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What banks must do to protect borrowers equity in 'forced sales' >>

You will have heard of a number of situations over the years where in forced sales Banks appeared to be interested only to recoup their loan funds, interest and expenses, and appeared to treat the borrowers equity in the assets very casually.

Borrowers are entitled to some protection, and need it if they are to have the maximum chance of using their equity for a fresh start.

The Law Report on Tuesday 18 February 2003 (ABC Radio National) had a panel discussion which examined creditor forced sales. If a bank takes possession and wants to sell the mortgaged property the banks must not act recklessly so as to sacrifice the equity of the borrower.

During the programme Peter Jackson of Jackson Smith said:

"[the duty is] described as a negative duty. Its described as a duty not to act in bad faith..."

So where is the law going?

Don Page, the member for Ballina, has introduced legislation into the NSW Parliament to require banks to obtain the market price on the sale of mortgaged property.

For details of this legislation look at the 2nd reading speech reproduced on the Jackson Smith website, newsletter volume 4, issue 7, June 2001. www.jacksonsmith.com.au

The duties of the lenders are being made wider by the courts. In a case quoted by Peter Jackson in the Law Report Programme the court held that the bank should have spent money to improve the prospects of the borrower recovering more money on the sale.

The most critical thing a client of yours can do to help protect his equity....

- Any borrower facing a forced sale should talk to the bank and inform the bank of any issue that is relevant to the proper sale.... confirming the discussions in writing. Bank's are learning that they ignore issues affecting a reasonable sale price at their peril.

To listen to the interview the web site address is: www.abc.net.au/rn/talks/8.30/lawrpt/stories/s785827.htm

For a free copy of the transcript contact Kirsten at Jackson Smith freecall 1800 687 217.

I hope that this is of interest and value to you.

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