SEQUAL
Senior Australians Equity Release

Tim Bryant
Committee Secretary
The Parliamentary Joint Committee on Corporations and Financial Services
P.O. Box 6100,
Parliament House,
CANBERRA, ACT, 2600

21ST October, 2011

Dear Mr Bryant,

Inquiry into the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011.

Thank you for your invitation to appear as a witness at a public hearing for the committee's inquiry into the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011.

Members of the Senior Australians Equity Release Association (SEQUAL) were asked to provide SEQUAL with their comments on the Bill by no later than close of business on Thursday 20th October. At this stage only a limited number of responses have been received.

As discussed, I am grateful for the opportunity to supplement the attached Industry Submission, by no later than 28th October, in the event that substantive matters are raised by SEQUAL Members beyond their response deadline to SEQUAL.

However, I am confident that the attached Industry Submission reliably summarises the broad views of the SEQUAL Membership and I am pleased to submit this information for the Committee's consideration.

Should you wish to discuss this matter further, please do not hesitate to contact me

Yours Sincerely,

Kevin Conlon M.App.Fin
Chief Executive

Senior Australians Equity Release

INDUSTRY SUBMISSION

Parliamentary Joint Committee on Corporations and Financial Services

Inquiry into the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011

October, 2011

Disclaimer:

This submission was developed by the Author and is based on discussions with a range of market practitioners and research provided by various parties.

The views expressed in this submission are intended to reflect the collective view of the SEQUAL Membership. However, no representation or warranty is given that either the Author or individual SEQUAL Members subscribe to each of the views herein described.

This submission has been prepared with care. However, neither the Author nor any SEQUAL Member is responsible for the results of any action taken on the basis of the information provided.

Acknowledgements:
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The Australian Bureau of Statistics · ASIC · RFi · ACAA ·Datamonitor · Deloitte Actuaries · Gadens Lawyers

For further information regarding SEQUAL, please contact:

Contents:

Mission and Objectives of SEQUAL

The SEQUAL Mission is to ensure the professionalism of those who offer or distribute Equity Release products for senior Australians. SEQUAL is dedicated to maintaining professional standards of practice within the Australian equity release market.

The primary objectives of SEQUAL are to provide:

1. An industry forum for the collaborative development of an ethical and successful Seniors Equity Release market in Australia.

2. Effective consumer protection through a Code of Conduct and Guidelines by which members of SEQUAL and SEQUAL-accredited Equity Release Consultants ("SERC's") are expected to comply.

3. Representation for the constituent parts of the Australian Seniors Equity Release Market at the national level through a process of consultation with Government, Regulators and Consumer Agencies.

4. A central resource of consumer information on Seniors Equity Release and to enable efficient access to SEQUAL members.

SEQUAL's Role as the peak Equity Release Industry Body

SEQUAL Membership imposes clear Code of Conduct obligations on product providers and the SEQUAL Industry Accreditation protocol requires appropriate standards of practice to be maintained by intermediaries providing product information and advice to consumers.

In this regard, the following attachments to this Submission should be noted:

- SEQUAL Code of Conduct
- SEQUAL Guideline –No Negative Equity Guarantee and Default Conditions
- SEQUAL Guideline –Equity Release Key Facts
- SEQUAL Guideline –Equity Release Proper Process

SEQUAL's role as the peak industry body for the Australian Senior's Equity Release market is well established. The various Industry Associations representing Finance Brokers and Financial Advisers, have endorsed the significance of SEQUAL's contribution towards professionalism in each of their practitioner guidelines.

