

## Renovator's delight, solicitor's dismay

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The “Great Australian Dream” of home ownership can become a nightmare for many, including conveyancing solicitors acting for first homebuyers keen to buy a “renovator’s delight”.

Two recent Lawcover claims illustrate not only risks involved for solicitors when acting in these transactions, but also risk management steps that can help solicitors to avoid them.

In both claims:

1. houses were purchased by first homebuyers and the purchase contracts contained broad “*caveat emptor*” special conditions;
2. the purchasers allegedly informed their solicitor of their intention to renovate the property (a fact in dispute in each claim);
3. pre-purchase building reports identified (for the first transaction) the potential existence of unapproved additions and building defects, and (for the second transaction) asbestos contamination;
4. the pre-purchase building reports recommended the purchasers engage in further expert investigation of those issues but the purchasers decided not to do so;
5. subsequent to settlement, the purchasers found themselves facing expensive building costs to address later remedial works.

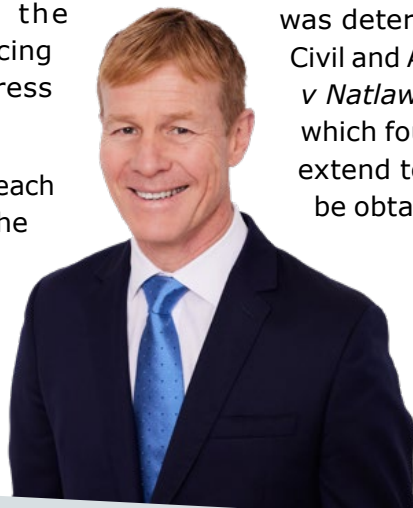
Negligence claims were made against each solicitor for losses associated with the remedial building costs, with each purchaser alleging the solicitors had failed to advise or insisting that they undertake the recommended further investigations.

Emphasis was placed on the solicitor’s knowledge of the purchaser’s intention to renovate, and the client’s vulnerability as inexperienced first homebuyers to the risks of later building issues.

The solicitor’s retainer agreements in both claims included the solicitor arranging pre-purchase building reports if instructed, but excluded giving advice on such reports and related building development/council compliance issues. Both solicitors articulated that they were not experts on building issues.

Despite this, both claims were vigorously pursued against the solicitors, with the purchasers alleging that the scope of the solicitors’ duty was to ensure further due diligence be undertaken to ensure the inexperienced clients’ interests were protected.

Ultimately, both claims were unsuccessful. In the first claim, the purchasers conceded to the solicitor’s reliance on the retainer exclusion, but only after receiving some limited financial benefits from a title insurance policy they had purchased, which covered building defects. The second claim was determined by the decision of the ACT Civil and Administrative Tribunal (see *Shields v Natlaw Pty Ltd & Anor [2023] ACAT 44*), which found that the solicitor’s duty did not extend to insisting that an asbestos report be obtained.



David Knibbs  
Claims Solicitor



Some valuable principles and practical lessons were illustrated in these claims:

- ▼ Solicitors should have an explicitly clear retainer specifying whether or not they are advising on any building, engineering, asbestos or other expert reports, and what searches they will undertake with regulatory bodies including local councils;
- ▼ A solicitor's standard of care owed to a client will depend on the level of sophistication and understanding of the client, and a first homebuyer may require more emphatic and direct advice;
- ▼ If a purchaser client specifies an intention to use the property, eg: to renovate it, the foreseeability of harm may increase and a solicitor should consider the suitability of the property for the client's intended use;
- ▼ A solicitor does not have a duty to insist on a client undertaking expert investigations against the client's instructions, but good risk management requires the solicitor to emphasise the risks associated with the purchase and the desirability to obtain advice from experts;
- ▼ Always confirm in writing all instructions and advice provided to your client.

**Solicitors can enhance value for their clients in conveyancing transactions by carefully managing the risks associated with advising clients, especially first homebuyers, looking to take on renovations.**