

# Nicholls Law Ltd

## Legal Services & Solutions

Level 1, 43 High Street, Auckland 1010, New Zealand

PO Box 105-629, Auckland 1143 DX CP24032

website: [www.nichollslawlimited.co.nz](http://www.nichollslawlimited.co.nz)

email: [nicholls@nichollslawlimited.co.nz](mailto:nicholls@nichollslawlimited.co.nz)

Cell: 021533301

Tel. (09) 300 3301 Fax (09) 300 3305

## **STANDARD TERMS OF ENGAGEMENT**

### NICHOLLS LAW LIMITED

In each case before providing legal advice or otherwise accepting instructions we require a signed and returned (or otherwise acknowledged) letter of engagement. The letter of engagement will specify the work to be done, as far as that is possible. The amount to be charged will be set out or estimated or the manner in which that will be calculated will be agreed.

We set out below general terms of engagement for your information.

#### **PERSONS RESPONSIBLE FOR YOUR WORK**

Their hourly charge out rates, are:

1. Aaron Nicholls (Director) \$ 500.00 Plus GST and Disbursements.
2. Manisha Saini (Law Clerk) \$ 200.00 Plus GST and Disbursements.

Where necessary we may instruct a barrister or other outside professional to assist or consult.

#### **INSTRUCTING SOLICITOR**

Where we are acting solely in respect of being the instructing solicitor for your barrister, we will only accept that instruction on the following basis:

1. If your barrister requires a retainer for his fee, they will be deposited into our Trust Account. This retainer may be required to be refreshed from time to time.
2. That money once received will be held in our Trust Account or on interest bearing deposit.
3. Your instruction to us includes an irrevocable instruction to pay your barrister's invoice from those funds immediately upon receipt by us.
4. We will account to you for those payments by way of copies of invoices and statements.
5. In each and every case our instruction of your barrister on your behalf is solely on the basis that you, the client, are entirely responsible for his/her fee.
6. Depending on the level of involvement required, our professional fees and office and administrative costs may be deducted from those funds to cover our fees and disbursements in that respect.

#### **THE BASIS OF OUR CHARGES**

We will endeavour to provide a fixed price for work where it is appropriate and practical to do so. If we don't provide a fixed price, then we will provide our best estimate for each stage of work to be undertaken. In some cases, it will not be possible to do either of those things – due to the complexity and or uncertainty of the work, such as in some litigation matters. In which case our attendances will be costed on a time engaged basis at the hourly charge out rate of the lawyer working on the matter, plus GST and disbursements.

## NICHOLLS LAW LIMITED

Where we require Certificate of Title searches and registrations, we obtain those from a third party – de Graaf Conveyancing Limited and where we require Personal Property Securities Register (“PPSR”) searches we obtain those from a third party – Landinfo.net Limited. Those charges are passed on to you as disbursements. No amount is added to disbursements, they are simply costs recovered. Where time is recorded it is in 6-minute blocks (“Units”) i.e. 10 Units in one hour. One Unit is the smallest amount of time recorded. We will also charge an Office Service Charge to cover office overheads of between \$25.00 to \$50.00 per matter and an Administration Fee for the handling your funds in our Trust Account and Interest-Bearing Deposit account.

### **BILLING ARRANGEMENTS**

For most matters we will require a retainer of approximately 50% of the fixed or estimated fee to be paid up front. This will be held in our trust account and debited for our fees as soon as an invoice is raised. We will issue interim accounts, either monthly or at stages throughout the instruction, with a final bill and statement on completion. We will deduct from funds received or held on your behalf any fees, disbursements or expenses for which we have raised an invoice. Acceptance of these terms is your authority to do so. In any circumstances where a retainer is not provided or refreshed as required, work will cease on your matter until that is resolved.

If in an individual situation we consider it necessary and appropriate - such as if we are instructed on a very significant piece of litigation, we may require security for our fee to be provided by you, potentially by way of a registered mortgage over real property or a security on the personal property securities register. This would only occur in extraordinary circumstances.

### **DISBURSEMENTS**

A disbursement is a payment made on your behalf to a third party. An identifiable disbursement will be recovered from you at its actual cost if reasonably and properly incurred or expected in relation to the transaction.

In addition to charging for disbursements incurred, we reserve the right to charge an additional fee to cover office overheads. If a fee is rendered against you it will be described as being an “Office Service Charge”.

We engage a third-party Conveyancer to conduct the e-dealings for conveyancing matters. This allows us to have an additional check on conveyancing matters as our Conveyancer will check all documentation is correct.

