



TRANSFER OF A PRACTITIONER'S PRACTICE – CHECKLIST

Rule 6 of the Legal Profession Uniform Legal Practice (Solicitors) Rules 2015 Transfer of a practitioners practice is copied below.¹

NOTE: Rule 6.1 and 6.2 does not apply where a new partner is admitted to a partnership which continues to conduct the practice. In all other circumstances the following procedure should be followed.

STEP 1

Before you deliver possession of your practice² to the law practice acquiring your practice you must provide each client with a written notice, advising them that at the expiration of the 14 days (or such other period as may be reasonable in the circumstances);

- (i) of your intention to transfer the clients documents, files, and safe custody documents (known as **trust property**³) to the law practice acquiring your practice, unless a contrary direction is received from them;
- (ii) your client's right to give you a contrary direction in relation to the conduct of their affairs and the delivery of their documents;
- (iii) the balance of money held on your client's behalf;
- (iv) your intention to transfer the relevant **account (trust monies)** to the practitioner or law practice acquiring the practice, unless advised by your client to the contrary;
- (v) your client's right to give you a contrary direction as to the manner in which you should deal with the **account (trust monies)** on the their behalf.

STEP 2

Advise the Law Society of any necessary changes to your practising certificate using the following forms directory link. <http://www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/formsdirectory/index.htm>

2.1 IF YOU INTEND TO CONTINUE TO PRACTICE AS A PRINCIPAL

In these circumstances there is no need to complete a variation of practising certificate form as you will retain the same practising certificate. However, you are required to notify the Law Society Registry within 7 days after the change in your particulars occurs.

2.2 IF YOU INTEND TO PRACTICE AS AN EMPLOYED SOLICITOR

If applicable, from the *forms directory* link complete change in employment details form to accurately reflect your changed status as an **employed solicitor** after your law practice has been transferred.

STEP 3

Advise the Law Society's Trust Account Department of any changes to your law practice trust account.

3.1 NOTIFICATION OPENING A NEW TRUST ACCOUNT

If applicable use the prescribed form on the *forms directory* link to notify the Law Society of the **opening** of your **new law practice Trust Account Rule 50(1) of the Legal Profession Uniform Rules**.

3.2 NOTIFICATION CLOSING A TRUST ACCOUNT

If applicable use the prescribed form on the *forms directory* link to notify the Law Society of the **closure** of your law practice **Trust Account - Rule 50(3) of the Legal Profession Uniform Rules**.

STEP 4

If the practice being transferred is an Incorporated Legal Practice (ILP), AND the ILP ceases to engage in legal practice then:

From the *forms directory* link complete and return notice of cessation of legal practice under S104(3) of the Legal Profession Uniform Law (NSW) and rule 29 of the Legal Profession Uniform General Rules 2015 within 14 days after the practice has ceased to engage in legal practice.





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STEP 5

Storage of a law practice archived files (trust property⁴)

5.1 Rule 14 of the Solicitors practice rules

Rule 14 of the Solicitors practice rules requires a solicitor with designated responsibility for a client's matter, to ensure that upon completion or termination of the law practice's engagement that the client or former client is given any client documents unless there is an effective lien.

A solicitor with designated responsibility or law practice may destroy client documents after a period of 7 years has elapsed since the completion or termination of the engagement, except where there are client instructions or legislation to the contrary.

5.2 What happens to the archived files when a law practice ceases to provide legal services?

In these circumstances the former **principal/s** of former law practices are responsible for the storage of archived files of the former law practice as they are by definition, the **solicitor with designated responsibility**⁵ of a client's matter.

5.3 Incorporated legal practices (in liquidation)

If liquidators are appointed to an incorporated legal practice (ILP) and the ILP gives notice that it will no longer engage in legal practice, then it is no longer a law practice for the purposes of the Act. It is however, a **former law practice**⁶ for the purposes of the Act.

In these circumstances, it is the former principal/s of the former ILP who has/have designated responsibility for the storage of the archived files of the former ILP.

Note a principal of an incorporated legal practice is an Australian legal practitioner who holds and Australian practising certificate authorising the holder to engage in legal practice as a principal of a law practice; and is a validly appointed director of the company.

Footnotes

¹ 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.

² The law practice acquiring your existing law practice may be **your own newly formed** partnership or Incorporated legal practice. Typically, this occurs when practitioners change their existing law practice structure **from a sole practitioner** to an incorporated legal practice; or from a **partnership** to a **sole practitioner** or an incorporated legal practice; or **from an incorporated legal practice** to a sole practitioner or a partnership.

³ Under section 128 of the Legal Profession Uniform Law (NSW) **trust property** means property entrusted to a law practice in the course of or in connection with the provision of legal services by the practice for or on behalf of another person, but does not include trust money.

⁴ Under section 128 of the Legal Profession Uniform Law (NSW) **trust property** means property entrusted to a law practice in the course of or in connection with the provision of legal services by the practice for or on behalf of another person, but does not include trust money.

⁵ As defined in the Glossary of terms in the *Legal Profession Uniform Law Australian Solicitors' Conduct rules 2015 Solicitor with designated responsibility* means the solicitor ultimately responsible for a client's matter or the solicitor responsible for supervising the solicitor that has carriage of a client's matter. The solicitor with designated responsibility is the **principal or principals of the law practice**.

⁶ s132 of the Act applies in relation to **former law practices** and **former principals** and associates of law practices in relation to conduct occurring while they were respectively law practices, principals and associates in the same way as it applies to law practices, principals and associates, and so applies with any necessary modifications.