

Legal Profession Uniform Legal Practice (Solicitors) Rules 2015

[2015-245]



New South Wales

Status Information

Currency of version

Current version for 27 May 2015 to date (accessed 18 July 2024 at 7:17)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 July 2015

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1 Citation

1.1 These Rules are designated as Legal Profession Legal Practice Rules and may be cited as the *Legal Profession Uniform Legal Practice (Solicitors) Rules 2015*.

2 Commencement

2.1 These Rules come into operation on 1 July 2015.

3 Objective

3.1 The objective of these Rules is to regulate aspects of legal practice by solicitors.

4 Authorising provisions

4.1 These Rules were developed by the Law Council of Australia in accordance with section 427 of the Legal Profession Uniform Law and are made by the Legal Services Council under Part 9.2 of that Law.

5 Definitions

5.1 In these Rules:

Uniform Law means the Legal Profession Uniform Law as applied in a participating jurisdiction.

6 Transfer of a solicitor's practice

6.1 When a solicitor intends to transfer to another solicitor the whole or part of the solicitor's practice, including clients' work in progress, and to put the other solicitor in possession of the documents held by the solicitor on behalf of clients, before the solicitor delivers possession of the practice to the solicitor acquiring it the solicitor must give to each client at least 14 days (or such other period as may be reasonable in the circumstances) notice in writing of:

6.1.1 the intended transfer of documents to the solicitor acquiring the practice, unless a contrary direction is received from the client, and

6.1.2 the client's right to give to the solicitor a contrary direction in relation to the conduct of the client's affairs and the delivery of the client's documents.

6.2 Any notice sent to a client on whose behalf the solicitor holds money in trust or under the solicitor's control must advise the client of:

6.2.1 the balance of money held on the client's behalf, and

6.2.2 the solicitor's intention to transfer the relevant account to the solicitor acquiring the practice, unless advised by the client to the contrary, and

6.2.3 the client's right to give to the solicitor a contrary direction as to the manner in which the solicitor should deal with the account on the client's behalf.

6.3 Rules 6.1 and 6.2 do not apply where a new partner is admitted to a partnership which continues to conduct the practice.

7 Debt collection or mercantile agencies

7.1 A solicitor must not allow the solicitor's business name or stationery to be used by a debt collection or mercantile agent in a manner that is likely to mislead the public.

7.2 A solicitor who receives, from a debt collection or mercantile agent, instructions to act for a client, must ensure that:

7.2.1 the solicitor's relationship to the agent is fully disclosed in writing to the client, and

7.2.2 the information required to be disclosed to the client by any relevant legislation and these Rules is communicated to the client, and

7.2.3 the solicitor maintains direct control and supervision of any proceedings or correspondence on behalf of the client, and

7.2.4 any money recovered on behalf of the client is accounted for by the solicitor.

8 Conducting another business

8.1 A solicitor who engages in the conduct of another business concurrently, but not directly in association, with the conduct of the solicitor's legal practice must:

8.1.1 ensure that the other business is not of such a nature that the solicitor's involvement in it would be likely to impair, or conflict with, the solicitor's duties to clients in the conduct of the practice, and

8.1.2 maintain separate and independent files, records and accounts in respect of the legal practice and the other business, and

8.1.3 disclose the solicitor's financial or other interest in that business to any client of

the solicitor who, in the course of dealing with the solicitor, deals with the other business, and

8.1.4 cease to act for the client if the solicitor's independent service of the client's interest is reasonably likely to be affected by the solicitor's interest in the other business.

8.2 For the purposes of this rule, a solicitor is taken to engage in the conduct of another business where the solicitor, or an associate:

8.2.1 is entitled, at law or in equity, to an interest in the assets of the business which is significant or of relatively substantial value, or

8.2.2 exercises any material control over the conduct and operation of the business, or

8.2.3 has an entitlement to a share of the income of the business which is substantial, having regard to the total income which is derived from it.

9 Business name

A solicitor must cause the firm or business name of the solicitor or firm to be mentioned in legible characters on all communications written in the course of legal practice by the solicitor.

