YOU AND YOUR PROPERTY

BY RESIDENTIAL PROPERTY LAWYER
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Most property owners have borrowed money to purchase their property, some will have paid off the loan advanced to them by a bank, others will have a significant balance still to repay. In my experience, there is a fair amount of confusion regarding the terminology of loans and mortgages and what those terms mean in theory and in practice.

The most common misunderstanding is evidenced when I hear clients saying they "pay the mortgage each month". What they mean by this statement is they repay the loan the bank advanced to them to allow them to purchase the property. The mortgage is the document that provides the bank with security for the lending granted to the owner. They are separate legal obligations. This distinction is important. The loan evidences one contractual relationship. The mortgage evidences another relationship.

When pressed, most people will say they believe their mortgage is designed to ensure the loan is repaid. In reality, the mortgage secures much more than repayment of the loan. A standard mortgage document contains a number of promises the landowner makes to the bank, in particular:

- The mortgage secures all lending the owner of the property has promised to repay to the bank. This includes credit card debt, personal loans or guarantees given by the owners in respect of other persons' debt to the same bank. In short this means if the owner makes all their payments on their loan but falls into significant arrears under their credit card debts the bank can sell their home to recover the credit card debt.
- The owner promises to repay all rates relating to the property. If the owner does not pay the rates the bank is within their rights to pay the outstanding rates and add this amount to the loan thereby increasing the obligations of the owner to the bank. Failure to pay the rates is also considered a default under the terms of the mortgage allowing the bank to force a sale.
- The owner promises to keep the property insured. This ensures that in the event the house is destroyed or damaged the bank's loan will be repaid. It is very important a house is insured for total replacement value based on a square meterage. This ensures the house can be reconstructed at a later time even if the cost of building materials and labour have increased.

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- The owner promises to look after the property and keep it in a good state of repair. If the property was to fall into disrepair the bank has the ability to sell the property. The owner is also obliged to ensure the house complies with Building

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Act and Local Authority requirements. Failure to comply with those standards may jeopardise the insurance cover.

- Most mortgage documents appoint the bank as the owner's attorney. This means if the owner does not cooperate with any requirement of the bank, the bank can simply present the mortgage as evidence they are the owner's attorney and carry out the actions they require without the consent of the owner.

All of these powers are designed to ensure the bank is paid.

It is tempting to separate out the different elements of our financial lives. This is administratively convenient for us. Notwithstanding this, it is important to remember the bank does not share this view. When a bank makes a lending decision they look at three factors in particular, character, capacity and collateral.

Character measures your personality and the likelihood you will repay any loan owing to the bank. The bank measures this by looking at your credit history and reviewing your bank statements to determine how you spend your money.

Capacity measures your ability to repay a loan. The bank looks at your total liabilities and measures that against your income/expenses and determines whether or not you are able to service the loan(s) you wish to take out. Banks have strict criteria you must fit within. In the event you do not fit within those criteria you will not be able to borrow money from that institution.

Finally, the bank measures collateral. No bank will lend money to an individual unless they are confident they will be repaid. This is a measure of the amount borrowed as a percentage of the value of the security. The closer this number gets to 100 per cent the more cautious the bank becomes.

In summary, you should not deal with each aspect of your banking in isolation except for administrative convenience. In making any financial decision involving lending you should always consider the big picture. The bank will be!

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