

Private lending – do the basics well

Presented by Phil Nolan | Risk Manager | LPLC

Quote

In banking or finance, trust is the only thing you have to sell.

Dr Patrick Dixon



5 key points

1. Make sure loans are secured
2. Make sure valuations are obtained and checked
3. Make sure loan transactions are properly documented
4. Make sure any necessary VOI is done
5. Make sure to use a checklist to identify key risk issues



Agenda

1. Introduction

2. Claims data

3. Five critical issue

4. Checklist

5. New LPLC program

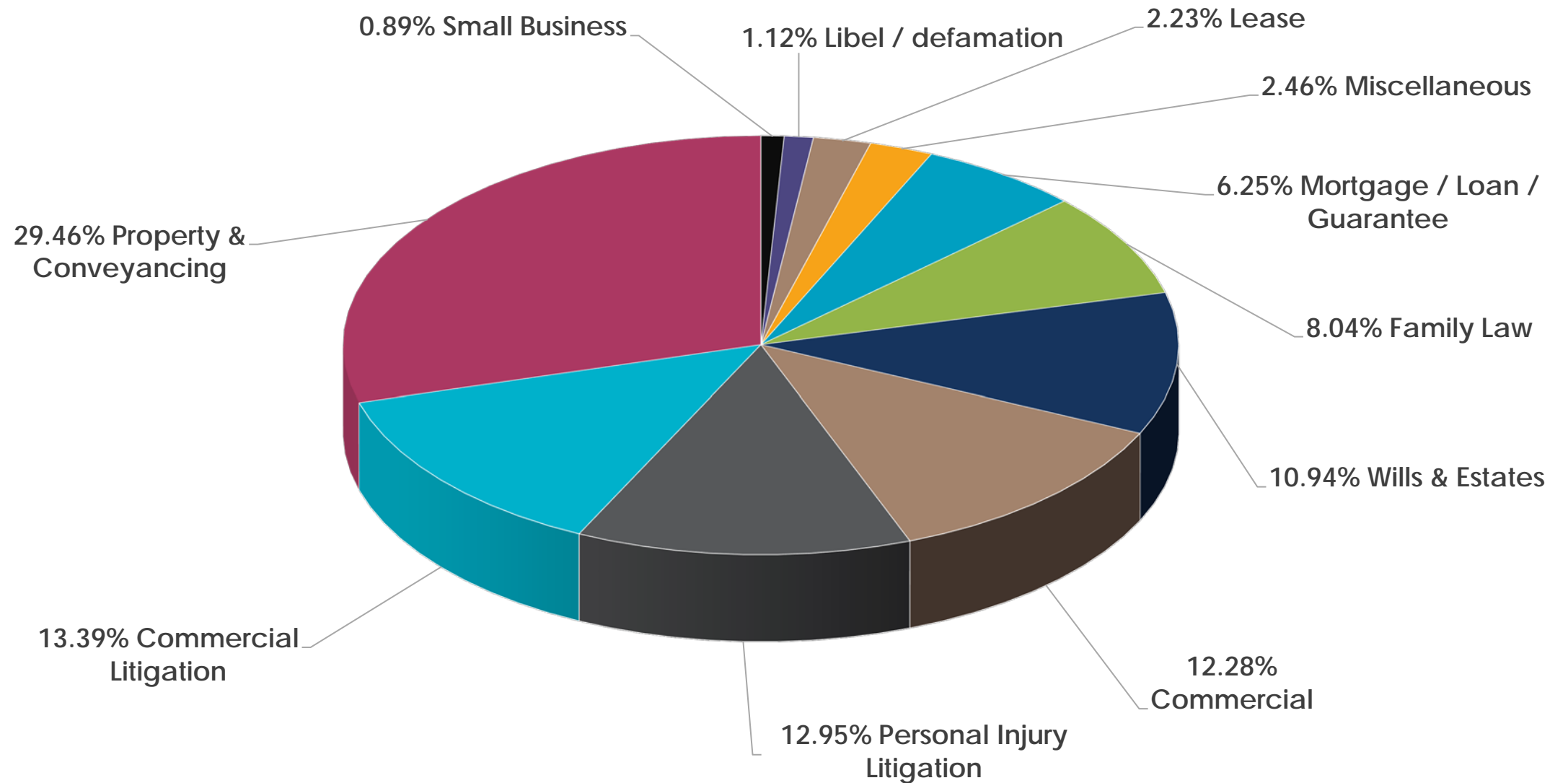
