

Short Minutes Transcript: A Timely Reminder

McLennan and Clapham provides a reminder as to the nature of the duty of care owed by a solicitor to a client purchaser in property transactions.

The clients retained a firm of solicitors to advise on the purchase of a residential property. They presented the solicitor with an unsigned copy of the contract but only met once, with the firm's conveyancing clerk at their office, to go through the contract.

Before the purchase, the property had purportedly undergone asbestos removal as part of an ACT government initiative. The contract contained documents relating to asbestos, including:

- An asbestos advice fact sheet
- A certificate of completion of asbestos removal
- A copy of a scope of work for removing asbestos fibres from the home, and
- Building and pest reports which excluded any consideration of asbestos and recommended obtaining other reports before purchase

The conveyancing clerk pointed these out at the meeting and gave the clients time to read the documents.

The purchase was made, but later it was found that the asbestos had **not** been removed. The clients brought a professional negligence claim against the solicitors for failing to adequately advise and maintained that had they received such advice, they would not have made the purchase.

The Court found that the solicitors had breached their duty of care and noted that:

- A solicitor owes a general duty to explain and ensure the client understands the contract of sale and to draw to their attention any unusual provisions or any provisions which might be of special significance to the client
- A solicitor should explain the relevant risks arising from a purchase and the consequences of those risks
- Although the conveyancing clerk was very experienced, not being a lawyer meant that they were not in a position to appreciate what legal advice should have been given, nor to provide it
- Simply showing the clients the contract of sale and allowing them to read it does not amount to the provision of competent advice

Citing Justice Pullen in *Capebay Holdings and Marks Healy Sands*, Associate Justice McWilliam added:

'A solicitor acting for the buyer of property is paid not only for what the solicitor, in fact, does, but also for the responsibility he or she assumes in trying to protect clients from financial loss if things go wrong.'

I'm Malcolm Heath

Links to both cases can be found below:

- [McLennan v Clapham and Ors \[2019\] ACTSC 1](#)
- [Capebay Holdings Pty Ltd v Marks Healy Sands \[2002\] WASC 287](#)