

HEAPHY & CO

PROPERTY LAW

TERMS OF ENGAGEMENT

1. Introduction

(a) Heaphy & Co (“we” or “our”) values its relationship with our clients (“you”) and believes that it is important that you are aware of and understand the terms on which we will provide legal services to you.

(b) These terms of engagement will apply every time you engage us to provide legal services to you (engagement), unless we have agreed an alternative arrangement with you, which is recorded in writing.

(c) We will take your continued instructions as your acceptance of these terms of engagement.

(d) These terms of engagement are an important document. Please keep a copy of this document for your records.

(e) If you have any questions about these terms of engagement, please contact us.

2. Services

(a) In carrying out the engagement for you we will:

- (i) take all reasonable care and skill;
- (ii) comply with our legal and ethical obligations to you;
- (iii) use our best efforts to deliver the desired outcomes within agreed or anticipated timeframes and costings; and
- (iv) subject to legal and/or ethical constraints, carry out your instructions and put your interests before all others.

(b) Our duties under these terms of engagement are owed solely to you, the person who has engaged us. We do not accept any responsibility to any third parties who may be affected by our performance of the engagement or who may rely on any advice we give, except as expressly agreed in writing between us.

(c) In order to provide efficient, specialist advice and service it may be that your instructions will be delegated to a person other than the person you originally instructed.

3. Communication

(a) We will report to you periodically on the progress of any engagement and will always try to keep you informed of any unexpected delays or changes in the character of the work being undertaken. You may request a progress report at any time.

(b) We require that you provide us with your full name, residential address, email address, a postal address and telephone number at which we can contact you when required.

(c) If you provide us with an email address, then information may be relayed to you by email without prior contact. Please let us know if, for any reason, you require to be telephoned before we send an email to you.

(d) We may from time to time send you information, such as client newsletters, updates, function invites, information about our services, and other material that we consider may be relevant to you. These may be sent in electronic form to the e-mail address provided by you. Unless you tell us otherwise, we will assume you agree to receive this information. If you do not wish to receive this information or would prefer that it be posted to you, please let us know.

4. Our Fees

(a) Unless we have provided you with a fixed fee quote in writing, our fees will be calculated in accordance with the guidelines laid down by the New Zealand Law Society and will take into account several factors including:

- (i) the time and labour expended;
- (ii) the skill, specialised knowledge, and responsibility required to perform the services properly;
- (iii) the importance of the matter to you and the results achieved;
- (iv) the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you;
- (v) the degree of risk assumed by us in undertaking the services, including the amount or value of any property involved;
- (vi) the complexity of the matter and the difficulty or novelty of the questions involved;
- (vii) the experience, reputation, and ability of the person who acts for you;
- (viii) the possibility that the acceptance of the particular retainer will preclude employment of that person by other clients;
- (ix) whether the fee is fixed or conditional (whether in litigation or otherwise);
- (x) any quote or estimate of fees given by us to you;
- (xi) any fee agreement (including a conditional fee agreement) entered into between us and you;
- (xii) the reasonable costs of running a practice; and
- (xiii) the fee customarily charged in the market and locality for similar legal services.

(b) You may request an estimate of our fee for undertaking the required services at the time you instruct us.

(c) Any estimate of our fee will normally be a range between a minimum and a maximum amount.

(d) Any significant assumptions included in the estimate will be stated.

(e) Unless otherwise stated, any estimate or charge out rate will not include office charges, disbursements, or GST.

(f) Any estimate or charge out rate provided by us is a guide only. The amount of the final fee may be more or less depending on all the circumstances.

(g) If we are going to significantly exceed any estimate provided by us, we will contact you to discuss a revised estimate.

(h) Any estimate given by us is not a quote or fixed fee, nor is it a cap on what may be charged by us.

(i) Our fees to you may include an amount for attendances incurred on matters contained in clause 13 below.

5. Disbursements and Office Services

(a) In addition to our fees we will charge you for disbursements incurred by us on your behalf. These disbursements will be charged to you at their cost to us. Examples of disbursements include, without limitation, Courier charges, LINZ registration and search fees, Companies Office registration and search fees, PPSR registration and search fees, court fees, filing fees and fees for agents, experts and other professionals. We may ask for payment in advance for disbursements, particularly where the amount is more than minor.

(b) We will also charge you for office services provided by us in acting on your behalf. These services include, for example, printing, photocopying, binding, postage, telephone, information retrieval and routine online searches. Office services are charged at 5% plus GST of the legal fee charged (exclusive of GST).

6. Our Invoices

(a) We will normally send you a monthly invoice for ongoing matters involving work spread over more than one month. Final accounts will be rendered on completion of each matter.

