



LEGAL
PRACTITIONERS'
LIABILITY
COMMITTEE

Old mistakes and new laws – VOI and other conveyancing issues

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Property and conveyancing

Five main areas of claims 2014/15



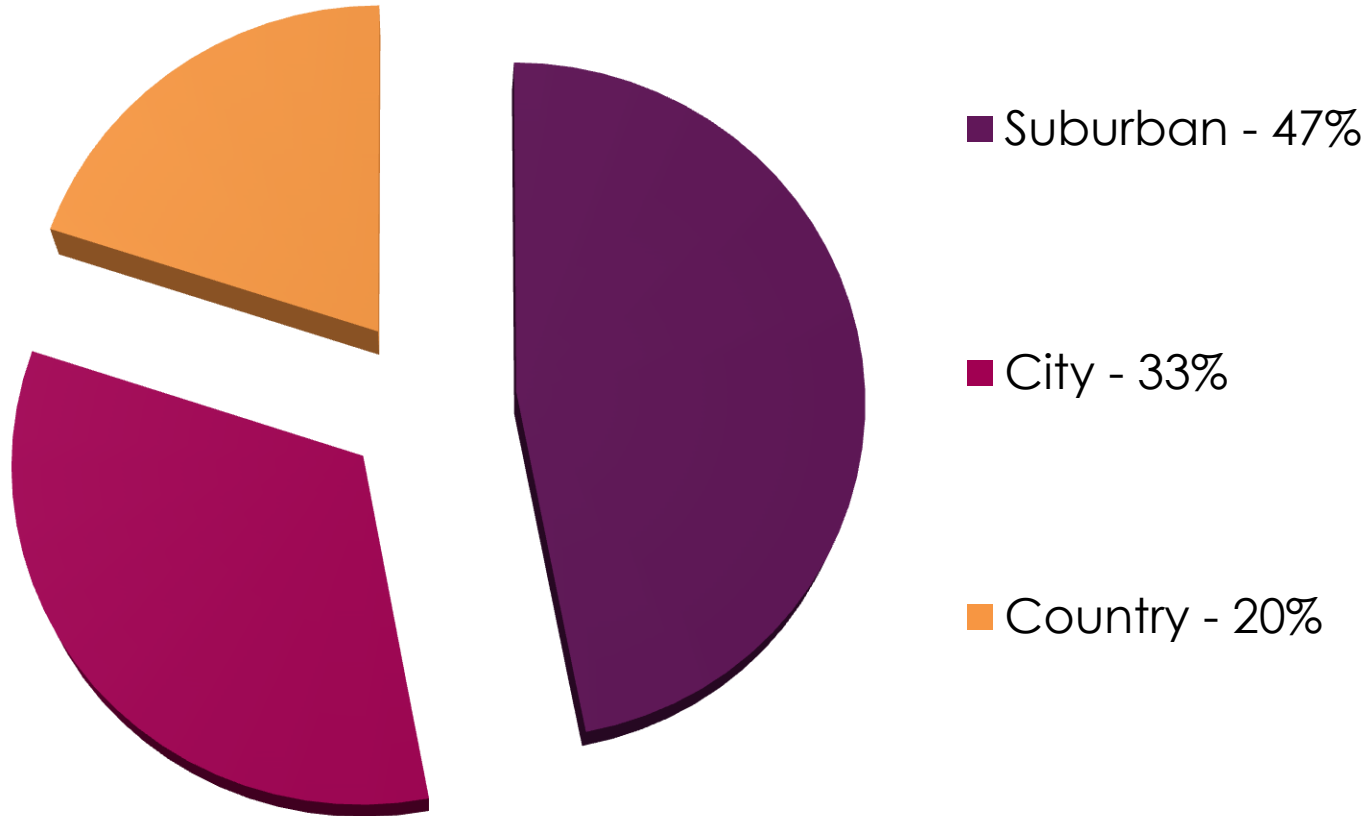
- No advice about land - 23%
- GST - 15%
- Defective disclosure - 12%
- Planning / environment / contamination - 8%
- Allowing contracts to become unconditional - 4%
- Other - 38%

Property and conveyancing Causes of claims 2014/15



- Failure to manage legal issues - 42%
- Simple oversights - 23%
- Poor engagement management - 19%
- Poor communication - 8%
- Lack of useable trail - 8%

Property and conveyancing Number of claims 2012/13 to 2014/15



Poor communication - example of claim

Practitioner acted for vendor via their attorney.

