

CONVEYANCING CLAIMS ON THE RISE

What risk management practices are you doing to avoid a conveyancing claim?

In 2016/17 LPLC received 127 conveyancing claims and notifications which represented approximately 30 per cent of all claims and notifications received that year. The cost is currently estimated to be in excess of \$10 million.

This represents an increase in both the number and cost of claims compared to 2015/16.

The most expensive mistakes are:

- tax mistakes – CGT, duty, GST, land tax
- inadequate advice to purchasers
- defective disclosure in s32 statements
- wrongly dealing with caveats.

Causes of claims

Failing to manage legal issues is the most common cause of conveyancing claims.

These claims arise because the practitioner does not know the law, overlooked an issue or more commonly, did not collect enough facts to apply the right law.

In one claim a practitioner did not understand how the GST margin scheme worked. In another a practitioner did not understand the owner builder requirements.

The second most costly cause of conveyancing claims is simple oversight. Most of these types of claims occur when the practitioner is under pressure because they are too busy or they are distracted because of stressful issues in their personal lives. Strategies to avoid these simple oversights include:

- use a checklist to ensure a proper process is followed
- have a review process with a “fresh set of eyes” to check the documents and identify any mistakes or unintentional omissions
- record dates in an electronic diary and allocate responsibility to two staff members to regularly check the diary.

Recent case

The recent case of *McHutchison v Asli* [2017] VSC 258 contains details of issues LPLC sometimes see in conveyancing claims.

In this case the s32 statement recorded that sewerage was connected to the property when s32H of the *Sale of Land Act 1962* (Vic) actually requires a vendor to state which services are “not connected”.

The property was, in fact, serviced by a septic tank. This should have been evident from the Yarra Valley Water certificate attached to the statement. It included an infrastructure plan which showed no sewer main connected to the property.

The use of certificates is governed by s32J of the Act which provides that a certificate can be attached for the purpose of complying.

But what happens when a certificate shows the opposite to the wording in the s32 statement?

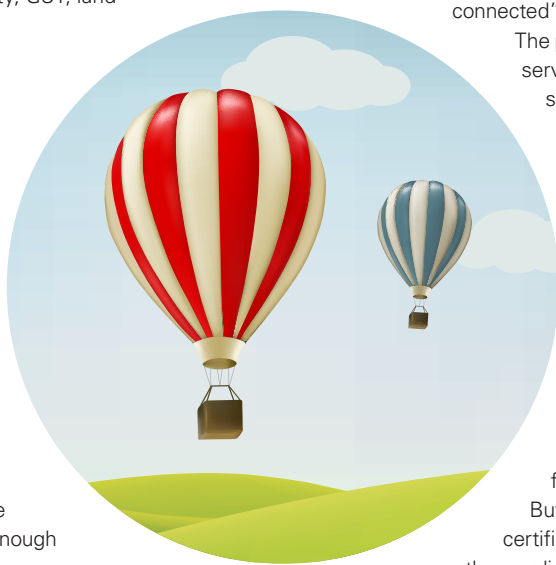
A further defect in the s32 statement was that the permit for the use of the septic tank was not disclosed as required by s32D of the Act. The estimated cost to comply with the permit was about \$400 per annum.

In accordance with s32K of the Act, the purchaser rescinded the contract for the breaches of s32.

Justice John Digby found the certificate was not enough to overcome the wrong reference to “connected” in the s32 statement and he was not convinced the vendor acted honestly and reasonably. Orders were made for the return of the deposit with the vendor to pay the purchaser’s legal costs.

Attaching the correct certificate may not be enough to remedy a mistake in the wording of the s32 statement. ■

This column is provided by the **Legal Practitioners’ Liability Committee**. For further information ph 9672 3800 or visit www.lplc.com.au.



TIPS

- Use checklists to ensure all relevant steps and issues have been addressed.
- Always ask vendor clients which services are connected and not connected, and specifically ask if the property uses water tanks and/or septic tanks.
- If in doubt about information contained in a search or certificate, seek clarification from the responsible authority.
- Designate someone other than the author to compare s32 statements to the searches and certificates for accuracy.
- Read the updated LPLC practice risk guide “Claim free conveyancing” to learn about common mistakes and how to avoid them.