

## Risk video bites – Buying or selling a small business

Presenter: Matthew Rose

---

In this video we're going to look at three things you need to do to help minimise your risk of a claim when acting in the sale or purchase of a small business.

First, never act for both vendor and purchaser in a small business transaction. It is simply too risky, yet the claims show it occurs. In these claims, the clients typically begin by trusting each other implicitly, come to the practitioner with a 'done deal' and see no reason to duplicate time and expense.

The practitioner is lulled into a false sense of security and fails to see looming problems. This leaves them open to allegations they preferred the interests of one client over the other.

Sometimes the parties won't have turned their minds to issues like restraints of trade or the GST implications of stock. In these situations, it is impossible for a practitioner to conduct arm's length negotiations for both sides and protect their respective interests at the same time.

The second thing is to ensure your purchaser client's intended use of the premises is permitted within the applicable planning scheme. Claims in this category typically involve allegations the practitioner failed to conduct necessary searches or advise the purchaser to check the applicable planning schemes and permits themselves.

In many claims, practitioners think their retainer is limited and they don't have to advise on planning issues. It is essential to clarify the scope of your retainer in writing. Avoid making unsafe assumptions about planning schemes, permits and the client's level of knowledge of such matters.

The third thing is to ensure your vendor client has adequate security when the purchase price is being paid by instalments and the purchaser takes possession before full payment has been made.

Vendor finance terms are often arranged at the last minute by vendors desperate to sell. However, unless you make it clear to your vendor in writing you are not advising on security, you need to take appropriate steps to address the issue. This could



involve identifying and advising on existing mortgages and personal property securities interests, advising on the adequacy of proposed security, and preparing and registering security documents including guarantees. Don't get caught out by these issues when the deal changes.

Small business transactions are not simple and the scope of your retainer needs to be clear. You can find more information on how to avoid claims when acting in small business transactions in LPLC's practice risk guide *Small Business Big Risk*.

Thanks for watching.