

MAUDE & MILLER

INFORMATION FOR CLIENTS

Set out below is the information required by the *Rules of Conduct and Client Care for Lawyers* of the New Zealand Law Society ("Law Society").

1. **Fees** – the basis on which fees will be charged is set out in our Letter of Engagement of Legal Services. When payment of fees is to be made is set out in our Standard Terms of Engagement.

We may deduct from any funds held on your behalf in our Trust account any fees, expenses or disbursements for which we have provided an invoice.

2. **Professional Indemnity Insurance** – we hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. We will provide you with particulars of the minimum standards upon request.

3. **Lawyers Fidelity Fund** – the Law Society maintains the Lawyers Fidelity Fund for the purposes of providing clients of lawyers with protection against pecuniary loss arising from theft by lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000.00. Except in certain circumstances specified in the Lawyers & Conveyancers Act 2006 the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

4. **Complaints** – We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.

If you have a complaint about our services or charges, you may refer your complaint to the person in our firm who has overall responsibility for your work.

If you do not wish to refer your complaint to that person, or you are not satisfied with that person's response to your complaint, you may refer your complaint to Roger Holmes Miller, Managing Partner.

The Law Society maintains a complaints service and you are able to make a complaint to that service. To do so you should contact the Law Society, PO Box 494, Wellington; Telephone Number: (04) 472 8978.

5. **Persons Responsible for the Work** – the names and status of the person or persons who will have the general carriage of or overall responsibility for the services we provide for you are set out in our Letter of Engagement and Legal Services.

6. **Client Care and Service** - the Law Society client care and service information is set out below:

Whatever legal service your lawyer is providing, he or she must:

- Act competently, in a timely way, and in accordance with instructions received and arrangements made.
- Protect and promote your interests and act for you free from compromising influences or loyalties.
- Discuss with you your objectives and how they should best be achieved.
- Provide you with information about the work to be done, who will do it and the way the services will be provided.
- Charge you a fee that is fair and reasonable and let you know how and when you will be billed.
- Give you clear information and advice.
- Protect your privacy and ensure appropriate confidentiality.
- Treat you fairly, respectfully and without discrimination.
- Keep you informed about the work being done and advise you when it is completed.
- Let you know how to make a complaint and deal with any complaint promptly and fairly.

The obligations lawyers owe to their clients are described in the *Rules of Conduct and Client Care for Lawyers*. Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.

If you have any questions, please visit www.lawyers.org.nz.

7. **Limits on our Liability to you**

7.1 Except where otherwise provided by Law, the total amount that we have to pay to you if we are found liable for any loss or damage is the minimum amount set by the New Zealand Law Society. The limit applies whatever you are claiming for and however the liability arises.

7.2 If you are more than one person (such as a couple or partnership) this maximum is the maximum combined amount that we have to pay you together.

7.3 If you engage us to do work for the purposes of a business, you agree the Consumer Guarantees Act does not apply. Otherwise, nothing in this paragraph limits any rights you may have under that Act.

7.4 We are not liable for any loss or liability because:

- we relied on information provided by you or any third party;
- you did not provide us with all information required for your instructions or the scope of our work;
- you did not receive or read a communication we sent you.

MAUDE & MILLER

STANDARD TERMS OF ENGAGEMENT

These Standard Terms of Engagement ("Terms") apply in respect of all work carried out by us for you, except to the extent that we otherwise agree with you in writing.

1. Services

1.1 The services which we are to provide for you are outlined in our engagement letter.

2. Financial

2.1 Fees

(a) The fees which we will charge or the manner in which they will be arrived at, are set out in our engagement letter.

(b) **How are fees calculated?**

In setting our fees we take into account a number of factors set by the Law Society including the following:

- (i) the skill, specialised knowledge, and responsibility required;
- (ii) the importance of the matter to you and the results achieved;
- (iii) the urgency and circumstances in which the matter is carried out;
- (iv) the degree of risk we assume in acting for you, including the value or amount of any property or money involved;
- (v) the experience, reputation and ability of the lawyer doing your work;
- (vi) the complexity of the matter and the difficulty or novelty of the questions involved;
- (vii) the possibility that our acceptance of your instructions may prevent us from acting for other clients;
- (viii) the number and importance of the documents prepared and considered;
- (ix) the fee typically charged in our market and locality for similar legal services;
- (x) the time and labour spent; and

(xi) the reasonable costs of running a practice.