In particular, the following attachments to this Submission should be noted:

- Financial Planning Association Guidance Note
- Mortgage & Finance Association of Australia Guidelines
- CPA Australia Guidance Note for Advising on Reverse Mortgages

SEQUAL Code of Conduct

Each Member of SEQUAL agrees its equity release product(s) will adhere to, and be measured against the following Code of Conduct in dealing with Senior Australians their families and advisers. As a minimum, Members of SEQUAL shall:

1. Treat all Customers with respect and dignity

2. Participate in an ASIC approved External Dispute Resolution Scheme

3. Ensure that all products carry a clear and transparent 'no negative equity' or 'non-recourse' guarantee. That is, the Customer(s) will never owe more than the net realisable value of their property, provided the terms and conditions of the loan have been met

4. Strongly encourage Customers(s) to discuss the transaction with family members and to seek independent financial advice from a qualified financial adviser
5. Strongly encourage Customer (s) to discuss the transaction with Centrelink to ensure they fully understand the impact, if any, on their Centrelink entitlements

6. Ensure that the Customer (s) obtains independent legal advice performed by the solicitor of their choice. Prior to the completion of the transaction, the Customer (s) or their solicitor will be provided with full details of the benefits the Customer (s) will receive, and the obligations they are entering into

7. Clearly and accurately identify all costs to the Customer (s) that are associated with the transaction

8. Not assert or imply to a Customer(s) that the Customer(s) is obligated to purchase any other product or service offered by the Member or any other company in order to enter into an equity release product

9. Provide in writing, a fair and complete package of equity release documents, covering the benefits and obligations of the product. This will include making available to the Customer(s) and their advisers a tool illustrating the potential effect of future house values, interest rates and the impact of any capitalisation of interest where applicable

10. Ensure that all contracts are written to comply with Australian Consumer Law and the consumer protection provisions of any other relevant Legislation, Regulation or Code and ensure compliance, where applicable, with all Guidelines issued by SEQUAL.

SEQUAL Submission –Overview

In providing comment on the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 (the "Bill"), SEQUAL Members, through this Industry Submission, have appropriately focussed on the proposed amendments to the National Consumer Credit Protection Act 2009 (the "NCCP") and the National Credit Code that affect Reverse Mortgages.

SEQUAL acknowledges that the Government has been willing to take the existing high standards of practice within the Australian equity release industry into account when developing the Bill and considers this to be a very good example of effective consultation between government and industry which has resulted in good outcomes for consumers.

However, SEQUAL continues to warn against over-regulating the equity release industry in view of its track record of ethical behaviour. It is critical that the Regulations that will emerge from the proposed legislation be appropriately scaled in order to have proper regard for the objective of preserving consumer choice and not over-burden the Australian equity release market.

More broadly, this submission will also address a number of issues that are likely to impact the demand for and supply of suitable equity release products in Australia.

SEQUAL submits that it is appropriate that the impact of any legislative reform, regulatory change and/or Government participation in the Equity Release market be carefully considered and proper regard given to the existing industry structure.

The Australian Seniors Equity Release market operates on an efficient and ethical basis and a range of alternative equity release strategies are available in Australia. It is important that Government and Regulators act in a manner that will preserve consumer choice rather than impose obligations on older Australians.

SEQUAL continues to encourage Government to consider the broader opportunities to support growth in the equity release market by ensuring that emerging regulation is not unduly restrictive and by extending existing Government initiatives aimed at improving funding in the home loan market to include equity release products.

Equity release strategies are likely to emerge as a significant part of retirement funding and will be particularly relevant to the challenge of funding aged care. SEQUAL supports the Productivity Commission's recent observation that:

"Older Australians generally want to remain independent and in control of how and where they live their lives, continue to be connected and relevant to their families and communities, and be able to exercise some measure of choice if they require care".

Home ownership is an important foundation for the retirement plans of many older Australians and it is important to ensure that soundly-based methods of releasing the wealth stored in the home are available and that consumers are well-placed to make fully informed decisions about their retirement funding.

Clearly, there is good reason to explore the options provided through equity release and the family home is now an intrinsic part of the planning process. It is vital that senior Australians have choices when considering the means by which they will meet the challenge of living longer and living well in retirement.

