



## EVERSOL'S weekly law

Contributed by Lesley McDonnell

### Signed, Sealed and Delivered... Or is it?

The concept of fraud is not new. We have all seen or read stories of fraud in the media and watched or heard of the devastating effects it can have on the families of those who perpetuate the fraud and on the innocent victims of fraud. The reality is hitting home as an increasing number of court cases are being litigated between spouses where one spouse perpetuates fraud against the other. A court earlier this year heard facts in a case where a husband left his wife the following note "I'm very sorry what I have done but I have had a very bad gambling problem and I have borrowed money on the house and I can't repay it. Now they are taking the house...". Perhaps it is a sign of the times but now lenders are finding themselves vulnerable to the fraudulent actions between spouses as a recent decision in the NSW Supreme Court has revealed.

In 1982 Mr and Mrs English married. In 1985 they purchased a home together at Castle Hill with the assistance of a loan. In 1990 the couple separated. Mr and Mrs English did not divorce and remained joint owners of the property. Subsequently Mr English approached a bank for a loan of \$536,000 and put the Castle Hill property up as security for the loan. Mr English firstly forged his wife's signature on the loan application. Next he forged his wife's signature on the acceptance of loan offer. And then for a third time, he forged his wife's signature on the mortgage documentation. The money was advanced and not surprisingly Mr English defaulted in his payments to the bank and the bank in turn sought to take possession of the Castle Hill property.

The twist in this case saw the wife escape the potentially devastating effects of her husband's fraud but the bank was not so lucky. In construing the terms of the mortgage documentation the Court concluded that in the absence of any secured agreement between the parties, the mortgage documentation secured nothing.

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