

# Senate Select Committee on Superannuation and Financial Services

## Main Inquiry Reference (a)

Submission No. 124

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## SOLICITOR'S MORTGAGE TRUST SCHEMES - TASMANIA

In 1994 we sold a parcel of land attached to our property at Kingston in southern Tasmania.

The solicitors acting on our behalf were E.R. Henry, Wherrett and Benjamin of Victoria Chambers, 9 Victoria Street, Hobart. Referred to from now on as HWB.

Upon settlement a cheque was lodged with our solicitors by the purchasers' solicitor, the monies at that point not passing to us. At the time we were unsure of what use we would put the money to. We were advised that HWB could put our money to use in a mortgage trust and that we could earn a good return from that. This would have been in November 1994.

At that time we were not given any advice on terms and conditions or risk involvement and certainly no brochure or prospectus. The only advice received in writing was a letter dated 16 June 1997 which advised of a change in the interest rate and a paragraph drawing our attention to the term of our investment. This covered such matters of length of investment and withdrawal of monies.

At no time were we advised in advance <sup>as to</sup> of the mortgagee our monies would be lent to, the <sup>only</sup> information only being provided at the time of interest payment. <sup>1</sup>

The first we knew of any trouble was correspondence dated 22 June 1998, about one month past a due interest payment. This was to advise of difficulties in the administration of a mortgage loan to B & D McKay Pty Ltd (ACN 009 552 961), later to change their name to Lizben Holdings Pty Ltd (same ACN). We were assured that every effort was being made to resolve the matter as quickly as possible, that we would be kept informed and to telephone for any further information. From this point on our attempts at obtaining further more concrete information was to be of no avail, until correspondence of 6 April 2001 when we were advised of the Memorandum of Mortgage of which our investment formed part and the value of that mortgage.

A search of one title showed a total of nine mortgages together with three caveats. It is understood that these mortgages were spread across all titles in the project.

On 4 April 2000 we sent a letter requesting the repayment of all funds lodged with HWB by the end of June 2000. By 14 April 2000 we had received a return of all monies other than an outstanding amount that had been loaned to B & D McKay Pty Ltd.

The matter of the property development by B & D McKay Pty Ltd at 315 Tolosa Street Glenorchy has been far from a smooth operation, and information we have received, albeit hearsay, points to events that cause concern that a mortgage(s) were ever granted to the project.

We have been endeavouring to uncover the events relating to the loans to B & D McKay Pty Ltd, and have spent time and money trying to track down the information. We reached a point where we could ~~not~~ proceed further, not because of a lack of enthusiasm, but because we objected to paying for what we believed was a matter of public record, and would be available from our solicitors HWB.

Our solicitors, HWB, have denied access to this information on the grounds that their insurers will not countenance the release of that information pending a settlement of a claim in progress. Our concerns are now further heightened by the failure of the HIH group of insurers, as our understanding is that many solicitors had taken out indemnity insurance with a member of this group.

Until we are given a full and frank disclosure on all matters relating to the project and the subsequent disposal of some properties by the mortgagee we will not continue to have faith in the system.

We did approach the Law Society following the news of problems in 1998, but without satisfaction, other than an almost responsive telephone call from HWB. In December 1998 a letter was written to the Law Society but we did not receive a reply. The standard reply in answer to a telephone query at that time was to go and discuss the matter with the solicitor involved. This would almost be laughable if it wasn't so serious as the reason we approached the Law Society was that we weren't getting any answers to our questions at HWB. We did note though, that each time we spoke to the society or someone on the periphery regarding a lack of communication of information from HWB we received in the following mail correspondence offering some form of information. That information was never of a substantial nature, excepting in the correspondence of 6 April 2001, and that we regard as minimal.

Because of the frustration we felt we wrote to The Australian Securities and Investments Commission on 10 October 2000 outlining the problems we saw with the matter and in particular the events surrounding the development project itself. ASIC sought our permission to use our material in a visit to and discussion with the Law Society, as they had previously not had to hand a matter, in writing, to test the Society's performance in the role as watchdog in the matter of mortgage trust funds. That permission was granted on 29 November 2000.

Prior to this, and subsequent to a letter to HWB, again strongly stating our concerns, we were invited to a meeting with HWB on Friday 13 October 2000. The result of this meeting was to raise more questions and promises to provide answers if the insurers agreed. At that meeting we advised that we had forwarded our concerns regarding the development to ASIC.

Our last contact with ASIC on this matter was February 26 2001. We were querying the absence of HWB from the list of run-out schemes published on the ASIC web site on 25 February 2001 when Mr David Knott announced a major investigation into solicitors' mortgage investment schemes. We were advised that HWB had not completed the audit of their mortgage trust as required by ASIC.

LC & SE Morrell