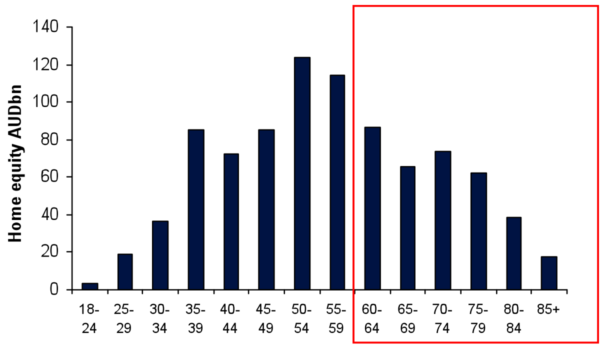
Property Ownership and the Wealth of Senior Australians

Many retirees have left the workforce poorly prepared via superannuation and other investments to fund their lifestyle until the end of their life. "Australia has a low household savings rate which results in our gross national savings rate rank of 17th out of the 28 OECD countries".[1]

In addition, more recent retirees, part of the so-called Baby Boomer generation, have increased expectations of their quality of life in retirement without significant liquid funds to enable this to be achieved.

"History, some might say, has been kind to the baby boomers. They have enjoyed affordable housing, access to free education, often generous, welfare benefits and frequently favourable employment markets. Now the baby boomers – those people aged between about 45 and 65 years – will have to respond in a very real way to the challenges of an aging population, where the consequences of their actions now and throughout their lives will have ramifications for the generations to follow".[2]

The good news is that the majority of Baby Boomers have achieved the "Great Australian Dream" of owning their own home. Total Home Equity (Owner Occupied) was $887 billion, at the end of 2005. The Over 60s accounted for $345bn (39%).



Source: Datamonitor

However, the absence of significant levels of savings (superannuation) and a concentration of wealth in an indivisible/illiquid asset (owner-occupied property), has made many older Australians "Asset-Rich but Cash-Poor".

In the past, any retiree in this difficult position, had two choices; significantly reduce their living standards or sell the family home - often having to then move away from an established network of family and friends and in many cases reducing their age pension entitlements.

With the emergence of the Australian equity release market, retirees now have another option – tap into the stored wealth of their home.

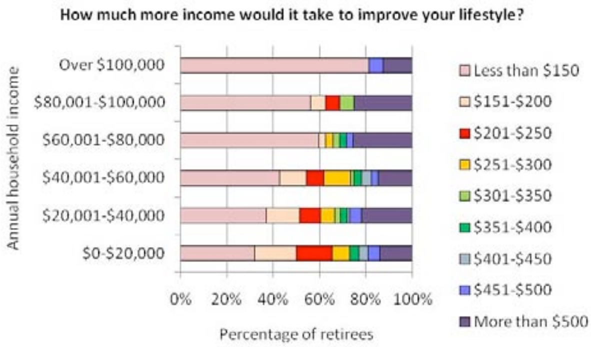
[1] IFSA Submission to Australia's Future Tax System Review. October, 2008
[2] AMP.NATSEM Income and Wealth Report. Issue No. 16. March 2007

Assisting older Australians

How Can Equity Release Assist Seniors?

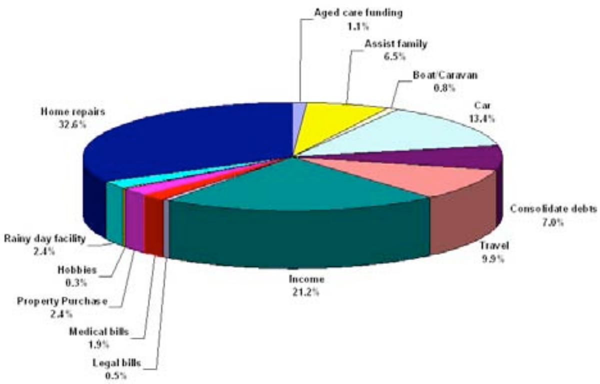
Even a modest draw down through equity release can provide the opportunity for senior Australians to significantly improve their standard of living in retirement.

The *'It's on the House' SEQUAL-RFI Reverse Mortgage Study*[3] was conducted in October 2007 with phone interviews of 1000 Australians over the age of 60. This Study found that a modest increase to their income would significantly improve the lives of most retirees, with 50% of those surveyed indicating that as little as $300 a month would be sufficient.



