



Time to rethink conveyancing

USING THE PROFESSION'S EXPERIENCE TO BETTER UNDERSTAND THE KEY DRIVERS OF CONVEYANCING CLAIMS CAN PROVIDE IMPORTANT LEARNING AND HELP IDENTIFY AREAS FOR IMPROVEMENT IN A FIRM'S SYSTEMS AND RESOURCING. **BY JUSTIN TOOHEY**

If there is one thing that could reduce professional indemnity insurance premiums over time it would be to reduce the incidence and severity of conveyancing claims. LPLC is very focused on developing strategies to achieve this.

That is not to say that other practice areas don't carry claims risks, but rather to highlight the fact that mistakes in conveyancing transactions are becoming more expensive, having grown in recent years from an average of less than 20 per cent of total claims costs to more than 25 per cent and in some years more than 35 per cent (see contributing factors, p24).

In this month's *LJ*, LPLC looks at the drivers of conveyancing claims across the profession with reference to a selection of themes. We go back to basics and look at:

- what is needed when preparing a section 32 statement
- why you cannot successfully practise in conveyancing without a good understanding of tax and stamp duty laws
- the perils of giving informal pre-contract advice
- why you need to spend time with your client

understanding what matters to them and the context in which they are coming to you with instructions for a sale or purchase

- some specific traps in acting in off-the-plan transactions
- recognising when you are holding money as a stakeholder and the potential conflicts that can arise
- and some tips on how to transform an awkward discussion about fees with a client into a discussion about the value of your services in what for many of them will be the most important financial transaction of their lifetime.

Sell your clients peace of mind. When unexpected complications emerge in a matter, show them you care and do what good lawyers have always done and find a solution for them. It may be negotiating an extension of time for finance or for settlement, seeking expert advice from counsel in response to an untimely rescission notice, or it may simply be a telephone call to the furniture removalist to communicate a settlement delay. This is what can differentiate you from your competitors, and develop your reputation as a professional problem solver.

Finally, remember to immediately notify LPLC's claims solicitors when you have a problem with a conveyancing transaction that might lead to a claim against you. It costs nothing to speak to us and we have a team of experienced risk managers and claims solicitors here to help you.

We hope you find this special edition a valuable resource and an impetus to re-examine the way your firm manages conveyancing transactions for clients. The LPLC has a wide range of resources designed to inform and assist you at lplc.com.au. As always, we are very keen to receive feedback on ways we can improve our risk and insurance services for you.

SNAPSHOT

- Conveyancing is the highest risk practice area for negligence claims. They are becoming more expensive and consuming a larger proportion of LPLC's premium pool.
- The falling property market and tighter lending conditions imposed by banks create external pressures which historically give rise to more conveyancing claims against practitioners.
- Be vigilant to the most common themes and causes of conveyancing claims, and implement risk management strategies to prevent them in your own practice.



Factors contributing to high representation of conveyancing in claims

The complexity of property law ought not be underestimated, but that of itself doesn't explain why conveyancing is consistently the highest risk practice area for professional negligence claims.

Other factors are at play and include:

- the mismatch between client expectations of conveyancing practitioners, the high standard of care which the law demands, and the fees clients seem willing to accept
- competition from licensed conveyancers, leading to the commoditisation of conveyancing, bringing with it less professional time from senior practitioners with deep subject matter expertise supervising transactions at critical moments – such as when taking a vendor's instructions for preparation of the contract and section 32 statement; or when advising about aspects of the transaction before a purchaser's

contract execution; or upon receipt of certificates and search information analysing and appreciating the importance of information contained within them


- a misapprehension that conveyancing is low-skill process-work that anyone can do.
- The recent move to mandatory electronic conveyancing has not contributed to conveyancing claims. Overwhelmingly, claims arise from defective documentation or inadequate advice about aspects of a transaction.

Property prices in Melbourne have fallen by 10-20 per cent in the past two years. Building approvals are also falling. The Hayne banking royal commission has put a spotlight on bank lending practices, with APRA-regulated banks having tightened lending controls and placed greater emphasis on responsible lending. Lower

valuations are affecting the supply of credit for investors, homeowners and small business. We are hearing from practitioners with clients whose previous finance approvals are being reassessed and, in many cases, refused.

These external conditions affect the risk profile of conveyancing, and property claims historically rise at this stage of the economic cycle. Your risk antennae should be on high alert as property transactions in this environment carry increased risk of becoming contentious. The time is now for refocusing attention within your conveyancing practice on the finer details of matters being undertaken by your firm. ■

Justin Toohey is CEO of LPLC and has more than 30 years as a practising solicitor. He has managed hundreds of conveyancing claims against solicitors insured by LPLC.

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