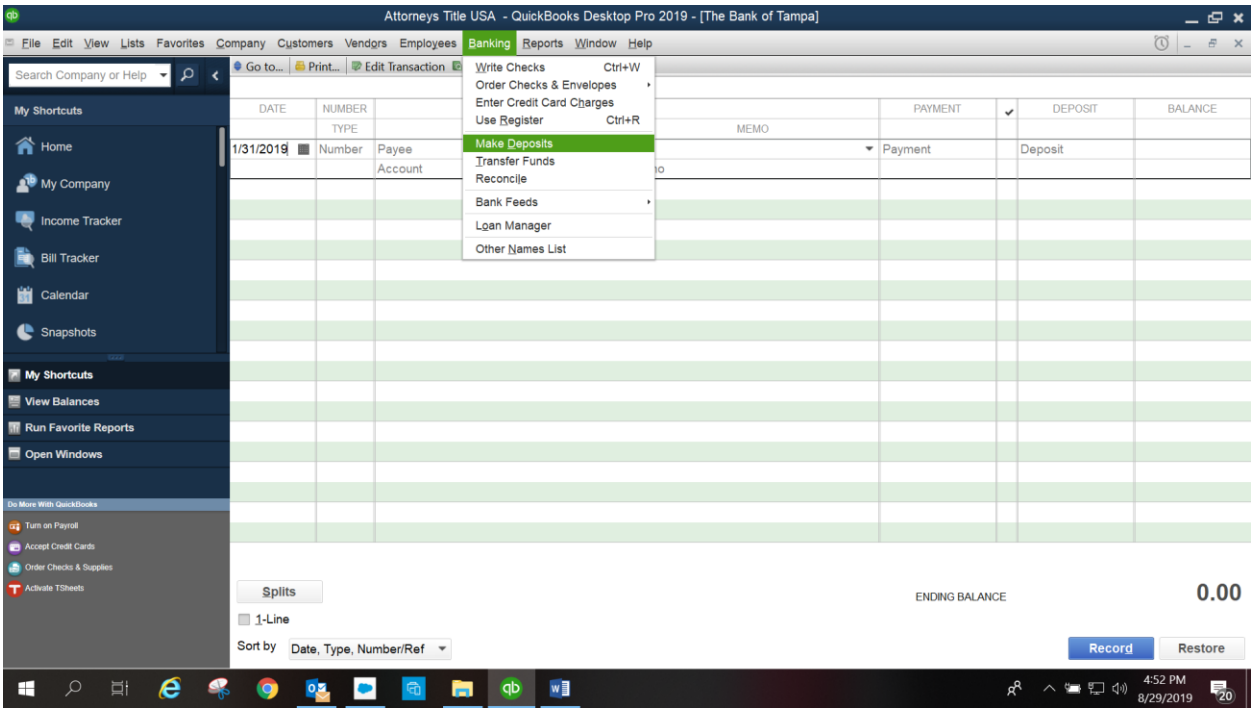
Go to “Use Register”



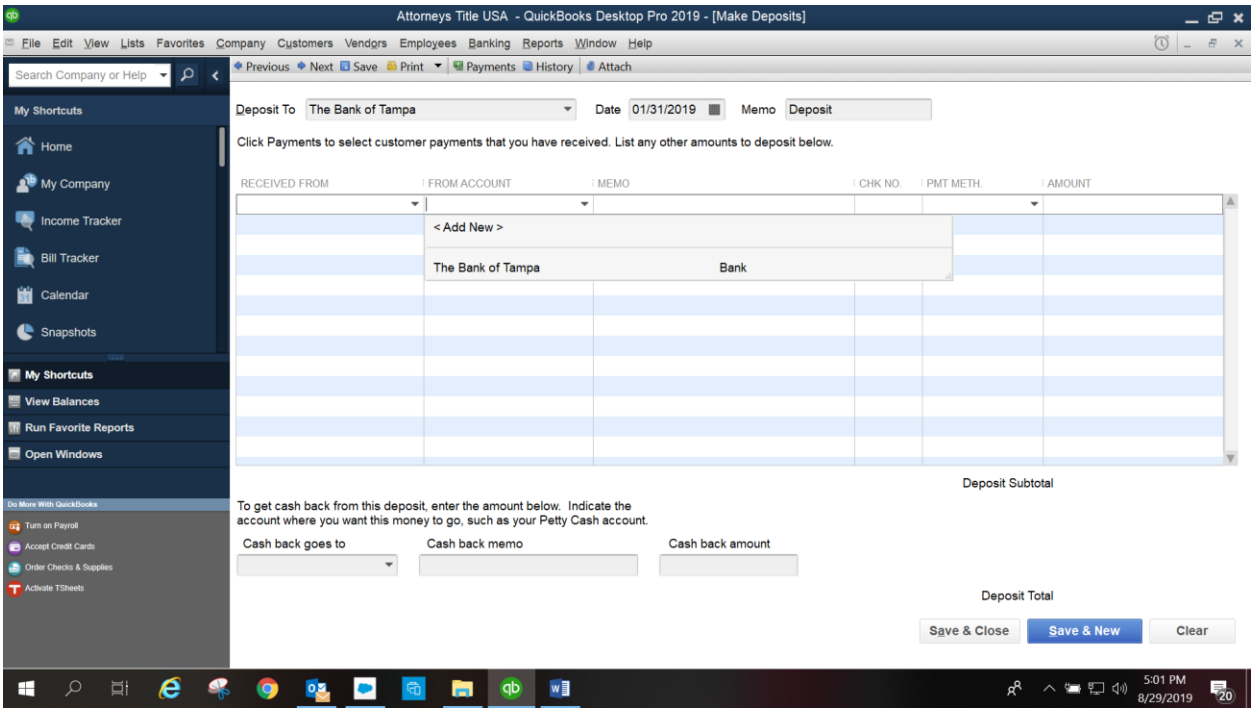
The below window will open and “the bank name should appear” and Click “OK”.



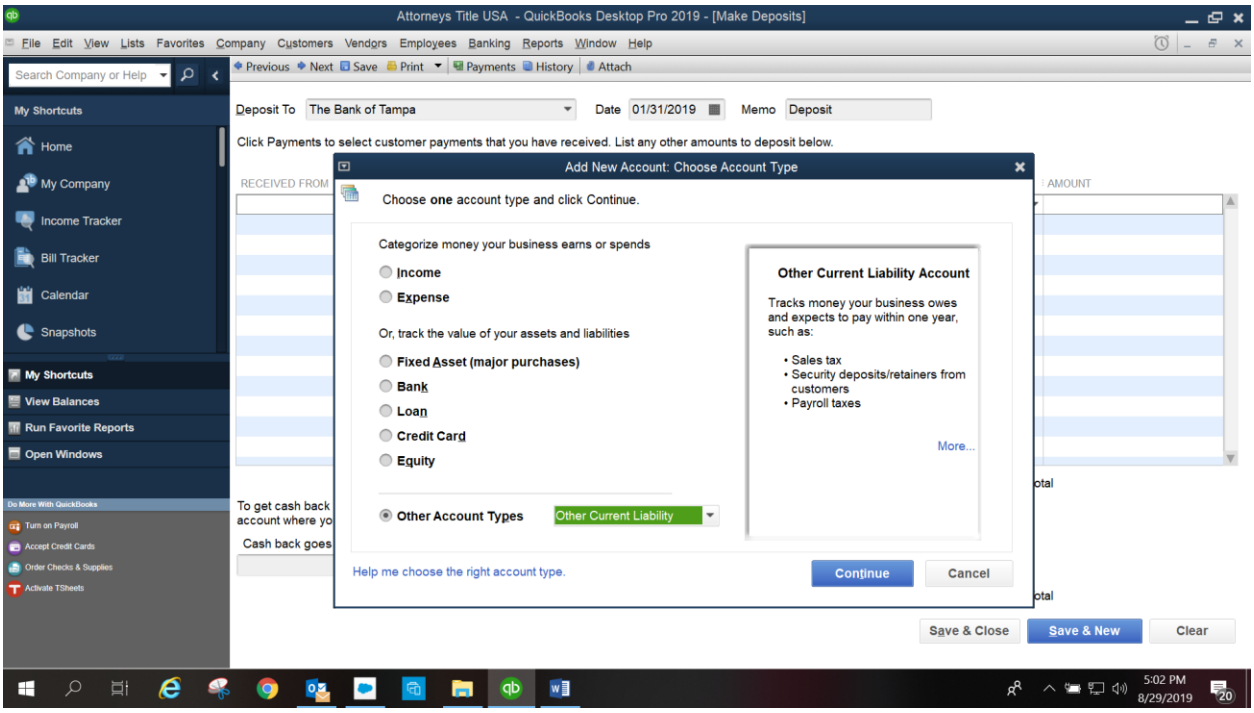
The register will open, then select “Banking” – Make Deposits



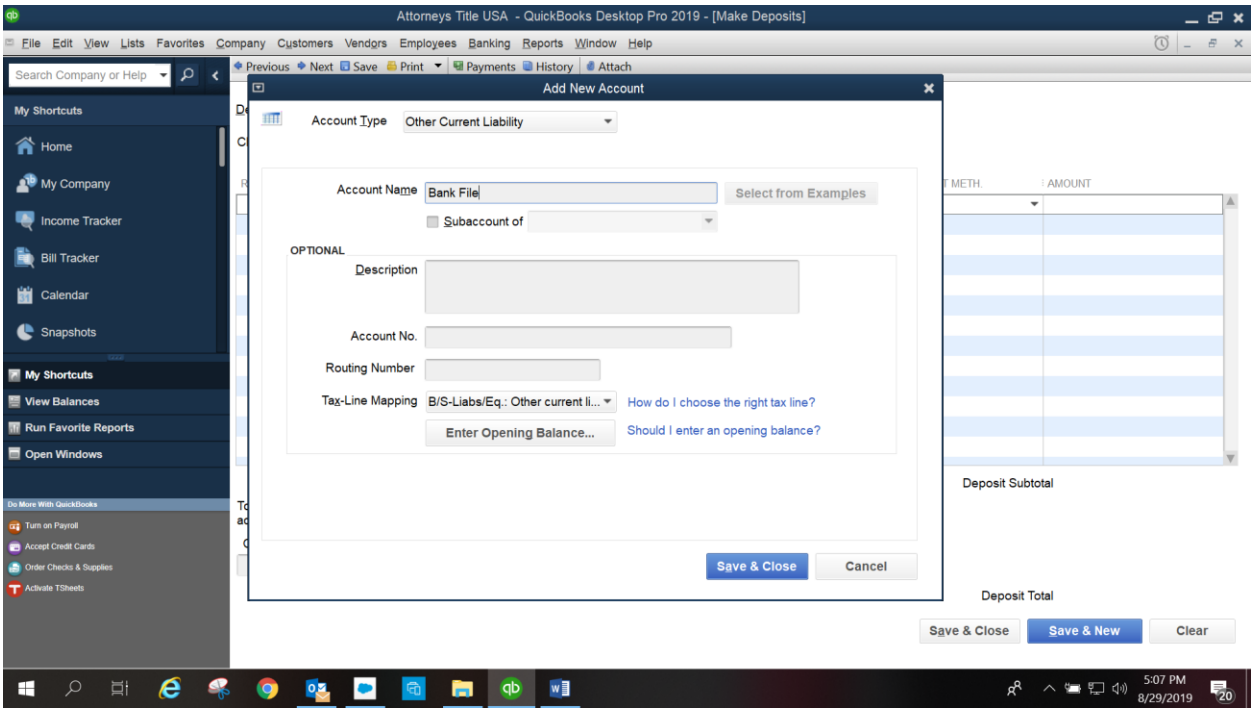
“From Account” – Select “Add New”

