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THE FINANCIERS ASSOCIATION OF AUSTRALIA LIMITED NEWSLETTER
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Welcome to the Autumn2008 Edition of
The Financiers Association of Australia Limited newsletter.
As usual we try to keep up with any legislative changes in the credit code as well as inserting any interesting general business pieces gleaned from various sources.

A welcome is also extended to new members at this time.

WHY WAYNE SWAN CAN'T PULL RATES DOWN

WHAT is Wayne Swan doing to put a brake on banks puffing up their margins on home loans?
And what can Swan do?
Not much, and not much more are the answers. Swan, our tyro Treasurer, is in a bind.

The Labor Government wants to be seen as tough on banks.
The trouble is that every time Swan talks about banks he simply exposes how weak his, and the Government's, position is.

There are two main reasons.
One is the spasms in world markets, which are giving banks the excuse to raise rates.

The second is the creaky reality of banking, where glossy surfaces hide systems that are slow and cumbersome to change.
Banks today are in the best position since the mid 1990s to exercise pricing power in the mortgage market.

The National Australia Bank this week increased its interest rate margin on home loans for a fourth time this year, lifting its variable interest rate on home loans to 9.36 per cent at the time of publication.

Other banks reached this level of interest rates in fewer steps, though most will be happy that NAB has now caught up.
NAB said it lifted rates to reflect the higher cost of borrowing money in wholesale markets, including from offshore.

And it is true, the price of money (relative to the rate on safe investments such as US government debt) is wider than it was.

But this is only part of the reason NAB and other banks can lift rates and get away with it.

The big change under way in the home loan market is that a line-up of non-bank lenders cannot compete with banks any more.

Most of these lenders grew up during the boom years of easy money in the credit market.

Up until late last year it was easy to pool home loans into a trust that would sell debt to insurance companies and pension funds.
Often the bonds were bought by obscure banks in Europe and Asia.
This market collapsed in August 2007 and no one in banking thinks it will recover this year.
And maybe not next year either.
So some well-known brands in home lending now cannot raise money to compete with the banks.

Lenders such as Aussie, Bluestone, Liberty and Virgin have to limp along lending little new money. Some home loan companies are out of business altogether, including Rams (though Westpac now owns the Rams brand).

Lenders dependent on easy access to credit markets accounted for at least 13 per cent of the home loan market when the music stopped last year.

And now there are few lenders around to step into the void.
This is great news for major banks, most regional banks and a handful of foreign banks.

The market share of big banks is rising as non-bank lenders fade from the market. And it is this rising market share, rather than the higher cost of money, that means big banks keep fattening the margin on home loans. This leaves those people with home loans, and those bleating about home loans such as Wayne Swan, with few good options. The best option is to look for a better deal and refinance with another lender.

The trouble is there are not so many good deals any more and it costs to switch a loan from one bank to another.

A hidden nasty is most home loan contracts is the "break fee", though the fine print will call this the "deferred establishment fee". Anyone who refinances a home loan after less than, say, four years, will have to pay this exit fee. Research by InfoChoice shows that break fees on average are $1450 but can be as high as $8750.

Non-bank lenders tend to have higher break fees than banks. Swan has Treasury and ASIC doing some work on making it easier to switch banks.

But there's not much practical to be done other than to make sure borrowers know what they are signing up for.

Banks charge break fees in order to make the up-front costs of loans look lower. If there were limits on exit fees from home loans banks would just charge them up front.

Maybe banks could make it easier for people to compare the cost of home loans. There is already a "comparison rate" that most people ignore.

The formula is also flawed. Banks could also be made to co-operate more readily with refinancing, though delays by banks are rare. There are also plans for the Federal Government to take over consumer credit laws from the states, but this won't change much.

There is a problem with rogue mortgage brokers but the bigger problem is the all too easy access to credit in recent years, with banks often ignoring real household living costs in working out how much someone could afford to pay back on a loan.

Wayne Swan has separate work under way to make it easier for people to change everyday bank accounts, though this looks like being an order to banks to supply a list of regular payments that a customer can take to their new bank.

What's really needed to make bank account switching easier is a radical overhaul of outdated bank processing systems, a project that would take years and cost a bomb.

The bad news is that the global credit crunch has wrecked competition in consumer banking. So expect banks to puff their profit margins for a long time to come.

From The Herald Sun

Ian Rogers is editor of banking industry newsletter The Sheet

Bill Facilities (Promissory Notes) Regulation

As of Friday 30 November 2007, the Consumer Credit Code (the Code) applies to the use of bill facilities (promissory notes and bills of exchange) where the credit is provided wholly or predominantly for personal, domestic or household purposes. In Western Australia and Tasmania, this change will take effect at a slightly later date.

The application of the Code to bill facilities has been brought about by the Consumer Credit (Bill Facilities) Amendment Regulation 2007 (the Regulation).

These are available for download download (www.creditcode.gov.au). By bringing bill facilities within the Code, consumers will benefit from key protections in the Code, including full disclosure of fees and charges, controls on the calculation of interest, access to hardship arrangements and procedural protections in enforcement situations.

Bill facilities were previously exempt from the Code, as they are predominantly used for commercial purposes.

