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Arrange own mortgage insurance

Banks, lawyers are unqualified

Personal needs should be assessed

A recent decision by the Ontario Superior Court emphasizes the importance of having life insurance protection for mortgages, and of arranging coverage with an insurer independent of the mortgage lender.

David and Therese St. Louis were inexperienced homebuyers when they purchased an \$82,000 condominium in Kitchener on the last day of 1996. At the time, they were 50 and 42 years of age.

David and Therese had been referred to Paul Eckmier, a mortgage broker employed by Tristar Funding Corp., which operates The Mortgage Centre. Eckmier arranged financing through Firstline Mortgages, a branch of CIBC Mortgages Inc., and he or his company received a brokerage fee of \$798.34 from Firstline.

David was subsequently diagnosed with cancer and died on Nov. 19, 2000.

He had one life insurance policy for \$50,000, which was paid soon after his death, but when Therese called the mortgage broker to inquire about the mortgage insurance she thought had been purchased, she discovered the policy was never arranged.

The dispute went to court. It came up for a two-day trial last April before Justice Donald Gordon.

Therese claimed she and her husband had requested mortgage life insurance from Eckmier, and were told that the premium was included in their mortgage payment.

Eckmier said he met with David and Therese three times before closing. He told them that Firstline would send mortgage forms to their lawyer and they would have to accept or decline coverage in his office.

Eckmier was a licensed mortgage broker but not an insurance agent. He did not discuss obtaining or waiving the insurance issue with Therese. Her husband told her that it was arranged and the mortgage would be paid off if anything happened to him.

It turned out that neither an application for insurance nor a waiver of coverage was ever signed by the husband and wife. Relying on assurances from Eckmier, they believed insurance was in place.

In June, Gordon released his decision, which awarded the widow the full amount of the mortgage as of her husband's death, plus interest after that date, and costs.

The court ruled that, since Therese was not informed in a "clear and accurate way" that no life insurance was in place, she was entitled to rely on her reasonable assumption that they did have insurance.

The St. Louis case illustrates that something is wrong with the consumer protection regime in this area. There is a perfectly good licensing program in place for life insurance agents, but the law unfortunately allows mortgage brokers and bank employees with little or no training or experience in the area to market life insurance to borrowers.

Banks and other mortgage lenders routinely send life insurance forms to lawyers, to be presented to their clients when signing mortgage documents, but lawyers are not trained or licensed to sell or explain life insurance policies.

It is not appropriate for real estate lawyers to have to ask their clients to fill out a detailed health questionnaire while they are signing documents for a home purchase and have other concerns in mind.

In my view, lawyers are the last people banks should ask to market their life insurance products.

Invariably, I am forced to advise my clients to obtain a third-party life insurance policy to pay off their mortgage for several reasons:

🍏 Life insurance needs should be carefully analyzed by a trained salesperson.

🍏 A policy that only pays off the mortgage and nothing else may not be enough for the needs of the survivors.

🍏 An insurance agent will compare coverage and prices with different providers. Financial institutions only offer one option at one price.

🍏 Mortgage life insurance declines in coverage with the mortgage balance, while family needs often escalate with inflation or other factors.

🍏 Mortgage life insurance is not transferable if the borrowers change lenders at the maturity of the loan. If they are no longer insurable for health reasons, they may not be able to get any coverage anywhere.

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