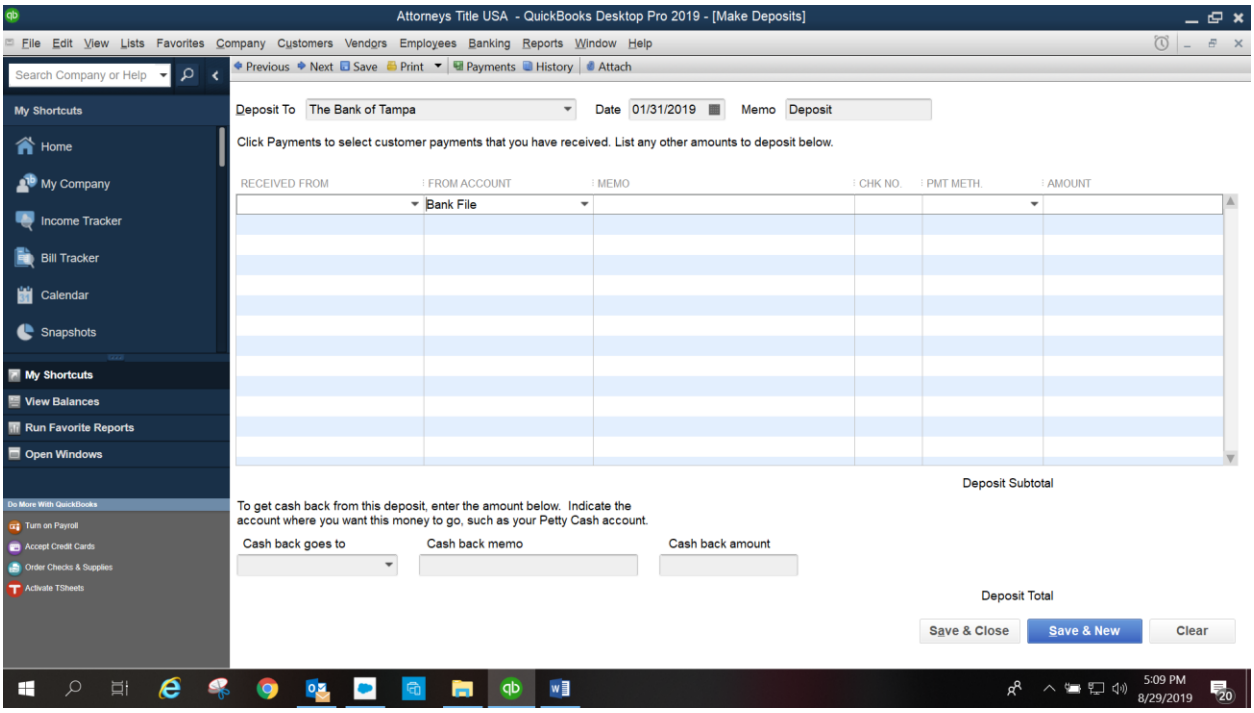


Select “Other Account Types” and choose “Other Current Liability” and click “Continue”.

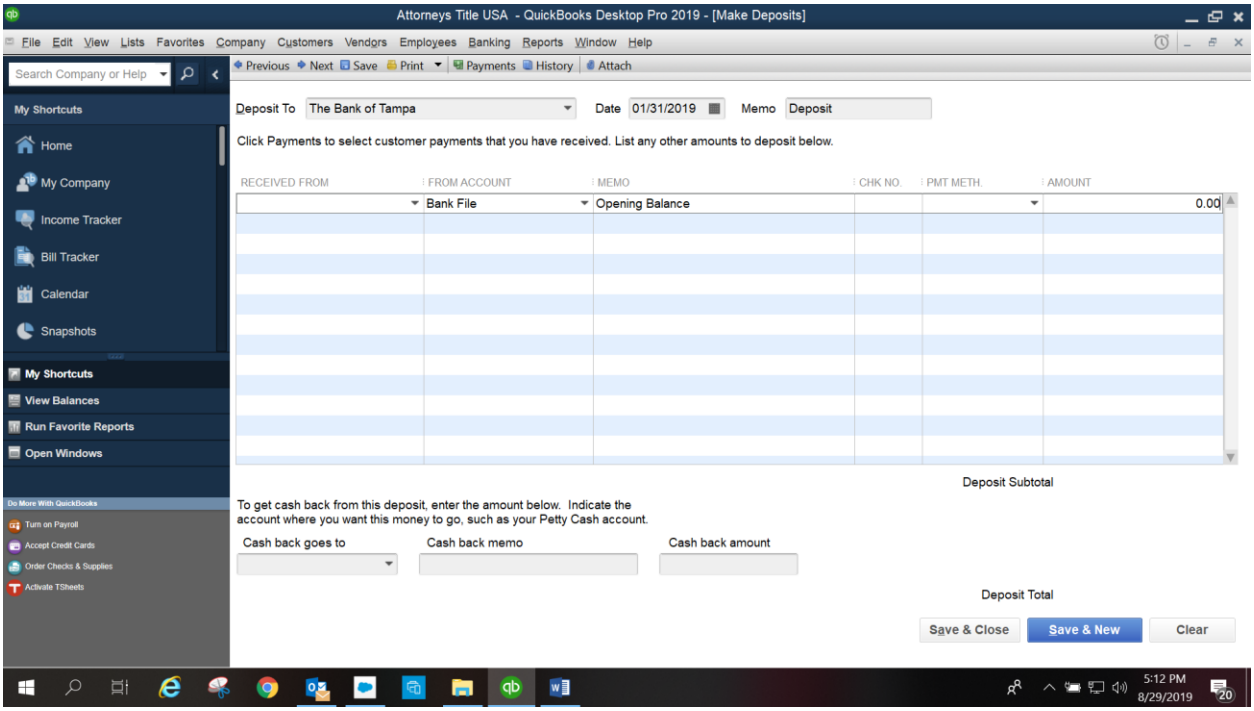


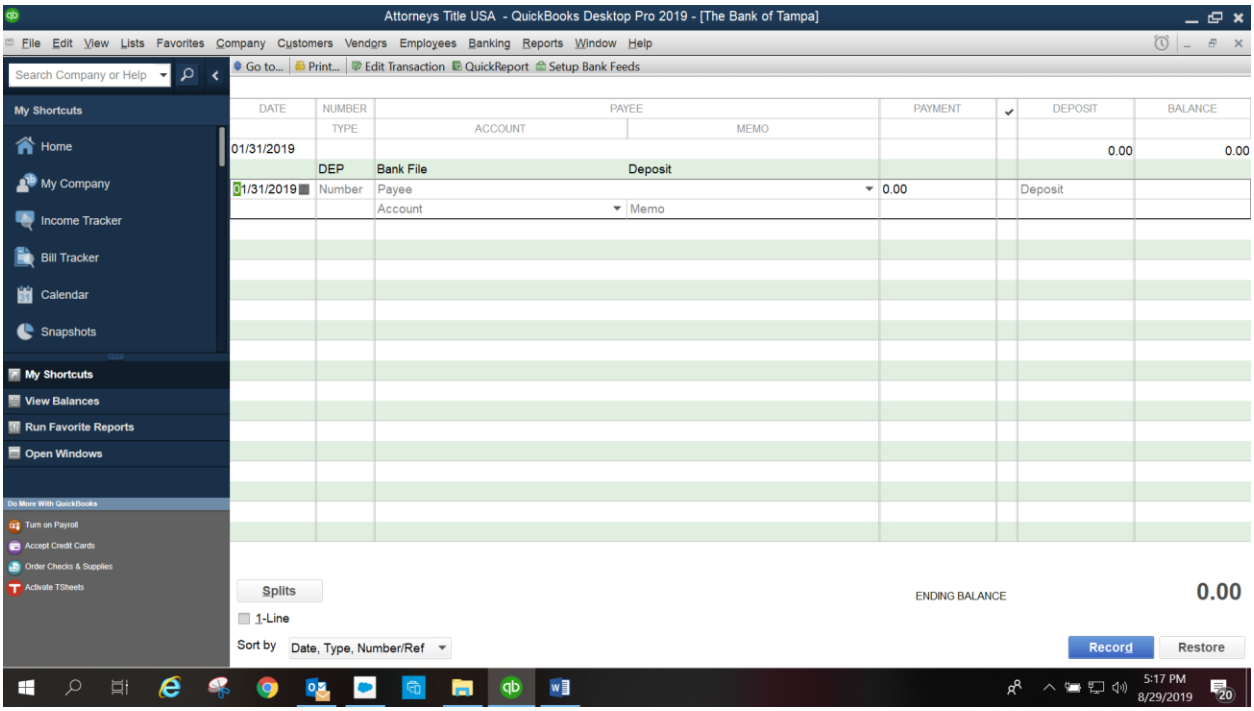
In Account Name - Type in “Bank File” and click “Save & Close”.





Type in “Opening Balance” in the “Memo section”. Tab to the “Amount” field and enter the amount of initial deposit or “$0.00”. Select “Save and Close”. You will now be in the check register.



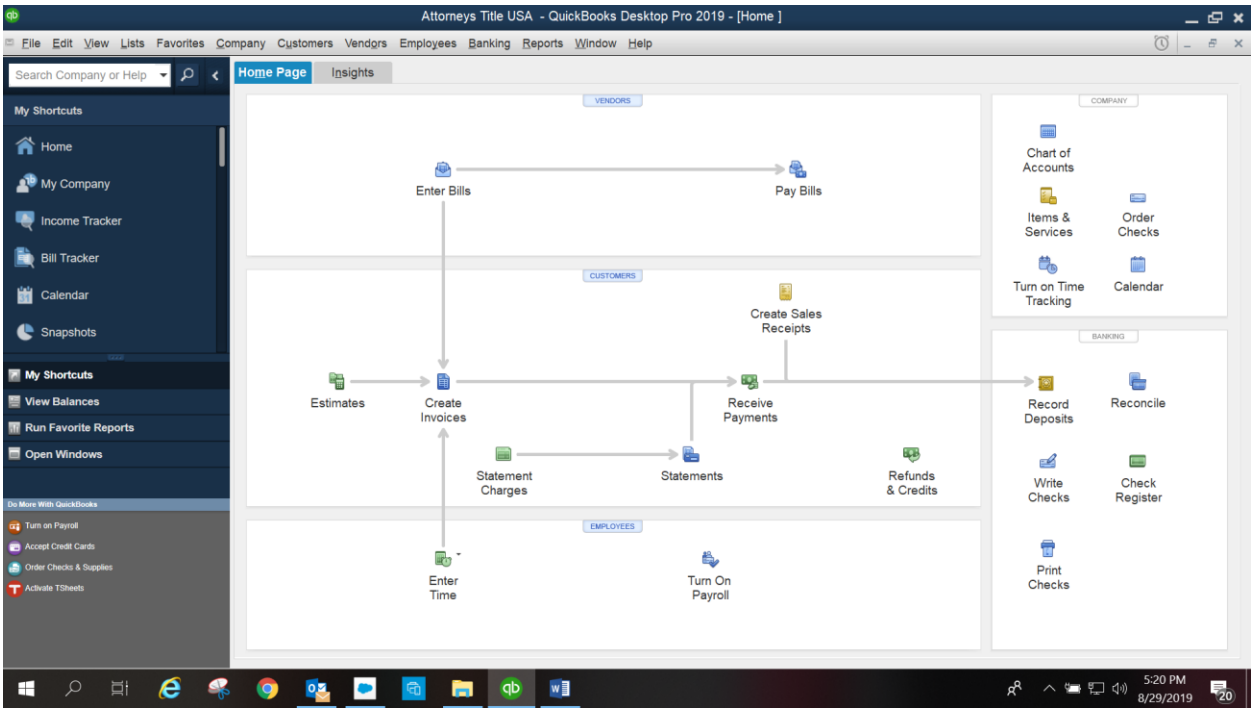


The check register shows an opening bank balance and is ready for you to enter new deposits or disbursements.

