

Do you ask your borrower client why they are borrowing the money when they come to you with loan documents? We know some practitioners don't.

It seems they think it's not part of their retainer to understand why the client is borrowing the money or they think it might be drifting into the realm of financial advice if they do ask, or both. And both reasons are wrong!

The courts have recently made it very clear that practitioners are expected to ask and know the reason a client is borrowing the money. The court also expects practitioners to draw to the client's attention the risks faced in borrowing the money and the need to obtain independent financial advice about the investment they intend to make.

In a recent case the court said a solicitor's obligation is not simply to explain the legal effect of the documents but to advise the client of the obvious practical implications of the client's entry into the transaction.

We have developed a checklist for practitioners when providing solicitor's certificates for borrowers or third party security providers to minimise the danger of claims in this risky area of legal practice.

Firms should review this checklist against their own firm policy and procedure for providing solicitor's certificates.

Once you have asked your client why they are borrowing the money there are many other things to do or to consider.

I have picked out a few but recommend you read the whole list to assist you to manage the risks.

- At the start of the first meeting insist on identification and do not proceed unless it is produced. Keep copies of the identification documentation.
- And confine providing a solicitor's certificate to existing clients.
- If there is more than one client, consider whether their interests are the same and never act for both the borrower and a third party security provider.
- 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.
- And where you receive the documents before them, send them a copy to give them sufficient time to read the documents prior to signing.
- Advise the client about the key elements of the documents including the worst case scenario. Ask them to tell you what they understood your explanation to mean and record their response.
- Do not provide financial advice.
- And finally, make a comprehensive file note of all attendances on your client, whether in your office or elsewhere, confirm your advice in writing and seek a signed acknowledgment from the client. And keep those files notes indefinitely.