



Exercise lien over documents or records of clients with caution

A lien is a right of a person to retain possession of the owner's property until the owner pays what he owes to the person in possession. Institute members sometimes withhold clients' documents as a means to recover unsettled bills. Where a legal right of lien exists, the Institute recognizes the exercise of that lien in appropriate circumstances.

A right of lien will only exist where all four of the following circumstances apply:

- a. The documents retained must be the property of the client who owes the money and not of a third party, no matter how closely connected with the client;
- b. The documents must have come into the possession of the member by proper means;
- c. Work must have been done on the documents by the member; and
- d. The outstanding fees for which the lien is exercised must be in respect of

such work and not in respect of other unrelated work.

When a member is about to render a bill, which is substantially different from bills rendered to the same client on earlier occasions for which the work may appear to be comparable, it is good practice to explain to the client the reason for the variation. Where the increase is caused by extra work being necessary, the reason for the extra work can be explained. Where the increase is caused by increased costs, this also can be explained. In many cases both factors will affect the total fee and any explanation will be mutually helpful.

Members, however, should note that certain company documents or records cannot be subjects of a lien. Examples are company records and accounting records of a registered company which have to be made available for inspection or be kept at the registered office or some other specified places.

From time to time, the Institute receives complaints against members for allegedly exercising liens in inappropriate circumstances. Members should consult their solicitors before seeking to exercise a lien.

The exercise of a lien in fee disputes is perfectly legal, but members should remember that its nuisance value is likely to promote ill-will not only between the parties, but also towards the profession as a whole.

Institute resource

Statement 1.301 General Guidance *Books and Papers – Ownership, Disclosure and Lien* (Volume I of Members' Handbook.)



This article is contributed by the Institute's Compliance Department