



# What is independent legal advice and why do I need it?

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**Date:** Tuesday March 10, 2020

You are just getting a loan from your bank for your business and the [banking officer tells you that you need to provide an independent legal advice certificate](#) (also referred to as a solicitor's certificate). So, what does that mean and why do you need to do it?

## Bad banking practices have led to crackdowns

In the late 1980s, the banks were very lax with how they approached lending arrangements.

The classic examples of this were where they asked mum and dad to guarantee a loan to their son to set up a business without checking if mum and dad had any idea about what a guarantee meant. This was even more unsatisfactory if mum and dad were of overseas origin and did not understand the language used or what was happening.

Another example was the husband coming home and saying to the wife "here, sign this, I need it for the business" but the wife had no idea what she was signing.

## The solution to bad banks

The banks tried to push the issue onto lawyers by requiring the lawyer to give a certificate stating that they explained the documents to the client and the client understood them. The reality is, we could never be sure, despite how much we talked about the documents, that the clients did understand them and any ramifications.

The legal industry now has an agreed arrangement with financiers (banks and other lending organisation) where we give our clients advice on the lending documents and the client signs a statutory declaration, which is given to the financier, stating that they were given the advice and they signed the documents voluntarily.

## What advice must lawyers provide?

It is our responsibility to look at the documents and to give you some general advice as to the effect of those documents.

We cannot give you financial advice such as whether it is a good financial transaction for you to enter into but we can talk you through the extent of your responsibility in signing the documents.

## How do we give you the advice?

You need to give us the documents which the bank provides to you so we can read through them.

Usually, the bank will give you a letter confirming the loan offer. Sometimes, it might include a loan document (mortgage) intended to be granted over your property.

And if you are not the one borrowing the money but you are guaranteeing to the bank that the borrower will pay back the loan, then there may be a Deed of Guarantee and Indemnity and even a mortgage on your property as security for that guarantee.

You will need to meet with us, once we have read through the documents so that we can discuss what is intended by the documents and how it may affect you. If you are then happy to sign the documents, we will help you with that process including signing the statutory declaration which you need to give to the financier.

## Is the whole thing simple?

From experience, the banks tend to trivialise the process by saying that you just need to go and get the documents signed - the bank is keen to get the transaction finished.

But what you are signing can have a significant impact on you if things don't go right. It's really important that you appreciate your legal responsibilities *before* you commit to them and not just treat it as a simple signing exercise. Notably, it is a criminal offence to sign a statutory declaration knowing the content to be false or misleading.

## How much does it cost to get an independent legal advice certificate in NSW?

The costs depend on the extent of the documentation provided by the bank and the complexity of your financial structure.

Generally, though, for us to read the documents, prepare our internal documents as required by the Law Society and then meet with you to explain the impact of the documents, takes some time to do.

We can give you an idea as to our costs once we have had a chance to look at what the bank has given to you.

## Should you get financial advice?

Lawyers are not generally permitted to give financial advice. If you are not fully across the reasons for the borrowing of the money and how the loan will be repaid, then you really ought to consider getting independent financial advice.

That advice needs to be independent of the accountant or financial planner who might have been involved in getting the loan from the bank in the first place; particularly those who may be employed by the bank themselves!

## Get help

If you've been asked by your lending institution to obtain an independent legal advice certificate, we can assist you with this and ensure you're fully aware of your rights and responsibilities regarding the financial contract you are about to enter into.

Contact one of our business and commercial lawyers to discuss your specific requirements.

## Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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