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If you would like any of our previous newsletters or any of our free booklets on Wills,

Mortgage Terms and Conditions

— By Michael Moohan



Many people see a mortgage as just "taking out a loan", when in actual fact it is quite a bit more than that. When you buy a property (say a house), you take out a loan with your bank and in return for the bank taking your word that you will repay that loan, you give the bank a mortgage over the house.

In giving the mortgage to the bank you are giving the bank rights over your house which normally only you as owner would have; and you must take into account the bank's rights whenever you later deal with the house.

Everyone knows that you cannot sell a house without first "clearing" your mortgage with the Bank but there are other situations where you deal with the property that can put you into a sticky situation. Here is an example:

Mr and Mrs Jones finally saved up enough deposit to buy their dream home. They got a loan from the bank to pay for the balance of the purchase and in return they gave a

A couple of years later the Jones' decided to buy a car but needed to borrow some money so they visited their local finance company. In return for lending them the money to buy the car, the finance company asked for a security interest in the Jones' house which the Jones' quite happily gave since there was no danger of them not being able to pay back the loan.

In the meantime the bank found out about the finance company's security interest and demanded immediate payment of the outstanding house loan.

Most mortgage agreements have a term in them that says that the mortgagee (the Jones') will not create or permit to exist

any security interest over the secured property (their house) unless it is with the Bank's prior written consent; and if they do then the mortgage security becomes immediately enforceable so that the bank can demand immediate repayment of the outstanding loan amount.

Luckily for the Jones' they eventually got their problem sorted out with the bank and came to an arrangement with the finance company, but at the cost of quite large legal fees.

It just shows that you need to read your mortgage documents carefully (no matter how boring that may seem), and if you aren't sure about anything give us a call or pop in and see us and we will gladly help - it could save you a lot of sleepless nights and money in the long run.

Our next newsletter will cover the sometimes perplexing but important subject of protecting your assets in preparation for retirement.