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Secure your home

Many home property owners have suffered and are still suffering from their houses being sold by way of mortgagee sale.

MORTGAGEE sale practice and processes followed in the present market has become a growing concern for the Consumer Council of Fiji.

This is one area that clearly shows how vulnerable consumers are taken advantage of by bigger and powerful financial institutions.

The Council sees a great need to voice out the unfair practices imposed by the financial institutions when selling real properties by way of mortgagee sale.

What is a mortgage?

A mortgage is a legal document by which the owner (i.e. the buyer or borrower) transfers to the lender an interest in real estate to secure the repayment of a debt. Mortgages are used by individuals and businesses to make large purchases of real estate without paying the entire value of the purchase up front. In a residential mortgage, a home buyer pledges his or her house to the bank or finance company.

The bank has a claim on the house should the home buyer default on paying the mortgage. In the event the mortgagor is unable to repay the loan, the bank may evict the home owner, sell the house and use the proceeds to clear the mortgage debt. A goods mortgage (also called chattels mortgage) is a loan to buy some movable property like motor vehicles and machinery where the item is security for the loan.

Mortgage to be in Writing

A mortgage must be in the form of a written mortgage document signed by the mortgagor. A goods mortgage, however, need not be in the form of a written document if the credit provider had acquired lawful possession of the goods before the mortgage was entered into. If a mortgage is in the form of a written mortgage document and is not part of a credit contract, the credit provider must give the mortgagor a copy to keep, in the form in which it was made, within 14 days after it is made. It is extremely important for mortgagors or borrowers to read through their credit agreements before they sign. They must read through each and every paragraph in the agreement and understand what they are agreeing to. In the event the borrowers do not understand certain clauses in the agreement, it is in their interest to seek independent financial and legal advice before signing the agreement.

Case Study

Mrs. Ram purchased a home loan from a bank. She signed the home loan agreement and started making her payments. Soon after, she found herself in financial difficulties where she could not pay her monthly payments. As such, her credit provider issued her default notices reminding her that her account was in arrears and that she needed to pay her arrears. Mrs. Ram also learnt that she would have to pay for all the notices that were sent to her which amounted to over $1000. Mrs. Ram disputed paying this amount and said that she was not informed that she would have to pay all the notices which were issued to her when her account was in default. Mrs. Ram then lodged a complaint with the Consumer Council of Fiji. Upon the council's intervention, it was found that Mrs. Ram failed to read the section in her contract which stated that in the event of any default notice sent to her by the bank, the customer (Mrs. Ram) would have to pay for all cost pertaining to those notices. Thus, she had no choice but to pay those costs. However, the bank must indicate during pre-contractual disclosure precisely how much the charges would be for sending such notices.

In this case study, the mortgagors was not vigilant enough and failed to read, analyze and understand their credit contracts, which resulted in financial loss for both.

Definitions

Let us take a look at the common terms and its definitions:

Mortgage - is a loan secured over the property such as a house. This means that if you fail to pay off the loan, the financial institution can sell your property to recover the debt.

Mortgagor - is the person who borrows the money from financial institutions by giving security over his/her house (the buyer).

Mortgagee - is the lender of the loan which is normally the banks and/or other financial institutions such as Home Finance Company.

Guarantee - If a person gives a guarantee under mortgage contract, he/she is agreeing to pay the debt if the borrower fails to do so.

Insurance - this is taken out by the borrowers to protect the property. This is normally paid on an annual basis.