(b) We may ask you for funds in advance to be held in trust and applied by us with your approval in payment of our fees and expenses.

7. Payment

(a) Our invoices to you are payable within 14 days following the date of the invoice unless alternative arrangements have been agreed with you in writing.

(b) For conveyancing, business and other matters involving transactions occurring on a settlement date, payment of our legal fees, office service charge and disbursements are required to be paid in full on or before that settlement date.

(c) Where we have your consent, we will deduct our legal fees, office service charge and disbursements from funds held on your behalf in our trust account.

(d) When you have received an invoice from us and later pay us funds to cover that invoice, your consent for us to pay that invoice from those funds will be impliedly given.

(e) Part payment of an invoice will be accepted as partial settlement of the full amount of the invoice unless we agree in writing to accept the reduced amount as full payment.

(f) We reserve the right to require payment in advance.

(g) We do not accept credit card payments.

(h) If you have asked us to carry out work on behalf of your company then you agree that we have accepted your instructions on the basis that you personally have requested this work. While we may, at your request, present our invoice for payment by the company, in the event of non-payment by the company we will be entitled to invoice you for payment personally.

(i) if you have asked us to carry out work on your behalf and the liability for our costs rests with a third party (e.g., you are a landlord and the tenant is liable to meet the landlord's solicitors costs) then in the event of non-payment of our costs by the third party then you agree that you will be liable for payment of our costs.

(j) if we hold funds on your behalf, you authorise us to deduct our fees from those funds (unless they have been provided for a particular purpose) and send you an invoice as required by the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

8. Unpaid Accounts

(a) If you have difficulty in meeting any of our accounts, please contact us promptly so that we may discuss payment arrangements.

(b) If our invoiced amount or any part of it remains unpaid beyond 14 days from the date of the invoice, we reserve the right to:

(i) charge a default fee at the rate of 2% per month (including GST) on the outstanding balance; and

(ii) stop work on your matter until the overdue amount is paid, to require payment for future fees in advance or to terminate our representation in a manner which is consistent with our obligations.

(c) In the event we need to take recovery action from you, you will be liable to reimburse us for our actual costs of taking that action (including lawyers and debt collector's fees).

9. Trust Account

(a) We operate a trust account. All money received by you or on your behalf will be held to your credit in the trust account. Payments out of the trust account will be made to you or to others with your authority. Written authorisation from you will be required when payment is to be made to a third party.

(b) A full record of our trust account is kept at all times, and we will provide to you a complete and understandable statement of all trust money handled for you, all transactions in your account, and the balance of your account –

(i) in respect of ongoing investment transactions, at intervals of not more than 12 months; and

(ii) in respect of all transactions that are not completed within 12 months, at intervals of not more than 12 months; and

(iii) in respect of all other transactions, promptly after or prior to the completion of the transaction.

A statement of trust account transactions detailing funds received, and payments made on your behalf will also be provided at any time upon your request.

(c) Where appropriate, funds will be placed on call deposit with a bank registered under section 69 of the Reserve Bank of New Zealand Act 1989. Funds may also be placed on term deposit. We will require your written authority to place funds on term deposits.

(d) Interest earned from call deposits or term deposits (less withholding tax) will be credited to your trust account. Heaphy & Co does not charge an interest collection commission for administering your call deposits and term deposits.

(e) In accordance with the Lawyers and Conveyancers Act 2006, moneys held in our trust account which are not held on call or term deposit will not earn you interest.

(f) If you request a payment from our trust account to be made by direct credit to your account, you will need to provide to us such information or documents as we reasonably require to make the payment, including the following:

- (i) Your bank account statement, or
- (ii) Evidence from your bank sufficient to identify your account.

Once we have your account details from you or your bank, we will require verification of that account in person or by a phone call.

10. Ownership of Files and Documents

(a) You will own all documents (in whatever form) we create on your behalf in the course of our engagement. We will own all documents (in whatever form) we have created for our own use in performing our engagement.

(b) We own copyright in all documents or works we create in the course of our engagement but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal or commercial use. However, you may not permit any third party to copy, adapt or use the documents without our written permission.

(c) We reserve the right to exercise a general lien over any and all files and documents we hold on your behalf while you owe us money either for services rendered or for any other reason.

(d) We will store your files and documents for you without charge if you wish for at least 6 years following completion of our engagement. After that time, we may destroy these files and documents, except documents we have agreed with you to keep in long-term storage or documents we are required by law to hold for a longer period.

(e) The storage may be electronic and/or a physical file that we establish on a matter and any other documents you leave with us, and we may destroy all files and documents as soon as we have converted and stored those files and documents to an electronic format.

