

## Risk video bites – Adequate security for loans

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Many claims by lender clients have involved allegations the practitioner failed to properly deal with the issue of security.

Mistakes by practitioners in this area have included:

- failing to register a mortgage
- delay in registering a mortgage, allowing a third-party caveat to be lodged after settlement
- failing to conduct a check search just prior to settlement which would have showed a third-party caveat had been lodged
- failing to obtain consent of a prior registered mortgagee
- failing to detect that the property comprised more than one title and the mortgage was only registered over one of the titles
- failing to realise that the borrower was a half owner or not the owner of the property they were purporting to mortgage
- failing to advise the lender about obtaining security, often because the practitioner thought they were just documenting the deal and did not clarify the retainer with the client
- and failing to advise the lender about the unusual nature of the security property, such as unusual terms in a lease or a covenant on the title.

These mistakes are sometimes made by practitioners acting for private lenders who they know well so they take an informal approach. The practitioner assumes the lender knows and understands the risk they are taking, and does not give clear, written advice to the client.

When acting for a lender, it is essential to take the following steps.

- Lodge a caveat if registration could be delayed.

- Conduct a final search as close to the settlement time as possible to check for any dealings which may delay or prevent registration of the mortgage. Do not settle until any impediments are removed.
- Where the security is a second registered mortgage, make sure the first mortgagee has agreed to the second mortgage and to limit its priority. Also ensure the first mortgagee has taken the necessary action so the second mortgage can be registered.
- Have a practice management system with good precedents and a bring-up system to ensure mortgages are registered promptly.
- Review the documents properly, and advise your clients both orally and in writing of the effect of the documents.
- Avoid informality even with longstanding clients.
- And be alert to possible conflicts, especially if you are asked to 'just document the deal' for both parties.

Thanks for watching.