You will create your file name/number the same way you created the Bank File. They will be listed under the bank in alphabetical/numerical order in the "Chart of Accounts".

TO ADD DEPOSITS OR DISBURSEMENTS:

- From the "Home" page



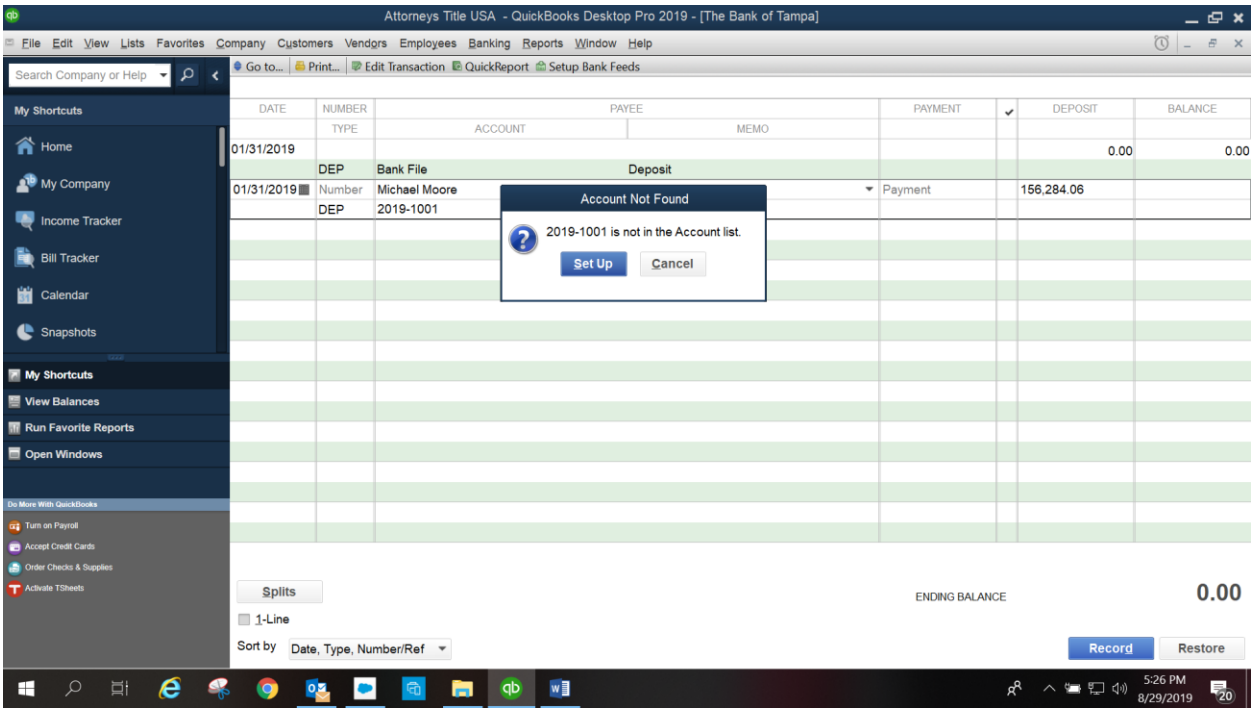
Click “Check Register”

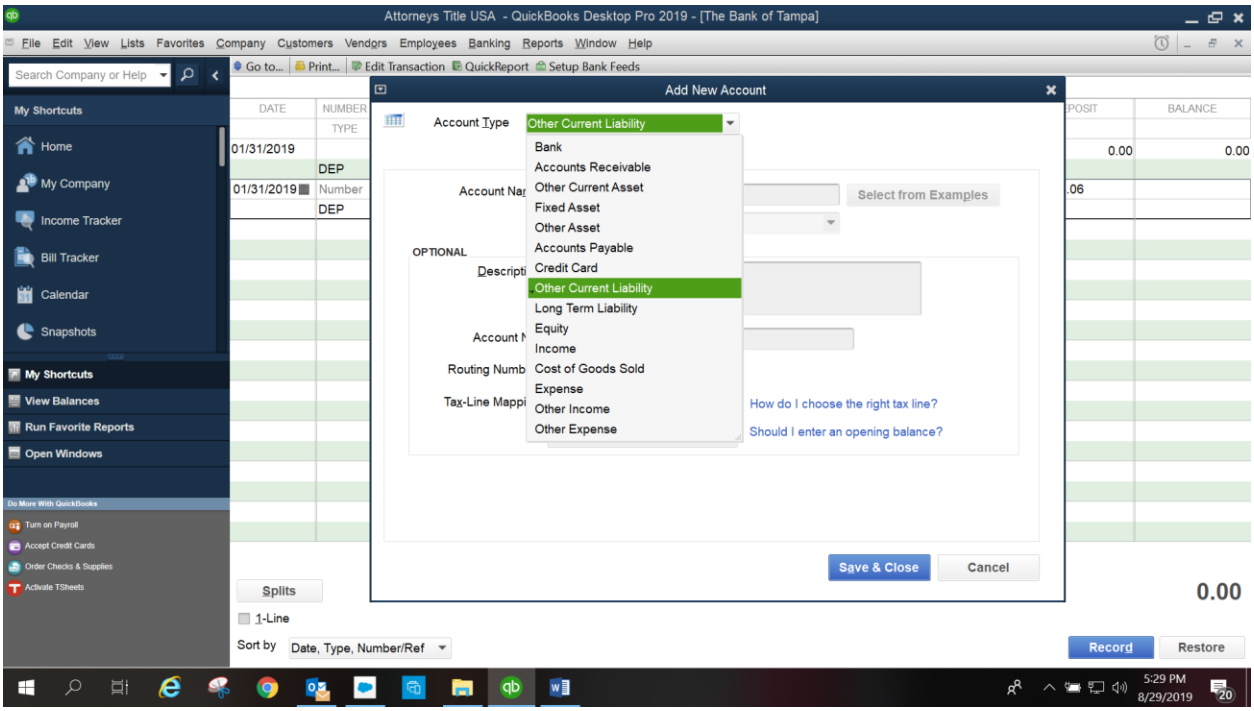
Enter in the information (check info, deposit info, etc.). When you get to the “Account” section, follow steps below:

1. Enter the File #/name you intend to use Under “Account”.
2. When you enter the file #/name, a “Set Up” window will appear.
3. In this window, go to “Account Type” and choose “Other Current Liability”.
4. Click “Save & Close”.

Continue entering the information

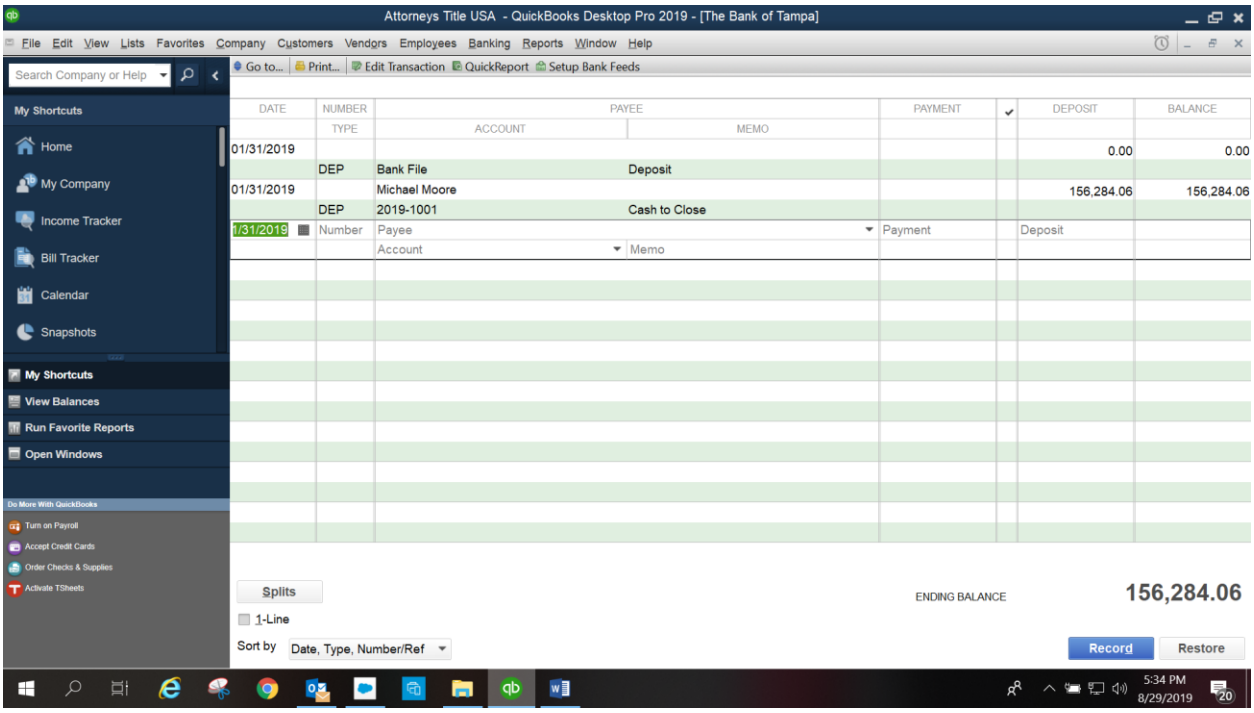
Click “Record”.





Once recorded the Register will show the deposit in the account.

