**Lien over Client Documents**

**What is a lien?**

A lien is a right for a member to retain possession of a client’s property until the client repays the amount owing to the member.

A lien maybe considered part of normal business practice, but for a lien to be effective, there are certain criteria that must be satisfied.

**Member Compliance Requirements**

The IPA request members comply with the Accounting Professional & Ethical Standards Board (“**APESB**”) standards and the Tax Practitioner Board (“**TPB**”) requirements in relation to claiming a lien over client property. Also included in the APESB standards and TPB requirements is guidance around document ownership, which is connected to claiming a lien over client property.

Both the APESB and TPB require that a client lien and document ownership arrangements are agreed to in advance of the appointment and formally documented in a client Engagement Document.

**Terms of Engagement**

A client Engagement Document should specify the contract terms agreed to between you and your client. Part of those contract terms should address the way a lien is exercised in the event that a client does not settle their debts with you. Also documented are arrangements around who owns client related documents, being source documents and working papers, both during the appointment period and in the event that the appointment is ended.

**APESB standard: APES 305 – *Terms of Engagement***

The APESB have produced the standard APES 305 *Terms of Engagement*. APES 305 sets out the standards in respect to the Terms of Engagement for members in professional practice.

APES 305 can be viewed at the following address:

<https://www.apesb.org.au/uploads/standards/apesb_standards/27102015051946_Revised_APES_305_Oct_2015.pdf>

APES 305 states, if an IPA member is seeking to exercise a right of a lien over client related documents as a result of a dispute with a client, this should be disclosed in the Engagement Document and clearly communicated to the client, including the process for dealing with disputes over the lien.

APES 305 also states that the Engagement Document should clearly state who owns:

* the *working papers* – being documents produced as a result of the client engagement, and
* the *source documents* – being original documents provided by the client to the member.

This includes both paper based and electronic documents and data.

**TPB requirement: TPB Information Sheet 02/2011 – *Claiming a lien over client property***

The TPB have issued an Information Sheet 02/2011 *Claiming a lien over client property*. This information sheet sets out the TPB’s position in respect to claiming a lien over a client’s property and document ownership.

TPB Information Sheet 02/2011 can be viewed at the following address: <https://www.tpb.gov.au/sites/default/files/tpb_i_02_2011_claiming_a_lien_over_client_property.pdf>

TPB Information Sheet 02/2011 advises there are two types of liens:

* a *specific lien* - being the right to retain a particular piece of property until the client repays the amount owing to the member, and
* a *general lien* - being the right of a particular class of persons (eg: solicitors, bankers or stockbrokers) to retain possession of property until the owner of the property has settled all their outstanding obligations to that class of persons.

In most cases, IPA members will be invoking a specific lien over client property for outstanding professional fees.

To exercise a valid lien over client property, there are certain criteria that must be satisfied:

* The member must be claiming the lien in their own right, and not as agent of a third person. The lien must be in relation to a debt owed by the client to the member. The client must be aware of the debt, and
* The member must have possession of the client’s property and it must have been acquired from the client with the consent of the client, and
* The debt must be connected to the property over which the lien is being claimed. For example, the property may be income tax returns which the member has prepared for lodgement with the Australian Taxation Office and the outstanding fees relate to the preparation and lodgement of those returns.

Property that can be subject to a lien are:

* Property upon which a member have expended labour and made more valuable such as a general ledger, balance sheet and draft income tax return,
* Electronic property such as a software data file that a member has expended labour and made more valuable.

Property that cannot be subject to a lien are:

* Invoices or sales journals where those documents are provided to the member only for checking and are not subject to any value add as a result of the member labour,

Information Sheet 02/2011 also states that the Engagement Document should clearly state who owns client related documents.

Subject to an agreement to the contrary, the following documents are usually owned by the client:

* source documents – such as ledgers, receipts, invoices or journals,
* correspondence between the ATO and the client and notices of assessment; and
* letter’s of advice, books of accounts, tax returns and financial statements prepared by a member for the client (once paid for).

Subject to an agreement to the contrary, the following documents are usually considered the members:

* Working documents of the member would not belong to the client unless the client specifically instructed the member to prepare such drafts for them and had paid for them.

The IPA have a full suite of Engagement Documents for members to use under the Practice Management Tool section of the website. These can be viewed at the following address: <https://www.publicaccountants.org.au/resources/templates>

Members are also encouraged to seek independent legal advice about the suitability of the IPA Engagement Documents to their business.