



Lawyers and Conveyancers Act (Lawyers: Fidelity Fund) Regulations 2008

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 30th day of June 2008

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to sections 94, 108, 309, and 311 of the Lawyers and Conveyancers Act 2006, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

1 Title

These regulations are the Lawyers and Conveyancers Act (Lawyers: Fidelity Fund) Regulations 2008.

2 Commencement

These regulations come into force on 1 August 2008.

3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—
Act means the Lawyers and Conveyancers Act 2006
Lawyers' Fidelity Fund or **Fidelity Fund** means the Lawyers' Fidelity Fund established under regulation 5
Law Society means the New Zealand Law Society.
- (2) Any term that is defined in the Act and used, but not defined in these regulations, has the meaning given in the Act.

4 Delegation of functions, duties, and powers of Law Society

The Law Society may in writing delegate (either generally or specifically) to any person or body any functions, duties, and powers of the Law Society under these regulations.

5 Lawyers' Fidelity Fund established

For the purpose of section 304(a) of the Act, the Lawyers' Fidelity Fund is established.

6 Maintenance and management of Fidelity Fund

- (1) The Law Society must take appropriate steps to maintain and manage the Fidelity Fund.
- (2) The Law Society must prepare, in respect of each financial year, an annual budget for the Fidelity Fund.

7 Costs payable out of Fidelity Fund

The Law Society may pay out of the Fidelity Fund the costs of establishing, maintaining, managing, and administering the Fidelity Fund.

8 Insurance arrangements

The Law Society may make such insurance arrangements in relation to the Fidelity Fund as it considers appropriate.

9 Investment of money

The Law Society may invest any money held in the Fidelity Fund in any manner it considers appropriate and prudent.

10 Minimum size of Fidelity Fund

- (1) The minimum size at which the Fidelity Fund is to be maintained in any financial year in order to be held out as a protection to clients of lawyers is the lesser of—
 - (a) 10% of the sum of all contributions from lawyers—
 - (i) received or expected to be received during that year; and
 - (ii) received in respect of the 4 immediately preceding financial years:
 - (b) \$250,000.
- (2) To avoid doubt, in subclause (1)(a), **contributions** does not include any extraordinary levies required under section 314 of the Act.

11 Maximum amount payable

The maximum amount that may be paid out of the Fidelity Fund to an individual claimant by way of compensation is \$100,000.

12 Notice of claim

- (1) A notice of claim against the Fidelity Fund required under section 324(3) of the Act must—
 - (a) be in form 1 of the Schedule; and
 - (b) be signed by the claimant or a person authorised to sign on the claimant's behalf; and
 - (c) contain full particulars of—
 - (i) the matters giving rise to the claim; and
 - (ii) the amount of the claim.
- (2) The Law Society may require the notice of claim to be accompanied by a statutory declaration in form 2 of the Schedule signed by the claimant or a person authorised to sign on the claimant's behalf.
- (3) The Law Society may, as it thinks fit, allow for any variations in, or dispense with, any form required under this regulation.

13 Dealing with claim

- (1) The Law Society must consider and deal with a claim with all reasonable expedition consistent with the nature of the claim and the surrounding circumstances.
- (2) In order to facilitate or assist the consideration of a claim, the Law Society may, as it thinks fit, do all or any of the following:
 - (a) make or cause to be made any inquiries or obtain any reports that it thinks fit concerning the claim or concerning any other claim or possible claims relating to the lawyer or other person in respect of whose acts the claim is made:
 - (b) request that the claimant, or any person having actual knowledge of the matter, verify by statutory declaration any statement, fact, or other matter relating to the claim:
 - (c) request that the claimant produce as exhibits to a declaration or otherwise all deeds, documents, and any other material of any nature or description relating to the claim:
 - (d) request that the claimant appear before any person appointed by the Law Society in respect of any matter relating to the claim.

14 Audit of Fidelity Fund accounts

The Law Society must ensure that the accounts of the Fidelity Fund are audited annually by a chartered accountant appointed for the purpose by the Council of the Law Society.

Schedule

r 12

Forms

Form 1

r 12(1)(a)

Claim against Lawyers' Fidelity Fund

To the New Zealand Law Society

Notice is given that *[full name and address of claimant]* has suffered pecuniary loss by reason of theft by *[name of lawyer, incorporated law firm, or agent of lawyer or incorporated law firm]* of \$*[amount of money or value of property stolen]* entrusted to the practitioner, firm, or agent in the course of the provision of regulated services, or in that firm's capacity as a solicitor-trustee, and accordingly claims against the Lawyers' Fidelity Fund the sum of \$*[amount]* as reimbursement in respect of the loss.

Particulars of claim

[Specify particulars of the matters giving rise to the claim, setting out fully the dealings with the person concerned leading up to the claim and attaching copies of any letters, accounts, statements, or other documents that are relevant.]

Particulars of amount of claim

[Specify particulars showing how the amount of the claim is calculated.]

Date:

Signature of claimant:

Signature of witness:

Name of witness:

Occupation:

Address:

Form 2

r 12(2)

Declaration in support of claim against
Lawyers' Fidelity Fund

I, [*full name, address, occupation*], being a claimant against the Lawyers' Fidelity Fund, solemnly and sincerely declare that the particulars set out in the notice of claim are full and true in all material respects.

And I make this declaration conscientiously believing the same to be true by virtue of the Oaths and Declarations Act 1957.

Declared at [*place, date*]

Before me: [*name, signature*]

(A person authorised to take a statutory declaration under the Oaths and Declarations Act 1957.)

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 August 2008, provide for rules relating to the establishment, maintenance, and management of the Lawyers' Fidelity Fund and related matters. These rules are enacted as regulations (under section 108 of the Lawyers and Conveyancers Act 2006) to ensure that they are binding on all persons.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 3 July 2008.

These regulations are administered by the Ministry of Justice.