The Study also showed that a third of retirees (31%) expected to rely on their home as a source of retirement funding and revealed that baby boomers are not optimistic about their ability to fund their retirement, with a third fearing their funds would last only five to 10 years.

Equity Release is used for a variety of reasons by Senior Australians:



Source: ABN Amro Portfolio Analysis

Contrary to popular opinion, it is very rare that the proceeds are used for frivolous reasons. Some use equity release to supplement their retirement income, while others use it to renovate their home or access Care, in many cases to help them cope with a disability.

[3] Report available for Download at: http://www.sequal.com.au/images/stories/sequal_rfi_study.pdf

How can Government Policy assist Older Australians to help themselves?

Senior Australians cannot be classified as a single homogenous group. For pension policy purposes, it may be appropriate to consider the distribution of Government assistance based on home ownership. This distinction is currently applied in the assessment of the Assets Test and in other benefits entitlement (e.g. Rent Assistance).

Home ownership is an important foundation for the retirement plans of many Senior Australians, and it is important to ensure that any method of drawing an income from the wealth stored in the home is soundly based so that Seniors understand the options available to them in order that that they can make fully-informed decisions.

Consumer Education is crucial

SEQUAL welcomes the important work undertaken by the Australian Securities & Investments Commission ("ASIC") in developing a general education booklet for Australian Seniors and providing valuable consumer information at its "Money Smart" website. However, much more needs to be done to educate older Australians about their retirement funding options. It should be a priority for Government to ensure that older Australians are not deprived of a better understanding of the role that Equity Release can play in meeting their needs and preferences in retirement.

Government funding of balanced financial literacy programs and counselling services is crucial. SEQUAL acknowledges the valuable contribution made by Centrelink's Financial Information Service ("FIS"), and other agencies such the National Information Centre for Retirement and Investments ("NICRI"). In particular, SEQUAL continues to encourage Government to maintain funding for NICRI's Equity Release/Reverse Mortgage Information Centre.[4]

Opportunities to better target assistance to those in need

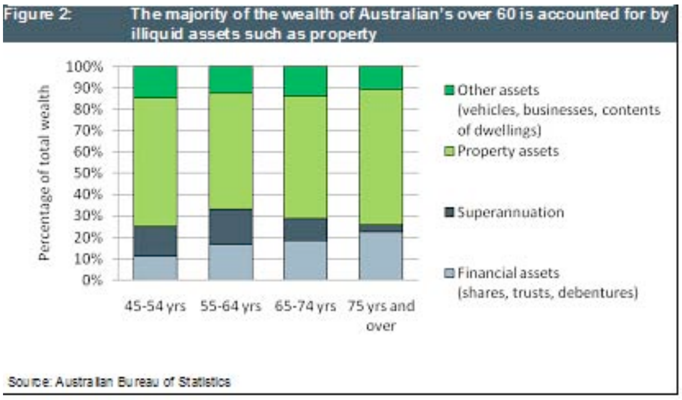
The Productivity Commission recommendations seek to address significant structural issues associated with funding an expanded aged-care system and correct inequitable arrangements. Whilst those who have the capacity will be expected to contribute towards the cost of their care, mandatory quotas and hardship provisions are proposed in order that older Australians will get access to the care they require.

The proposals for the development of both a Pensioners Bond Scheme and a Government-backed Equity Release scheme are aimed at enabling older Australians to access the wealth stored in their home in order to access care without needing to sell their home. However, if people decide to sell their home, they can avoid having the profit included in the Pensions means test by purchasing an Australian Pensions Bond.

It is critically important, however, that older Australians who have accumulated wealth through home ownership are not discriminated against, either as a consequence of their success or age. The primary residence of ordinary Australians is excluded for taxation purposes and many would argue that family home of older Australians should not be treated differently.

[4] More Information can be found at: http://reversemortgage.nicri.org.au

In terms of targeted assistance, given the fact that well designed equity release options are now widely available to home-owning pensioners, consideration can be given to targeting additional Government income assistance to those most in need -pensioners without the safety net of owning the family home.



