

Solicitors' Certificates / Certificate of Independent Legal Advice

A Solicitor's Certificate is a document that confirms a borrower or guarantor has received independent legal advice regarding a loan and associated security documents. By obtaining a Solicitor's Certificate, lenders can be confident that the borrower or guarantor understands the potential liabilities and risks involved in signing the security documents.

Guidance for Legal Practitioners

Legal practitioners may:

- accept a retainer to give independent advice to a client, and
- provide a Solicitor's Certificate if that action is the appropriate means of achieving the desired outcome for the client;

provided the practitioner acts prudently and professionally.

Practitioners who choose to practice in this area should take appropriate care and seek adequate remuneration for their services given the inherent risks, the skills required and the time and care which must be taken. A solicitor not only needs to ensure that the client understands the risks associated with signing the documents but also that the documents contain the terms the client agreed to.

'Solicitors certificates are fraught with difficulty if practitioners do not treat them seriously and have good systems in place. We regularly see claims where the client alleges they received no or inadequate advice about mortgage or guarantee they were entering into but the lawyer says they did give advice. Invariably there is not sufficient written evidence to show what that advice was.' (lplc.com.au)

The insurers of solicitors in Victoria, the Legal Practitioners' Liability Committee, have several publications providing guidance on this issue. Though the publications are specifically aimed at Victorian practitioners, the guidance which is of a general nature is relevant to Tasmanian practitioners.

The Committee recommends the following resource links:

- a) [Solicitors' Certificates – Checklists, Articles and Other Resources](#)
- b) [Seven Ways to Avoid a Solicitors' Certificates Claim](#)
- c) [Establishing Identity – This LIJ article looks at the 2020 case of C&F Nominees Mortgage Securities Ltd v Karbotli & Ors \[2020\] in which the Court found reasonable steps to verify identity were not fulfilled and provides key takeaways for lenders and legal advisers.](#)
- d) [Rule 11 of the Legal Profession Uniform Legal Practice \(Solicitors\) Rules](#)