Time and labour spent includes time spent investigating the facts and researching the law.

- (c) If the engagement letter specifies a fixed fee, we will charge this for the agreed scope of our services. Work which falls outside that scope will be charged on an hourly basis. We will advise you as soon as reasonably practicable if it becomes necessary for us to provide services outside the agreed scope and if requested, give you an estimate of the likely amount of the further costs.
- (d) Where our fees are calculated on an hourly basis, the hourly rates are set out in our engagement letter. The differences in those rates reflect the experience and specialisation of our professional staff. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.

- 2.2.1 **Estimates** - if you would like us to give you an estimate of what we expect the fees will be for your matter, we will do so. This will be a guide only and is not a fixed quote. We will also, at your request, tell you the amount of fees incurred to date, or we can let you know when the fees reach a certain level.
- 2.2 **Disbursements**– in providing services, we may incur disbursements or have to make payments to third parties on your behalf. These will be included in our invoice to you when the expense is incurred. We may require an advance payment for the disbursements or expenses we will be incurring on your behalf.
- 2.3 **Office Expenses** – we charge you an amount to cover office expenses (such as photocopying, printing, phone calls, faxes, file opening and file storage). Our standard administration fee is \$50.00 for each matter, but if the expenses exceed that we will charge a higher fee. This expense is shown separately in our account to you.
- 2.4 **GST (if any)** – is payable by you on our fees and charges.
- 2.5 **Invoices** – we will send interim invoices to you, usually monthly, and on completion of the matter, or termination of our engagement. We may also send you an invoice when we incur a significant expense.
- 2.6 **Payment** – invoices are payable within 14 days of the date of the invoice, unless alternative arrangements have been made with us. We may require interest to be paid on any amount which is more than 7 days overdue. Interest will be calculated at the rate of 2% above our Bank's 90 day Bank bill buy rate at the close of business on the date payment became due.

- 2.7 **Credit Policy** – you may be allocated a credit limit which will be:
- (a) confidential between you and our firm (and persons such as barristers and expert witnesses instructed by the firm with your consent);
 - (b) the total amount that we will allow you to owe us at any time;
 - (c) able to be increased or decreased or withdrawn by the firm at any time;
 - (d) We reserve the right to make reasonable and confidential credit enquiries from an appropriate information provider;
 - (e) We may stop doing work (and instruct others to stop doing work) for you if your credit limit is exceeded and we do not receive payment on time.

- 2.8 **Payment in Advance** – we may ask you for a payment in advance for out-of-pocket expenses payable to third parties on your behalf and/or as security for professional fees.

This money will be held in our Trust account on your behalf and will be used to pay:

- (a) any charges as they are due; and
- (b) ourselves, immediately after sending you our account.

We will provide you with a statement showing you how this money has been spent.

- 2.9 **Security** – we may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. You authorise us;
- (a) to debit against amounts pre-paid by you; and
 - (b) to deduct from any funds held on your behalf in our Trust account any fees, expenses or disbursements for which we have provided an invoice.

- 2.10 **Third Parties** – although you may expect to be reimbursed by a third party for our fees and expenses, and although our invoices may at your request or with your approval be directed to a third party, nevertheless you remain responsible for payment to us if the third party fails to pay us.

3. **Confidentiality**

- 3.1 We will hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you. We will not disclose any of this information to any other person except:

- (a) to the extent necessary or desirable to enable us to carry out your instructions; or
 - (b) to the extent required by law or by the Law Society's *Rules of Conduct and Client Care for Lawyers*.
- 3.2 Confidential information concerning you will as far as practicable be made available only to those within our firm who are providing legal services for you.
- 3.3 We will of course, not disclose to you confidential information which we have in relation to any other client.
- 4. **Duty of Care**
- 4.1 Our duty of care is to you and not to any other person. Before any other person may rely on our advice, we must expressly agree to this.
- 5. **Conflict of Interest**
- 5.1 We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises, we will advise you of this and follow the requirements and procedures set out in the Law Society's *Rules of Conduct and Client Care for Lawyers*.
- 6. **Trust Account**
- 6.1 We maintain a Trust account for all funds which we receive from clients (except monies received for payment of our invoices). If we are holding significant funds on your behalf, we will normally lodge those funds on interest bearing deposit with a Bank. In that case, we will charge an administration fee of 5% of the gross interest derived.
- 7. **Communication**
- 7.1 **Email**

We have virus protection software but we cannot guarantee that electronic communications will always be free from viruses or other defects, are secure, or will be received. We do not accept responsibility and will not be liable for any damage or loss caused by an email that is intercepted, or has a virus or other defect. If you prefer not to use email as a means of communication, then please advise us.
- 7.2 We often have to obtain and rely on external information or public records (eg, government agencies or registers) to carry out your instructions. This information may not always be accurate or complete.

