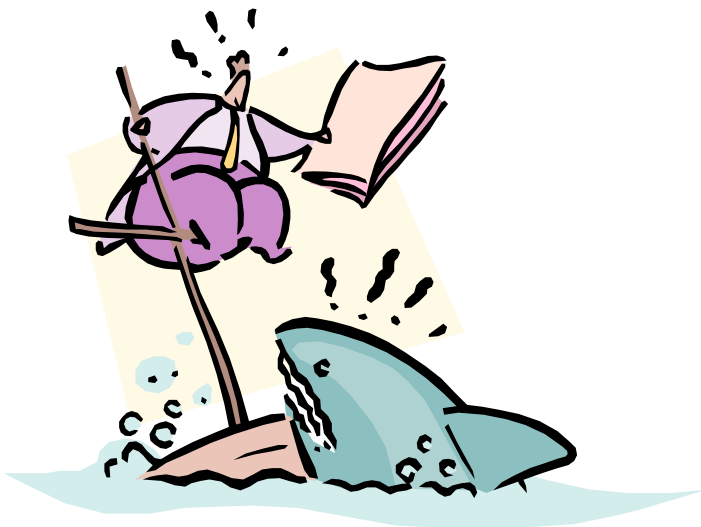


Jonathan Vowles
CHARTERED ACCOUNTANTS

Beginners Guide to the Accountant's Lien

A Lien is the right of one person to hold onto something valuable until the another person pays their bills. Accountants frequently refuse to hand over documentation and paperwork until their bills have been paid. But a Lien is a legal right and is legal in some circumstances and not in others.



Client's Audit or Accountant's Working Papers Files

There is debate on the ownership of the client's working papers file created by chartered accountant, whether it should be the property of the client or the accountant. The leading case on this ownership matter is Chantrey Martin & Co versus Martin 1953.

The general rules are:

Where the relationship is that of client and professional accountant, then all documents are the property of the accountant. The only exceptions are original documents, such as statements, invoices etc., which remain the property of the client

Where the relationship is that of principal or agent. This relationship will exist in situations like dealing with the inland revenue, negotiating loans, and arranging the sale or purchase of a business or other property; In these cases all the papers are likely to be the property of the client.

 CHARTERED ACCOUNTANTS

 BUSINESS SERVICES

 BOOKKEEPING SERVICES

 PAYROLL SERVICES

 CONSULTANCY SERVICES

The ownership of working papers may not seem important, but it may be relevant in situations such as changes in professional appointments, legal proceedings for recovery of documents, negligence actions etc,

Accountant's lien

Accountants are considered to have a 'particular lien' over any books of account, files and papers which their clients have delivered to them and also over any documents have come into their possession in the course of their ordinary professional work. A particular lien gives the possessor the right to retain goods until a debt arising in connection with those services are paid. The relevant case law is Woodworth v Conroy 1976.

Professional Regulation

The Institute of Chartered Accountants in England and Wales has issued regulations to its members over Liens and when they can and can't be used or enforced. The ICAEW members handbook states:

"A right of particular lien (in the absence of any agreement to the contrary) will exist only where all of the following circumstances apply:

- (i) *The documents retained must be the property of the client who owes the money and not of a third party, no matter how closely connected with the client.* Accordingly, where a member carries our work for both a company and its directors in their private capacities and where fees remain outstanding in respect of the work done for the directors personally, no right of lien will exist over the company's documents.
- (ii) *The documents must have come into the possession of the member by proper means.* Accordingly, if a member receives documents belonging to a client from a third party in error, the member would not be entitled to exercise a lien over them.

 **Jonathan Vowles**
CHARTERED ACCOUNTANTS

Is an independent firm of accountants, tax advisors and business advisors

114 High Street
Cranfield
MK43 0DG

Tel 01234 752566
Tel 01908 616104
Fax 01234 752577
info@vowles.co.uk
www.vowles.co.uk

- (iii) *Work must have been done by the member in respect of the documents.*

A member may exercise a lien over documents where he has done work in respect of them. Case law indicates that a member's lien would be undermined if a fee note is not submitted or an oral demand not made within a reasonable period of time. The Institute's ethical principles, in particular the fundamental principle of integrity, oblige that a member acts not only with honesty but also with fair dealing. As such, a member who has not already issued an invoice in relation to such work or communicated to the client that there are fees due (and the amount due) must do so as soon as is practicable to ensure that both his legal position is maintained and that he complies with the Institute's high ethical standards.

- (iv) *The fees for which the lien is exercised must be outstanding in respect of such work and not in respect of other unrelated work.*

Where documents belonging to, or created for, a client relate to an earlier or different engagement for which no fees are outstanding, no right of lien can be exercised over those documents in respect of other engagements for which fees are outstanding. For example, where a member is holding documents which relate to the preparations of a client's financial statements, the member may not exercise a lien over those documents in respect of unpaid fees which relate to tax advice provided to the same client.

The ICAEW notes that there are special cases

There are various special cases where the normal position regarding the existence and enforcement of liens does not apply. Special cases may arise as a result of the provisions of a particular statute, or from considerations of general public policy and include the following.

Statutory books of companies

An established line of authority exists in which the courts have held that no lien can exist over books or documents of a registered company which, either by statute or by the articles of association of the company, have to be available for public inspection or to be kept at the registered office or some other specified place or to be dealt with in any special way. Accordingly, documents such as the register of members and directors' minute books cannot become the subject of a lien.

Accounting records of companies

A lien cannot be asserted over accounting records as defined in s.386 Companies Act 2006 ('Accounting Records') because such records are required to be kept as set out in the Companies Act 2006, and must be open to inspection in accordance with the provisions of that Act.

What does it all mean?

What conclusion can we make from all this? Firstly, for an accountant to place a lien over a client's information the fees that are outstanding have to relate to those books and records. Secondly, a Lien cannot exist over the statutory books or accounting records of a limited company. Therefore sole traders and partnerships can be the subject of a Lien but not limited companies.

Caveat: This guide is no substitute for proper professional advice and no responsibility or liability can be taken by Jonathan Vowles Chartered Accountants for any action or inaction taken as a result of reading it.

© Jonathan Vowles Chartered Accountants 2004-2010



Is an independent firm of
accountants, tax advisors and
business advisors

114 High Street
Cranfield
MK43 0DG
Tel 01234 752566
Tel 01908 616104
Fax 01234 752577
info@vowles.co.uk
www.vowles.co.uk