

THIS IS A PRECEDENT DOCUMENT

This precedent document should be used as a guide only. Practitioners should adapt the Deed as required. The Law Society of NSW does not warrant the effectiveness of the Deed in any particular matter.

THIS PAGE DOES NOT FORM PART OF THE DISCLOSURE OR AGREEMENT AND SHOULD BE DELETED BEFORE THE DOCUMENT IS USED

TRIPARTITE DEED

(Legal Profession Act 2004)

THIS DEED is made on _____ day of _____ 20____

THE PARTIES

INSERT

(the 'present practitioner')

INSERT

(the 'client')

INSERT

(the 'former practitioner')

BACKGROUND

- A The former practitioner acted for the client in the matter until the retainer was terminated.
- B The present practitioner is now acting for the client and has taken over the carriage of the matter.
- C The client owes costs to the former practitioner.
- D **[Option 1: Use Option 1 if the client does not agree to pay for the disbursements incurred by the former practitioner]**

The former practitioner claims a general retaining lien over the documents in the matter but agrees to transfer the file to the present practitioner upon satisfactory security for the costs.

[Option 2: Use this Option if the client agrees to pay for all disbursements incurred by the former practitioner before the release of the files]

The former practitioner claims a general retaining lien over the documents in the matter but agrees to transfer the file to the present practitioner upon:

- (i) payment by the client of all disbursements incurred by the former practitioner upon execution of this Deed, in which case such paid disbursements will not form part of the "costs" for the purpose of this Deed; and
- (ii) satisfactory security for the costs.

NOW THIS DEED WITNESSES AS FOLLOWS

1. INTERPRETATION

Definitions

‘assessed’	means a concluded assessment, including any reviews or appeals, under Part 3.2 of the LPA.
‘costs’	includes fees, charges, disbursements, expenses, remuneration and GST.
‘documents’	means documents as defined in s.4 of the LPA and includes all those that are the property of the client and have come into the possession of the practitioner pursuant to the practitioner/client relationship.
‘equitable lien’	means the right under the general law to be paid costs from the money. It has the same meaning as the ‘fruits of the action lien’ and ‘particular lien’
‘matter’	means INSERT
‘money’	means the net amount resulting from a settlement, award or verdict in the matter, including party/party costs.
‘practitioner’	includes the practitioner’s law practice.
‘general retaining lien’	means the right, under Rule 15 of the Solicitors’ Rules, to retain the client’s documents pending payment of all costs. It has the same meaning as the ‘possessory lien’.
‘retainer’	means the agreement to act pursuant to the costs agreement between the practitioner and the client dated INSERT
‘the LPA’	means the <i>Legal Profession Act 2004</i> .
‘the other party’	means the opposing party, or its legal representative/s in the matter.
‘the LP Regulation’	means the <i>Legal Profession Regulation 2005</i> .
the ‘Uniform Law’	means the <i>Legal Profession Uniform Law (NSW)</i> and associated legislation being <i>Legal Profession</i>

Uniform Law Application Act 2014, Legal Profession Uniform General Rules 2015 and the Legal Profession Uniform Law Application Regulation 2015.

‘valuable consideration’ means the present practitioner’s agreement to continue to act for the client.

2. THE PRESENT PRACTITIONER AGREES

2.1 upon receipt of money from the other party and availability of cleared funds, subject to the provisions of the Uniform Law, the LPA and the LP Regulation, to pay the former practitioner’s costs of an amount to be agreed between the former practitioner and the client;

2.2 if agreement is not reached, to keep the amount claimed by the former practitioner in the present practitioner’s trust account until the amount of outstanding costs has been agreed or assessed;

2.3 to provide a notice of equitable lien on the money to the other party;

2.4 to make the file available to the former practitioner at mutually convenient times to prepare a bill of costs or to deal with the assessment of costs; and.

2.5 to keep the former practitioner informed of material developments relevant to the entitlement of former practitioner to payment of costs.

3. THE CLIENT

3.1 gives to the present practitioner on irrevocable authority, for valuable consideration, to receive money from the other party and to pay the former practitioner’s costs of an amount to be agreed or, failing agreement, as assessed;

- 3.2 authorises the present practitioner to advise the former practitioner upon obtaining any entitlement to a settlement, award or verdict, including any party/party costs, the details of such entitlement in so far as they are relevant to the former practitioner;
- 3.3 agrees not to provide instructions to the present practitioner to act contrary to his or her agreements under this Deed; and
- 3.4 will not charge or encumber the proceeds of the transaction, litigation or dispute without the consent of the former practitioner.
[If Option 2 is used in Recital D, add Clause 3.5]
- 3.5. will pay to the former practitioner all disbursements incurred by the former practitioner in the matter upon execution of this Deed.

4. **THE FORMER PRACTITIONER AGREES**

- 4.1 to transfer the client's documents to the present practitioner upon the execution of this Deed or within a reasonable time; and
 - 4.2 to refrain from commencing any court action to recover from the client any costs owed to the former practitioner in the matter, unless this agreement has been breached by the present practitioner and/or the client.
5. Interest is payable on the outstanding costs but only if it is payable under section 321 and section 363A of the LPA or Regulation 109 of the *Workers Compensation Regulation 2003* or any other legislation.
 6. If the money received from the other party is not sufficient to pay the costs, the costs are to be apportioned as agreed by the present practitioner and the former practitioner on a pro rata basis.
 7. If the costs are regulated by legislation, the costs are to be apportioned by agreement between the present practitioner and the former practitioner on a

pro rata basis and in the absence of agreement as to the apportionment of the costs, the present practitioner agrees to obtain an apportionment, where permissible, under one of the following provisions:

- Section 342 of the *LPA*;
- Regulation 84(2) & (3) of the *Workers Compensation Regulation 2003*;
- Regulation 9(2) & (3) of the *Motor Accidents Compensation Regulation 2005*;
- Regulation 12(2) of the *Victims Support and Rehabilitation Rule 1997*;
- or
- A provision under any other legislation.

8 The client acknowledges that, prior to execution of this Deed, opportunity has been given to seek independent advice about the Deed and such advice has been recommended by the present practitioner.

9 The former practitioner's general retaining lien over any of the client's documents is not discharged by entering into this Deed.

10 This Deed shall continue in force until the costs and interest, if any, have been paid to the former practitioner.

Executed as a Deed

SIGNED, SEALED and DELIVERED

.....

Present Practitioner

.....

(Witness)

.....

Client

.....

(Witness)

.....

.....

Former Practitioner

(Witness)