



SOLICITORS

MORTGAGES

Mortgages

In its most simple form a Mortgage is a document which grants security over an asset. The most common form of Mortgage is a Mortgage upon Real Estate. It is impractical to deal with all types of Mortgages in a short brochure such as this however Mortgages normally fall into three broad categories. These are as follows:-

Fixed Term Fixed Asset Loan

This is a Mortgage which covers a specific loan for a specific period of time. It does not cover any other transactions which may be entered into between yourself and the Lender. This is a fairly unusual form of Mortgage.

An All Moneys Mortgage

An All Moneys Mortgage (or as it is some times called a Further Advances Mortgage) has a clause stating that the Mortgage is given as security not only for the specific loan which initiated the transaction but also to secure any further moneys which may be advanced by the Lender to you the Borrower under the terms of that Mortgage. This would cover such things as further advances for home improvements or even advances against your home where you utilise the funds for purchase of a new motor vehicle or some other purpose.

All Facilities Mortgages

These are by far the most common. This type of Mortgage is granted to secure all moneys owing under the initial transaction together with any and all other banking facilities granted by the Lender to you. This is a form of cross collateralising whereby should any money be owing under (say) your Bank Card they can use the all facilities security to be able to recover their money. One of the problems with an All Facilities Mortgage is that in some instances banks will not allow you to refinance only some of your transactions. They may require you to refinance your entire "banking package".

The Mortgage document itself consists of two parts. These being a schedule in the form required by the Titles Office and a memorandum of terms which sets out everyone's rights and obligations to each other. This form varies in its content and effect depending upon whom you have borrowed the money from. All major lenders have registered a copy of their Memorandum of terms and conditions with the Titles Office and these are freely available for inspection. When signing a Mortgage the Mortgagee is also required under the provisions of the credit code to supply a copy of these terms and conditions.

Whilst the clauses might vary there are however consistent issues that are dealt with in all memoranda and the following are some of the common issues that are contained in all Mortgages. At all times it should be remembered that the transaction involved is one of straight commerciality. All of the major financial

institutions are in business to make money for their shareholders and not to provide the social service of housing to the community. The financial institutions therefore have obviously drafted their documentation to protect their (and their shareholders) interests. If we therefore consider the major issues that would place the bank at risk we can deal with such issues under the following headings.

The Basic Transaction

The basic transaction here involves the bank lending you money, with the requirement that you pay it back. If you do not pay it back or default in your payments then the bank has a right to your property and may sell it in order to get back the money that it loaned to you.

Principal

The bank obviously does not want to place the principal advanced to you at risk. All memoranda therefore have a clause which states that the principal must be paid back in full on the date for due payment.

Interest

The bank must endeavour to make a profit. The way that it makes a profit is by charging a profit margin on the money lent to you. This is commonly referred to as "interest". All memoranda have a clause stating that the interest must be paid back in terms of the loan agreement on due date.

Improvements

Before making any improvements to the property you must get the approval for making these improvements from the bank, and from all appropriate authorities (e.g. the local authority). The bank has an interest in your property for as long as you owe the bank money and therefore you should not do anything to diminish the value of that property this is the reason why you must seek the bank's approval before making any improvements.

Insurance/Risk

Obviously the bank would lose money should its security not be worth the amount of the loan at any one time. One of the largest risks is obviously destruction of the premises and thus all memoranda state that you must insure the property against damage or destruction by fire or tempest or any of the other usual "all risks". This Insurance Policy should have the Lender noted as the Mortgagee and should the property be damaged or destroyed then the Bank has the discretion to decide on how the insurance money should be spent. They may decide to utilise it in repayment of their loan or they may decide to reinstate the property. You should carefully check the terms of your memoranda to ascertain what the Lenders powers are in this situation.

Repairs

Obviously if the property falls into a state of disrepair it will not be able to be sold for as much and the Lender stands the likelihood of losing out should the property be sold. All memoranda have a clause which states the property must be maintained. The Lender usually has powers to inspect the property at any time to ensure that you are keeping it in a fit state of repair.

Local Body Requisitions

If a government body or local authority instructs you to do something with regard to your property (e.g. clear noxious weeds from the property), then you must do whatever it is that you have been told to do. If you are required to do something and you do not do it, then the bank can organise to have it done and will charge for this service. This can work out to be fairly expensive because the bank will employ professionals to do the job and will then charge whatever fee those professionals ask. The bank may then charge an administration fee for organising these people to do the job and these amounts are then added onto the amount loaned by the bank to you and interest will then be charged on that amount. This of course makes it an expensive exercise for yourself and the moral of the story is that if you are told to do something by a government body or local authority then you must do it immediately.

Costs

You as mortgagor must pay all the costs of the mortgage and the stamp duty, and there is a clause in the mortgage which states this specifically.

Default

Generally an event of default will involve you not paying an instalment on time or going bankrupt. The mortgage states that in the event of a default then the entire loan becomes immediately due and payable. The mortgage then states what the bank's rights are if you default on the mortgage, and its most important and most powerful right is its ability to sell the property upon an event of default. But you should note that this is a long and involved process and can take up to 6 months to complete, and so the banks do not enter into such a process lightly. If however the bank does decide to sell your property then you would have to pay for the costs of the sale of the property, and the amount raised at the sale would be used to pay off the entire amount then owing to the bank. The important point to note is that if you do fall behind in your payments you should not let it run on and do nothing about it. You should contact me as there is a lot that I can do, by arranging with the bank to reorganise your repayments.

The Good News

Finally if you keep up with your repayments and do not breach any of the terms of the mortgage, once you have paid off the full amount of the loan the bank will write to you and indicate that they no longer have an interest in your property, and might even suggest that your credit rating is such that they would be prepared to lend you more money should you so desire. The advice given below is purely a summary of the main items and clauses which generally appear in Bills of Mortgage, and in no way attempts to be an exhaustive analysis of any particular Bill of Mortgage. You should carefully read through the

mortgage documents applying to yourself and contact me if you have any problems with any of the clauses contained therein. You should also note that I do not attempt to advise you on the commerciality of the mortgage document (i.e. the interest rate you should be paying, early repayment penalties, etc.) and can only advise you on the legal effects of the document.

