

WHAT IS A MORTGAGE?

Most of us have these things but where did they come from and what do all those clauses mean?

A Historical Background

The history of the actual word “mortgage” is very interesting. In the word “mortgage”, the “mort” is from the Latin word for death. “Gage” is from the sense of that word that means a pledge to forfeit something of value if a debt is not repaid.

In the beginning, as early as 1190, a mortgage was just a conveyance of land for a fee. The buyer paid the seller a set rate, with no interest, and the seller would sign over the land to the buyer. In those days they didn’t have house and property lenders like we do now. There were usually conditions that had to be met before the land would be the property of the buyer, just like today, but it was based upon the assumption that the land would produce the money to pay back the seller. It was a lopsided arrangement giving the seller absolute power, who could after the sale dictate all sorts of arrangements that may forever prevent the buyer completing the purchase and hence the land would be forfeit back to the seller. People could be just as unscrupulous in those days as they can be now!

English Common Law gradually built in protections for both parties. A law was enacted to protect a creditor (the person owed money) by giving him an interest in his debtor’s (person owing the money) property. Under this law the mortgage was a conditional sale. The debtor could sell the property to repay his debt to the creditor, much as it is today.

25 pages of Conditions – what do they say?

A typical mortgage those days is a complex and lengthy document listing mortgagor and mortgagee obligations. Let’s look at a few of these.

- **Debt payable on demand** – Funds secured are often payable on demand dependent on certain events stated in the mortgage, such as default or otherwise breaching your mortgage conditions.
- **Interest payable** – Interest continues to be payable at all times while the mortgage is outstanding. We’ve often found clients forget this aspect when they want to refinance. Default interest may be at a higher rate and this will be specified in the loan contract.
- **More than one borrower and guarantor** – Each borrower guarantees the due payment by the borrowers of the whole of the guaranteed moneys. It is as if you were the only person obliged to pay. So if you enter into a borrowing arrangement with someone else, you must feel comfortable with them. If you are a guarantor, a lender can usually enter into further arrangements with the borrower without your knowledge or any obligation to tell you. It is important guarantors realise this, as they should completely trust anyone they guarantee.
- **Trustees beware** – if as a trustee you have signed a mortgage agreement, you continue to be liable even after you stop being a trustee unless the lender gives you a written discharge.
- **Looking after the land** – All property including the land must be kept in good repair at your expense. Should you alter any existing structures, subdivide,

change the use of the land, sell it, lease it, etc you are bound to inform the mortgage holder. Nothing should be done to jeopardise the value of the lenders security.

- **Rates, Taxes, Leases, etc** – You are liable for these to be paid on time.
- **Insurance** – Houses and buildings must be covered by Full Replacement insurance, which includes cover for fire, flood, earthquake. The lenders interest as mortgagee must be noted on an insurance policy. If there are any claims, refund of claims, cancellation of the insurance policy the lender should be notified.

The lender is entitled to ‘call up’ the mortgage should any terms or conditions be breached. If this happens the mortgagee and guarantor continue to be liable for the debt plus accruing interest and charges related to the lender retrieving its debt.

In a word don’t go there. If you find that it is impossible to keep to the mortgage terms, which in most cases is the required repayments, then take action and sell the place under your own steam. Inform the lender but don’t wait for them to take action. You will generally get much less for your property if you delay.

Allistar Walker is a registered mortgage broker. His personal disclosure is available online from www.mortgagehelp.co.nz or contact on 0800 005 066, if you have any mortgage problems.