

File Ownership and Handling



Who owns documents in a client file?

This fact sheet provides information for complainants and lawyers about ownership and management of clients' files.

Does a file belong to the client or the lawyer?

Most documents in a file belong to the client, but some belong to the lawyer. Ownership generally depends on when a document came into existence, and why.

Documents generally belong to the client in the following circumstances:

- The document existed before the client employed the lawyer and the client sent the document to the lawyer.
- The lawyer prepared the document for the benefit of the client. Examples include the lawyer's notes of conversations with third parties for the purpose of advancing the client's matter, records of attendances at court, briefs to Counsel and notes of conferences and telephone conversations with Counsel.
- The document was prepared by a third party and the client paid for it. Examples include experts' reports.

Documents generally belong to the lawyer in the following circumstances:

- The client gave the document to the lawyer for the lawyer's own use and benefit.

- The lawyer prepared the document for his or her own benefit, protection or records, and the client is not expected to pay for them. Examples include notes of attendances on the client, notes of work done and notes of matters requiring attention.

In some cases a document may have been created for the benefit of both the client and the lawyer. It will then be necessary to look at the main purpose of the creation of the document.

How long does a lawyer have to keep a file safe?

The *Legal Profession Act 2007* ('the Act') provides that a lawyer (or the law practice) may destroy or dispose of documents 7 years after the matter has been completed, if the lawyer has been unable to obtain instructions relating to disposal or destruction.

Common practice among lawyers is to keep files for a longer period taking into account factors such as the age of the client, the type of matter or the type of documents contained in the file, possible taxation implications and any statutory limitation period that might be relevant. Where a minor is concerned, lawyers generally keep the file until 7 years after the minor has reached 18 years of age.

Many lawyers enter into a written agreement with their clients which, among other things, authorises the lawyer to destroy the file after a specified period.

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Can the client be charged for storing and copying a file?

The lawyer should return the original file to the client, but might wish to keep a copy for his or her own protection or records. If that happens, the client should not be charged for the photocopying expenses.

The cost of returning a file to a client will generally be considered as part of the lawyer's office expenses. If a lawyer has to retrieve a file from storage at the client's request, the lawyer may charge for any costs associated with obtaining the file. These costs may include a component for file storage as well as retrieval. Some lawyers outsource the storage of files and that cost is passed on to the client.

Can my lawyer keep my file?

Lawyers have the right to keep a client's file if their costs have not been paid by the client but they cannot exercise a lien over wills or certificate of titles owned by a person who is not the client. This is called a *lien* and is similar to the action taken by car mechanics or dry cleaners when their costs are not met by customers who have had work done for them.

There are a number of rules which apply to liens and some instances when liens can be waived or the court can order the handing over of a client's file. For further information, see the Fact Sheet on '*Liens*'.

What happens if my file is lost or misplaced?

Unfortunately, administrative errors do occur and files and documents can be lost.

We cannot compel lawyers to obtain new documents from other lawyers or government authorities.

If the loss of a file or other paperwork has more serious implications for your matter you should seek legal advice.

The loss of a file or other paperwork may be indicative of a conduct issue. You should contact the Legal Profession Board of Tasmania to discuss your concerns.

The information contained in this fact sheet does not constitute legal advice.

The information contained in this fact sheet has been adapted with permission from the NSW Office of the Legal Services Commissioner, 'File Ownership and Handling' Fact Sheet 14.

Further information

If you have any questions or require further information, please contact the Legal Profession Board of Tasmania.

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