

Mortgage/Loan/Guarantee – Independent Advice

Lenders regularly insist that a borrower or guarantor obtain independent legal advice and that the provision of this advice be documented by the solicitor (or that the client make a statutory declaration that this has occurred) before they will process loan documents and advance funds. Most commonly, banks will require this independent advice when:

- a person or company who is not the actual borrower is offering a mortgage over one or more of their properties as a guarantee that the loan will be repaid on time;
- a retired person is seeking to mortgage their home to provide funds to live on or meet maintenance costs for the property that they otherwise could not afford (ie. seniors loan or reverse mortgage)
- a company is borrowing and the directors are required to offer personal assets as security for the company's loan;
- a superannuation fund is borrowing to fund the acquisition of a property.

Unfortunately, it has been our experience that bank officers or mortgage brokers often tell the borrower “you just need to sign in front of a solicitor, it doesn't take long.” Regrettably, this misleading direction leads people to believe that there is no requirement to obtain advice. Worst still, this aspect is often left until the last possible day and when having funds available to complete a property transaction has become urgent.

In order to provide the ‘certificate of independent advice’ usually required by banks in these situations, we take on the professional responsibility of ensuring that you understand the legal implications of every document the lender asks you to sign. This usually involves us reviewing several different documents relied on by the lender, considering their contents and then explaining the legal implications of each document to you.

On average, it requires us to set aside at least one hour of professional time to review the documents and a further hour to properly advise you, then to assist you in completing the documents and any associated declarations.

It is therefore necessary for you to arrange for all documents provided to you by the lender to be provided to us by email or in hard-copy to our office at least 2 business days before your appointment to receive the advice and if you wish after considering that advice to proceed to sign the loan or guarantee documents.

Although the only reason a solicitor is required is to protect the lenders interests in the event of a default, so that the advice provided is in fact independent, you are required to meet the professional costs involved.

NB: We cannot advise you of the merits of the particular loan product and separate advice should be sought from a financial adviser as to whether the particular loan is the most appropriate one for your needs.

2020 FEE SCHEDULE

Number of Clients	Professional Fee (inc. GST)	Max. Professional time allowed for*
Single Borrower/Guarantor	\$594	1.5 hours
Each additional Borrower/Guarantor	\$198	+ 30mins
Reverse Mortgage – New Loan	\$792	2 hrs
Reverse Mortgage – Top-up	\$396	1 hr

* if additional professional time is required due to the length of documents or additional conferences with you, this additional time will be charged at the published hourly rate for the solicitor attending.

In some cases where you can't provide them, we are required to conduct Title or ASIC searches as part of our review. If such searches are required, the costs of those search fees we incur will be payable by you in addition to the above professional fee.