



GUIDANCE NOTE 7 CONVEYANCING FILES Issue 2

**Issued by the Council for Licensed Conveyancers on
30 March 2009.**

This Guidance Note came into force on 31 March 2009.

This Guidance Note supersedes Guidance Note 7 – Conveyancing Files issued by the Council on 19 October 2005 which ceased to have effect on 31 March 2009.

Licensed Conveyancers, Managers and Recognised Bodies must at all times act in compliance with the Council's Rules in so far as they are applicable. In particular, Rule 3.2 of the Licensed Conveyancers' Conduct Rules 2009 provides:-

"A Licensed Conveyancer must:

- 3.2.1** comply with the Guidance Notes unless he has good reason for not doing so in the particular circumstances;
- 3.2.2** ensure that the Recognised Body of which he is a Manager complies with the Guidance Notes unless it has good reason for not doing so in the particular circumstances."

Rule 5.2 of the Licensed Conveyancers' Conduct Rules 2009 states:

A Licensed Conveyancer, in the provision of Regulated Services, must:-

- 5.2.9** *keep safe Client information and records on a Durable Medium until delivered to the Client or disposed of in accordance with guidance issued by the Council."*

This Guidance Note adopts the definitions set out in the Licensed Conveyancers' Conduct Rules 2009.

“Recognised Body” includes, where the context permits, any Manager (including a Licensed Conveyancer who is a Manager) or employee acting for the Recognised Body.

Ownership of the file contents.

1. The conveyancing file itself will generally contain a mixture of papers and documents some of which belong to the Client and some to the Recognised Body. In addition there may be other papers and documents which belong to another Client, for example a lender.

2. Documents that belong to the Client

- Those prepared by the Recognised Body for the benefit of the Client and which have been paid for by the Client either directly or indirectly. They include:-
 - most attendance notes;
 - drafts;
 - copies made for the Client’s benefit of letters received by the Licensed Conveyancer;
 - copies of letters written by the Recognised Body to third parties contained in the Client’s file and used for the Client’s business, for example letters to lenders.

This does not include copies of letters written to the Client which may be kept by the Recognised Body.

- Those prepared by a third party during the course of a matter and sent to the Recognised Body (other than at the Recognised Body’s expense). Examples are receipts and vouchers for disbursements made by or on behalf of the Client and letters received by the Recognised Body from third parties.

3. Documents that belong to the Recognised Body

- Those prepared by the Recognised Body for its own benefit or protection, the preparation and production of which is not charged to the Client. They include:
 - copies of Communications written to the Client;
 - copies of Communications received by the Recognised Body;
 - office journals;
 - computerised records;
 - copies of Communications to third parties but only if they are contained in a filing system of all Communications written in the office;
 - tape recordings of conversations;
 - entries in diaries;
 - time sheets;
 - books of account;
 - inter office Communications;

- Those sent to the Recognised Body by the Client, the property of which was intended at the date of despatch to pass from the Client to the Recognised Body, including letters, authorities, and instructions written or given to the Recognised Body by the Client.

4. Joint retainers – joint Clients

Those documents referred to in paragraph 2 belong to the Clients jointly. Originals must only be handed to one Client with the consent of the other(s). Each Client is entitled to a copy without charge. Copies should be released to third parties only with the consent of all Clients.

5. Joint retainers –Client and lender

Where a request for the file or part of it is made by or on behalf of a lender, the Recognised Body should determine the ownership of the various papers in accordance with the principles in paragraphs 1 and 2. There may be documents which:-

- Belong to the lender alone including the lender's instructions to the Recognised Body, certificate of title and correspondence between the Recognised Body and the lender. The original may be released but a copy should be retained.
- Belong to the borrower Client, but which the lender is nevertheless entitled to see, as they relate to that part of the work where the lender and borrower can be said to have a common interest, such as deducing title. Examples are the contract, transfer and search certificates.
- Belong to the borrower Client that the lender is not entitled to see without the consent of the borrower Client (and for which a copying charge may be made).

Retention and Destruction of the file contents.

6. The Council recommends:

- (a) the contents of files relating to the sale of property are retained for a minimum of six years;
- (b) the contents of any other file are retained for a minimum of fifteen years;
- (c) after the relevant minimum period, and provided it has the Client's authority, a Recognised Body reviews the file to decide whether it may be safely destroyed;
- (d) a Recognised Body to consider retaining separately and for a longer period the authority from the Client.

7. If the matter involved a mortgage, then any specific requirements of the particular lender must be taken into account.

8. It is good practice for a Recognised Body:-

- (a) to make a copy (without charge) for its own benefit of any documents released;
- (b) where documents are requested with a view to any claim being made against it:

- not to make any admission of liability;
 - to notify insurers of the circumstances (as required by Rule 4.4.11 Conduct Rules 2009); and
 - to deal with the matter in accordance with instructions issued by or on behalf of the insurers.
- (c) where a file or information from a Client file is requested by a third party (such as the Police, HM Revenue and Customs or Trustee in Bankruptcy) to satisfy itself (by the production of legal authority, preferably a court order) that the party making the request is legally entitled to the documents and information requested;
- (d) where it intends to charge for copying documents (other than where any copying is made for his own benefit) to make a reasonable charge which the Council considers should be no more than 15 pence (plus VAT) per A4 sheet;
- (e) to ensure that the relevant Terms of Engagement authorise it to retain or destroy the contents of a Client's file or transfer the data onto another Durable Medium, since it may be liable for any loss incurred if the contents of a file are destroyed without the Client's consent.
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