

Compare or Despair

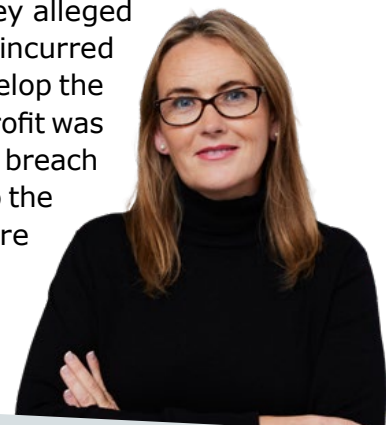
Competing priorities, time pressures and client demands are significant factors impacting accuracy when drafting and reviewing documents. Investing time to carefully review final drafts prior to execution avoids misunderstandings, disputes and potential negligence claims.

In a recent Lawcover claim, the solicitor was retained to act in the purchase of a commercial premises. Following negotiations, the solicitor made agreed amendments to the sale contract and returned it to the vendor's solicitor. The vendor's solicitor included further amendments and returned the contract to the solicitor for execution. These further amendments included a clause to the effect that the purchaser would pay the vendor an amount equal to rent deferred by the vendor due to covid. The vendor's solicitor did not highlight the further amendments to the solicitor and the solicitor did not carry out a detailed review of the final draft of the contract prior to the purchaser signing. The purchaser subsequently brought a negligence claim against the solicitor for failing to check the documentation prior to execution.

The recent case of *Lindsay-Owen v HWL Ebsworth Lawyers* [2023] NSWSC 68 also serves as a reminder of the importance of comparing final drafts against a checklist of client key objectives. The plaintiffs made a claim against their former solicitors alleging negligence and breach of retainer arising out of advice provided to them concerning the acquisition and development of

lands in the western suburbs of Sydney. The plaintiffs wanted to sub-divide and develop the lands with an experienced developer to maximise return upon a rezoning from rural to urban. The firm's retainer included advice around the joint venture agreement and the plaintiffs had an existing loan facility connected to the land. They alleged they instructed their solicitor that a key objective was that this existing debt was to become a joint venture liability and maintained that the solicitor knew and understood those instructions. However, the joint venture agreement as executed, contained a provision that obliged the plaintiffs to discharge the loan when planning approval was received. The plaintiffs were unable to discharge the loan and ultimately were forced to sell the land. They alleged significant expenses were incurred and the opportunity to develop the land and earn substantial profit was lost. The law firm conceded breach of duty of care in relation to the drafting of the joint venture agreement.

Glenda Carry
Legal Risk Manager



Risk management tips

There is very little scope for error when it comes to inaccuracies in legal practice. Most document and drafting mistakes can be prevented by taking some simple, but key actions including:

- Use of comparison software such as the 'Compare' function under the 'Review' tab in MS Word which compares two versions of a document and assists in highlighting any new changes
- Proofreading and review – have a colleague look over the document for inconsistencies or inaccuracies
- Instigate a workflow process where the use of comparison tools and peer reviews becomes part of your usual processes and procedures