

KEEP YOUR FILES MOVING

Files can stagnate for many reasons: make moving them a New Year's resolution.

Is one of your professional New Year's resolutions to procrastinate less, to better move matters on or to ensure nothing gets left behind this year? Make this the year you develop good strategies for moving your files on promptly.

Here are some examples of how and why delays can occur and some tips for managing the risks.

Wrong time limit

Matters occur where time limits are not properly understood.

In one claim a law clerk was acting for a woman who had been injured in a car accident in the Northern Territory. She came to see the law firm soon after the accident. According to NT law the NT Insurance Office was liable and the only issue in dispute was the quantum. An initial offer made by the law clerk was rejected by the Insurance Office. There was further communication about why and another medical report obtained and then nothing of substance happened on the file for over a year. The law clerk eventually put a new offer on instructions from the client. It was only then that the law clerk discovered the claim was out of time because there was a three-year limitation period not six years as they had presumed.

To compound the error, the law clerk hid the mistake. It took nearly five years before the client discovered what had happened. By that stage it was not possible to extend the time limit.

No time limit

In an apparently simple inter family transfer of a property, the clients saw the practitioner in May about transferring the property from joint names to the wife's name. It was agreed that the consideration would be for "natural love and affection". The practitioner did very little on the matter until September when they sent the clients a draft transfer to sign. The clients promptly signed the transfer and returned it to the practitioner. Shortly after that the practitioner went on unexpected sick leave and did not return to the office until the following January and the transfer was not registered until early May the following year, 12 months after the initial instructions. At about the same time, the husband's business went into liquidation and six weeks later the husband was made bankrupt. A challenge was made to the transfer of the property and once those proceedings were settled the wife brought proceedings against the practitioner, alleging that the delay exposed her to the claim on her property.

Why did the delay occur? The partner in charge of the area reviewed the practitioner's files when they

went on sick leave but thought that the matter was not urgent and so could wait until the practitioner returned. That assessment was not revisited when the practitioner's return was repeatedly extended. As there was no one acting on the other side of the transaction to push the matter to completion, it continued to languish. The initial delay from May until September was not picked up because the file was not opened until September.

Intra-family transfers appear to be the simplest of transactions with no urgency about them but unbeknownst to the firm, it was a ticking time-bomb as the husband's financial position was deteriorating daily.

How good are you at tracking inactive files and managing unexpected absences?

The too-hard-basket file

Delays can also occur not just because of practitioners' absences but also the "the-too-hard-basket" file. It is probably true to say that all practitioners will experience a file at some stage in their career that they have a mental block about: the file that just seems too difficult to progress. It is the file that they know they need to deal with and promise themselves every day they will, but never quite get to.

Firms need to encourage practitioners not to procrastinate with files like this. Some firms have regular meetings where difficult files are discussed, and where necessary, swapped between practitioners. What one person has a mental block about, another may not. Firms should also have a system in place to track prolonged inactivity on files.

Start the year mindful of why and how delays can occur and put steps in place to ensure you don't let matters languish. ■

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

TIPS

- Use practice management reports to help monitor stagnating files
- Confirm any time limits at the start of a matter and record them on the file and in your practice management system.
- You can find the time limits that occur most in the claims in LPLC's "Know your limits" practice risk guide.
- Develop protocols for file handovers if practitioners leave the firm or are out of the office for extended periods of time.
- Develop a culture where difficult files can be talked about and not ignored and mistakes can be addressed promptly.

