

Solicitors' Term Deposit or Mortgage Investment Initial Disclosure

(Part 4 Securities Markets Act 1988 and Financial Advisers Act 2008)

Details of the Investment Broker/Adviser (solicitor)

Name of Investment Broker/Adviser: Gibbs Mills Livingstone, Barristers & Solicitors
Address: Aviemore Court, 26D Aviemore Drive, Highland Park, Manukau, Auckland
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Background

There is some doubt as to the requirement to make disclosure in respect of securities by reason of current legislation. In any event, we have chosen to make the following disclosures as a service to our clients and members of the public accessing this website, notwithstanding that mortgages arranged through our firm are generally exempt.

Experience, Qualifications & Professional Standing

David Gibbs, Valerie Mills and Carol Livingstone are partners in the firm. They are qualified barristers and solicitors in New Zealand, hold current practising certificates, and are members of the New Zealand Law Society.

David Gibbs obtained an LLB law degree at Bristol University in England in 1969 and was admitted as a solicitor of England and Wales in 1972. He was admitted as a barrister and solicitor in New Zealand in 1975 and has been continuously practising in Manukau City since that time.

Valerie Mills obtained an LLB degree at Auckland University in 1977 and was admitted as a barrister and solicitor in 1978.

Carol Livingstone initially obtained a BA at Auckland University in 1993, an LLB degree at Canterbury University in 1999 and was admitted to the Bar in 2000.

All partners have kept up to date with changes in the law and David has had greater responsibility for matters relating to bank deposits of clients' funds and investments on secured mortgages.

Our experience is limited to mortgage investments or the placing of clients' money on term deposit through the firm's trust account at a trading bank.

Summary of Investment Broker's Procedures

1 Investment money may be paid (or delivered) to the investment broker by:

- (a) Cash; or
- (b) Cheque (including a bank cheque); or
- (c) Direct credit.

If payment is made in uncleared funds, the investment broker may wait until the funds are cleared before disbursing the investment money.

2 The investment broker will hold the investment money in its trust account on trust for the investor in accordance with section 89 of the Law Practitioners Act 1982 until it is distributed in accordance with the investor's instructions. The money may be held on term deposit at a registered bank (not a security as defined by Part 4 of the Act).

The investor must supply the investment broker with a signed investment authority specific to a particular loan before the investment money is invested in a mortgage (called a "security"). Such an authority will disclose the amount of the investment, the interest rate, the term, and the property over which a mortgage security is given in favour of the investor. Generally we do not encourage or recommend contributory mortgages.

The investment broker will then draw the investment money from its trust account and invest it in the mortgage security.

The investment money before being invested in a security will be held in the investment broker's trust account in the firm's name on trust for the investor.

- 3 If the investment money is paid in cash, by cheque, or by direct credit, the investment broker will supply the investor with a receipt (on request).
- 4 The investment broker will keep records of the investment money and the security in accordance with the Law Practitioners Act 1982, the Solicitors Audit Regulations 1987, the Solicitors Trust Account Rules 1969, and any other legislation rules in addition, replacing, or varying any of them. These records will include copies of trust account receipts, cheques and ledgers, investment ledgers, and bank statements that will separately identify the investor's investment money and security.
- 5 The investor will receive a written statement relating to the investment money (including its proceeds) at least once every 12 months (whether or not this is requested). Tax will be deducted by the investment broker from interest earned and paid to the Inland Revenue Department as required by law. As soon as practicable after 31 March each year the investment broker will provide a certificate of interest earned and tax deducted in the preceding tax year.
- 6 The investment broker will supply the investor with a copy of these records relating to the investment on request. The investment broker may charge a reasonable fee for this.
- 7 The receipt, holding, and disbursement of the investment money by the investment broker is liable to be audited at any time by auditors appointed by the New Zealand Law Society.
- 8 Subject to any arrangement entered into with the investor before the money is received, the investment broker may not use the investment money for its own benefit except that it may:
 - (a) Charge and set off against all or part of the investment money (including its proceeds) a commission of 5% of the interest paid on the investment money; and
 - (b) Make any other lawful set-off against, or claim any lawful lien on, all or part of the investor money (including its proceeds) for any of the investor's debts due from time to time to the investment broker.
- 9 At the end of the term of the security the proceeds received by the investment broker will be banked into the investment broker's trust account. The investment broker may take commission and other money it is allowed or required to (including tax) from the proceeds.
- 10 The investment broker will then pay the balance of the investment money (including the balance of its proceeds) to the investor by trust account cheque or as otherwise directed.

For further information or to make an appointment, please contact us.