

Risk video bites – Inadequate advice

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The conveyancing process is unfamiliar for many purchasers of real estate. The role of a practitioner acting for a purchaser buying land includes understanding what the client intends to do with the property, explaining the contract to the client and ensuring they understand what is required of them.

All of this requires effective listening and communication skills. It means not taking your client's knowledge and understanding for granted.

One area clients sometimes don't understand is how subject to finance clauses work. We regularly have claims where clients say their practitioner didn't properly advise that they had to give notice under general condition 14.2 if they could not get finance in time.

These requirements are often confusing and counter-intuitive for clients and a clear explanation is needed.

In one recent claim the practitioner told us he usually explained the subject to finance clauses to clients and thought he had done so for this client.

The client was new to the firm and had an initial meeting with the practitioner for about half an hour where they discussed the signed contract. Unfortunately, the practitioner's file note lacked any details about the discussion and in particular about the subject to finance condition. The practitioner also didn't provide the purchaser with written advice about the issue after the initial meeting.

The subject to finance approval date came and went.

Although she didn't obtain finance by the due date the purchaser didn't tell the practitioner and he didn't follow her up. The practitioner said later he assumed when he didn't hear from the client that finance had been approved.

Unfortunately, the purchaser could not obtain finance by the settlement date and the day after settlement the vendor issued a rescission notice. The purchaser was still unable to obtain finance and as they failed to settle within the 14 days, the deposit was forfeited.

The purchaser brought a claim alleging that the practitioner had not pointed out the need to give notice to the vendor if finance was not approved.



Without a clear recollection from the practitioner, a descriptive file note or written explanation to the client, it was difficult to defend and the claim was settled with a contribution from the practitioner and LPLC.

This sort of claim arises because the practitioner assumes the purchaser understands more than they actually do and has not tested the client's understanding.

Some clients will not understand or remember an oral explanation of something unusual like a subject to finance clause without further testing, explanation or written material.

The key risk management tips to avoid this sort of claim are to:

- give the client a clear explanation face to face of important issues and ask the client to tell you what they have understood
- keep a file note of what was discussed at the meeting
- have a clear retainer letter which fully explains issues like how the subject to finance conditions operate; and
- diarise the due date for finance to be approved and follow up the client before the due date.

Thanks for watching.