

## Risk video bites – Conveyancing

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Following a checklist can often help practitioners avoid a claim, especially when doing conveyancing.

While conveyancing looks deceptively simple it actually involves a huge amount of detail that can be easily missed. Using a checklist can guide practitioners through the transaction and help them cover all the issues and avoid a claim.

When you act for a vendor your checklist should include a requirement to obtain all certificates and searches necessary to prepare a complete and compliant section 32 statement.

It is much safer to get the certificates than to rely on your client's memory about things like building permits or notices.

Your checklist for both vendor and purchaser should also include a question about whether the client is acting in a trustee capacity.

We had a claim where a practitioner was acting for a purchaser of land with 'development potential'. Many years after settlement the client received a land tax assessment for land tax at the higher trust rate plus penalties and interest. At this point the client contacted the practitioner and asked the practitioner why they had not given notice to the State Revenue Office about the acquisition by the trust.

The practitioner was at risk of being found negligent for not asking the client whether the purchaser was acting in a trustee capacity.

The matter settled with a small contribution from us.

GST is another issue that can easily be overlooked, especially when a sale of commercial property occurs and the practitioner or clerk usually deals with existing residential property where GST is usually not an issue.

In a recent claim the client told the property partner they would be selling a commercial property. The partner was expecting to receive the instructions for the sale but the real estate agent sent the instructions to the firm's law clerk, as was their usual practice.

The experienced and capable law clerk prepared the section 32 statement and standard contract, and sent it back to the real estate agent within 24 hours, believing it was just a standard conveyance. Unfortunately, she overlooked the GST issue because it was not

something she regularly considered as most of her work involved residential conveyancing.

The property was sold without any GST treatment. The client later said they would have used the margin scheme if they had been properly advised.

We settled the matter by contributing to the difference between full GST and the margin scheme.

The lessons in this claim are threefold.

1. A checklist would prove a valuable risk management tool, both in asking the right questions of the vendor and whether GST is applicable.
2. It's important to create a culture where getting it right is more important than doing it quickly.
3. And no matter how competent your staff may be, consistent supervision by legal practitioners is a must, especially when preparing contracts, no matter how competent and experienced their staff are.

A good place to start when preparing a checklist is the *LPLC Key Risk Checklist: Sale of land – questions for the vendor* and the *Property websites checklist*.

Also, refer to the LPLC practice risk guide *Claim free conveyancing* for details of property and conveyancing claims and recommendations on how to avoid them.