6. Do the right thing

INTRODUCTION

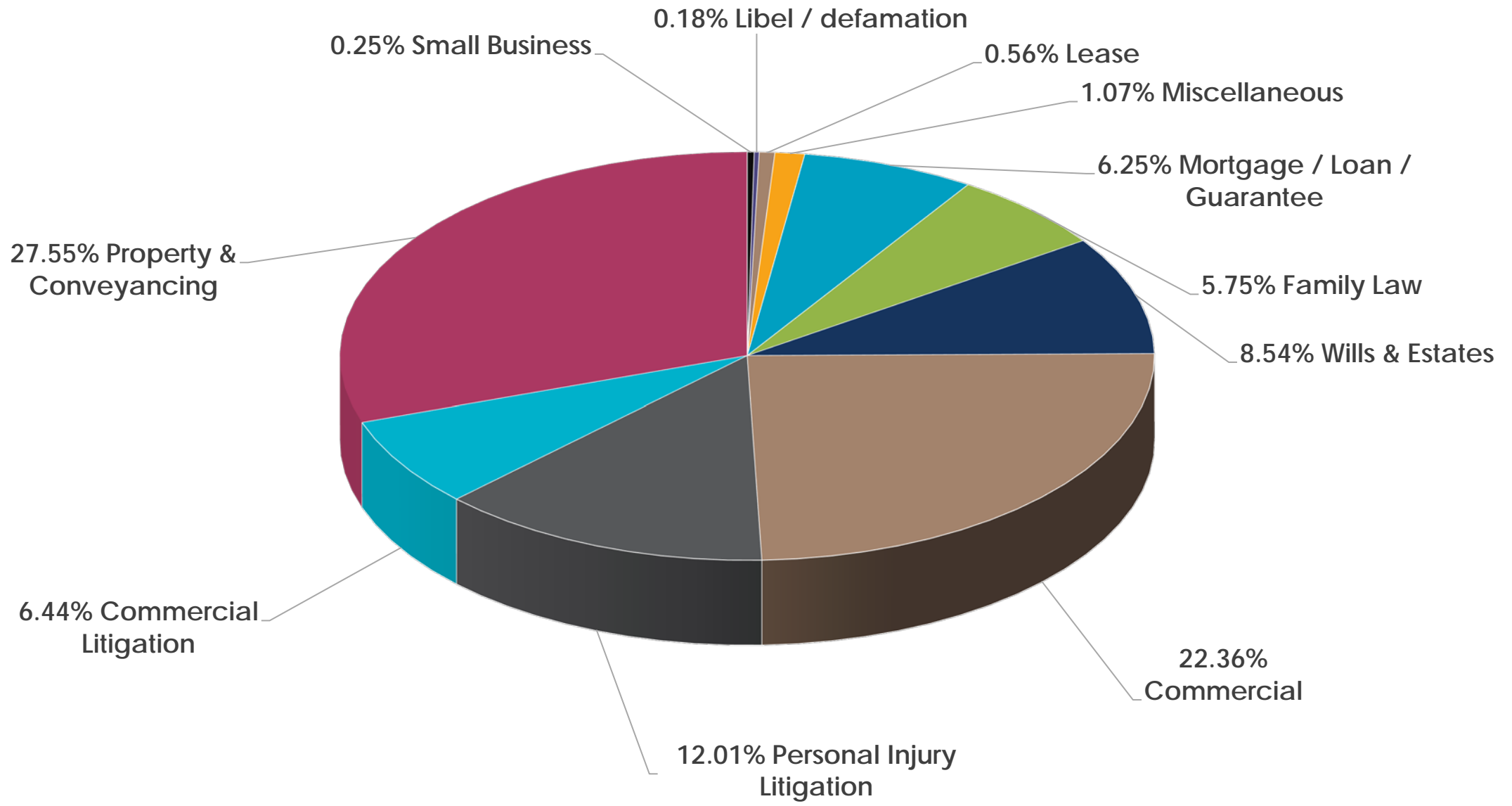
CLAIMS DATA



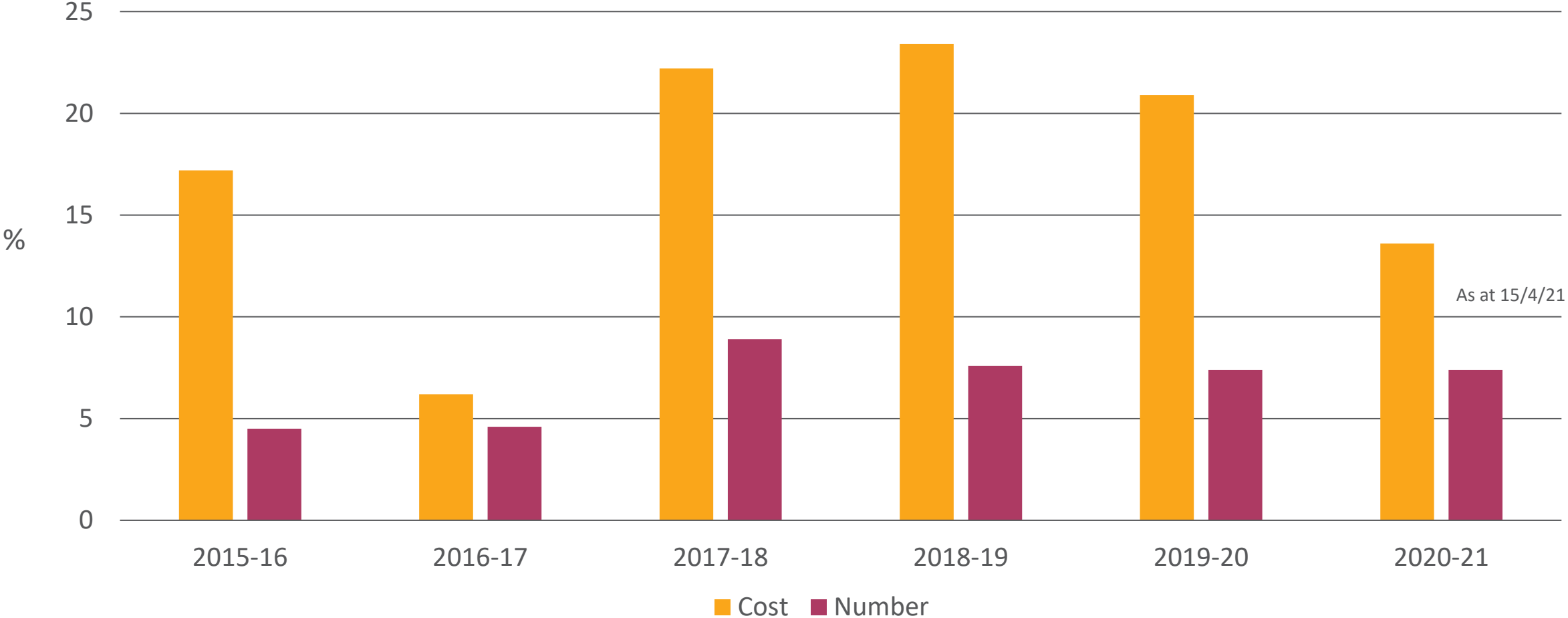
Number of claims: 2021-22



Cost of claims: 2021-22



Mortgage claims 2015-16 to 2020-21



Poll

Do you include covenants in the mortgage schedule?