Our Conveyancing Professional is John de Graaf of de Graaf Conveyancing. Any costs that may be incurred from this will be recovered from you by way of disbursement.

We also engage a third party for conducting PPSR searches, registrations and assignments on the PPSR. Our agent is LandinfoNet. Any costs that may be incurred from this will be recovered from you by way of disbursement.

### **RETENTION OF RECORDS**

The majority of correspondence on all matters is undertaken via e-mail. To keep costs down it is not the policy of this firm to necessarily print every e-mail and retain a hard copy thereof. Electronic copies are retained. The most significant original documentation is held securely in our deeds room. In the situation where you uplift your file for any reason you agree that we will provide emails and some other documentation to you in electronic form such as on a flash drive.

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) 7 years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

## NICHOLLS LAW LIMITED

### **CONFIDENTIALITY**

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.

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.

We will of course, not disclose to you confidential information which we have in relation to any other client.

### **TERMINATION**

You may terminate our retainer at any time.

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

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.

### **CONFLICTS OF INTEREST**

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.

### **DUTY OF CARE**

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. Please note that we are not investment advisors and do not give investment advice, in any instruction in relation to an acquisition, of real property or otherwise – we do not give any advice in respect of the value or suitability of the acquisition from an investment perspective.

### **TRUST ACCOUNT**

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 [ ]% of the interest derived.

### **DISCLOSURE OF CONNECTIONS IN THE UNITED STATES OF AMERICA**

An inter-governmental agreement was entered into between New Zealand and the United States governments in June 2014 which brings the United States Foreign Account Tax Compliance Act (FATCA) into force in New Zealand. The FATCA agreement between New Zealand and the United States is directed at reducing tax evasion by US taxpayers and therefore has application to New Zealand law firms with trust accounts.

The Law Society recommends that to help meet the requirements to certify in respect of clients, law firms start obtaining information and consents from their clients (as to whether they are US citizens or US tax residents) either when a new matter arises or at the latest before funds are lodged in the trust account.

Where funds are held in the trust account on the snapshot date (30 June 2014) the relevant information will still need to be obtained.

## NICHOLLS LAW LIMITED

The Law Society has published information and consent forms on its website which provides information regarding FATCA and upcoming requirements for the OECD's Common Reporting Standard, which will impose FATCA-like obligations on New Zealand law firms under agreements the New Zealand Government may enter into with the Governments of many other countries.

You will disclose this information to NLL and further consent to complete, to the best of your knowledge, any forms provided to you for this purpose.

NLL is considered to be a passive Non-Financial Foreign Entity (NFFE) and as a result will be required to disclose information regarding a client to our bank and/or the IRD.

NLL will be able to retain these records and you consent to the retention of these forms and their disclosure if required to under the FATCA. NLL will obtain your authority to disclosure of FATCA information if required.

### **GENERAL**

These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.

We are entitled to change these Terms from time to time, in which case we will send you amended Terms.

Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.

### **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. 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 purpose 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. Except in certain circumstances specified in the Lawyers and 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.

## NICHOLLS LAW LIMITED

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 Aaron Nicholls at Nicholls Law Limited.

He may be contacted as follows:

- Letter – PO Box 105-629 or Level 1, 43 High Street, Auckland 1010;
- Email – nicholls@nichollslawlimited.co.nz; or
- Phone – 09 300 3301.

The Law Society operates the Lawyers Complaints Service and you can make a complaint to that service. To do so, phone 0800 261 801 for information and advice about making a complaint.

### 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.

### 6. Client Care and Service:

The Law Society client care and service information is set out below. Whatever legal services 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 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.lawsociety.org.nz](http://www.lawsociety.org.nz) or call 0800 261 801.

### 7. Limitations on extent of our Obligations or Liability

NICHOLLS LAW LIMITED

Any limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our letter of engagement.

**COMPLETION**

When this matter is completed, we will advise you accordingly and provide a brief summary of work undertaken if we have not already done so. Where appropriate, we will also identify any necessary future action that may be required.

To comply with the Rules of Conduct and Client Care for Lawyers, disclosure has to be made to you of the above terms. Accordingly, would you please sign and return the duplicate copy of this letter.

Yours faithfully,

**AARON NICHOLLS**

*Director*

[nicholls@nichollslawlimited.co.nz](mailto:nicholls@nichollslawlimited.co.nz)

021533301

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**I CONFIRM I HAVE READ AND UNDERSTOOD THE TERMS OF ENGAGEMENT AND INSTRUCT YOU ACCORDINGLY.**

**Name:**

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**Signature**