(f) We may store those files and documents at premises outside our offices in what is referred to as "the cloud" and operated by independent service contractors. If you uplift your files or documents,

we may make copies of them before giving them to you. We will not be obliged in any uplift of our files to provide any of our own file notes.

11. Confidentiality

(a) Information disclosed to us by you will be afforded confidentiality to the fullest extent allowed by law and the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers (Rules). You acknowledge that if we are required by law to disclose information to a third party, we may be prevented by law from telling you that we have done so.

(b) You agree that information disclosed to us that is in the public domain (other than through our fault) is not subject to confidentiality.

12. Privacy

(a) In your dealings with us we will collect and hold personal information about you. If you are an organisation this may include collecting and holding personal information about your personnel. We may also source or receive information about you from third parties and publicly available sources. We will use that information to undertake our business, carry out the engagement, contact you in the future about issues we believe will be of interest to you, such as those described at clause 3(d), and to comply with our legal obligations. Failure to provide information we request (including information requested under clause 13) may prevent or hinder us from starting the engagement, or providing our services to our customary standards, or at all.

(b) We may disclose your name and address to a credit agency to perform a credit reference or to undertake credit management processes if we deem it necessary to do so.

(c) Subject to our legal and ethical obligations to maintain client/lawyer confidentiality at all times you authorise us to disclose, in the normal course of performing the engagement, such personal information to third parties for the purposes mentioned in clauses (a) and (b) above.

(d) The information we collect and hold about you will be kept at our office and/or at file storage sites elsewhere in New Zealand. We may also use service providers who store (on our behalf) the information overseas. We use such security safeguards as are reasonable in the circumstances to protect it. Our address, as the person that collects and holds the information, is –

*Heaphy & Co
First Floor
Jack Coddington House
109 Lyndon Road East
Hastings 4122*

(e) If you are an individual, you have the right to access and correct this information as set out in the Privacy Act 2020. If you require access to the information, please email or phone us.

13. Verification of Identity and compliance with our applicable laws

(a) We may ask you to show us or provide us with documents verifying your identity, including in the case of an organisation, as to its ownership and control. We are required by the Financial

Transactions Reporting Act 1996 and the procedures for electronic registration of land transactions to take a copy of these documents in some transactions.

(b) You must also provide any information and documents as soon as reasonably practicable where we reasonably request it in order for us to meet our obligations under any law, including, without limitation, under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. Any delay by you in doing so may hold up work on the matter.

(c) To the extent that we hold funds in our trust account on your behalf whether on deposit or otherwise, you authorise us to disclose any information required to be disclosed to either this firm's bank or the Inland Revenue Department pursuant to Foreign Account Tax Compliance Act (FATCA) requirements. You authorise us to collect FATCA information from you in relation to such funds on an ongoing basis and whenever monies are held in our trust account and disclose such information as and when required under FATCA.

(d) From time to time, we may require reconfirmation or updates to such information and documents to ensure they are current.

(e) We are obliged to comply with all laws applicable to us in all jurisdictions, including (but not limited):

- anti-money laundering and countering financing of terrorism laws; and
- laws relating to tax and client reporting and withholdings.

We may be required to undertake customer due diligence on you, persons acting on your behalf and other relevant person such as beneficial owners and controlling persons. For “captured activities”, we will not be able to begin acting, or to continue acting, for you until that is completed.

To ensure our compliance and yours, we may be required to provide information about you, persons acting on your behalf or other relevant persons to government agencies. There may be circumstances where we are not able to tell you or such persons if we do provide information to agencies.

Please ensure that you, persons acting on your behalf and other relevant person such as beneficial owners and controlling persons are aware of and consent to this. It is important to ensure that all information provided to us is accurate. If the information required is not provided, or considered by us to be potentially inaccurate, misleading, or in contravention of any law, we may terminate or refuse to enter into an engagement.

14. Ethical Duties

(a) We take steps to ensure that no conflict of interest arises between clients for whom we are engaged. On the rare occasions that a conflict or potential conflict does arise, we will follow the Rules. In particular, we will:

- (i) advise the clients involved of the conflict or potential conflict;
- (ii) advise the clients involved that they should take independent advice and arrange that advice if required; and
- (iii) decline to act further for any client in the matter where to continue to act would or would be likely to disadvantage any of the clients involved.

(b) Our relationship is one involving a very high degree of trust and confidence between us. Either you or we may terminate the engagement at any time if either of us believes that relationship has been undermined for any reason.

(c) We may also stop work on a matter or terminate the engagement if required by law to do so, including, without limitation, if required to do so under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

15. Insurance

We hold professional indemnity insurance that meets the minimum standards from time to time set by the New Zealand Law Society. We will provide you with particulars of the minimum standards upon request.

