

Regional Risk Management Tour



April – May

Transaction traps

Matthew Rose, Risk Manager, LPLC

Acting for vendor and purchaser

Video scenario – *Risky business*

A practitioner acts for all parties in the transfer of a small business. The business then has serious problems for which the purchasers blame the practitioner.

What are the risk management lessons?

Claims examples

Retainers and scoping

A practitioner shared premises with an accountant and although two separate businesses, they marketed themselves as a 'one stop shop'. When a purchaser client alleged he did not receive advice about certain loan liabilities, the practitioner argued his retainer was limited to conveyancing matters and he thought the accountant was advising on the value of the business.

What are the risk management lessons?

Searches

A practitioner acted for the purchaser of a car wash in Melbourne. After settlement, the purchaser discovered that although the business had operated as a car wash for 10 years, this was not in fact permitted.

What are the risk management lessons?

Vendor finance

A practitioner acted for the vendor and purchaser of a shop. The contract provided for vendor finance and gave the vendor the right to register a second mortgage over the purchaser's home. The practitioner prepared the mortgage but failed to lodge it for registration.

What are the risk management lessons?

Employee entitlements

A practitioner acted for the vendor of a child care business. The purchaser's lawyer prepared the contract of sale which provided for accrued sick leave to be adjusted at the settlement date. The vendor later complained they were not properly advised about the provision.

What are the risk management lessons?

Transactional matter becomes a dispute

A practitioner acted for two partners in the sale of their business. There was a dispute about how the net proceeds of sale held in the practitioner's trust account were to be distributed. The practitioner acted for one of the partners in the dispute. When the parties settled nearly two years later, the non-client claimed interest he says should have been earned on the money in trust.

What are the risk management lessons?



Additional resources

[LPLC Practice risk guide: *Small business – big risks*](#)

[LPLC Key risk checklist: *Small business – when acting for vendor \(including precedent documents\)*](#)

[LPLC Key risk checklist: *Small business – when acting for purchaser \(including precedent documents\)*](#)

Atul Gawande, *The checklist manifesto: How to get things right*, Picador, 2009