

## Short Minutes Transcript: Traps in Family Law Conveyances

It's never a good sign when a judgment begins with *"This is a cautionary tale for solicitors holding money on trust..."* as in the case of [Laurens & Laurens](#).

The solicitor, initially acting solely for the wife in family law proceedings, consented to act for both parties on the conveyance of real estate in accordance with orders made in the family law proceedings.

When the real estate was sold, the solicitor was required to hold the proceeds of the sale on trust and then distribute the money in accordance with the court orders. After settlement the solicitor advised the husband's solicitor, in writing after 5pm on a Friday, that she intended to distribute the funds with an adjusted amount in favour of the wife. This was not in accordance with the orders and did not allow sufficient time for the husband's solicitor to raise an objection. She then proceeded to distribute the money with an adjustment in favour of the wife.

Not surprisingly the husband made an application for costs for enforcing the court order. The solicitor was ordered to pay those costs and was also requested to provide submissions as to whether her conduct should be referred to the Legal Services Commissioner.

While it's not unusual for a solicitor to agree to act for the sale on behalf of both parties, there are risks to be aware of:

- As trustee the solicitor has fiduciary obligations to the beneficiaries of the trust – in this case, both parties on opposite sides of contested litigation
- When accepting a role of trustee on behalf of conflicting parties, be aware that you owe duties to both parties. Always ensure that when acting as trustee, you are aware of your rights, responsibilities, and duties before accepting the role
- Clearly define what you are being retained to do

Links to the case and Rule 11 of the Australian Solicitors' Conduct Rules can be found below:

- [Laurens & Laurens \(No. 2\) \[2017\] FCCA 109](#)
- [Rule 11 - Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015](#)

I'm Melissa Fenton