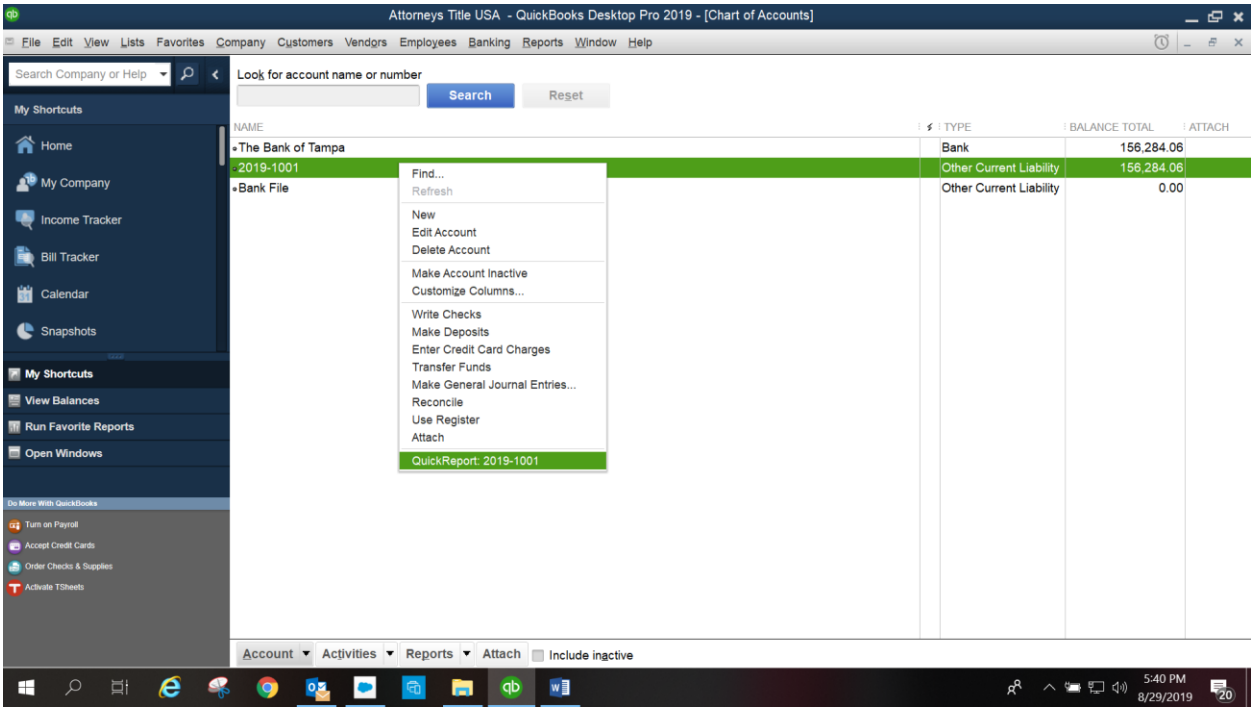
Repeat these steps for new items to be entered in the account.



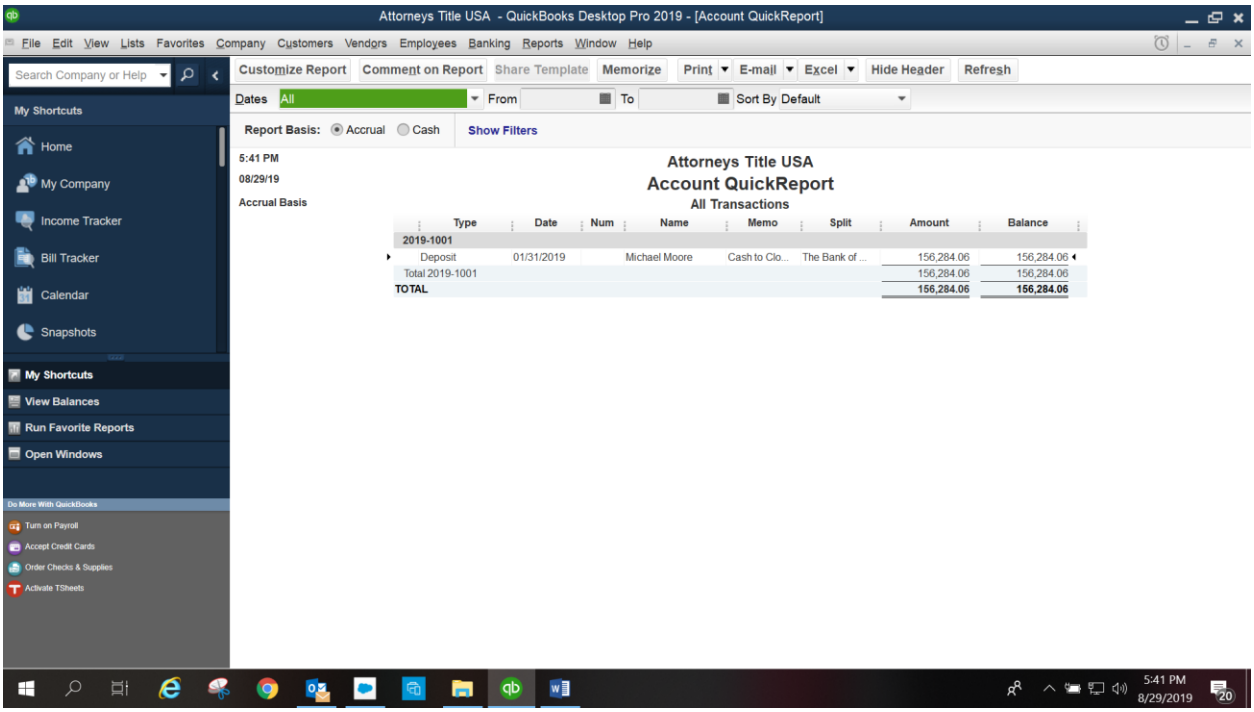
PRINTING/VIEWING LEDGER CARDS FOR EACH FILE

This should be done after each file is disbursed, to verify if the file is short/over or at a $0 balance. (Print and place in ALL closing files).

Go to “Chart of Accounts” – Highlight the file and right click, select “QuickReport” the QuickReport will open for you to view the file balances.