- a) Yes
- b) No

Relevant case

Hunt & Hunt v Mitchell Morgan [2013] HCA 10





Poll

Have any of your mortgage files been audited by Land Registry Services?

- a) Yes
- b) No

Further information

ARNECC MPR Guidance Note 6 – compliance examinations

LPLC webinar – Compliance audits – Are you ready?



FIVE IMPORTANT ISSUES TO ADDRESS



Number 1 – Security

Poll

Is a caveat security for a loan?

- a) Yes
- b) No
- c) Don't know



Number 2 – Properly document

Common factors

- Inexperienced file operator
- No precedents
- Loan documents / precedents not updated
- Errors





Number 3 – Valuations

- **No valuation**

Relevant article

LPLC article – ‘Independent valuations essential for lenders’

Number 3 – Valuations

Failure to detect errors

Relevant cases

I & L Securities Pty Ltd v RS Melloy Pty Ltd [2002] QSC 306

Errors in valuation included:

Errors in valuation included:	
Impact of flooding ignored	No proper basis for cost construction
No enquiries / searches about rezoning	No town planning or surveying information

Kayteal Pt Ltd v Dignan & Ors [2011] NSWSC 197

Number 4 – Verify identity

Poll

When acting for a lender do you do a VOI of the mortgagor?

- a) Yes
- b) No



Number 4 – Verify identity

ARNECC requirements

Model Participation Rules

Guidance note no. 2 - VOI

Relevant case

C&F Nominees Mortgage Securities Ltd V Karbotli
& Ors [2020] VCC 987

Relevant legislation

S.87A of the Transfer of Land Act 1958 (Vic).



Number 5 – Properly advise

Relevant case

McLennan v Clapham and others [2019] ACTSC 1

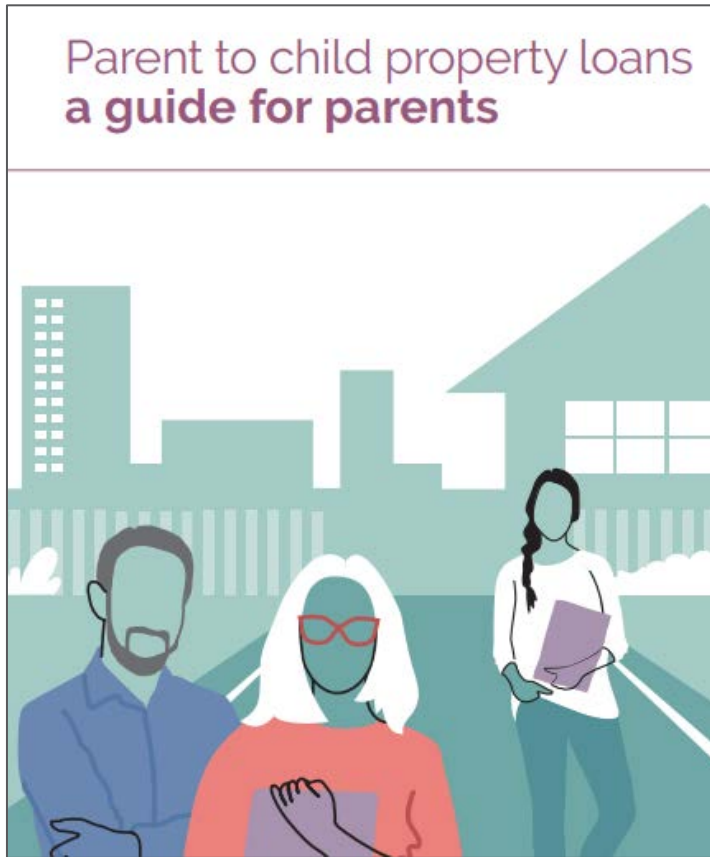
“A solicitor owes a general duty to explain legal documents to the client.... a solicitor should explain both the relevant risks..... and the consequences of that risk to the client..... ”