Attorney instructed practitioner to sell real estate owned by the donor.

Property sold subject to finance. Purchaser sought an extension. Practitioner unable to obtain instructions. As no extension granted purchaser terminated.

Property subsequently resold to the same purchaser.

Short settlement period of 30 days.

Practitioner received second contract not long prior to settlement and at this point requested that the original title be provided. The title could not be found.

Lessons

- Always ask the client to deliver the title immediately upon receiving instructions to sell a property where the property is unencumbered
- Ask the client whether they will be absent during the sale and settlement period
- Obtain a number of contact details for the client including email and mobile number as well as contact details of someone else in the event of an emergency

Poor communication - example of claim

Practitioner acted for a vendor selling a commercial property subject to a lease.

None of the boxes in the particulars of sale about GST were completed. This meant the sale was GST inclusive and was sold at auction on this basis.

Nothing on the file indicating how the property was to be treated for GST purposes.

Following settlement the vendor brought a claim against the practitioner for the GST which was payable on the sale.

Lessons

- Take time at the outset of a matter to raise any GST issues with the client
- Verify the GST registration of all parties:
www.abr.gov.au
- Read the GST frequently asked questions on the LPLC website
- Email the LPLC GST hotline: dc.davine@bigpond.com

VOI – why, when, how

Most people are other people. Their thoughts are someone else's opinions, their lives a mimicry, their passions a quotation.

Oscar Wilde

Exercise – background

You are instructed to act for a foreign person purchasing an off-the-plan apartment described in the contract of sale as unit 128, 105 Clarendon Street Southbank.

The client was referred to you by the selling agent. The agent informs you that the client resides in Beijing and is buying the apartment for his son to live in.

Assume that the developer has obtained approval to sell to foreigners and the client will be obtaining a loan from ANZ to fund half of the purchase price.

List three reasonable steps you would take to verify the identity of your client:

1.

2.

3.

Question

What additional steps might you consider taking when acting for a vendor who is a foreign resident and selling real estate in Victoria?

Key point

Develop and implement an office policy about:

- client capacity
- verification of authority
- verification of identity

Why

To prevent identity fraud. See:

- [Marsh Insights: fraud and scams increasing awareness](#)
- [XPAK Pty Ltd v Scibilia & Ors \[2013\] VCC 1260](#). [In Check issue 64](#) contains details about this case.
- [Braham v Catalano & Anor \[2013\] VSC 437](#)

Why

- International obligations to prevent [money laundering](#) and fraud, for example [Austrac](#)
- Requirements of:
 - [ARNECC](#)
 - Registrar of Titles
- Common law obligations

When

Always required to certify VOI when using PEXA

Land Registry

- From 9 November 2015 – VOI a must do
- From 3 April 2017 required to certify to Land Registry about VOI

Most conservative approach

VOI every client using the VOI standard in schedule 1 of the ARNECC Model Participation Rules

How

Starting point – have an office policy to cover:

- when identification must occur
- who will undertake the identification
- who will check the data
- identification process to be followed
- how the data will be stored

How

- Refer to the *Capacity, authority and identity flow chart and notes* document in the workshop handouts
- Refer to the *Face to face VOI* document in the workshop handouts
- Refer to the *VOI client information sheet* in the workshop handouts
- Refer to the *Troubleshooting VOI* document in the workshop handouts