However, bill facilities (especially promissory notes) have also been used by some consumer credit providers to avoid the Code. Promissory notes generally carry very high interest and other charges, and can be targeted towards vulnerable and disadvantaged consumers. The enactment of this Regulation closes this loophole, and will ensure greater consumer protection for vulnerable and disadvantaged consumers.

It is important to note that this amendment will not apply to commercial bill facilities or to any bill facility (no matter what the purpose) provided by an ADI.

The proposal to bring all bill facilities under the Code was part of the Fringe Credit Providers' Regulatory Impact Statement and public consultation took place on the draft Regulation last year.

Further information about this Regulation is available for download from www.creditcode.gov.au

Term Contracts for sale of land are regulated by Credit Code

In *Geeveekay Pty Ltd & Ors v Director of Consumer Affairs Victoria* [2008] VSC 50 , the Victorian Supreme Court decided that a terms contract of sale for land was regulated by the Consumer Credit Code.

The Director of Consumer Affairs Victoria applied for civil penalties relating to 46 contracts of sale including the sale to Rand.

The main features of the transaction between Mr and Mrs Keogh and Ms Rand were:

- Mr and Mrs Keogh were the registered proprietors of the property and would remain so until final settlement, probably in 30 years (2032)
- Mr and Mrs Keogh had mortgaged the property to Westpac
- by the terms contract of sale, Mr and Mrs Keogh sold the property to Ms Rand for a price plus interest payable by 360 monthly instalments unless additional payments were made
- Ms Rand was entitled to possession of the property (which was to be her home) shortly after signing the contract
- under the terms contract, Mr and Mrs Keogh agreed to use the instalments in the first instance to meet their payments under the Westpac mortgage and to discharge the mortgage before final settlement, and Ms Rand agreed to be bound by the terms of that mortgage

The vendors argued that they did not provide "credit". The court decided the contract provided credit because Ms Rand's obligation to pay instalments was a present obligation to pay a future debt which came within the concept of "incurs a deferred debt" in the definition of "credit" in s 4(1)(b) of the Code. It also concluded the terms contract between the parties is a credit contract under the Code on the additional basis of Ms Rand's assumption of Mr and Mrs Keogh's mortgage and loan obligations.

Consumer Credit Code amendments update

The recent call by the Treasurer for the States to accelerate work on the licensing, conduct and disclosure of mortgage brokers has put pressure on the States to provide an update on consumer credit code review progress.

The Ministerial Council on Consumer Affairs has now announced that:

- In response to concerns raised about reverse mortgages, the Ministerial Council on Consumer Affairs has agreed that there should be a prescribed Information Statement for reverse mortgages and a statutory protection against negative equity.
- The Ministerial Council on Consumer Affairs has agreed to investigate the introduction of mandatory participation in external dispute resolution by all providers of consumer credit. The consultation regulatory impact statement is being prepared.
- Consultation on the bill facilities regulation amendment has now closed. It is anticipated that the regulation could be made as early as the end of October 2007. This has come to pass in the previous article but one.
- In respect of reform to pre-contractual disclosure, the Standing Committee of Officials of Consumer Affairs has agreed to UCCCMC commissioning research, by an independent consultant, into

pre-contractual disclosure with the goal of developing a disclosure model which addresses the needs of consumers. Negotiations are currently underway with the preferred tenderer.

- In respect of instalment contracts, a Bill has been finalised and submitted to the Ministerial Council on Consumer Affairs for approval to be made by the Queensland Parliament.
- Provisions affecting solicitor lending have been removed altogether pending further consideration of the underlying issues.

- A consultation regulatory impact statement on responsible lending through credit cards is being prepared and should be released before the end of the year.

- An independent review on mandatory comparison rates is still being considered.

Recovery from Mortgagees of Outstanding Queensland Lax Tax

Lenders may need to monitor a borrower's Queensland land tax liability each year and impose a condition requiring evidence of payment on an annual basis. Recently, the Queensland Commissioner of Land Tax has invoked provisions of the *Land Tax Act, Qld* against mortgagees whose borrowers have failed to pay their land tax liability.

In Queensland, land tax is payable by registered proprietors of land as at midnight 30 June in each year. Ordinarily, an assessment will issue three months after that date with payment due one month later. The assessment may exceed $100,000 in the case of commercial land.

Failure to pay an assessment enables the Commissioner to require the property mortgagee to pay it on behalf of the owner/ borrower:

1. The Commissioner may require a mortgagee to pay outstanding land tax – section 24.

2. The Commissioner may do so by notice (*"requisition"*) to the mortgagee – section 24.

3. The *requisition* requires payment by the mortgagee within one month.

4. A mortgagee who fails to do so is liable to:
   (a) a maximum penalty prescribed of $1,500 and twice the amount of tax avoided; and
   (b) Pay interest accruing on the assessment at the rate of 12% - section 28.

Monies paid by a mortgagee under a requisition are added to the principal debt and attract interest at the facility rate – *section 24.*

Mortgagees may need to refresh themselves on the extent of the Commissioner's powers.

If you come across or would like to contribute any article that may be of interest for the newsletter please fax on (02) 9299 1433 or post to the Association c/- GPO Box 3463 Sydney NSW 1043.

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