

# OWNERSHIP OF DOCUMENTS BY THE CLIENT AND THE PRACTITIONER

## THE IMPORTANCE OF AN ENGAGEMENT LETTER

In order to determine whether documents belong to a client or the practitioner, it is necessary to consider:

- the agreement between the practitioner and the client (generally set out in an engagement letter)
- the capacity in which the accountant has undertaken the work
- the purpose for which the documents have been created.

APES 305: *Terms of Engagement* requires that, “a Member in Public Practice shall document and communicate to the Client the Terms of Engagement.”

A well drafted engagement letter is an important tool and smart business practice as it will establish and clearly set out the understanding between the client and the practitioner.

It is important that the engagement letter makes clear who owns the documents produced during the engagement.

Documents include any data, record or information in written, printed, photographic or electronic format, including data held with an outsourced service provider, or with a cloud service provider.

It is particularly important that the engagement letter provides clear guidelines on what happens to documents at termination of a retainer, or if there is a dispute about fees, and what effect non-payment may have on the client.

## OWNERSHIP OF DOCUMENTS WHEN THERE IS NO ENGAGEMENT LETTER

In circumstances where an engagement letter or any other specific agreement/relationship doesn't exist between a practitioner and client, then the following guidelines can be used to determine the ownership and right to use documents:

### **Client documents**

Documents provided to a practitioner prior to or during the engagement with a practitioner remain the property of a client and must be given to a client promptly on request, except in the circumstances where a practitioner is able to exercise a right of a lien. These documents are provided to a practitioner on the basis of a licence for the provision of the services by a practitioner.

### **Practitioner documents**

Documents produced by the practitioner during the engagement, or which existed prior to the engagement, (including but not limited to drafts, working papers or internal file notes) remain the property of the practitioner, however, a practitioner may need to provide a client with such documents in limited circumstances subject to the payment of all fees owing to a practitioner by a client (see 'Implied licence to use documents' below).

## OWNERSHIP OF DATA IN THE CLOUD

When using a cloud-based service provider, it is important to understand the terms of the agreement with the cloud-based service provider, to ensure that the chain of title in the intellectual property is confirmed prior to entering into the agreement.

Normally, when a practitioner subscribes to a cloud service, the cloud service provider would recognise a practitioner as the owner of the documents and information held on the cloud service platform. It is unusual that a platform, on which the information is held (including through a cloud service provider) will change the attributes of the information ownership between a practitioner and client.

A practitioner should carefully review the terms of service of a cloud-based service provider to ensure that the provider is providing access only to the cloud-based platform and will not have any claim to ownership of any documents or information uploaded to the platform.

## IMPLIED LICENCE TO USE DOCUMENTS

Generally, a licence will only be implied where there is a necessity to do so, and a client may in limited circumstances be able to argue that there is an implied licence for access to practitioner documents.

For example:

- providing a client with access to practitioner documents in the event they engage the services of a new practitioner, and those materials are requested or required by the new practitioner (subject to payment of all outstanding fees and disbursements) or
- where information is requested that could be said to form part of the accounting records of a company or the records of an unincorporated business, it would be reasonably considered that one should be able to obtain access and use of these documents. In the case of a Limited Company, it needs to maintain and keep its accounting records at its registered office.

## ENGAGEMENT TEMPLATE

CPA Australia provides a sample Terms of Engagement template for members in Australia and New Zealand. This guidance is for public practitioners and their professional staff. It incorporates the requirements from APES 305: *Terms of Engagement*, and where appropriate, requirements from other APES standards.

[Terms of Engagement template](#)

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