



Bulletin No 7

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Property assessments

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The issue regarding mortgage bond evaluations has been raised on numerous occasions over the last few years. It was referred to in the Ombudsman's first annual report, in the Banking Adjudicator's Handbook and in adjudications done in the past. Based on complaints being received the issue still appears to be unresolved.

Complaints are commonly based on the following circumstances:

The bank clients apply to the bank for finance to purchase a home. The bank's evaluator inspects the house and makes no mention of any defects of any kind. The finance is approved and the bond is registered. Soon after the client moves in, defects, which may have been disguised or are not easily seen, are noticed.

These defects can be very serious, for example:

- Ground movement in the area, which causes the walls to crack or fall over.
- Bank clients also apply for building loans. The bank's inspector is sent out to check the progress. After the final payment is made, the client then notices defects in the building work done.

In both these type of scenarios the bank states that the evaluation is done for the sole purpose of assessing the security and accepts no responsibility for any defects in the property.

This situation is referred to in the following clauses of The Code of Banking Practice:

*4.3.2 As financiers we do not have the skills or the resources to monitor or control the quality of the building you are building or buying. **We will clearly inform you** that our appraisal is solely to enable us to assess the value of the security to us. It is not intended to be an evaluation of the present or future market value of the property, nor does it have to be the same as the purchase price. We have not necessarily inspected the property and do not accept any responsibility or liability for the structural or other condition of the security, even if the loan is a development or building loan.*

4.3.6 Should you require it, we will provide you with:

- *the assessed security value of the security; and*
- *the minimum replacement cost that we have placed on the buildings and improvements for insurance purposes.*

4.3.5 Issues of home quality are the responsibility of the seller (or builder or developer) and yourself as buyer. Homes younger than 5 years may also have a National Home Builders Registration Council Limited Warranty. You must satisfy yourself to the best of your ability that you are buying a good product and if necessary obtain assurance as to the structural quality of the property, compliance with local authority requirements and replacement costs of the buildings and improvements from the proper experts.

Based on the complaints we are receiving the banks are still not making their clients aware of this clause in the Code and are not informing their clients of the purpose of the appraisal. It would appear a very simple procedure to provide a copy of the relevant clause in the Code to any applicant for a bond.

This is clearly an untenable situation, which needs to be addressed as soon as possible. The making of an award in these types of cases is made difficult by the fact that it will often be necessary to call expert witnesses to prove the extent of the damages suffered. Disputes can arise as to whether or not the work was done adequately. These disputes may make it necessary for cross-examination, which is more appropriate for a court. We will however evaluate any related complaint on its merits and make an appropriate award where necessary.

**Adv NJ Melville
Ombudsman**