

Risk video bites – Stop and think

Presenter: Matthew Rose

In trying to keep matters moving along as quickly as possible, it can be easy to move from task to task without thinking of the bigger picture. Claims often occur when practitioners lose sight of what's really happening in the matter or give insufficient thought to whether they've missed anything. Whatever the type of matter, step back periodically and think what assumptions am I making about the client and my retainer? How is this matter different from previous matters? Have I identified *all* the issues that could potentially impact on the matter and things that could go wrong for the client?

In one claim, a couple instructed the practitioner to document a loan they had made to their son two years earlier to purchase a property with his de facto partner at the time. The son and his partner, who since separated, were registered as joint proprietors.

The practitioner prepared a simple loan agreement that was signed by the parents and their son but not his ex-partner. The agreement included a charge over the property in favour of the parents and the practitioner lodged a caveat over the title. What he failed to do was stop and think about possible future scenarios with the property in joint names and advise the parents on the implications of how the property was held.

When the son later died, the property passed by survivorship to his ex-partner who wasn't a party to the loan agreement. The parents' caveat lapsed as the son's interest in the property had ceased, leaving the parents without security and no further recourse on the loan. Because the practitioner treated the matter as a simple intra-family arrangement, he hadn't thought through the possible scenarios and what was needed to protect the parents' interests.

However, another firm's proactive approach brought a potential banana skin to light. The firm's conveyancing clerk habitually googles properties in the transactions she works on. In one matter, the agent's description of the property as a 'prestigious estate' alerted the clerk that building on the property could be subject to design guidelines which were not obvious on the face of the title search and contract

documents. Further searching confirmed this to be the case and the necessary advice was then given to the purchaser client.

So throughout your matters, keep thinking about issues such as:

- what the client really wants to achieve
- what are their interests that need to be protected
- why do they want to do this, especially if it is against their interests
- whether you have considered authority, capacity and potential conflicts of interest
- whether you have all the instructions you need
- whether you have information from previous matters that may be material to the current matter, such as interdependent agreements
- whether things have changed since the start of the matter and you need to re-scope the work
- what aspects of the matter are unusual or outside your expertise.

Claims show that practitioners do not always ask themselves these questions, even though they know they should. You need to be proactive in stepping back periodically from the tasks at hand to consider the bigger picture.

Thanks for watching.