

## Standard Form Contingency Fee Agreement Checklist

Lawyer/Paralegal:

Client Name:

Client Matter No.:

This Checklist is designed for use by lawyers and paralegals. Prior to using this Checklist, you should review the [Instructions for the Standard Form Contingency Fee Agreement Checklist](#). These Instructions outline the circumstances in which this Checklist applies and the way in which you should use it. The Instructions also direct you to the applicable legislative authorities, rules of conduct, and other related resources. You should refer to these requirements and supports to determine the full extent of your legal obligations and professional responsibilities with respect to contingency fees.

**You should only use this Checklist for contingency fee arrangements entered into on or after January 1, 2022, that require you to use the revised Standard Form Contingency Fee Agreement (“Standard Form CFA”).**

### At the outset of the matter

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#### 1. Review or confirm that you are familiar with the requirements for contingency fees

I have reviewed or am familiar with

- the [Solicitors Act](#)
- [O. Reg. 563/20, Contingency Fee Agreements](#) (“O. Reg. 563/20”)
- Sections 3.6 and 4.2 of the [Rules of Professional Conduct](#) (“Rules”) or Rules 5.01 and 8.03 of the [Paralegal Rules of Conduct](#) (“Paralegal Rules”) and Guideline 13: Fees of the [Paralegal Professional Conduct Guidelines](#) (“Guidelines”)
- the [Standard Form CFA](#)
- the [Contingency fees: What you need to know](#) (“Consumer Guide”)

Lawyers and paralegals may also wish to review the Law Society’s [Frequently Asked Questions about Contingency Fees](#) (“Contingency Fee FAQs”).

#### 2. Ensure you are permitted to enter into a contingency fee agreement for this matter

I am a **lawyer** and

- not** representing the client in a family law, *Criminal Code (Canada)*, or any other criminal or quasi-criminal matter

**or**

I am a **paralegal** and

- the matter is within my permitted scope of practice as defined in section 6 of [By-Law 4](#), and

- it is **not** a *Criminal Code (Canada)* or any other criminal or quasi-criminal matter.

**Note:** If you do meet these conditions, you are **not** permitted to enter into a contingency fee agreement for this matter and should **not** use this Checklist.

**3. Confirm that you are required to use the Standard Form CFA for this matter**

- I am required to use the Standard Form CFA for this matter because
  - The legal services being provided are wholly or partly in exchange for a percentage or proportion of the amount or the value of property being recovered under an award or settlement
  - My client or the person or entity responsible for payment of my client’s legal fees in the matter that is the subject of the contingency fee arrangement is **not** an organization as described under Section 7(3) of [O. Reg. 563/20](#), and
  - The court has **not** approved the contingency fee agreement, or the contingency fee set out in the agreement.

**Note:** For information on the requirements for contingency fee arrangements that are exempt from using the Standard Form CFA, review the **Contingency Fee Agreements** section of the Law Society’s [Contingency Fees FAQs](#).

- I am choosing to use the Standard Form CFA for this matter but am not required to do so.

**4. Ensure compliance with the marketing disclosure requirements, if applicable**

- I do **not** market my services on the basis that clients may be charged a contingency fee **(if you checked this box, proceed to #5)**

**or**

- I market my services on the basis that clients may be charged a contingency fee, and
  - I have disclosed to the client
    - The maximum contingency fee percentage that I charge either by
      - Posting it on my firm website, **or**
      - Providing this information to the client when they first contact me because I do not have a website, and either
    - I am **not** charging a contingency fee percentage that is more than my published general maximum contingency fee rate, or
    - I am charging a contingency fee percentage that was more than my published general maximum contingency fee rate, and
      - I have now published the higher rater on my firm website as my maximum rate or will advise clients of this higher rate going forward

Responsible Lawyer/Paralegal:

Date:

## Prior to entering into the contingency fee agreement

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### 5. Prepare a Standard Form CFA for the matter

I have

- Used the [Standard Form CFA](#)
- Included the contingency fee percentage or other basis of the contingency fee in the agreement
- Filled in all other relevant information for the matter
- Removed or tailored optional language or sections as appropriate to the client or client matter
- Not made any other additions or modifications to the Standard Form CFA

**Note:** Aligning the Standard Form CFA with your firm branding is permitted.

### 6. Comply with the client disclosure requirements

I have

- Provided the client with the Consumer Guide
- Ensured that the client had a reasonable opportunity to review and consider the Consumer Guide
- Obtained court approval of the contingency fee **or** advised the client about the factors that I took into consideration when determining the appropriate percentage or other basis of the contingency fee, including
  - The likelihood of success
  - The nature and complexity of the claim
  - The expense and risk of pursuing it
  - The amount of the expected recovery
  - Who is to receive an award of costs

**Note:** If you have obtained court approval of the contingency fee, you should indicate in the Notes section of this Checklist the date(s) upon which court approval was sought and obtained.

Responsible Lawyer/Paralegal:

Date:

## At the time of entering into the contingency fee agreement

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### 7. Administer the Standard Form CFA in accordance with the [Solicitors Act, O. Reg. 563/20](#), the [Rules](#) or the [Paralegal Rules](#), and best practices

I have

- Reviewed the Standard Form CFA with my client, discussing any particulars added specifically for the client or client matter

- Asked my client if they have any questions related to the contingency fee, the Standard Form CFA, or the Consumer Guide
- Answered all my client's questions
- Confirmed my client's understanding of their rights and obligations under the Standard Form CFA
- Considered requesting that the client initial the Consumer Guide to confirm that the client received and reviewed it
- Signed and required my client to sign the Standard Form CFA
- Provided my client with a fully signed copy of the Standard Form CFA
- Obtained court approval for the contingency fee if my client is a person under a disability represented by a litigation guardian
  - I have indicated in the Notes section of this Checklist the date upon which court approval was sought and obtained.
- Retained for my records:
  - A fully signed copy of the Standard Form CFA, and
  - The court's approval of the Standard Form CFA, if required

Responsible Lawyer/Paralegal:

Date:

### **During representation under the contingency fee agreement**

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**8. Comply with the obligation to provide written settlement breakdown to the client if advice was provided about settlement**

- I have disclosed in writing an estimate of the approximate net amount the client is to receive from the settlement, including a breakdown of
  - Legal fees
  - Disbursements, and
  - Any other charges to be deducted from the amount the client will receive, or
- No advice was provided about settlement

Responsible Lawyer/Paralegal:

Date:

### **Upon completion of the contingency fee agreement**

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**9. Deliver a bill to the client that includes the required fee-related disclosures**

The bill I delivered to the client included

- The total amount of the settlement or award
- The net amount that the client receives
- An itemized list identifying disbursement costs, legal fees, and taxes charged to the client
- Unless the court has approved the contingency fee, an explanation of the reasonableness of the fee with reference to the following:
  - The time the lawyer or paralegal expended
  - The legal complexity of the matter at issue
  - The results achieved
  - The risk I assumed including the risk of non-payment where there is a real risk of an adverse finding on liability in the client's case
- A statement that the client has a right to apply to the Superior Court of Justice for an assessment of the bill in accordance with section 28.1 of the [Solicitors Act](#) and specifies the latest date for doing so

Responsible Lawyer/Paralegal:

Date:

Notes: