



## GUARANTEE ADVICE INFORMATION SHEET

### Background

Banks and other financial institutions often require borrowers to obtain independent legal advice. This is often explained by banks as simply having the borrower's signature witnessed by a lawyer, but it is much more than this.

The need to give independent legal advice requires the lawyer to explain in detail the possible ramifications of the borrower failing to comply with the loan obligations, thereby ensuring that the borrower is aware that any property offered as security for the loan can be sold to repay the loan. Additionally, the lawyer must take steps to verify the identity of the borrower to ensure that the loan documents are correctly signed.

The real motivation for the Bank insisting on independent legal advice is not to help the borrower but to provide the Bank with opportunity to sue the lawyer if the proper identification procedure is not followed or if the borrower is able to convince a Court that the full terms and consequences of the loan were not explained to the borrower. The lawyer is therefore exposed to a claim for the Bank's losses and must ensure that full explanation is given.

### Multiple Borrowers

Often more than one person, perhaps spouses, are borrowing and the advice must be given to all borrowers.

## **Guarantors**

Sometimes the loan is being made to one person and is being guaranteed by another person. This is a dangerous situation as the guarantor is not receiving any tangible benefit but is assuming the risk of non-payment by the borrower and the Bank calling on the guarantor to repay the loan or have the guarantor's property sold to repay the loan.

Extra care needs to be exercised in this situation and the guarantor **MUST** be interviewed independently of the borrower.

## **Company Loans**

A company may be the borrower but because the company has limited assets the Bank will require Directors of the company to give personal guarantees, thereby putting the personal assets of the Directors at risk. Again, great care needs to be taken in this situation to be certain that the Directors are aware of their personal liability.

## **Legal Costs**

Depending on the circumstances, interviews relating to guarantees will take between 30 and 60 minutes. Detailed advice must be given, identity verified, certificates of advice given and copy documents retained. We will only provide this service to existing clients and our costs of \$660 (GST inclusive) are a reflection of both the time taken to give the advice and also risks associated with giving that advice.