Consumer Council of Fiji
www.consumersfiji.org

HEAD OFFICE
4 Carnavon Street
Private Mail Bag
GPO, Suva
Phone - General Office: 3300792, 3305478
Executive Secretary/CEO: 3305864
Fax: 3300115 Email: complaints@consumersfiji.org

LAUTOKA/West
Suite 4 Popular Building
Vidilo Street
PO Box 5396, Lautoka
Phone: 6664987
Email: consumerltk@connect.com.fj

LABASA/North
FNPF Building
Rosawa Street
PO Box 64, Labasa
Phone: 8812559
Email: consumerlbs@connect.com.fj

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Real estate law changes, will bring fairness to mortgage sales

The Consumer Council of Fiji welcomes Government's latest initiative to strengthen laws and regulations governing the real estate sector, in particular new regulations governing mortgagee sales or transfer of property involving banks and other financial institutions. The amendments to the Real Estate Agents Act will prohibit the deep involvement of lawyers acting on behalf of financial institutions for the purposes of disposing of properties by mortgagee sale.

The lack of transparency in the current system has always been a concern for the Council whereby home owners are left in the dark without having a say while their property is being disposed.

The Council hopes that with the elimination of lawyers from engaging directly into the actual process of mortgagee sales, home owners will be allowed to be part of tender opening and tender awarding process. This will allow the property to be sold at actual market value and do justice to the home owner in getting the best deal. Mortgaged properties often attract lower prices compared to similar non-mortgaged properties sold in the market around the same time. The Council's own experiences with consumers have found that generally the information on the amount owed by the homeowner is leaked by bank officers to other parties.

Based on consumer complaints there are some unscrupulous lawyers representing all three parties' i.e. financial institution, seller and the buyer. Consumers are concerned that lawyers don't disclose or inform consumers that they are representing the buyer and the financial institution. We have noted that in such cases the settlement takes much longer because the lawyer cannot make the financial institution unhappy as they are on their panel of solicitors. Dragging the settlement means more money for the financial institution where interests will continue to accrue and charged until the day of settlement. For lawyers it is a billing opportunity guised under "follow-ups".

Legal fee is another issue in mortgagee sales where home owners are not informed by the financial institution or lawyers on how much fees he/she is expected to pay. It is also disappointing to see that neither the financial institution nor the lawyer provides a final statement to the home owner giving details such as what was owed to the financial institution, how much the property was sold for, any reimbursement of insurance, other fees and charges, what as the accrued interest, what is now owed by the home owner after mortgagee sale or how much will be returned to the home owner based on the proceeds of sale.

As a result, many home property owners have suffered at the hands of banks and their lawyers where they have lost their entire life savings.

The Real Estate Licensing Board has a very critical role to play now as they are empowered to take action to enforce the Real Estate Agents Act 2006 given reasonable cause that provisions of the decree are being contravened. The Council believes that the changes will not only protect home owners but empower the board to effectively carry out its mandate. The Council hopes that

strengthening of the regulations will bring about fairness and more transparency particularly in mortgage sales.

The Council hopes to see the rights and interests of home owners are protected with the amendment made to Real Estate Agents Act.

PREMILA KUMAR
Chief Executive