



Acting for lenders

- Don't dabble in this area, you need to have good precedents and systems.

- Only act for one party even if you are asked to 'just document the deal' for both parties. Be clear who your client is and recommend the other party obtain independent legal advice.

- Advise your clients both orally and in writing of the effect of the documents.

- Avoid informality even with longstanding clients.

- Confirm with the lender in writing that you are not providing any advice on the financial wisdom of entering the transaction.

- For short term, urgent loans advise private lender clients in strong terms about the risks and more than once and via more than one media – spoken, written, diagrams – to try and get them to understand the risks. Given them time to absorb it.

- Instruct the lender to make its own enquiries about the borrower's credit history and capacity to repay.

- Always do a title search for any security property.

- Recommend the client obtain a valuation of the security property.

- When a valuation is obtained, examine it carefully for:
 - accurate description of the property
 - any assumptions about the state of completion of a project that has not commenced, rather than the value as it is currently
 - consideration of any lease terms and conditions
 - reference to any relevant planning restrictions affecting the property's use or development
 - material differences between the valuation and any recent contract of sale of the property.

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August 2020



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- Where the security is a second mortgage,
 - advise your client on the risks of second mortgages
 - advise your client that enquiries need to be made with the first mortgagee about the extent of their security
 - obtain consent from the first mortgagee to the second mortgage and to limit its priority. This is usually done by a deed of priority.
 - ensure the first mortgagee has taken the necessary action to ensure the second mortgage can be registered
 - if the second mortgage is not registered straight away, lodge a caveat

- Advise your lender client that they must
 - be satisfied the borrower/mortgagor/guarantor understands the nature of the documents they are signing, either by ensuring the lender gives that explanation or that independent legal advice is obtained. This is essential where there are third party security providers.
 - take reasonable steps to identify the mortgagor in accordance with section 87A of the Transfer of Land Act 1958 (Vic) and relying on the mortgagee's solicitor's certificate may not be sufficient¹

- Treat related party loan transactions like any other loan on commercial terms and ensure they are properly documented.

- Ensure compliance with the identification requirements relating to mortgagors as specified in section 87A of the [Transfer of Land Act 1958 \(Vic\)](#).

- Carefully read the signed solicitor's certificate and check that:
 - the details and names are complete and consistent with other transactional documents
 - photo identification was provided.

- If you do not know the certifying practitioner, confirm their existence on the Victorian [Legal Services Board + Commissioner's](#) website.

- If any features of mortgage fraud appear from Section 4 of this guide, make the extra enquiries necessary to satisfy yourself it is a bona fide borrowing.

¹ [C & F Nominees Mortgage Securities Ltd V Karbotli & Ors \[2020\] VCC 987](#)

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- Where a lost title application is being processed, do not settle until a new title has been issued.

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- If acting for a lender to recover money owing, note the 15 years limitation period from the date when the right to receive the loan money accrued. See s.20 in the [Limitation of Actions Act 1958 \(Vic\)](#).