

Broker sued by aggregator in loan fraud case

[James Mitchell](#) Friday, 26 May 2017



A leading mortgage industry lawyer has warned brokers of the shortcomings of professional indemnity insurance following a recent case in which an aggregator sued a broker over a fraudulent home loan.

Speaking to The Adviser, Bransgroves Lawyers founding partner Matthew Bransgrove said he recently consulted a broker who was being sued by their aggregator pursuant to an indemnity clause in the aggregation agreement.

“The aggregator was suing the broker for indemnity because the bank was suing the aggregator. The bank was suing the aggregator because a mortgage had been forged,” Mr Bransgrove said. “The brokers’ PI insurers were refusing to cover the claim because the broker was said to have contracted out of proportionate liability legislation by giving the indemnity to the aggregator.”

It is understood the broker was unaware that documents provided by the client were fraudulent.

Fraud is a common out for PI insurers. Mr Bransgrove explained that if a broker certifies a document that contains a false statement the PI insurer can allege that it was done knowingly and therefore fraudulently.

“Once fraud is established the policy does not answer. Usually the line between actual fraud and negligence is blurred. The insurer says, ‘no reasonable person would have not realised there was a fraud going on, you must have known, therefore we will not cover’,” he said.

The situation was unfortunate not just for the broker, but also for the aggregator; the main recourse an aggregator has against a broker, other than direct recourse to the trail book, is indirect recourse to the broker’s PI policy.

“For this reason, it makes sense for aggregators to be less onerous towards brokers in their aggregation agreements,” Mr Bransgrove said.

The lawyer urged all brokers to review their policies and negotiate better cover.

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