We do not accept responsibility and will not be liable for any direct or indirect damage or loss caused by errors or omissions in external information.

- 7.3 These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.
- 7.4 We are entitled to change these Terms from time to time, in which case we will send you amended Terms.
- 7.5 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.

8. **Scope of our Work**

- 8.1 Unless we tell you otherwise, we are not qualified to give:
- Investment advice – you should get that from a qualified financial advisor;
 - Tax advice – you should get that from your accountant or tax advisor; or
 - Advice about foreign laws – we can help you contact a lawyer in the other country.
- 8.2 Unless we agree to do so in writing, we will not remind you about dates e.g. PPSR, Lease or consent expiry dates, or update our advice after it is given.

9. **Our Intellectual Property**

- 9.1 Unless we agree otherwise, we retain ownership of all opinions, documents and other intellectual property that we create.

10. **Verifying your Identity**

- 10.1 In some circumstances, we are required by law to verify your identity. Usually we must do this by sighting either a passport, a New Zealand drivers licence or some other form of New Zealand Government issued photographic identification of you. We may keep an electronic copy of this ID in our system for future reference.

11. **FATCA**

- 11.1 Under a Government treaty the US Internal Revenue Service can now collect taxes from US citizens in New Zealand. Because of that, we must establish the tax residency of each of our clients. For those who are Americans, information about their financial affairs may be passed to the US Internal Revenue Service by our Bank.
- 11.2 A Trust in New Zealand is also affected by this if it has a “controlling person” (settlor, trustee, or beneficiary) who is a US citizen or tax resident.
- 11.3 A New Zealand company is also affected if it has a director or shareholder who is a US citizen or tax resident.
- 11.4 The New Zealand Government is entering into similar information sharing agreements with other OECD countries.

- 11.5 IRD can compel us to supply information about you even though we have a duty of confidentiality to our clients, so we need your consent. We will give you a consent form to complete and return. **We cannot act for you until we have your consent in writing** [you only need to do this for us once, not every time we act for you, unless your tax residency changes].

12. **Land Transfer Tax Statement**

- 12.1 The Government also requires us to collect information from clients regarding land sales and purchases entered into on or after 1 October 2015. You will have to confirm your residency status and IRD number, except for the transfer of your main home.

- 12.2 However, you still have to give us the information if:

- (a) You use a Trust or Company to own your home.
- (b) You are an “off shore person”. This includes a New Zealander who has not been in New Zealand during the previous 3 years, or someone on a residency visa who has not been in New Zealand during the previous 1 year.
- (c) You have sold your main home 2 or more times in the previous 2 years.

- 12.3 There are significant penalties for providing false information. However, none of the details you provide will be made public.

- 12.4 If you have a trust that buys or sells any property, it must now have an IRD number. You should apply to IRD for a number in plenty of time if the trust does not already have one.

- 12.5 If you are not a New Zealand resident, you will also have to have a New Zealand IRD number before buying or selling land, and you will not be able to get that unless you have a New Zealand bank account. To avoid expensive delays, if this applies to you, you should arrange these things as early as possible before entering into a land transaction.

13. **How you can help us**

- 13.1 You can help us by:

- giving us clear instructions;
- asking if there is anything you are not sure of;
- telling us if you have any important time limits;
- dealing promptly with any questions we have;
- telling us if your contact details change; and
- keeping in touch.

13.2 Please ask us if you are concerned about anything or do not hear from us when expected.

14. **Termination**

14.1 You may terminate our retainer at any time.

14.2 We may terminate our retainer in any of the circumstances set out in the Law Society's *Rules of Conduct and Client Care for Lawyers*.

14.3 If our retainer is terminated, you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

15. **Retention of files and documents**

15.1 You authorise us (without further reference to you) to destroy all files and documents for this matter (other than any documents that we hold in safe custody for you) seven (7) years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.