

Amadio

While the following checklist is not exhaustive, it does draw attention to the key areas that many practitioners overlook in Amadio transactions. The checklist may be photocopied for ongoing use.

Client:

Matter:

- ☐ Allocate only one person in the office to give practitioner's certificates.
- ☐ Confine the provision of a solicitor's certificate to existing clients.
- ☐ Where the client receives the security documents before you, request they send you the documents well in advance of your meeting to give you sufficient time to read them.
- ☐ Where you receive the security documents before the client, provide a copy of the documents to the client prior to signing to give them sufficient time to read them.
- ☐ If there is more than one client, consider whether their interests are the same. Does one need to obtain independent advice or will advising them separately be sufficient?
- ☐ Never act for both the borrower and a third party security provider.
- ☐ Always advise the security provider client without the borrower present.
- ☐ At the start of the first meeting insist on identification and do not proceed unless it is produced. Keep copies of the identification documentation.
- ☐ Use an independent interpreter when appropriate. Never use the person who is seeking to gain from the provision of the security as interpreter.
- ☐ Advise the client about the key elements of the documents and the worst case scenario.
- ☐ Ask the client to tell you what they understood your explanation to mean and record their response.
- ☐ Address the possibility of capacity, undue influence or duress.
- ☐ Ask your borrower client why they are borrowing the money.
- ☐ Ask your security provider client why they are entering into the transaction and record the answer.
- ☐ Do not provide financial advice.
- ☐ Advise your borrower client of the interest rates applicable to the transaction. Advise them in strong terms to obtain independent financial advice about the loan and the investment for which they are borrowing the money. Refer your client to a qualified accountant or financial adviser and ensure they have enough time to obtain this advice.
- ☐ Advise your security provider client in strong terms they should obtain independent financial advice about the ability of the borrower to repay the loan. Refer your client to a qualified accountant or financial adviser. Ensure they have enough time to obtain this advice.

- ☐ Make a comprehensive file note of all attendances on your client, whether in your office or elsewhere.
- ☐ Check your file notes:
 - are dated
 - identify the author
 - record the duration of the attendance
 - record who was present or on the telephone
 - are legible to you and someone else
 - record the substance of the advice given and the client's respons/instructions
 - are a note to the file rather than a note to you.
- ☐ Use the LIV/ABA practitioner's certificate even if the financier has provided a different form of certificate.
- ☐ Confirm your advice in writing and seek a signed acknowledgment from the client.
- ☐ Keep files indefinitely.

Unrepresented surety mortgagors or guarantors

- ☐ Advise any security providers in writing that you are not acting for them and they should seek independent legal advice.
- ☐ Do not prepare answers to requisitions on the security provider's behalf.
- ☐ Never use the borrower as an agent to reach the security provider.
- ☐ Ensure the security provider signs the disbursement order and you bill the borrower direct.
- ☐ Be clear about who you are acting for in your correspondence with the other side.