



Solicitor's certificates for borrowers or third-party guarantors

Providing a solicitors certificate for the borrower or third party security provider

- Allocate only one senior person in the office to give solicitors certificates.

- Confine the provision of a solicitors certificate to existing clients.

- Where the client receives the security documents before you, request they send you the documents well in advance of your meeting to give you sufficient time to read them.

- Where you receive the security documents before the client, provide a copy of the documents to the client prior to signing to give them sufficient time to read them.

- If there is more than one client, consider whether their interests are the same. What assets do each of them have at risk? IF they are different you should only act for one.

- Never act for both the borrower and a third party security provider.

- Always advise the security provider client without the borrower present – unless the security provider is the sole director of the borrower company.

- Comply with rule 1L.2 of the [Legal Profession Uniform Legal Practice \(Solicitors\) Rules 2015](#) and use the Verification of Identity Standard in schedule 8 of the Model Participation Rules - face to face in person VOI.

- Use an independent interpreter if the client has limited English.
 - obtain written confirmation from the interpreter.
 - never use the person who is seeking to gain from the provision of the security as interpreter.
 - if you speak the client's language you do not need an interpreter but you may be asked to verify your proficiency if the certificate is ever challenged.

CHECKLIST

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If the client is the borrower, ask why they are borrowing the funds and record their response.

If the client is the third party security provider ask them why they are providing the security and record their response.

Advise the client about the key elements of the documents and the worst case scenario including the obvious practical implications of the transaction.

Key elements will include:

- joint and several obligations
 - interest rates
 - default clauses
 - that the mortgagors or guarantors may lose their property first
 - that the amount repayable can be more than the amount borrowed.
 - any unusual clauses
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Ask the client to tell you what they understood your explanation to mean and record their response.

Address the possibility of capacity, undue influence or duress.

Ask your borrower client why they are borrowing the money.

Do not provide financial advice.

Advise your borrower client of the interest rates applicable to the transaction. Advise them in strong terms to obtain independent financial advice about the loan and the investment for which they are borrowing the money. Refer your client to a qualified accountant or financial adviser and ensure they have enough time to obtain this advice.

Advise your security provider client in strong terms they should obtain independent financial advice about the ability of the borrower to repay the loan. Refer your client to a qualified accountant or financial adviser. Ensure they have enough time to obtain this advice



- Make a comprehensive file note of all attendances on your client, whether in your office or elsewhere. See LPLC's [template file note](#).
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- Check your file notes:
- are dated
 - identify the author
 - record the duration of the attendance
 - record who was present or on the telephone
 - are legible to you and someone else
 - record the substance of the advice given and the client's response/instructions
 - are a note to the file rather than a note to you.
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- As required by rule 11 of the [Legal Profession Uniform Legal Practice \(Solicitors\) Rules 2015](#) use the LIV form of certificate even if the financier has provided a different form of certificate.
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- Confirm your advice in writing and seek a signed acknowledgment from the client.
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- Charge appropriate fees that reflects the work done.
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- Keep files indefinitely.
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Unrepresented surety mortgagors or guarantors

- Advise any security providers in writing that you are not acting for them and they should seek independent legal advice.
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- Do not prepare answers to requisitions on the security provider's behalf.
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- Never use the borrower as an agent to reach the security provider.
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- Ensure the security provider signs the disbursement order and you bill the borrower direct.
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- Be clear about who you are acting for in your correspondence with the lender.
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Signing solicitors certificates - generally

- Only use the form of certificate as specified in the [Legal Profession Uniform Legal Practice \(Solicitors\) Rules 2015](#) when advising a borrower, a grantor of a security interest or a security provider.

- Never be complacent about the content and form of documents which lenders insist be signed and/or witnessed by you.

- Scrutinise what you are being asked to sign.

- Consider whether the certificate and/or declaration proffered is appropriate and reasonable.

- Ask yourself whether you can personally vouch for the contents of the certificate and/or declaration.

- Do not sign unless the matters contained in the certificate and/or declaration are within your knowledge and true.