16. Lawyers' Fidelity Fund

The legal profession also operates a lawyers' fidelity fund through the New Zealand Law Society which may reimburse clients who suffer pecuniary loss due to theft or misappropriation of funds by lawyers. The maximum amount payable by the fidelity fund by way of compensation to an individual claimant is limited to \$100,000.00. However, subject to certain limited exceptions as set out in the Lawyers and Conveyancers Act 2006, the fidelity fund does not cover a client for any loss relating to money where the lawyer invests the funds on behalf of the client.

17. Complaints and Disputes

(a) If you have any concerns or complaints about our services, please raise them as soon as possible with the person to whom they relate.

(b) If you are not satisfied with the way that person has dealt with your complaint please raise the matter with our Director, Jonathan Heaphy, on 021 421941. We will endeavour in good faith to resolve the matter with you in a way that is fair to all concerned. You will be provided with a response in writing.

(c) If the matter remains unresolved between us, we invite you to contact an independent and senior solicitor having experience in the same types of legal work as Heaphy & Co undertakes. We have received consent from 2 such solicitors to fulfil that role, and we will provide you with details of those 2 solicitors upon your request.

(d) Finally, if you are still not satisfied the New Zealand Law Society has a complaints service to which you may refer the issue. Matters may be directed to the –

The Lawyers Complaint Service

Phone: 0800 261 801

Complaints form: www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form

email: complaints@lawsociety.org.nz

18. Limitations on the extent of our obligations or liability

(a) In the unlikely event that our actions (or inactions) cause you to suffer loss, or we are liable to you in some other way, our total liability to you in relation to the matter (or series of matters) you have engaged us on will be the greater of:

- (i) where the liability is covered by our insurance, the amount paid out under our insurance up to a maximum of NZ\$1 million (including interest and costs);
- (ii) in any other case, an amount equal to five times the fees you paid us (excluding disbursements and GST).

This maximum applies to any liability that may arise in any way.

(b) You also agree that we will not be obliged to:

- (i) advise as to the accounting, tax (including GST) or investment implications of the matters on which we act for you, unless we accept a specific instruction to provide our opinion on such an issue. You should obtain such advice from the usual accounting, tax or investment advisor. If you do not have such an advisor, then we can refer you to somebody with appropriate qualifications;
- (ii) advise you regarding matters other than those upon which you specifically instruct us;
- (iii) confirm receipt by you of information we send to you by courier, post, email, or other means; nor
- (iv) inform you more than once of an action required of you.

(c) Upon completion of a matter we will, where appropriate, identify any necessary future action required of you. You accept that we will not be obliged to alert you when the time for that action arrives. If action is required at a future date, you must make your own arrangements to be alerted when that date arrives, e.g., by making a diary entry.

(d) Any claim you may have against us must be filed within two years after the date of the act or omission on which the claim is based. Otherwise, the claim cannot be filed, and we have no liability for that act or omission or for its consequences (to the extent permitted by law). Reference here to "claim" and "the date of act or omission on which the claim is based" have the same meanings as the Limitation Act 2010. This time limit overrides the time periods under the Limitation Act 2010 and applies regardless of when any fact relevant to the claim was discovered or able to be discovered.

19. Feedback

Your satisfaction is our primary objective and feedback from you is very helpful to us. Please feel free to comment on any aspect of the service provided by us.

20. New Zealand Law Society - Client Care and Service Information

Whatever legal services are being provided, your lawyer must:

1. act competently, in a timely way, and in accordance with any arrangements made;
2. protect and promote your interests and act for you free from compromising influences or loyalties;
3. discuss with you your objectives and how they should best be achieved;
4. provide you with information about the work to be done, who will do it and the way the services will be provided;
5. charge you a fee that is fair and reasonable and let you know when you will be billed;
6. give you clear information and advice;
7. protect your privacy and ensure appropriate confidentiality;
8. treat you fairly, respectfully and without discrimination;
9. keep you informed about the work being done and advise you when it is completed; and
10. 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 New Zealand Law Society's "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 or call 0800 261 801.

21. Acceptance

These terms outline the terms upon which instructions are accepted and apply to any current engagement and any future engagement, whether we send you another copy of them. Your instructions represent acceptance of these terms. We may unilaterally change these terms of engagement over time. You will either be notified of any such changes, or these Terms of Engagement may, from time to time, be updated on our website. Our relationship with you is governed by New Zealand law and the New Zealand courts have exclusive jurisdiction.

Should we email you a copy of these Terms of Engagement and you subsequently communicate with us, effectively asking us to act for you, then you are deemed to have accepted the content of these Terms of Engagement.

Version: 30 April 2026