

# POST MORTEM RISK MANAGEMENT

Good risk management includes analysing mistakes and learning from them.

What has a post mortem examination to do with risk management? A doctor conducting a post mortem thoroughly examines the deceased to try to determine the cause and manner of death. The results are also useful for research and educational purposes.

Consider doing a post mortem examination on a closed file where a claim or potential claim arose or where difficult issues were encountered.

Having identified any issues and considered the causes of the claim or potential claim, a firm can then determine the best strategy to deal with any such problems should they arise again. It can inform improvements in office policies, procedures and checklists.

Keeping a record of claims, near misses, difficult issues, findings and risk management recommendations is important to ensure these lessons are not forgotten.

## Questions to ask your client at the start

A conveyancing claim LPLC received illustrates how beneficial analysing past incidences can be. A practitioner used a checklist to ask clients questions to assist the practitioner to complete a section 32 statement. One question was whether the client had obtained any building permits, to which the client answered no.

The purchaser's representative discovered that a building notice had been issued by the local council requiring the removal of a porch added by the vendor to the rear of the dwelling.

When confronted by the practitioner about the works, the vendor client's response was that they did the works as owner builders and did not obtain any permits.

A post mortem examination of this file by the practitioner resulted in them updating their checklist to include a question as to whether the vendor client has done any building works, not just obtained any building permits.

## LPLC checklists

The checklists on the LPLC website have been prepared based, in part, on a post mortem examination of claims and near misses. "The Key Risk Checklist: Sale of land – questions for the vendor contains 59 questions for a vendor" is a good example. These questions have been included as a result of reviewing conveyancing claims data. If the

questions had been asked, a claim may have been avoided.

One of the questions in the checklist is whether the client has an ABN. Practitioners who have not asked this question in the past have missed the fact that the client entity is actually acting in its capacity as a trustee.

## Before settlement steps

In another claim the client bought a property off-the-plan. The firm acting for the purchaser received a copy of the registered plan before settlement but did not carefully compare the registered plan with the plan in the contract. After settlement the client discovered that two easements had been added to the lot he was buying which affected his intended use of the property.

The client made a claim against the firm saying the firm should have told them about the changes. The firm has since changed its protocols and it now always carefully compares any registered plan against the one in the contract and sends a copy to the client. The firm does not rely on the vendor's solicitor to tell them if there has been any change to the plan.

## Lessons

Information gained from doing post mortem examinations is a valuable way to ensure firms continually improve the way they manage clients and their matters. Firms that talk openly and constructively about mistakes and near misses are much better placed to avoid those mistakes in the future. ■

This column is provided by the **Legal Practitioners' Liability Committee**. For further information ph 9672 3800 or visit [www.lplc.com.au](http://www.lplc.com.au).

## TIPS

- Before closing a difficult file, stop and think of any risk management lessons that could be learned from the file.
- Discuss mistakes and near misses openly and constructively.
- Keep a list of difficult issues including risk management lessons learned.
- Revisit policies, procedures and checklists regularly with the lessons learned.

