

You may have cause for complaint about the conduct of Macquarie, both in relation to the delay in settling the loan and the error in the documents. Macquarie seems to acknowledge the loan documentation was not what had been discussed. However, in my view, nothing will be gained by pursuing this avenue of complaint. Macquarie's answer will be that immediately the error became apparent it offered to vary the loan to the terms you originally negotiated, back dated to the settlement date. That offer was made at least as soon as 22 December 2005.

Even though you have made no repayments and Macquarie has taken possession of the property, it appears still to be open to a settlement which will enable you to either refinance or to sell the property in an orderly fashion yourselves, rather than have Macquarie sell it.

You have instructed me you wish to conduct the sale and to put a proposal to Macquarie to enable this to happen. You are speaking with the real estate agent to agree on a commission and a marketing strategy.

On your instructions I contacted Macquarie's lawyer and advised that you have given careful consideration to their letter of 18 May 2006 and whilst you are not inclined to accept that offer as it is, you will shortly make an offer to resolve this matter.

In my view, for an offer to be accepted by Macquarie, you will need to demonstrate in the offer at least the following:

1. That you are serious about selling the property at a realistic price and time frame. You will need to demonstrate you have taken and accepted advice from a competent real estate agent about this. I think the agent should put her advice in writing.
2. That you will make at least some effort to service the interest on the loan. If you are not able to meet the full interest commitment, you will need to explain to Macquarie your financial position in detail and demonstrate that what ever offer you are making to service the interest component is the best you can manage.
3. You should not delay in making this settlement offer.

I will shortly send to you my firm's service agreement for you to sign and return at your earliest convenience. Our terms of trade are that our accounts are to be paid within 14 days. You have indicated you will find this difficult and to the extent our accounts may not have been paid by the due date, you wish to pay them from the proceeds of sale of the property. My firm will therefore include a provision in the service agreement to this effect. The agreement will provide for an unregistered mortgage to my firm to secure the payment of any unpaid fees. My firm will record a caveat over the property to protect this mortgage interest.

This service agreement is an important document giving legal rights to my firm in relation to the property. For this reason you are entitled and we encourage you to take independent legal advice about the agreement.