10 Litigation lending

10.1 A solicitor who has assisted a client to obtain a **litigation lending account** with a bank, or other financial institution, for the purpose of funding litigation, must not withdraw or cause or permit the withdrawal of money from the client's account for any purpose other than the following:

10.1.1 to reimburse the solicitor for disbursements (including Counsel's fees) already paid, or

10.1.2 to pay on behalf of the client any accounts due for payment to a third party, including the payment of costs due to a solicitor who has previously acted for the client where such a payment is required to obtain delivery of documents retained under a lien for unpaid costs claimed by that solicitor.

10.2 All withdrawals of money from the client's account must be made in accordance with the client's instructions.

11 Loan and security documents

11.1 This rule applies where:

11.1.1 a solicitor is engaged to give advice to a proposed signatory that will be:

- 11.1.1.1 a borrower, a grantor of a security interest, or a security provider referred to as a borrower (**a borrower**) in loan or security documents, or
- 11.1.1.2 a third party mortgagor, guarantor, surety mortgagor or indemnifier (**a guarantor**) providing security for the borrower, and
- 11.1.2 the solicitor has been asked to provide evidence of the advice.
- 11.2 The solicitor providing the advice must verify the identity of the proposed signatory using the Verification of Identity Standard contained in Schedule 8 to the *Model Participation Rules* determined by the Australian Registrars' National Electronic Conveyancing Council as adopted and made by each jurisdiction pursuant to section 23 of the Electronic Conveyancing National Law.
- 11.3 The evidence of advice provided by a solicitor to a borrower must be in the form of:
 - 11.3.1 Law Society of NSW Declaration by Borrower/Grantor of a Security Interest Schedule 1, 1A or 1B, or
 - 11.3.2 Law Institute of Victoria Australian Legal Practitioner's Certificate 1 (Schedule 1).
- 11.4 The evidence of advice provided by a solicitor to a guarantor must be in the form of:
 - 11.4.1 Law Society of NSW Declaration by Third Party Mortgagor, Guarantor, Surety Mortgagor or Indemnifier for the Borrower/Grantor of a Security Interest Schedule 2 or 2A, or
 - 11.4.2 Law Institute of Victoria Australian Legal Practitioner's Certificate 2 (Schedule 2).
- 11.5 Where an interpreter or translator is present while the advice is being provided:
 - 11.5.1 the name of the interpreter or translator must be included on the relevant Law Society of NSW Declaration or Law Institute of Victoria Australian Legal Practitioner's Certificate, and
 - 11.5.2 the interpreter or translator must be asked to complete a certificate in the form of:
 - 11.5.2.1 Law Society of NSW Interpreter's Certificate Schedule 3, or
 - 11.5.2.2 Law Institute of Victoria Certificate by Translator/Interpreter (Schedule 3).
- 11.6 The solicitor providing the advice must obtain the following documents for retention on the solicitor's file:
 - 11.6.1 an acknowledgment in the form of:
 - 11.6.1.1 Law Society of NSW Acknowledgment of Legal Advice Schedule 4, 4A, 4B

or 4C [which must not be provided by the solicitor to the lender], or

11.6.1.2 Law Institute of Victoria Form of Acknowledgment given by a Borrower or Surety to the Certifying Australian Legal Practitioner (Schedule 4), and

11.6.2 a copy of the relevant Law Society of NSW Declaration or Law Institute of Victoria Australian Legal Practitioner's Certificate, and

11.6.3 a copy of Law Society of NSW Interpreter's Certificate Schedule 3 or Law Institute of Victoria Certificate by Translator/Interpreter (Schedule 3) (if applicable), and

11.6.4 a list of the loan and security documents.

11.7 A solicitor who holds a practising certificate issued in:

11.7.1 NSW must use the forms referred to in paragraphs 11.3.1, 11.4.1, 11.5.2.1 and 11.6.1.1, as applicable, and

11.7.2 Victoria must use the forms referred to in paragraphs 11.3.2, 11.4.2, 11.5.2.2 and 11.6.1.2, as applicable.

11.8 A solicitor (eg a solicitor acting for the lender) must not aid, abet, counsel or procure any other solicitor to provide evidence otherwise than in conformity with this rule.