

A GOOD PRECEDENT

Using precedent documents effectively is essential risk management.

TIPS

- Invest in buying good template documents or having someone prepare them.
- Use only template precedents where variables are blank.
- Do not copy over documents from other files.
- Train and supervise staff appropriately.
- Allow sufficient time for proofreading and client review of documents.
- Review your system of keeping precedents up-to-date.

Most practitioners understand the value of having good precedents and it is an important investment for any firm irrespective of its areas of practice. However, precedents are not just a set and forget tool. If not used and maintained properly, precedents can increase your risk.

Previous matter documents are not precedents

Sometimes claims arise where the firm does not have a proper precedent and staff just copy over a document from an old file for use in a new matter but fail to make all the necessary changes because of a lack of attention to detail.

We have seen this combination when practitioners are preparing leases, s32 statements, contracts of sale and family law financial agreements.

In one claim, a practitioner acted for the ex-husband. The practitioner was instructed to prepare a financial agreement on the basis that the ex-wife had agreed to accept a very small amount of the asset pool. The practitioner copied a financial agreement from another file.

Unfortunately, the practitioner failed to replace the names of the parties in the copied agreement with the new parties. The most dramatic error was in the solicitor's certificate where one of the names was wrong.

Not long after the agreement was signed by the parties and their respective lawyers, the ex-wife changed her mind and sought to challenge the validity of the agreement. One of the grounds was that the wrong names were shown in the agreement.

We are also aware that some lawyers and clerks have a habit of producing a document from a precedent on their firm's practice management system and using that as their precedent for subsequent documents. Problems can arise when the makeshift precedent lacks the updates and variables such as optional clauses that are contained in the actual system precedent.

To avoid these mistakes only use template precedents where any variables are blank and have a strict policy

of not copying over documents from other files. Consider using document assembly and automation software which generates documents after the user answers a series of questions. You can adapt your own templates using this type of software or use templates from commercial providers.

Practice management

As precedents are an essential practice management tool, it is important to invest in developing policies and systems to optimise their use. To use precedents effectively and minimise risk, you need to:

- train staff on how to use your precedents safely and encourage attention to detail
- exercise appropriate supervision regarding the use of precedents
- have a system that ensures all precedents are kept up-to-date.

All staff using precedents need to be properly trained and supervised. We have had claims where inexperienced staff members have included optional precedent clauses in documents that were neither requested nor in the client's interests while their supervising practitioners were on leave. Although all the relevant clauses for a document may be contained in a precedent's variables, staff members will need guidance about which option is applicable from time to time. You should not assume that a document will be right just because a staff member uses the correct precedent.

Every matter is different and no matter how good your precedent, you need to proofread the document. Some documents need to be road-tested to show how critical clauses such as will provisions and contractual formulae will operate in a practical sense. Send the document to the client in draft and give them sufficient time to read and raise any issues.

You should also be proactive in checking that staff are using template precedents in accordance with your firm's policy. Periodic, random file audits can be a good way of doing this. ■

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