



# MORTGAGE NEWS

MACGILLIVRAYS

S O L I C I T O R S

## In this Edition

**Interest Rate Cap For Queensland by Richard Williams**..... 1

**MacGillivrays Gold Coast Office Moves**..... 1

**Secured Building Covenants by Gordon Perkins**..... 1

**Stamp Duty and Registration Fee News** ..... 2

**Are we on a Funder's Panel?**..... 2

**Team Profiles – Gold Coast and Mooloolaba**..... 2

## Editor's note

We created Mortgage News to supplement our Banking In Brief newsletters and to be a little less formal than that publication. We plan to publish Mortgage News electronically periodically when we see the need to inform clients of changes affecting them. Feel free to forward Mortgage News to your staff.

## Contact Us

If you have any queries regarding the material in this newsletter, please contact us.

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## Interest Rate Cap For Queensland

by Richard Williams

On 16 April 2008 a bill was introduced into Queensland Parliament, one of the purposes which is to implement an interest rate cap on loans regulated by the Consumer Credit Code.

It is proposed that not only interest charges, but all credit fees and charges under the Credit Contract will be included for the purposes of determining whether or not the interest rate cap has been exceeded.

The imposition of an interest rate cap will be implemented in due course by way of regulation. The current bill before the Queensland Parliament merely puts in place the structure to enable regulations dealing with this matter to later be made.

Importantly, a transitional provision will be inserted to enable the interest rate cap to also apply to existing regulated contracts where:

- the interest charges or credit fees and charges under the contract are increased; or
- a new fee or charge is imposed after the amending legislation takes effect.

It has been announced the interest rate cap will be 48% per annum.

As with other recent amendments to legislation, this bill is more likely to affect so called "fringe lenders".

Richard is a Partner in our Melbourne Office.

## MacGillivrays Gold Coast Office Moves

When the lease on our Gold Coast Office expired in April we took the opportunity to better utilise our integrated IT infrastructure to maximise the number of paralegals available to service our Gold Coast Clients while maintaining an office on the Gold Coast at Nerang.

Many of our Gold Coast clients will know Mike, Steven, Cathy, Tamioka and Lani. Steven moved to Kylie Mahoney's team in our Brisbane office shortly before Cathy commenced maternity leave. Recently Lani joined Lisa Muscat's team in Brisbane and both are servicing our Gold Coast clients from there. Tamioka has moved on and Mike has remained on the Gold Coast.

The change means that our Gold Coast clients are able to draw upon the larger pool of paralegals and experience available in our Brisbane office. At the same time these arrangements give Mike (a team leader) more time to devote to servicing our Gold Coast clients.

## Secured Building Covenants by Gordon Perkins

We have recently seen a number of construction loan applications for borrowers buying land in estates with secured building covenants. Whilst building covenants do not normally pose a problem for lenders, there is an increasing trend to secure those covenants with buy-back options supported by caveats, encumbrances, and Owners Corporation (body corporate) rules.

Secured covenants are often problematic for borrowers and lenders if the lender is subordinated to the covenant holder. Often they include buy-back clauses which price

the re-purchase based on the original sale price plus the value of complying improvements less costs of making the property comply with the covenants and expenses.

In three recent cases it was a strong possibility the borrowers would not have been able to comply with the construction timeframes imposed under the covenants.

In two of the cases the covenants included a \$300 per day liquidated damages clause, in the third case the time to commence construction had run out before the finance date in the purchase contract.

We are presently working through these issues with the Mortgage Manager and the borrowers' solicitors in an effort to overcome issues relating to the security arrangements for the building covenants.

It is always better to identify these issues early to enable your application to factor in solutions for issues posed by secured building covenants. Early detection also gives borrowers the best opportunity to negotiate with developers as they can under the finance clause as bargaining chips.

To assist you in this regard, we are happy to review covenants in purchase contracts and advise in issues they may present before you send the application to credit for approval.

## **Stamp Duty and Registration Fee News**

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On 1 July 2008 the following Mortgage Duty and Registration Fee changes occur.

### **NSW**

The residential investment property exemption commences. This concession is similar to the present residential property exemption. It applies to loans:

- for financing the acquisition, construction or alterations and additions to investment housing; and
- to refinance a loan for that purpose,

if the loan is secured by residential housing and made to (eg the borrower is) a natural person who is not a trustee.

Registration fees for some land transactions increase. Registration of mortgages and transfers increases to \$92.00.

### **South Australia**

The duty rate applicable to dutiable mortgage transactions occurring on or after 1 July 2008 in South Australia reduces to \$0.15 per \$100 or part thereof.

For that part of new mortgages to which an exemption does not apply the rate will be:

- \$10.00 for the first \$6,000; plus
- \$0.15 per \$100 or part thereof for that part of the loan after the first \$6,000.

For that part of further advances to which an exemption does not apply, the rate will be \$0.15 per \$100 or part thereof.

### **Western Australia**

Duty will cease to apply to dutiable mortgage transactions occurring on or after 1 July 2008.

### **Victoria**

Fees for lodgement of some land registration documents such as mortgages and transfers increase. Paper based registration fees for mortgages increase to \$95.10 and transfers to \$119.90 + \$2.46 for every \$1,000 of the purchase price. The transfer fee is to be capped at \$1,346.00. If you would like a copy of the notice, please e-mail your team leader who will be happy to e-mail one to you.

## **Are we on a Funder's Panel?**

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As one of the most experienced and well known Banking Law firms in Australia we are on the Lawyers Panel for most Funders.

If you sign up for a new Funder, always remember to check if we are on the panel. Often if we are not on a new Panel, the Funder will be more than happy to appoint a firm of our experience to the Panel.

## **Team Profiles – Gold Coast and Mooloolaba**

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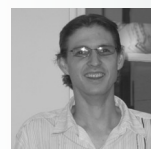
A number of our clients have regular contact with our Gold Coast and Mooloolaba teams. For those clients, here's a chance to put faces to the names of the people you speak to.

### **Gold Coast**



Mile Matsis (Team Leader) Ph 07 3228 5389. Mike has been with us for seven years and has helped with the training of our Sydney and Melbourne staff.

### **In Brisbane**



Steven Hutchins (Paralegal) Ph 07 3228 5255. Steven has also been with us for seven years.



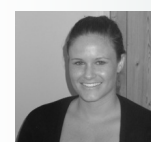
Lani Wright (Paralegal) Ph 07 3228 5225. Lani has been with us for two years.

### **Mooloolaba**

We have also seen the recent upgrading of our Sunshine Coast office with the move of that office to Mooloolaba.



Kate Boyce (Team Leader) Ph 07 3228 5381. Kate has been with us three years.



Natalie Davis (secretary) Ph 07 3228 5382. Natalie has been with us for one year.