“A solicitor has a duty to warn a client of a material risk inherent in the proposed [transaction]”

Important issue to consider

- Windfall gains tax

Number 5 – Properly advise



New LPLC resource to help practitioners advise clients giving loans to their children

Link

<https://lplc.com.au/resources/client-resources/parent-to-child-property-loans-things-to-consider-client-brochure>

CHECKLIST



CHECKLIST

July 2021



Acting for private lenders checklist

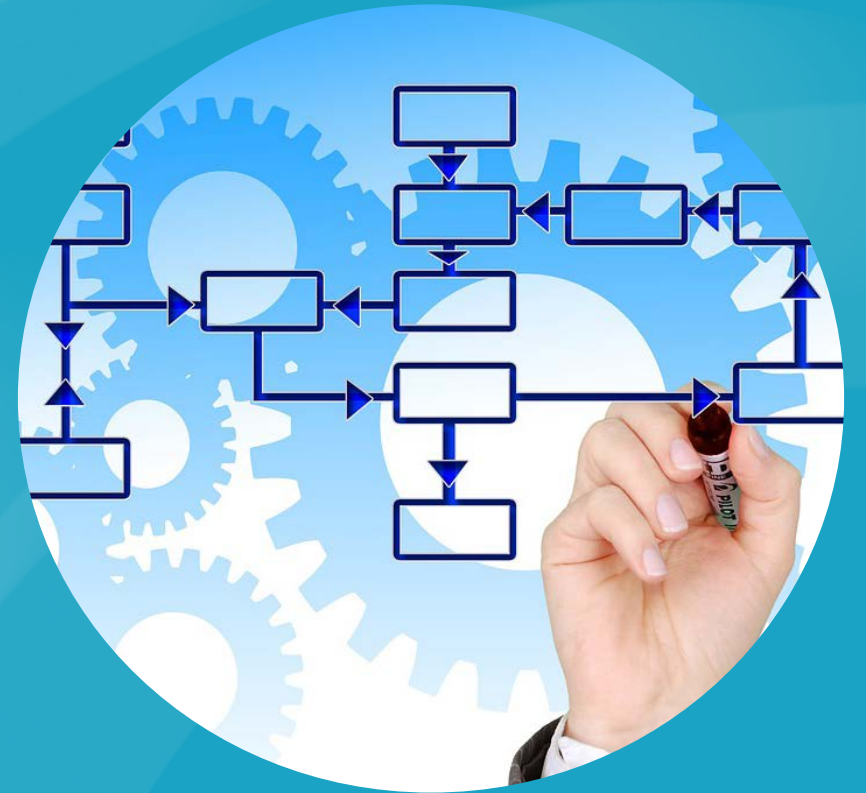
Checking off on the items in this checklist will help practitioners avoid the most common claims when acting for private lenders.

The items in this checklist are the minimum requirements which would usually apply when acting for a lender regardless of whether the loan is one off or for a more experienced private lender.



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PRIVATE LENDER REVIEW PROGRAM



Private lender review program

Do you want to participate?

Email me: phil.nolan@lplc.com.au





DO THE RIGHT THING



Do the right thing

There are a number of ethical issues that may arise in relation to acting for a private lender.

Help

If you have an ethical issue, contact LIV ethics:

Phone: 03 9607 9336

Email: ethics@liv.asn.au



Conflict

Rule 11

A solicitor and a law practice must avoid conflicts between the duties owed to two or more current clients.



Exercise

Background

You receive instructions to act on behalf of a lender. Two days later the lender collects the loan documents from your office and delivers them to the borrower.

The next day the borrower attends your office to witness them sign the loan documents.



Exercise

Poll

Do you have a conflict?

a) Yes

b) No

c) Don't know



REFLECTION

What have you learned from this session and materials that might help you and your colleagues in your work?



Thank You

Presented by
Phil Nolan | Risk Manager, LPLC