



LAWSPREAK

More paper on way as new rules come into force

You better get used to it. There will be more paper coming your way and there is nothing we can do about it.

Nolans and all New Zealand law firms are now required, under the Lawyers and Conveyancers Act 2006, to provide clients with written information about everything from fees and fidelity fund coverage to the name and status of the person carrying out

proposed legal work. And it is obligated to keep providing it.

This is part of the Conduct and Client Care Rules that impose new duties on all lawyers when dealing with clients. Client Care Rules specify the information required to be given to clients and when that information must be given.

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Nolans partner Neil Mackie (second from right) with (from left) Steven Shields, Enterprise Motor Group new vehicles manager, and Nolans' clients Marty Reynolds and Sam Willock.

Client relationships above par

A bit of fun on the golf course over the past few years has reaped more rewards than ever imagined for Nolans partner Neil Mackie and clients Marty Reynolds and Sam Willock.

The trio has played together in the Holden Scramble for the past four or so years with varying games and unremarkable results. But this month partner-client relationships were well and truly cemented when they won the regional finals of the Holden Scramble competition in Taupo ... and a trip to Australia to boot.

In August they excelled themselves by coming second out of 40 teams in the Gisborne Holden Scramble held at the Poverty Bay golf course. In so doing, they earned a trip to the regional finals in Taupo, playing at the prestigious Wairakei course in early November.

Each of the 32 teams were joined by a professional to make up a four; the

Nolans team by Taupo's Grant Fisher, who allegedly spends more time painting houses than practising his golf.

Neil says that all four played a few rough shots but pulled out some amazing ones when it mattered.

"The pro was nervous but we reassured him we were only there for a bit of fun. We thought we had no chance but ended up with 11 birdies from 18 holes. We played above expectations, sinking some long putts and hitting the ball close to the pin while still some distance away."

Neil plays off a 6 handicap; Sam, 20 and Marty, 23. They grossed 61 on the par 72 course. In late November the foursome will try their luck against another 33 teams, including five Kiwi teams, at the Australasian Holden Scramble final. The heat will be on with four days of golf at the Twin Waters Golf Club on the Sunshine Coast. Sounds like a bit of fun.

Changes to enduring powers of attorney now in effect

The rules have changed for creating and operating enduring powers of attorney, an important tool in succession planning since 1988.

Changes include a new range of duties, the ability to provide more directions, and rules about witnessing signatures.

We hate using acronyms but to avoid saying "enduring powers of attorney" 16 more times and taking up lots of valuable space, we're going to say EPA instead.

While most changes apply only to EPA signed on or after 26 September 2008, a few changes apply to all of them.

The new laws impose a range of duties on all attorneys, regardless of when the EPA was created. While the duties differ slightly between EPA for property and those for personal care and welfare, essentially an attorney must:

- act in the donor's best interests (the donor is the person who has appointed the attorney)
- consult family members and any other person specified by the donor, before exercising the EPA

- consider financial implications of decisions and keep financial records
- consult with the other set of attorneys before acting in exercise of the power of attorney if the donor has appointed different attorneys for property and for personal care and welfare
- have regard to directives given by the donor
- provide information on exercise of powers.

The forms of EPA have been changed too so the donor can give more directions when granting an EPA. For example, both forms of EPA:

- enable the donor to advise who the attorney must consult before acting on any matter and also to whom the attorney must give information and the type of information to be provided
- allow for other directions, specific to the form of EPA.

With the personal care and welfare EPA, the donor can nominate a person to assess their mental capacity.

With the property EPA, the donor can

state whether or not an attorney can complete a will on their behalf.

Witnessing EPA – New rules apply to here too. The donor's signature can only be witnessed by a lawyer, an officer of a trustee corporation or a registered legal executive. The witness must be independent of the donor and the attorney. Also, the person witnessing the donor's signature on the EPA must complete a certificate stating that the donor understood the implications and effects of the power of attorney and that the witness is independent of the attorney. This certificate has to be attached to the EPA. The EPA will not be effective unless these procedures are followed.

These new requirements will create some practical problems. Where a husband and wife appoint each other as attorneys and Nolans has acted for both husband and wife in the past, each will now need to go to different law firms to have their signatures witnessed by an independent lawyer.

Please contact your Nolans lawyer to find out how the changes may affect you.

New life and holidays a feature of life at Nolans

Julie Mettrick was pleased to get her teeth into an increased workload when she returned from satisfying her wanderlust in September. Appointed associate solicitor on 1 October, Julie spent seven weeks cruising Croatia and the Greek Isles, and spending time in London and Zurich. There was no time for post-holiday blues. She picked up extra files with the departure of former staff solicitor Anna Watt to Wellington, and is now happily splitting her time between family law matters, property and, a field that holds her increasing interest – employment.



Lucy Comerford

Assisting Julie with her family law and conveyancing work is new law graduate Lucy Comerford.



Julie Mettrick

The former Campion College student, who also has a BA in English, joined the firm in July. Once her professional exams are behind her, Lucy is expected to be admitted to the bar in February. And already family law holds her interest.