However, it is important to understand that some home-owning pensioners have homes which are not suitable for a equity release, possibly due to the low value of their home or its location, and this should be taken into account in any change of entitlements.

Equity Release users should not be penalised under the pension

The already overburdened Aged Care sector faces significant stress as a consequence of the impending demographic shift. Some estimates suggest that the system will more than treble to $3.6 billion by 2050. It is clear that a comprehensive solution be found.

However, it is also important to ensure that pensioners who utilise equity release are not penalised by losing entitlements under the system.

It is in the national interest to encourage Senior Australians to use their assets sensibly in retirement, including the family home where needed. However, any reductions in benefits that result from accessing equity release will act as a deterrent to do so.

The current Centrelink assessment rules allow most retirees to access equity in their home without adversely affecting their benefits provided, they utilise rather than accumulate the funds accessed through equity release.

Consideration should be given to reviewing the gifting rules where the proceeds come from a currently exempt asset such as the family home.

Regulation of the Equity Release Market

Forty One Thousand (41,000) senior Australians have released a total of $3.0 billion of home equity.

SEQUAL is comprised of Equity Release providers that are either Authorised Deposit-taking Institutions (ADI's) or independent providers (Non-ADI's).

The SEQUAL Membership currently includes the following financial institutions:

Australian Seniors Finance	**Banksia Financial**	**BankWest**
Bluestone Equity Release	**Over Fifty Group**	**Police & Nurses Credit Union**
Royal Bank of Scotland	**St George/Westpac**	**Westpac Bank**

SEQUAL is well-placed to influence the design and distribution of appropriate Senior's equity release products and the principles of the SEQUAL Code of Conduct provide a clear consumer benefit.

SEQUAL Policy Guidelines have introduced important consumer protection measures such as the preservation of the benefit of No Negative Equity Guarantee.

SEQUAL supports considered regulation that encourages the development of an ethical and efficient senior's equity release market in Australia. It is important, however, that Government have proper regard for the standards of industry practice that have been achieved by SEQUAL in consultation with Regulatory Bodies, Consumer Advocacy Agencies and Government itself, over an extended period of time.

'ASIC welcomes industry moves to address consumers concerns about these products including the development of a code of practice by reverse mortgage providers industry group SEQUAL and the efforts of individual product providers to develop innovative provisions that mitigate some of the risks for consumers.'[5]

The Chief Ombudsman of the Financial Ombudsman Service ("FOS"), Colin Neave AM recently noted that:

"Of the Thirty Eight thousand (38,000) existing reverse mortgage borrowers in Australia (as at year end 20090 only five (5) have lodged a complaint and of those complaints, Four (4) were resolved through provider co-operation with no evidence of wrong doing on the part of the provider. What other industry can boast that level of consumer satisfaction"?

SEQUAL supports the Government's National Consumer Credit Reform[6] initiative and welcomes the opportunity to actively participate in the development of appropriate regulations as a Member of the Treasury's Equity Release Consultation Working Group.

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[5] Mr. Greg Tanzer -ASIC Executive Director of Consumer Protection, November 2005

[6] Download the Action Plan: http://www.treasury.gov.au/documents/1381/PDF/NCC_Brochure_02102008.pdf

SEQUAL Comment -Proposed Amendments to the NCCP Act and NCC Provisions

The SEQUAL Membership broadly supports the proposed legislative changes and welcomes the opportunity to provide comment on the draft Bill.

SEQUAL Members were asked to review a summary of the measures in the Bill relating to reverse mortgages prepared by Gadens Lawyers and then provide broader comment to SEQUAL in order that this Industry submission would accurately reflect the considered view of the SEQUAL Membership. This commentary is outlined, as follows:

Reverse mortgages – NCCP amendments

133DB Before making a credit assessment lenders and brokers must:

(a) show the borrower projections (calculated using an ASIC approved website) and give the borrower a copy.

Comment:
This proposal is supported on the basis that there can be no doubt that consumers are better placed to make informed decisions if they are provided with the opportunity to develop and consider projections (based on reasonable assumptions) that may impact their expectations for preserving some level of home equity.

