



Checklist for terms of settlement

This Checklist is designed to help solicitors and barristers ensure they have correctly addressed all of the relevant issues in terms of settlement. Using this checklist will help avoid the most common mistakes LPLC sees in terms of settlement that lead to claims. Barristers may find it useful to use this checklist alongside [LPLC's Good Counsel – Practice Risk Guide for Barristers](#).

Are parties correctly identified?

Is the court proceeding correctly identified?

Are there recitals giving brief background or context for terms of settlement, including a definition of any matters that are to be the subject of the release?

Payment obligations –

- by whom?
- joint or several?
- to whom?
- how?
- when?

Costs –

- Is the settlement inclusive of costs?
- If settlement is 'plus costs', how are they to be assessed?
- How are extant cost orders addressed?

Taxes and duties –

- Is there GST on the settlement sum? If so, who will bear the GST?
- Is there capital gains tax consequences? If so, who will bear the CGT?
- Are there stamp duty consequences? If so, who will bear the duty?

Is there an admission of liability or denial of liability?

Are all specific obligations agreed by the parties recorded?

Is the disposal of the proceeding recorded – discontinuance, dismissal, consent orders (including any past costs orders)?

CHECKLIST

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- Releases -
- Will there be a release?
 - Is it mutual?
 - Has the client specifically agreed to the scope of the release?
 - Is the release operative on signing the agreement or performance of agreement?
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- Are there confidentiality and/or non-disparagement requirements?
- Have these been correctly described?
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- Are there interests in land being addressed?
- Are the owners of the interest in land signing?
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- Are directors' guarantees required?
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- Does the settlement need to be in the form of a deed?
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- Is the settlement conditional on court approval?
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- In the case of self-represented litigants, do the terms acknowledge that they have been invited to seek their own legal advice before executing the terms?
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- Do the terms need to provide for the execution of counterparts?