

# Certificate of Independent Legal Advice? Think Twice!

Solicitors are regularly requested to provide Certificates of Independent Legal Advice (Certificates), however certifying that you have provided that independent advice is rarely good practice. Here's why.

- ▼ [Rule 11 of the Legal Profession Uniform Legal Practice \(Solicitors\) Rules 2015](#) prohibits a NSW solicitor from attesting to having given independent legal advice to a borrower or guarantor.

Instead – prescribed forms are to be used by which the client may make an attestation. The forms can be found on the Law Society of New South Wales website: <https://www.lawsociety.com.au/practising-law-in-NSW/rules-and-legislation/rules>.

- ▼ Rule 11.8 prohibits a solicitor (eg. acting for the lender) from procuring evidence of independent legal advice from a solicitor – other than as prescribed by Rule 11.
- ▼ Practice rules differ across states. Be aware of the requirements applicable to you – and be aware that interstate lenders may not understand the rules that apply to you. Do not succumb to pressure from lenders.
- ▼ Conflict issues arise. Certificates are given for the benefit of a third party, so that they may rely on them in the event of a dispute, at the cost of your client.

If you have issued such a Certificate, consider whether you must cease to act.

In NSW the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* require that a solicitor must not act for a client where there is conflict between the best interests of a client and the interests of a solicitor ([Regulation 12](#)) – or where a solicitor will be required to give evidence material to the determination of a contested issue ([Regulation 27](#)).

- ▼ In limited contexts, a Certificate will be required to be given by a legal practitioner. A binding financial agreement under [s90G of the Family Law Act 1975](#), for example, requires a statement to be signed by the legal practitioner to say that independent advice was provided to that party about the effect of the agreement on the rights of that party, and advantages and disadvantages to them in making the agreement. Proceed with caution.
- ▼ The wording matters. Follow the prescribed forms and be alert to the conflict rules and risks. Never attest to what the client has understood, which you cannot know. Do not provide financial advice and be careful to avoid a suggestion that you have done so. Ensure any Certificates are consistent with your retainer agreement.
- ▼ Preserve your insurance. If you enter into a contract which increases your liability beyond an ordinary solicitor's duties (by, for example, providing an indemnity or a warranty), then a coverage exclusion may apply under Lawcover's professional indemnity insurance policy. Another good reason to avoid issuing a Certificate beyond the prescribed form.