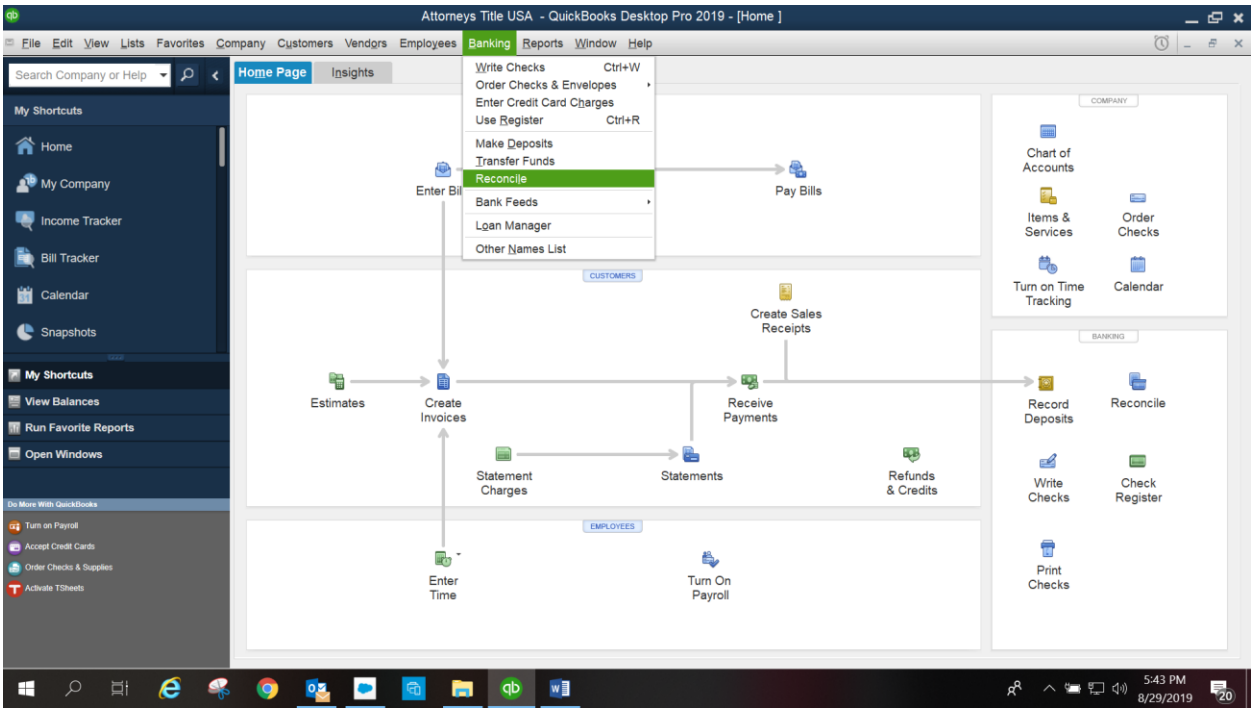


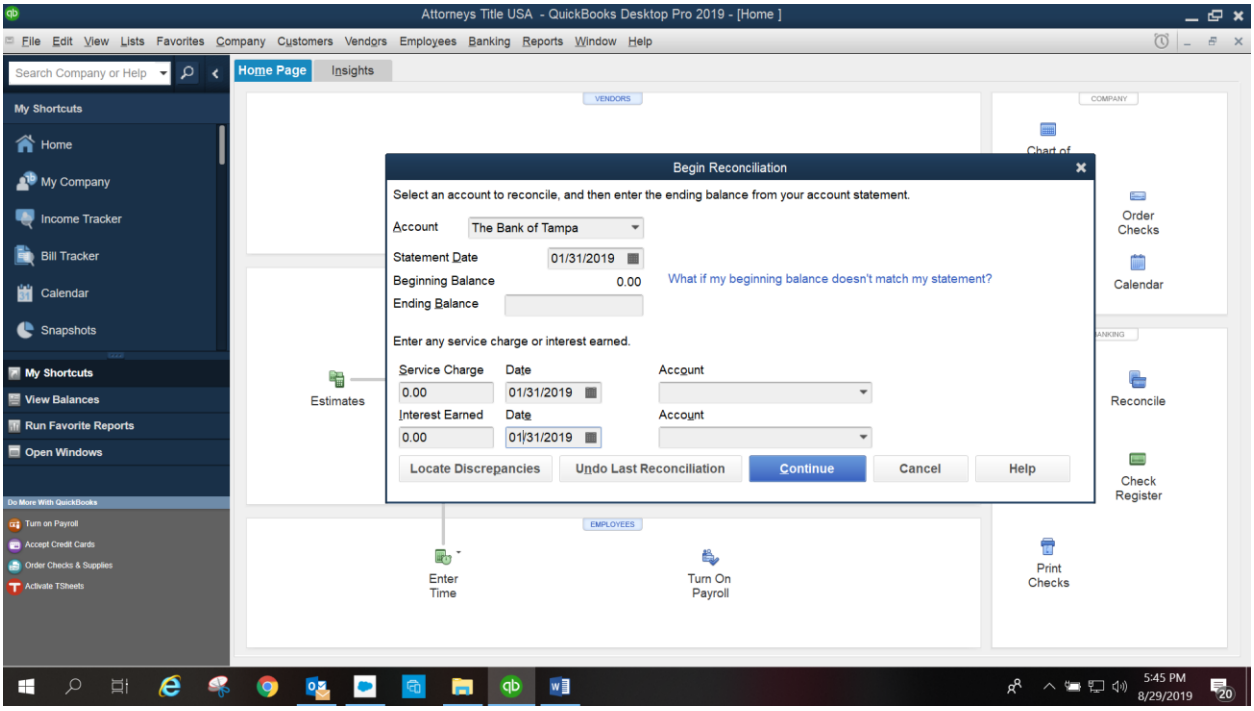
QuickReport: File 2019-1001



RECONCILING

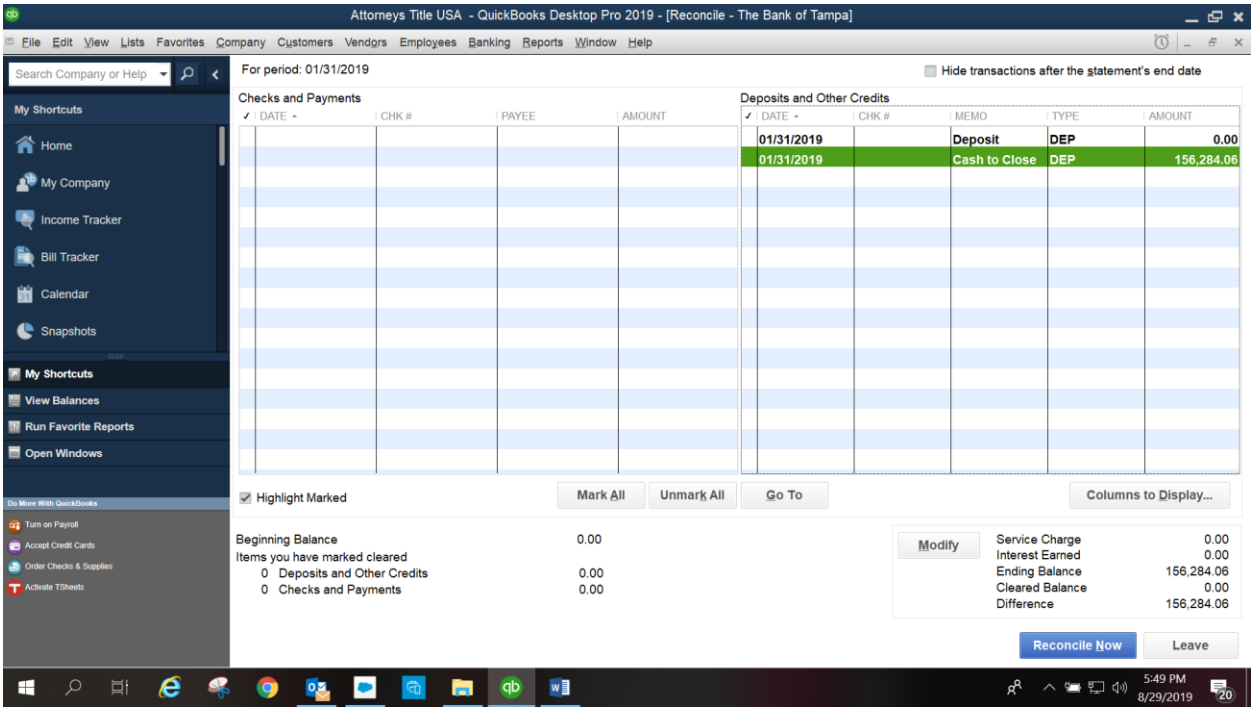
- Go to “Banking” (located along top row of the screen).
- Click “Reconcile”.





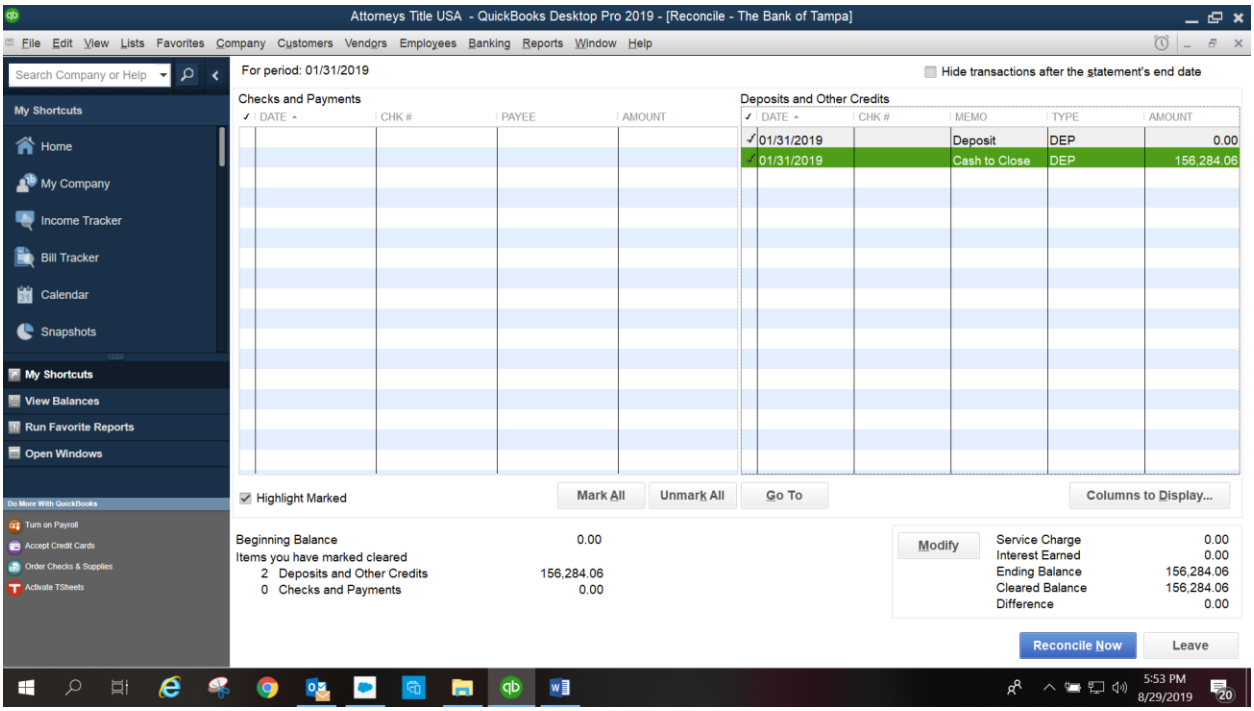
*Never use the “service charge” or “interest” windows in this section. Create an actual file for these items. Use the “Bank File” or create and “IOTA Trust” file to enter interest debits and credits.

- Enter the statement “ending” date (should match the ending date on the bank statement) and the ending bank balance.
- Click “Continue”
- The next screen will show deposits on right and debits on the left for this time period, as illustrated below:

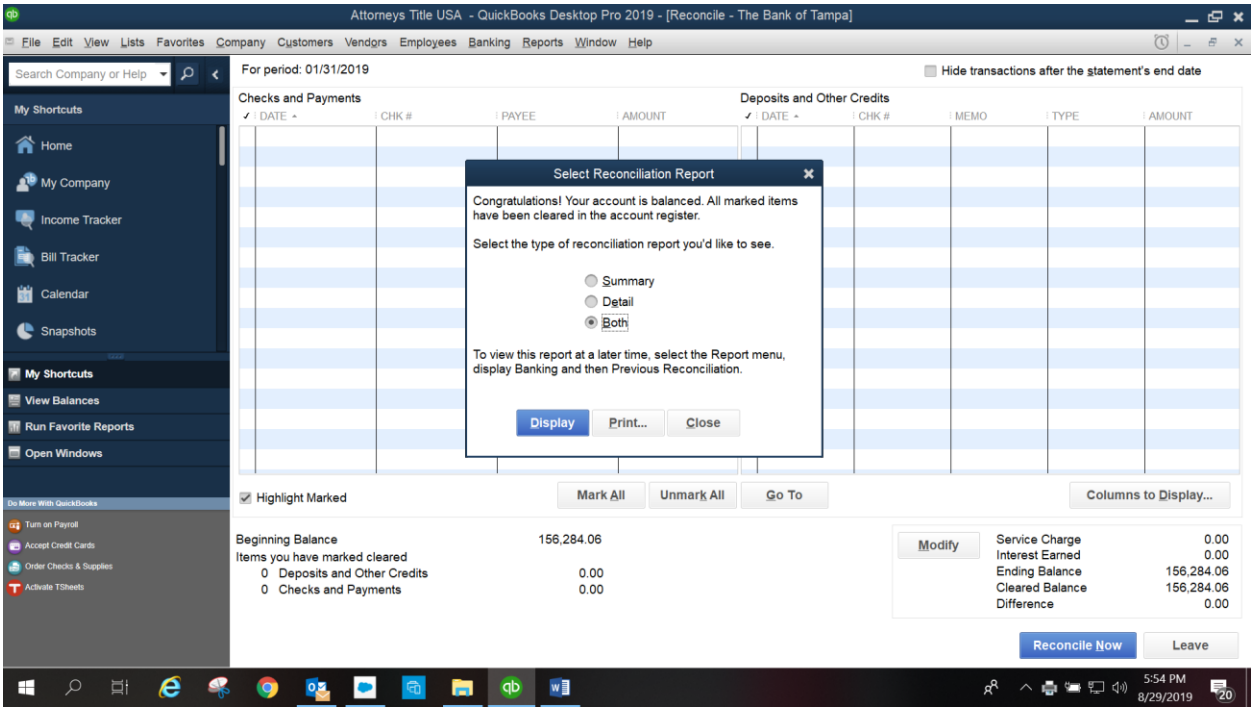


At this point, all the items that have been entered into the “Check Register” should appear.

- Using the bank statement, click on the items that have cleared the bank statement.
- The box on the bottom right hand side should have a zero balance (difference), once all the cleared items have been checked off. If the balance is NOT zero, you will need to research the reason the account is not in balance.
- After the account is in balance (zero difference), click on “Reconcile Now”.



- After you have finished reconciling the "Select Reconciliations Report" window will appear.

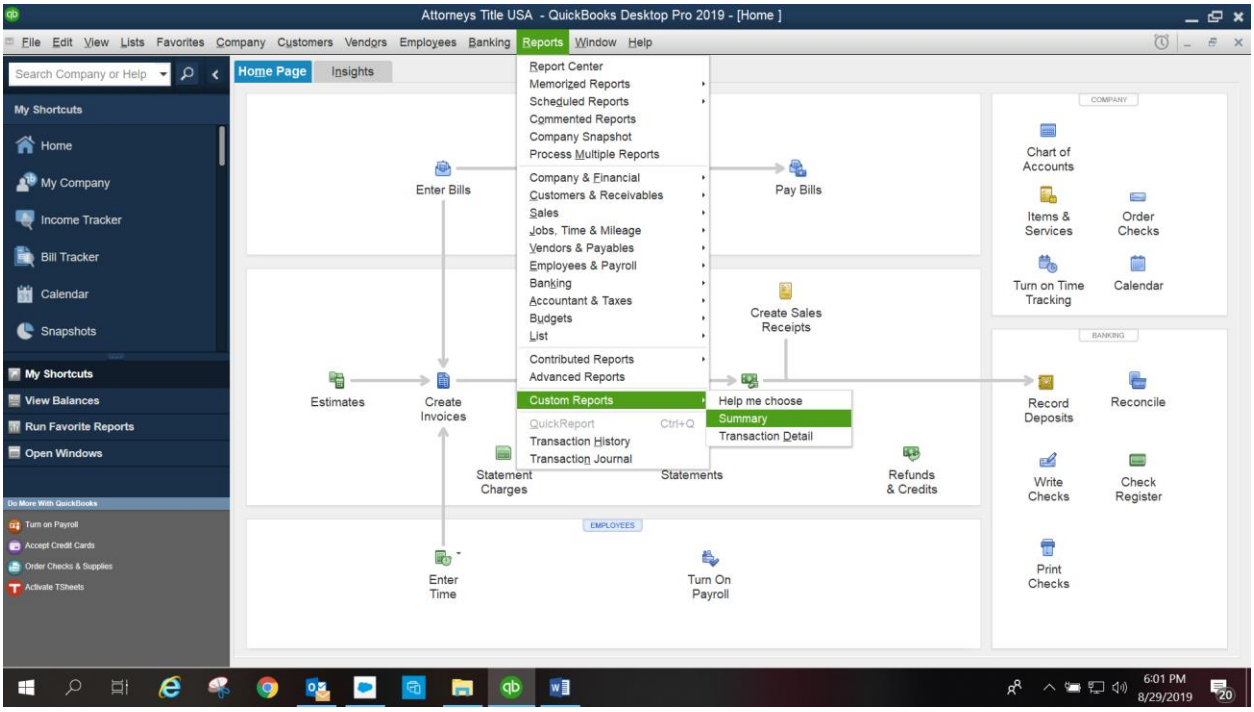


- Select "Both", if not already selected.
- You can preview and print or save to PDF file. You need to print and save the summary and detail reports now. *

