

Newsflash

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BTL: Buy to Let or Blame the Lending?



Bradford & Bingley, the government owned bank, revealed to the Financial Times on 20 August 2010 that it is taking legal action against solicitors who advised its Buy to Let arm, Mortgage Express. This announcement followed the same bank's release on 19 March 2010 that it was setting aside £388.4M for potential losses on its mortgage book for fraud and professional negligence.

In this Newsflash, Louisa Robbins of Robin Simon LLP and Debbie Taylor of DCS Protect talk to leading independent mortgage audit service supplier, Rockstead Ltd. Robin Simon LLP is a specialist national firm of defence lawyers representing professionals and their insurers. DCS Protect provides cost effective claims handling services for surveyors and insurers alike.

As firms of solicitors and valuers continue to be targeted with potential negligence claims from lenders seeking to mitigate their losses, these professional firms and their insurers must delve into the lending manuals and underwriting files to assess where the blame really lies, and in what proportions, for the massive losses suffered.

Louisa Robbins and Debbie Taylor regularly consult with Rockstead Ltd. Rockstead has a number of years of experience in carrying out forensic analysis of mortgage files and also draws on significant expert witness experience, going back to the mid nineties. Brian Pitt of Rockstead explains that:

“A good proportion of the reviews we have carried out fall into the Buy to Let category and a number of lenders have chosen strategic positions based around two principles; 1) Buy to Let is not regulated, therefore the same lending rules need not apply 2) Buy to Let lending relies on the ability of the borrower to let the property and the lending criteria reflects that position.

In our opinion, any FSA regulated entity should have processes and procedures in place that assesses the borrower's ability to repay the loan, irrespective of the product type. We also believe that lenders have a responsibility to ensure that their processes are detailed enough to be able to defend any challenge on the validity of the mortgage contract if they have breached any of their own, or indeed the regulators principles. Simply relying on the borrowers' statements of affordability in our view reveals weak processes and principles of high risk underwriting”.

Louisa Robbins points out that:

“Terminology such as “BMV (Below Market Value)”, “NMD (No Money Down)”, are increasingly familiar to us as we scrutinise lenders’ files on Buy to Let loans, as are transactional patterns involving back to back sales, sub sales, same day or next day remortgages, assignable contracts and option agreements. Our investigations suggest that the implications of these mechanisms were not necessarily appreciated by the new generation of “landlords”, nor it now seems by a number of the appointed professional advisers. Some professional parties had incentives and other forms of discounts concealed from them altogether”.

Debbie Taylor adds that:

“As the market continues to stall, the need for support in this new era has never been greater. It is essential that as much documentation is obtained as possible at the earliest stages of investigations. Many commentators fear the worst is yet to come in the form of claims against property professionals”.

“It is of course easy with hindsight to criticise lenders positions” adds Brian Pitt, “but our experiences over the past few years lead us to the conclusion that in the chase for market share fundamental flaws in underwriting standards and processes and significant relaxation of lending criteria appeared. Evidence of that can be seen in the Buy to Let sector with some lenders having marketed:

- Higher LTVs
- Reduction of rental cover percentage calculations
- Linking of that calculation to initial discounted rates (rather than the normal, non discounted rate)
- The artificial lowering of the rate by charging high arrangement fees

Combinations of these features significantly increased the risks attached to each lending decision and should have resulted in enhanced procedures to mitigate those risks, but unfortunately our experience does not reflect that”.

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We can put together a seminar/talk or panel discussion on the issue above, or any of the issues featured in our publications to be held at any of our offices, or yours.

If you are interested, please contact any one of our lawyers or David Simon at: david.simon@robinsimonllp.com

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