

Fact Sheet 10 – Liens

December 2023

A *lien* is a solicitor's right to keep a client's property until the client has paid the solicitor's fees and disbursements. Unless the client and the solicitor have come to some other agreement, a lien can be exercised at any time if the solicitor's bill has not been paid.

What things can a solicitor hold under a lien?

If a client owes a solicitor money, the solicitor can hold a lien over all papers, files, and documents that belong to the client that the solicitor received while representing the client. This can include files and documents relating to other matters which have been completed and which the client has already paid for.

A solicitor can also hold a lien over money that the solicitor is holding on behalf of a client. For example, after a legal case a solicitor might receive a cheque for the client. The cheque will generally be banked into the solicitor's trust account. The solicitor will then prepare a bill to the client and ask for the client's authority to pay the bill with money from the trust account.

If the client refuses to authorise payment or objects to payment, the solicitor can hold in the trust account enough money to pay the bill - but not more. This does not prevent the client from having the costs assessed by a court appointed assessor. [Further information can be found on the OLSC Fact Sheet on **Costs Disputes**].

Are there things that cannot be held under a lien?

Documents which cannot be the subject of a lien include wills, during the client's lifetime or after the client's death if a lawyer is compelled to provide the will to Court.

What happens if I change solicitors?

Liens become an issue most often when either the client or the solicitor has terminated the solicitor's retainer and the client wishes to retain a new solicitor. [Further information can be found on the OLSC Fact Sheet **Hiring a Lawyer**]

If *the client* terminated the retainer, the solicitor is entitled to a *general retaining lien* over the client's documents until the client has paid the solicitor's bill in full.

If *the solicitor* terminated the retainer, he or she only has a *qualified lien* and should make the client's documents available upon payment or satisfactory security so that another solicitor can continue the client's current court proceedings.

The client might have to provide some kind of promise or security for the solicitor's costs, and the documents would have to be returned to the solicitor at the conclusion of the court proceedings if the costs remained unpaid.

In many cases, a client's file might be released after the former solicitor, the new solicitor and the client have signed a *three party agreement* which covers the payment of the former solicitor's costs. This usually involves the new solicitor agreeing to ensure that the former solicitor is paid or gets the file back at the end of the legal matter. The Law Society of NSW has drafted a model agreement for use in these situations.

In other personal injury matters, costs are usually paid out of settlement or court-awarded money at the conclusion of the case. If the client transfers the case to a new solicitor, the former solicitor might release the file to the new solicitor if the new solicitor agrees to pay the former solicitor's costs as agreed or assessed. Usually, the client has to give the new solicitor an irrevocable authority to pay the former solicitor's assessed or agreed costs out of any settlement or verdict monies, and to return the file to the former solicitor if the new solicitor's retainer is terminated.

What if the solicitor won't release my file?

There are three ways of having a file released from a lien.

First, pay the costs.

Second, under Section 472 of the Legal Profession Uniform Law, a client can apply to the Supreme Court for the court to order the release of the client's documents.

Third, the NSW Legal Services Commissioner can discharge a lien where they are satisfied that it is fair and reasonable in all the circumstances and this form of compensation order deals most appropriately with the client's direct loss.