***This will only produce the Reconciliation Summary page and Cleared/Outstanding Lists. It will NOT produce the Trial Balance Report.**

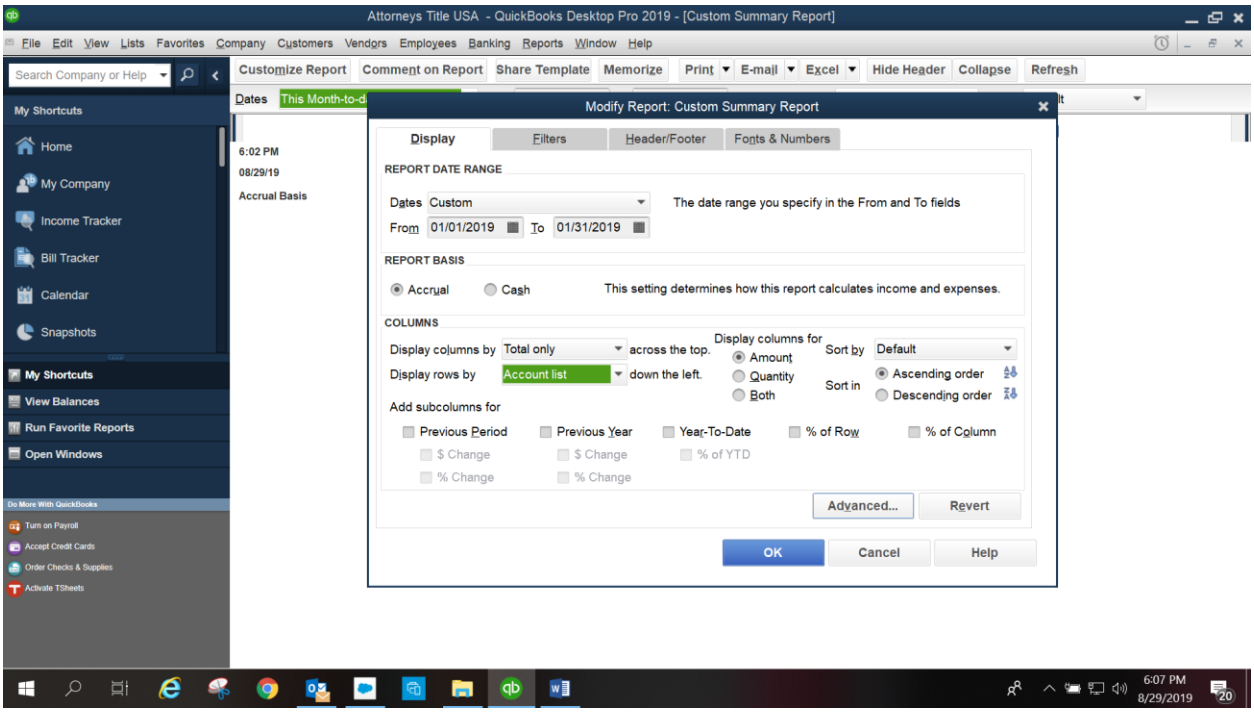
CUSTOMIZING AND PRINTING THE TRIAL BALANCE REPORT

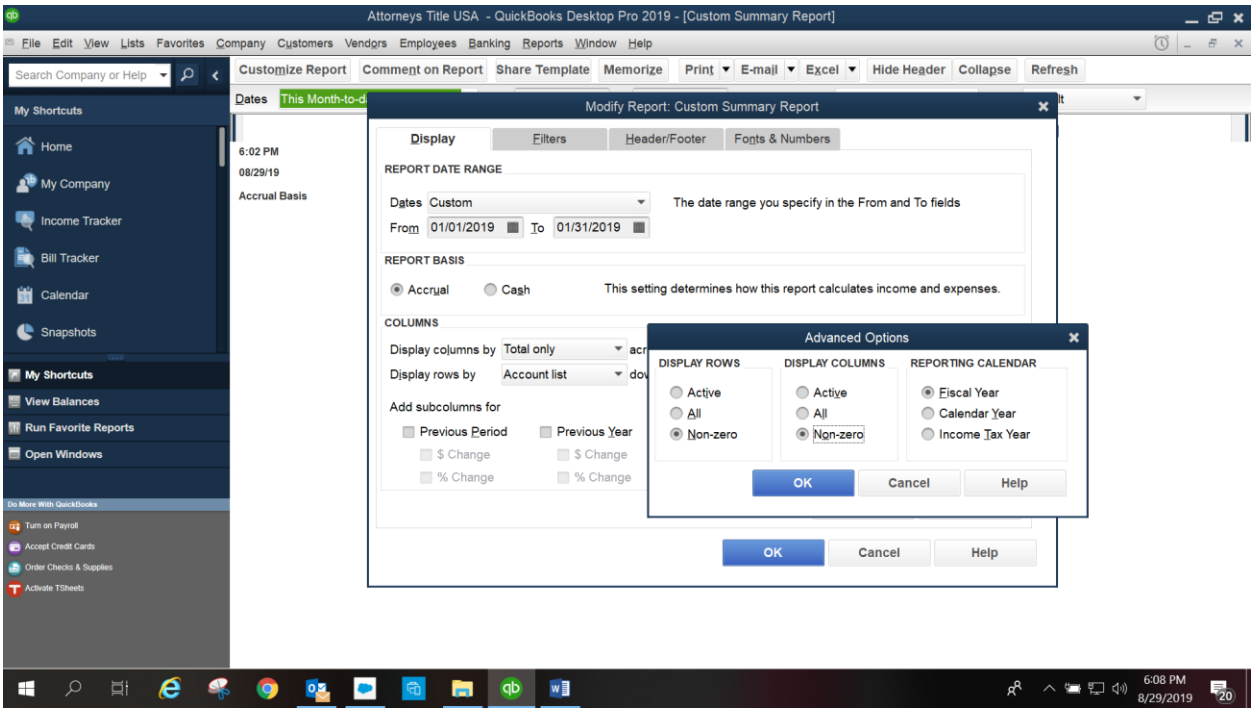
- Go to “Reports” (located along the top row of the screen).
- Choose “Custom Reports” then “Summary”.



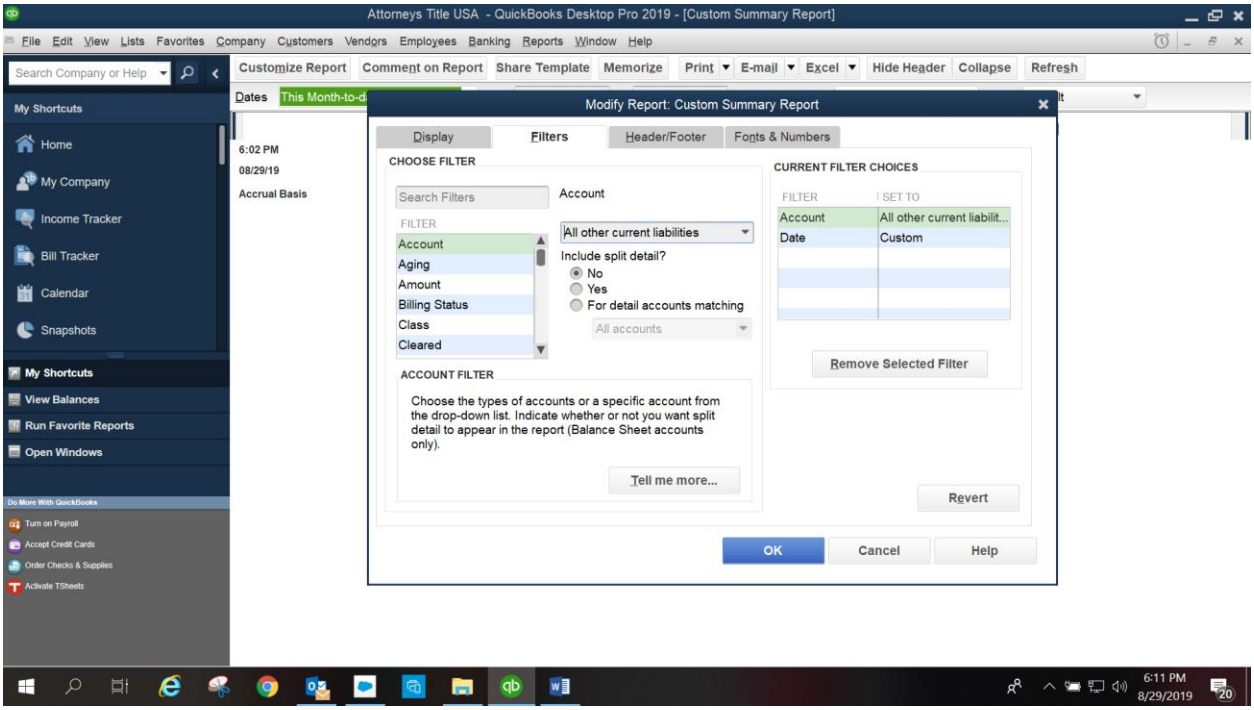
The “Custom Report” window will have multiple tabs to choose from. Follow the steps below for the corresponding tabs to set up the Trial Balance Report correctly:

- Display Tab:
    1. Make sure “from” date is set to the beginning of the escrow account (date account was opened).
    2. Make sure the “to” date is set to the ending date of the bank statement you are reconciling.
    3. Set “display columns” to “totals only”.
    4. Set “display rows by” to “account list”.
    5. Click “Advanced” at the bottom right, then select “non-zero” for both “display rows by” and “display columns by” and click “OK”.

