

Practical tips for conveyancing solicitors in a changing economy



Rosemary Workman is Senior Claims Solicitor at Lawcover.



Historically, conveyancing has been a major source of professional negligence claims against solicitors. In a changing economy and with a decline in property values in many areas, there may be an increased risk of claims against solicitors for loss in property transactions. Outlined are some areas to watch out for.

Vendor disclosure legislation

Section 52A of the *Conveyancing Act* imposes an obligation on vendors to attach prescribed documents to a contract for the sale of land (see Schedule 1 *Conveyancing (Sale of Land) Regulations 2017*). Failure to do so gives the purchaser the right to rescind the contract (reg 17). Have someone check that documents required by the vendor disclosure legislation are attached prior to exchange.

Options

Claims arising from a failure to exercise an option strictly in accordance with its terms can be difficult to defend. Option agreements are strictly construed by the courts. In *JLF Corporation v Matos* [2016] QCA 355, the Court held that delivery of signed copies of the 8th edition of the REIQ Queensland Law Society standard form of contract did not comply with the terms of an option agreement that required signed copies of the 10th edition. It is advisable to review and diarise option agreements to ensure strict compliance by the required date.

Subject to finance

In an uncertain economic climate, solicitors should be aware of the risk of prospective purchasers being unable to obtain finance. Contracts should be made subject to finance and clients warned of the potential exposure if they are unable to complete.

Release of deposit

Claims often arise as a result of a client purchaser agreeing to release the deposit directly to the vendor. Commonly, this occurs when the vendor is a developer and release of the deposit is required to complete construction. When the developer fails, the deposit is lost and often a claim will arise against the

Snapshot

- Conveyancing has been a major source of professional negligence claims against solicitors.
- Check all documents required by the vendor disclosure legislation are attached to the contract prior to exchange.
- Strictly comply with option terms.
- Always confirm advice in writing and keep detailed file notes.

solicitor for this loss. Advise clients in writing against releasing a deposit, especially where the vendor is a company. Alternatively, warn the purchaser of the risk of default and that the deposit may be forfeited.

Car parking

Lawcover has encountered claims where the purchaser was informed by the agent that the property was entitled to a car space, however it was found that it was either: (a) subject to approval; (b) not the space shown by the agent; or (c) on a separate title. Prospective purchasers should be advised to clarify the position prior to exchange without relying on the solicitor, as any misleading conduct during inspection is likely to be attributed to the solicitor's failure to adequately advise.

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Enquiries of council/inspection

Clients frequently overlook advice given by a solicitor, particularly in relation to ascertaining (after completion) that: construction is not permitted, the property is land locked, has limited road access, or is located in a flood or fire zone. Clients should be advised, in writing, to undertake enquiries of council or inspect the site.

Pre-purchase building reports

Lawcover has seen a reduction in claims against solicitors arising from advice regarding building, pest and strata pre-purchase reports. Generally, it is prudent to advise the client in writing to obtain their own report and for a qualified professional to review it. If the solicitor is asked to obtain the report, the report should be passed on to the client with a clear statement that the client should discuss the report with its author, as the solicitor is unable to provide advice on its contents. Problems arise where the solicitor gives only partial or limited advice on such reports, without making the limitation clear to the client.

Solicitors will no doubt be aware of the spate of apartment building problems in Sydney. At this stage, there is no evidence that the legal profession will be exposed. However, solicitors should be aware there is a risk that claims against solicitors will be made as a last resort. Taking the steps outlined in this article will reduce the chances of those claims succeeding. **LSJ**