

The importance of questioning assumptions

At work, as in our private lives, we make both conscious and unconscious assumptions. While these assumptions are often based on past experiences, how confident can we be that they are always right?

In a recent claim, the solicitor acted for two clients who were purchasing a property. The clients shared a surname and the solicitor made certain assumptions as to the relationship of the purchasing parties. As the matter progressed, the solicitor only took instructions from one party, assuming the instructions were given on behalf of both. That party defaulted on settlement and the vendor terminated the contract, retaining the deposit. The other party alleged that, had the solicitor sought proper instructions from both parties, she could have completed the contract independently of the other party and the purchase could have proceeded.

In another claim, 'Firm A' acted on a limited retainer on behalf of a wife in family law proceedings. 'Firm B' acted in the sale of the family home. Orders were made by the court regarding the split of the sale proceeds between the husband and wife. Firm B provided Firm A with a settlement statement confirming the distribution of the sale proceeds between the husband and wife. Firm A assumed it would only receive the settlement monies due to the wife, however, the entire sale proceeds were deposited to Firm A's trust account.

Without checking the settlement sheet, Firm A transferred all monies to the wife, not realising that the funds deposited included the husband's share.

Another recent claim arose from a solicitor not checking a client's assumption that a property was held by them as tenant in common and drafting the client's will on that basis. After the client passed away, it became apparent that the property was held by the client as a joint tenant so passed to the surviving joint tenant. The disgruntled beneficiary sued the solicitor.

Risk management tips

Making assumptions while acting for clients can lead to errors and increased risk. In the examples cited above, the following simple risk management procedures would have significantly reduced the likelihood of claims arising:

- ▼ Carrying out identity verification checks as part of standard client onboarding procedures and, where there are two or more clients, making it clear that, unless directed otherwise, instructions will be sought from each party
- ▼ Prior to distribution of funds, checking settlement sheets and any court orders for correct amounts and recipients
- ▼ When taking instructions from a testator with respect to property distribution, conduct a title search as standard practice.

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