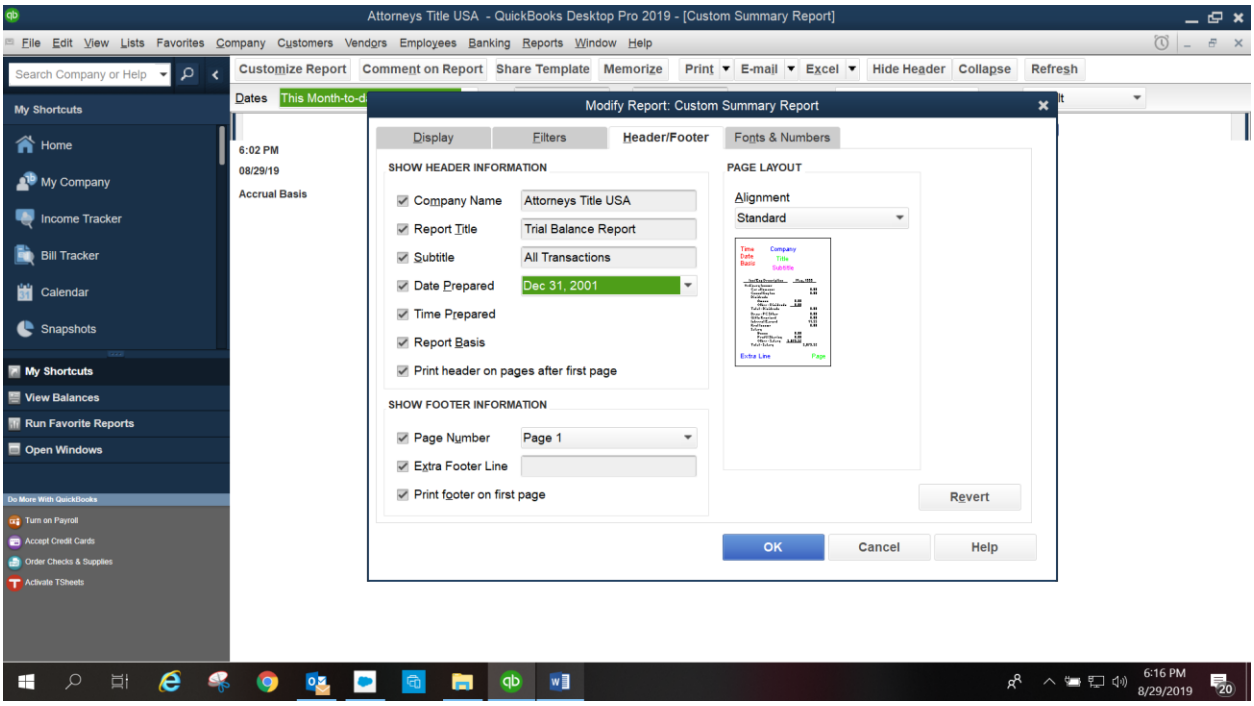

Attorneys Title USA - QuickBooks Desktop Pro 2019 - [Custom Summary Report]
Modify Report: Custom Summary Report
Display
Filters
Header/Footer
Fonts & Numbers
REPORT DATE RANGE
Dates Custom
From 01/01/2019 To 01/31/2019
The date range you specify in the From and To fields
REPORT BASIS
Accrual
Cash
This setting determines how this report calculates income and expenses.
COLUMNS
Display columns by Total only across the top.
Display rows by Account list down the left.
Add subcolumns for
Previous Period
Previous Year
Year-To-Date
% of Row
% of Column
$ Change
% Change
% of YTD
Sort by Default
Ascending order
Descending order
Advanced...
Revert
OK
Cancel
Help


Attorneys Title USA - QuickBooks Desktop Pro 2019 - [Custom Summary Report]
Modify Report: Custom Summary Report
Advanced Options
DISPLAY ROWS
Active
All
Non-zero
DISPLAY COLUMNS
Active
All
Non-zero
REPORTING CALENDAR
Fiscal Year
Calendar Year
Income Tax Year
OK
Cancel
Help

- Filter Tab:
    1. Make sure “Filter” is left as “Account”.
    2. Make sure “Account” is set as “All Other Current Liabilities”, **or if you have multiple accounts in your QuickBooks, change to account you want to run the report for, then choose “For Detail Accounts Matching” and from the drop down select “All Other Current Liabilities”.**

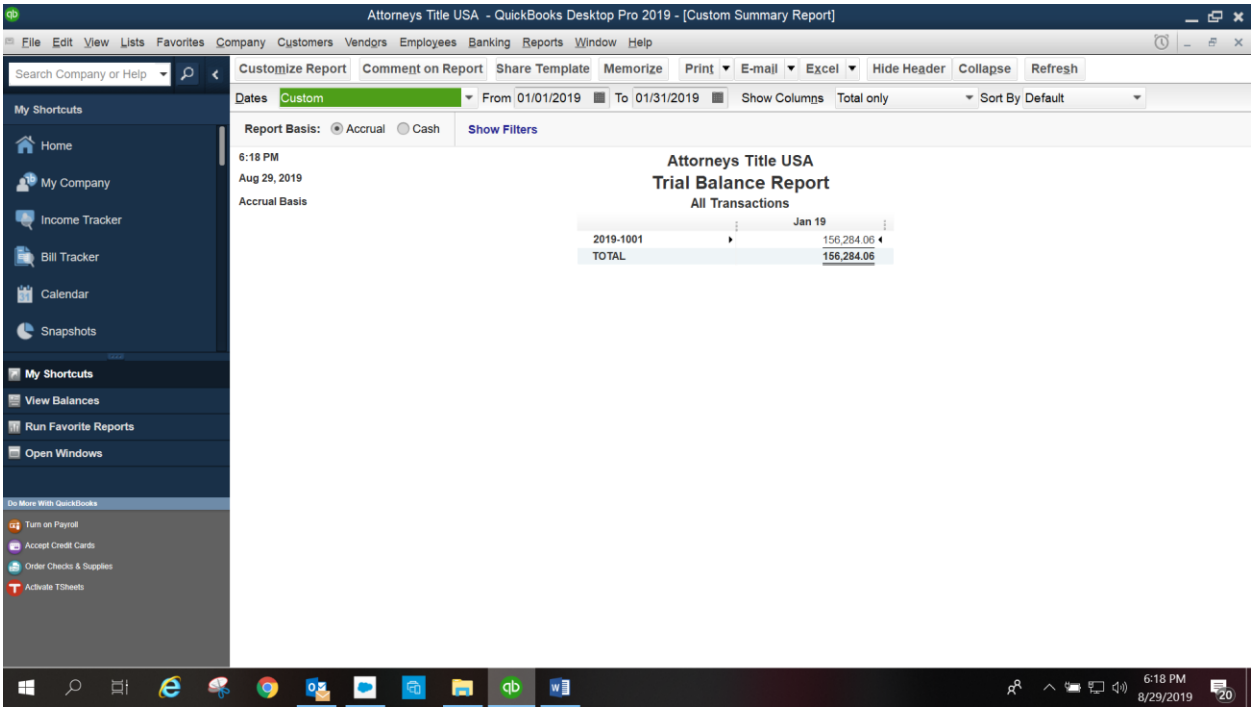


- Header/Footer Tab:
    1. Under “Report Title” type “Trial Balance Report” and under “SubTitle” type “All Transactions”.

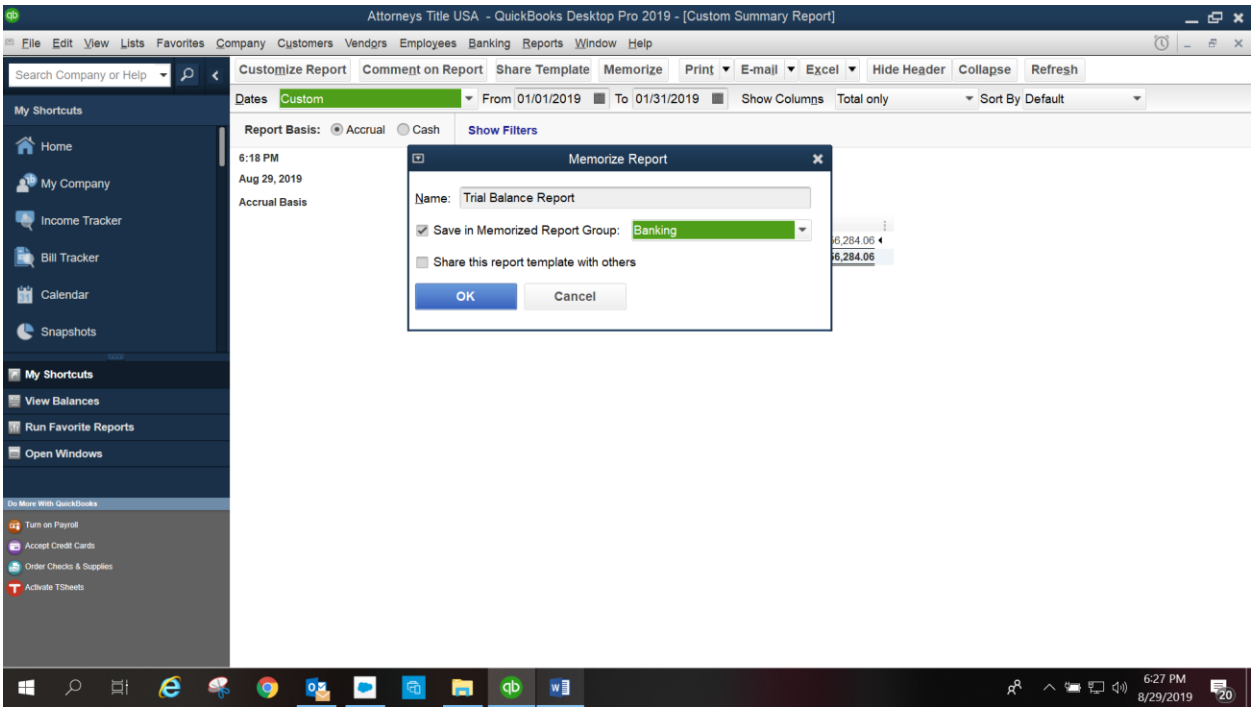


2. Click “OK”.

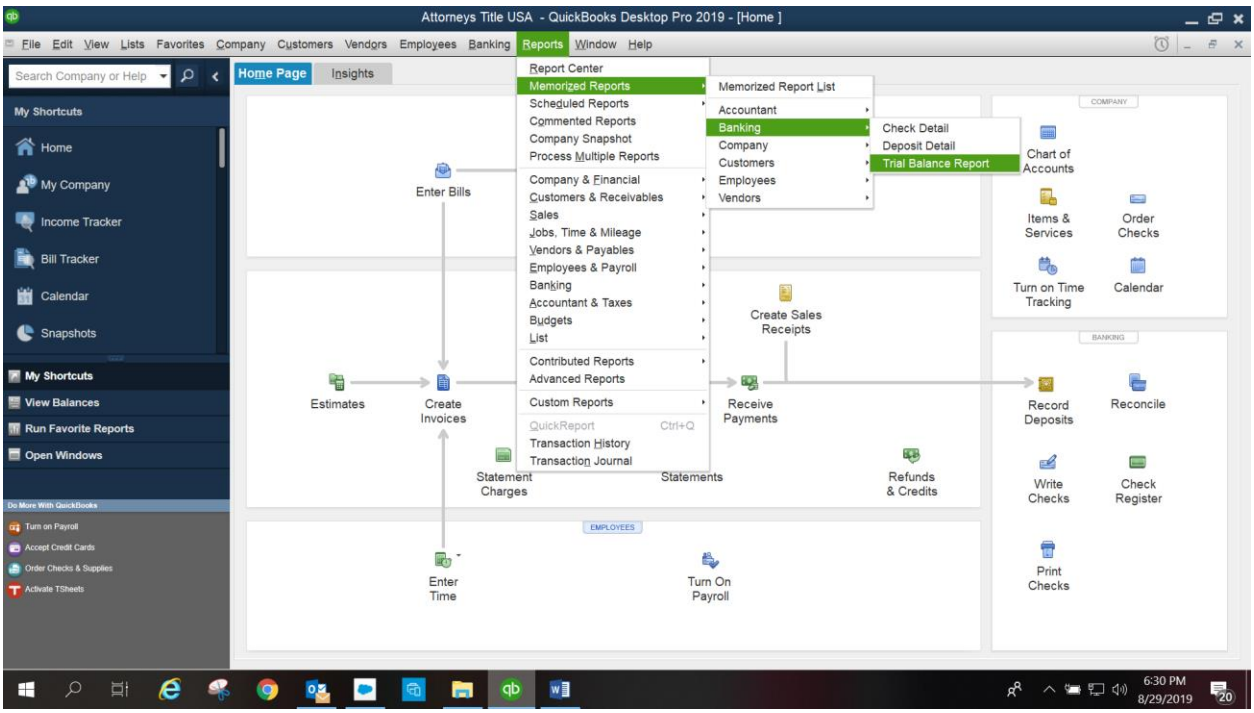
3. The preview of the Trial Balance Report appears on the screen (see below).
    - This SHOULD give you a detailed list (not just a total balance) of all the files with their end of the month totals.



