

Independent valuations essential for lenders

When acting for private lenders you need to pay careful attention to the security on offer, especially in the current market. Many private lenders who are lending on short term loans or to people they know, are often not concerned enough about the detail of the security property. If the borrower defaults though all the focus will be squarely on the security and why the lawyer didn't make sure it was adequate.

With any property used as security the first thing to do is a title search to confirm ownership and any encumbrances on title and advise the client to obtain:

- written confirmation from any existing mortgagees or caveators of the amounts secured against the property
- an independent valuation of the security property.

When a valuation is obtained, examine it carefully for potential signs that the valuation may be flawed. The mistakes and oversights we have seen in valuations include:

- inaccurate description of the property
- a valuation that assumes the completion of a project that has not commenced, rather than the value as it is currently
- failure to consider lease terms and conditions
- failure to address 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

In claims where these mistakes have happened, the valuer does bear some responsibility, but so does the lawyer where they received the valuation and the mistake was obvious.

Justice Brereton in *Kayteal Pt Ltd v Dignan & Ors* [2011] NSWSC 197 said:

A solicitor is bound to report to the client matters discovered, or that ought to have [sic] discovered, in the course of investigating title and preparing for completion, that a reasonably competent solicitor would regard as such as might cause the lender to doubt the correctness of the valuation, or some other ingredient of the lending decision. [38]

Don't take it for granted that the valuation details are accurate.