

Mr Arthur Cristian and Mrs Fiona Cristian  
4 July 2006

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7. The Notices required you to repay to Perpetual Limited within 31 days the amount by which your loan account exceeded the credit limit of your Loan Contract (being \$22,684.96), plus expenses of \$600.00. The section 57(2)(b) notice stated inter alia:

*"Unless the requirements of this Notice are complied with within (1) months after service on you of this Notice, Perpetual Limited proposes to exercise a power of sale in respect of the land referred to in the schedule below, which land is the subject of the Mortgage also specified in that schedule.*

**SCHEDULE**

- (a) *The land: the whole of the land described in Certificate of Title Folio Identifier 54/755903 commonly known as 40 Warrain Crescent, Currarong, NSW 2540.*
- (b) *The Mortgage: registered mortgage number AB812274 between Fiona Caroline Cristian (Mortgagor) and Perpetual Trustees Australia Limited now known as Perpetual Limited (Mortgagee)."*

The section 80 notice stated, inter alia:

*"Your approved Facility Limited has been exceeded in the amount of \$22,684.96. You must pay us that amount.*

*If after 31 days from the date of this notice you do not do so, we:*

- (a) *will be entitled to exercise our rights under the Credit Contract to accelerate payment of the outstanding balance of your loan. That is, instead of having to pay us the normal payments required under the Credit Contract, you will have to pay us the whole amount you owe us on the loan account;*
- (b) *may commence legal proceedings against you for the recovery of the outstanding balance under your account;*
- (c) *may take possession of and sell property mortgaged to us as security for the loan".*

8. The Notices were served on you in accordance with section 170 of the *Conveyancing Act 1919 (NSW)*.

9. You have failed to comply with the Notices.

10. Under the terms of the Mortgage signed by Mrs Cristian, the provisions set out in Memorandum No. 2477234 filed in the Department of Lands, Land and Property Information Division (LPI) ("the Memorandum") are incorporated in the Mortgage. The Memorandum provides under clause 5.2 that following default the Bank may:

*"eject you or any other occupants from the Land and take possession of the Land" provided notice "has been given in accordance with laws governing the exercise of the power of sale as mortgagee".*

11. The Notices given are in accordance with laws governing the exercise of power of sale as mortgagee.

12. The Notices were given and expired prior to the Bank taking possession of the Property on 11 May 2006. Accordingly, the possession of the Property has been