4. Click “Memorize” on the top of the screen. You can now name the report “Trial Balance Report”. (We recommend you place your Company name in front of the report, to make sure you are pulling the Real Estate account). This Trial Balance Report can be viewed later under “Memorized Reports” “Banking”. Click “OK”.



5. If you memorized the report, **(This helps create the trial balance each month)** by choosing reports, memorized reports then banking and then choose your Trial Balance Report. **You will need to change the "to" date (ending bank statement date) to the date you are reconciling the account through and click "refresh" then print the report.**



The trial balance total should equal your register balance, the month ending date found on your reconciliation reports. This shows the account is in balance and whose money is in the account.

Note from Auditor:

If you do not print the Trial balance report after you print the Summary and Detailed report, you MAY NOT balance, this needs to be done right after those two reports are printed. If it does not balance you must wait until next month to get an accurate balance.

START A NEW MONTH (RECONCILE)

- Redo the steps above
- Enter the ending balance of the new month bank statement
- Redo remaining steps listed above.

****You do not have to customize the Trial balance once it's been Memorized.***

When viewing the Trial balance report (on the screen) and you notice a "negative" balance to quickly view the QuickReport, double click on the "File Balance" of the file you want to view, it will appear on the screen.

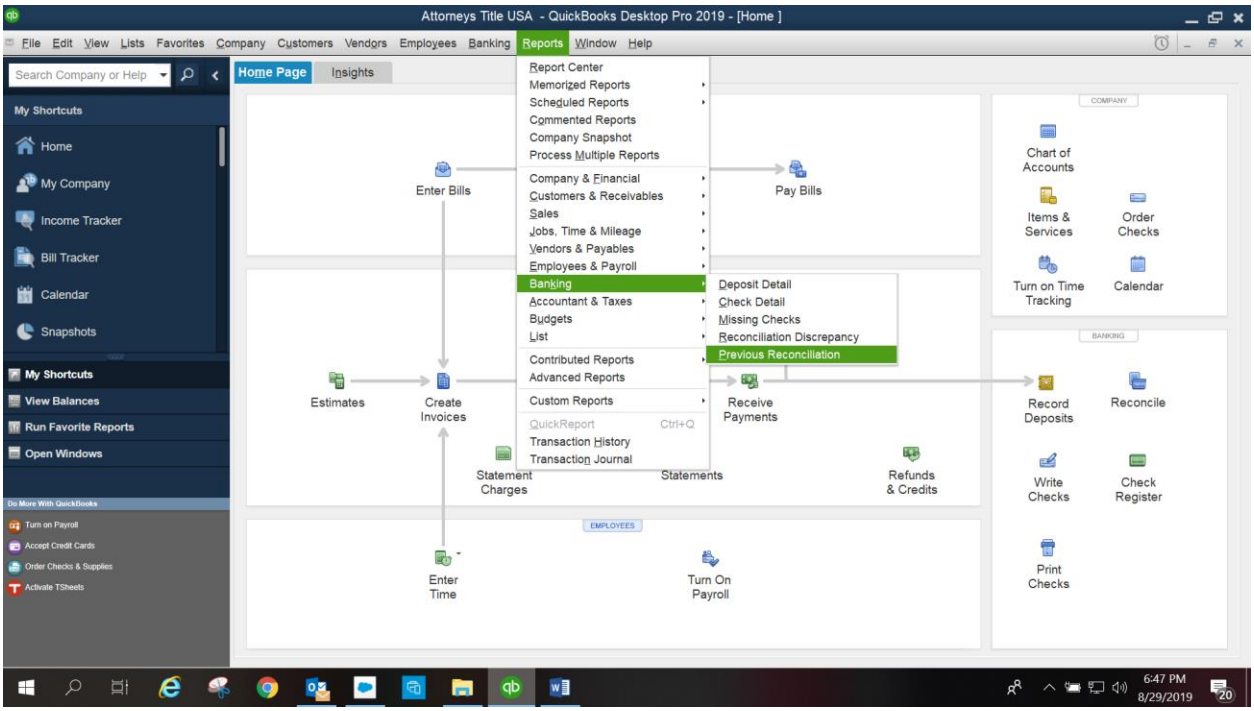
OTHER TIPS

To set up multiple accounts, set up a "**new company**" for each NEW account. ***Do not set up as a "new account". This will cause the accounts to "share" the Trial balance Report.*** Each new account must have its own Trial balance so it doesn't commingle with your other accounts.

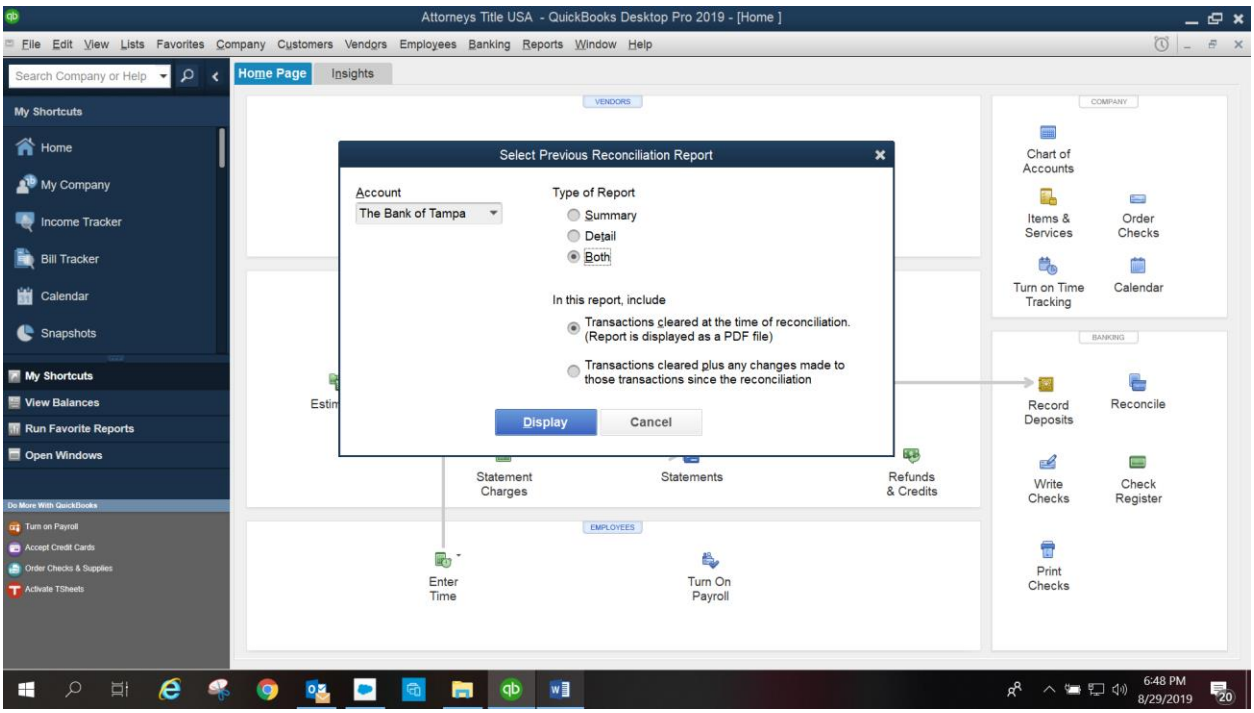
TO PRINT THE PRIOR MONTHS RECONCILITIONS

To view or print the prior months reconciliations go to:

- Reports (located at the top row of the screen)
- Choose "Banking"
- Choose "Previous Reconciliations".



- The “Select Previous Reconciliation Report” window will open, select “Both” then click Display and print or save to PDF.



TIP: Every month you MUST save (via PDF) or print your reports, once you reconcile a new month, or it will overwrite the previous month.

ALTA Rapid Response Plan for Wire Fraud Incidents

https://www.alta.org/file.cfm?name=ALTA-Rapid-Response-Plan-for-Wire-Fraud-Incidents

Time is of the essence – every second and minute counts.
Organize your team and make a plan in advance.
Be ready to act simultaneously and accomplish all of these steps as quickly as possible.

Step 1: Alert company management and your internal wire fraud response team.

Contact your team according to a pre-arranged plan (group email; group text):

- Owner / Manager
- Accounting / Finance / Treasurer
- IT / IT Security
- Legal Counsel
- Underwriter(s)

Step 2: Report Fraudulent Wire Transfers to the Sending and Receiving Banks.

- Contact the sending bank's fraud department and request that a recall of the wire be sent to the receiving bank because of fraud. Provide the details for the wire. Also request a recall or reversal and a Hold Harmless Letter or Letter of Indemnity.
- Ask the sending bank to initiate the FBI's Financial Fraud Kill Chain.
- Also call the receiving bank's fraud department to notify them that you have requested a recall of the wire because of fraud. Provide the details for the wire and request that the account be frozen.
- If a client or consumer was a victim and your bank/accounts were not directly involved, your client or customer will need to contact the bank themselves but you may have helpful information to share, too. Coordinate quickly!

Step 3: Inform the parties to the transaction (buyer, seller, real estate agents, broker, attorneys, underwriter, notary, etc.) using known, trusted, phone numbers for verbal verification.

If you're unsure about what to say, here's a sample: "There appears to have been [attempted] wire fraud associated with this transaction. We recommend that you review your email security and update passwords and take any other appropriate security measures immediately. For the remainder of this transaction, all communication will occur using known, trusted, telephone numbers."

Step 4: File a complaint with the FBI's Internet Crime Complaint Center (IC3).

Need help to get started? Visit www.alta.org/ic3how to see a two-minute how-to video.
Ready to go? Visit www.alta.org/ic3 and provide the following information:

- Victim's name, address, telephone, and email
- Financial transaction information (e.g., account information, transaction date and amount, who received the money)
- Subject's name, address, telephone, email, website, and IP address
- Specific details on how you were victimized
- For Business Email Compromise (BEC) events, copy email header(s). Learn How at https://mxtoolbox.com/Public/Content/EmailHeaders/
- Any other relevant information that is necessary to support the claimant

Step 5: Report Fraudulent Wire Transfers and Attempts to Law Enforcement in the jurisdiction where the crime has occurred.

- Local Police/Sheriff: https://www.policeone.com/law-enforcement-directory/
- FBI Field Office: https://www.fbi.gov/contact-us/field-offices
  Ask your Field Office to initiate the FBI's Financial Fraud Kill Chain.
- Secret Service: https://www.secretservice.gov/contact/field-offices/

Step 6: Call the sending bank again to confirm that the recall request has been processed.

Step 7: Document your response using a Response Worksheet.

- Customize this ALTA Rapid Response Plan for Wire Fraud Incidents
- Customize a Response Worksheet (available in Excel or PDF)
- Assign each step to an appropriate person/entity
- Track progress through to completion or resolution
- Retain the Response Worksheet for future reference/update

Step 8: Consider contacting your insurance carrier(s) and outside legal counsel.

Step 9: Review your Incident Response Plan to determine if you need to update passwords, secure hardware, and review email logs to determine how and when email accounts were accessed.

Step 10: If funds were wired out of the U.S., hire an attorney in that country to help recover funds.