

Risk video bites – Defective section 32 statements

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The sale and purchase of land is a complicated process regardless of which party you act for. Did you know there are over 30 pieces of legislation conveyancing practitioners need to know about?

When acting for a vendor one crucial role for a practitioner is to ensure that the section 32 statement is correct. It takes a lot of work to get it right.

The consequences of getting it wrong can be devastating for a vendor, especially where a purchaser rescinds. Sometimes the purchaser is prepared to settle with a reduced purchase price. In either case, the vendor will usually look to their practitioner to compensate them for their loss.

Mistakes often arise because the practitioner didn't ask the client the right questions and then didn't verify the client's answers.

In a recent claim, a vendor client sued his practitioner for failing to provide details about the owners corporation in the section 32 statement.

The practitioner had asked the vendor about an owners corporation but the client didn't realise there was one.

The vendor's mistake was understandable as:

1. the section 32 statement, when he purchased the property, did not refer to an owners corporation
2. there had never been a meeting of the owners corporation
3. the owners corporation only existed because the four lots on the plan of subdivision shared common services like a shared sewer main and
4. there was no was common property.

The practitioner relied solely on the instructions of the client without verifying them. She could have detected the mistake by referring to:

- the register search statement which contained a panel referring to the owners corporation; and

- the owners corporation search report but no one read the statement carefully.

The Nicolacopoulos v Khoury case is a similar example where the vendor failed to provide information and documents revealing that the land was affected by an owners corporation. The court upheld the validity of the purchaser's rescission for a breach of section 32 for failing to disclose that information.

The key takeaway from this case and the claim are to ensure you verify what the client tells you by comparing the client's instructions to the information in certificates from various authorities, such as Land Registry, and other organisations such as water and rate authorities. It is not enough to get the certificates, you need to read them.

As professionals, a lawyer's job is to bring their knowledge and expertise to conveyancing transactions. This requires thinking carefully about every sale to make sure the section 32 statement is as watertight as possible.

For more information see LPLC's practice risk guide *Claim fee conveyancing*.

Thanks for watching