

Professional Negligence and Mortgages

Claims by Lenders: Making the Best of Bad Times

10 June 2010, London

9.00 Registration and Coffee

9.30 Chairman's Welcome and Introduction

Colum Leonard, Stewarts Law LLP

9.45 Mortgage Fraud: The Warning Signs

- Fraud drivers
- Environmental factors
- Mortgage fraud - who does what?
- Common issues
- Intermediaries - love them or hate them?
- FSA response
- Prevention

Nick Baxter, Baxters Business Consultants

10.30 Securing Assets and Mitigating Loss

- The procedures available to claimants in recovering losses
- Remedies in relation to the SCF and Land Registry Indemnity
 - Freezing Orders
 - Bayer -v- Winter Orders
 - Norwich Pharmacal Orders

Louise Power, Walker Morris

11.15 Coffee

11.30 Quantification of Loss against Negligent Professionals

Valuers

- Lenders; how loss is measured
- A smaller loan?
- Mitigation of Loss
- The SAAMCO principle
- Contributory negligence
- Non-Lenders; how loss is measured
- Borrowers

Solicitors

- Loss of opportunity claims
- When they arise
- How loss is measured
- The advantages
- The complications
- A true story; loss of chance squared

Colum Leonard, Stewarts Law LLP

12.15 Contributory Negligence and Failure to Mitigate in Solicitor Cases

- Contributory negligence: the leading cases
- Careless lending in recent years
- Is the regulatory framework relevant?
- When will the defence not be available?
- Mitigation: the possible steps

Peter Dodge, Radcliffe Chambers

1.00 Lunch

2.00 Procedure and Protocols

- How can you win a professional negligence claim?
- Tactical considerations
- Funding options in the changing post LJJ Jackson Costs Review environment
- Risk Assessments
- Constructing a powerful protocol compliant claim letter
- Examining the likely pitfalls and defences
- Disclosure issues and expert evidence

Katy Manley, Manley Turnbull

2.50 Professional Indemnity Insurance Considerations and Contributions Claims Between Professionals

- Minimum insurance requirements for professionals
- The problem of fraud
- Sole practitioners and companies
- When contribution claims are available
- Operation of contributions claims

Elizabeth Ovey, Radcliffe Chambers

3.40 Tea

3.55 Group Claims by Lenders against Solicitors and Valuers

- Securitisation and portfolio sales
- Group claims for lenders against surveyors and valuers
- Use of expert determination
- Med-Arb
- Limitation issues

Jonathan Sachs, Sprecher Grier Halberstam LLP

4.45 Conclusion Closing Remarks

5.00 Conference Close

"This very timely conference focuses on a carefully selected range of topics. A "must go" event for all those involved with professional negligence claims"

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Professional Negligence and Mortgages

It is in turbulent times when property prices have declined and lenders are exposed through shortfalls that the most negligence claims are made by lenders against solicitors, valuers and other professional advisers. This very timely conference focuses on a carefully selected range of topics, from the procedures available to claimants in recovering losses through to an analysis of the leading cases on contributory negligence. All the speakers are experts in this complex area of work and will deal with following topics:

- Mortgage fraud: The warning signs ■ Securing assets and mitigating loss ■ Quantification of loss against negligent professionals
- Contributory negligence and failure to mitigate in solicitor cases ■ Procedure and protocols ■ Professional indemnity insurance considerations ■ Contributions claims between professionals.

Chairman:

Colum Leonard is a Commercial Litigation partner in Stewarts Law LLP, *The Lawyer* magazine's Niche Firm of The Year 2009. He has worked on contentious debt recovery, mortgage repossession, banking, legal costs, insolvency, consumer credit, environmental, commercial and professional negligence disputes for over 25 years. Colum is a Deputy District Judge, a Deputy Costs Judge in the Supreme Court Costs Office, a Legal Chairman in the Residential Property Tribunal Service, a member of the Professional Negligence Lawyers' Association and a CEDR Accredited Mediator.

Speakers:

Nick Baxter worked for Building Societies from 1975 until 1993, ending up as Assistant General Manager (Mortgages) for the Cheltenham & Gloucester Building Society. In that year he set up what is now Baxters Business Consultants who are business consultants, freelance journalists and expert witnesses to the residential mortgage lending, building society and financial service industry. He is a regular speaker and trainer, a member of the Academy of Experts, and a Founding Member of the Society of Expert Witnesses.

Peter Dodge is a barrister at Radcliffe Chambers. He is primarily a litigator with a commercial chancery practice. He formerly worked in the City as a fund manager at a leading investment bank. He has particular experience in property and financial litigation, his clients in this field having included both mortgage lenders and borrowers. He also has extensive experience of advising and representing not only professionals and their insurers but also claimants. He has also advised and represented independent financial advisers in relation to regulatory matters.

Katy Manley is the founder of Manley Turnbull and was previously an equity partner in a leading Bristol practice and Head of their Professional Negligence team. She deals with professional negligence claims against lawyers, surveyors and other professionals. She is a founder member of the Professional Negligence Lawyers Association and chairs their Lender Claims Group. Katy is one of the leading names in claimant professional negligence work and is known not only for her practice but also from publishing articles and lecturing on this subject.

Elizabeth Ovey is a barrister in Radcliffe Chambers. Her areas of specialisation include mortgages, building societies and banking law and related areas of professional negligence. Her work includes both contentious and non-contentious matters and she is instructed both by claimants and by insurers. She is joint editor of *Wurzberg and Mills on Building Society Law* (Sweet and Maxwell) and co-author of *Current Law Statutes Annotated* edition of the Building Societies Act 1986. She also sits part time as a deputy judge of the Upper Tribunal.

Louise Power is a Director in Walker Morris' Real Estate and Banking Litigation department. Her work for large banking and building society clients has enabled her to specialise in the prosecution and defence of claims of professional negligence in relation to solicitors and surveyors. Additionally she has experience of investigating advisors and brokers in relation to cases of mortgage fraud. Louise is the only Solicitor in England and Wales who has received an endorsement from the House Builders Federation to provide accredited training to the building industry in matters relating to the Property Misdescriptions Act 1991.

Jonathan Sachs is a Partner with Sprecher Grier Halberstam LLP. He specialises in Commercial and Property Litigation, with particular emphasis on claims for professional negligence for financial institutions. He has acted for Governments, banks, private companies and private individuals in litigation in England, the United States, Europe and the Middle East. He is named by *Chambers* as a leading solicitor in all areas of his work and he has also been included in the Best Lawyers® list of solicitors for the UK in the fields of Litigation and Real Estate.

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