* * *

Nolans is expanding behind the scenes. Partner Kris Clapham and his wife Rhonda are now the proud and somewhat sleepless parents of two following the September birth of young Hunter Mark Clapham, brother to big sister Amelia.

Associate Leah McHardy and husband Alex – and two-year-old son George – are waiting expectantly for their second child due in early February. Leah is taking six months maternity leave but will still be available to clients during this period thanks to the use of technology.



Fresh off their cruise boat in Helsinki, Nolans partner Barry Henderson and his wife Marie celebrated Christmas early with this magnificent specimen, not far from the true home of Santa and his reindeer. The stopover was part of a 14-day Baltic cruise which included highlights St Petersburg, Stockholm, Berlin (a day trip from port) and a stunning Helsinki church built into a rock face. During their six-week trip, Barry drew on his natural skills to drive through Paris and Burgundy and says the pleasant character of the famed French capital will see him return. The cosmopolitan nature of Shanghai, visited on their way home, also captured their taste for more.

Client Care rules dictate what and when information provided

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Undoubtedly, some clients will find the information helpful, others may find the extra paper an unnecessary irritation.

The two main obligations are for lawyers to provide clients with written information on –

1. the principal aspects of client service, in advance, including:
 - the basis for charging fees
 - professional indemnity arrangements
 - coverage provided by the Fidelity Fund
 - procedures for handling complaints.
2. before undertaking significant work,
 - a copy of the client care and service information set out above
 - the name and status of the person who will be carrying out the work
 - any limitations on the extent of the firm's obligation to the client or which exclude liability.

Partner Barry Henderson says that while Nolans has already been providing much of this information to clients – some following a direct request by a client and some when confirming instructions – now it must always provide the information whether requested or not.

“The information that must be provided under the first obligation needs only

be provided to the client once, but has to be updated if it becomes outdated. That information is available on Nolans' website (www.nolans.co.nz), and will be kept updated.

“The information to be provided under the second obligation must be provided whenever Nolans undertakes a significant new job for a client, mostly whenever a new file is opened for a client.”

While the Client Care Rules will change some aspects of the delivery of services to clients, they will not change the way

in which Nolans has always endeavoured to serve its clients, and that is to provide legal services of a high standard in a timely and efficient way.

The Act, which came into force on 1 August 2008, changes the way the legal profession is governed and imposes many changes on all legal practices. The various sets of rules cover all aspects of legal practice including who is eligible to be a lawyer, professional indemnity requirements, the Lawyers' Fidelity Fund, the incorporation of law firms and the operation of trust accounts.

These are some of the rules set out by the Lawyers and Conveyancers Act 2006 which came into effect on 1 August 2008:

Client Care and Service Information

Whatever legal services your lawyer is providing, they must –

- act competently, in a timely way, and in accordance with instructions received and arrangements made
- protect and promote your interests and act for you free from compromising influences or loyalties
- discuss with you your objectives and how they should best be achieved
- provide you with information about the work to be done, who will do it and the way the services will be provided

- charge you a fee that is fair and reasonable and let you know how and when you will be billed
- give you clear information and advice
- protect your privacy and ensure appropriate confidentiality
- treat you fairly, respectfully, and without discrimination
- keep you informed about the work being done and advise you when it is completed
- 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 rules of conduct and client care for lawyers (the Client Care Rules). These obligations are subject to other overriding duties, including duties to the courts and the justice system.

Legal executive team gains skills and strength

Helen Hine has had cause for celebration and commiseration over the past few months.

In September she became a registered legal executive and the following month fractured her shoulder after being knocked off her bike at the Fitzherbert Street roundabout. A legal executive since 2005 and legal secretary since 1999, Helen is now an affiliate of the NZ Institute of Legal Executives.

To be a registered legal executive you have to hold a Legal Executive qualification issued by the New Zealand Law Society. That's no problem for Helen who spends most of her time in estate administration with a healthy dose of conveyancing and commercial lease work. She can now witness certain documents such as

enduring powers of attorney

“I enjoy estates but it is generally a sad time in people's lives whereas conveyancing is an exciting and happier time.”

Following in her footsteps are Sonia Wiersma, who joined the firm

mid-year from Waipukurau, and Helen Jensen. Sonia, who has worked as a legal secretary since 2004, will qualify as a legal executive at the end of 2009. She is positive about her move to Gisborne and enjoys riding horses, and playing netball



From left, Helen Jensen, Helen Hine and Sonia Wiersma.

and touch. Helen Jensen began her career with Nolans in 2006 and is legal secretary for Kris Clapham. This year the mother of two teenagers began the first of six papers towards her legal executive certificate, and relished the challenges of conveyancing and estate work.

LAWSPEAK

A newsletter from NOLANS, Gisborne's leading law firm

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GISBORNE

Looking to buy or sell property?

- check out the www.nolanshomefront.co.nz
- call NOLANS 867 1209
- email enquiries@nolans.co.nz

NOLANS' HomeFront website tells you what you need to know about buying and selling residential property. It makes the process easier for novices, offers tips for seasoned buyers and sellers and it's not full of legal jargon.

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