However, it may be not always be practical for such projections to "shown" to the borrower in a "face to face" meeting and it should be possible for an equity release provider to make available an ASIC approved calculator on their own website. There are a number of compelling reasons why there should be some flexibility as to the method of delivering this information to the consumer including, but not limited to, costs to the consumer and preserving consumer choice.

It is important to note that in the initial stages of the application process, the projections would be generic in nature due to the absence of more detailed underwriting information that would normally be collected as the application process proceeded. Once an application has been confirmed and the details of the loan have been confirmed, a more personalized illustration should be provided as part of the loan documentation covered in the legal advice process.

(b) tell the borrower prescribed things

Comment:
Whilst the proposed legislative changes appear to have proper regard for the high standards of practice already adopted by SEQUAL Members, it is important that the regulations to be developed in response to the Bill be appropriately scaled so as to deliver effective consumer protection without imposing an unreasonable regulatory burden on equity release providers.

(c) give the borrower a 'Reverse Mortgage Information Statement'. A licensee need not give projections again if they have been given by someone else.

Comment:
SEQUAL has in consultation with the Australian Securities and Investments Commission (ASIC) and State-based agencies, developed a "Key Facts" guideline (refer Attachment B). Particularly given the broad consultation associated with this guideline and the objective of delivering effective consumer protection without imposing an unreasonable regulatory burden on equity release providers, the proposed Reverse Mortgage Information Statement should be modeled on the SEQUAL guideline.

133DC Lenders and brokers marketing reverse mortgages who have a web site that provides information about reverse mortgages must display on the web site a 'Reverse Mortgage Information Statement'

133DC Lenders and brokers marketing reverse mortgages must give the borrower a 'Reverse Mortgage Information Statement' if requested.

133DE Brokers and lenders must not use the term "reverse mortgage" unless the loan meets the statutory requirements of a reverse mortgage.

Comment:
SEQUAL acknowledges the effort being made by the Treasury to properly consult with industry and notes that the definition of a Reverse Mortgage is currently the subject of that consultative process.

179(7) If a lender provides an unsuitable loan when a reverse mortgage would have been suitable and available from the lender or another lender, the borrower can apply to court for an order to allow the borrower to remain in their principal place of residence.
Comment:
SEQUAL supports this proposed amendment. However, the amendment should be limited to an obligation in respect of the lender's own product range as it would be unreasonable to expect that an individual lender be aware of all other lender's products.

NCC provisions
17(15A) If the lender's credit policy allows a person other than the borrower to occupy the property, the borrower may nominate that the other occupant has the same rights as the borrower – e.g. right to occupy. The credit contract can limit the type of cohabitants.

18A The following cannot be a default event in reverse mortgages:
(a) failure to advise another person is occupying the property
(b) failure to provide evidence about who occupies the property
Comment:
This exclusion, as it stands, seems to remove the requirement of borrowers and their beneficiaries from informing lenders that they no longer occupy the property, this is in contradiction to the essence of the trigger for repayment of Reverse Mortgages, that is death or moving into long term care of the surviving nominated resident. In practice this leaves lenders with no recourse if the resident has passed away and a beneficiary chooses not to inform the lender, this would greatly jeopardize the Negative Equity position.

3
(c) leaving the property unoccupied
Comment:
An empty property could lose value quickly and this would not be in the best interest of either the consumer or the provider. Accordingly, this provision should be limited so that default only occurs if the property is left vacant without the lender's approval for a reasonable period of time provided that at all times that period of vacancy does not otherwise cause a default (e.g. Valid property insurance cover etc.).

(d) failure to pay rates and taxes and other costs
Comment:
There is a risk that the lender's security interest could be compromised as the property could be sold for rate arrears. Accordingly, this provision should be limited a reasonable period of time of rates non-payment.

(e) borrower failing to comply with an unclear loan term

(f) cross default

(g) an event or omission prescribed by the regulations18B If the lender's credit policy does not allow a person other than the borrower to occupy the property, brokers must notify the borrower in writing that the contract does not contain a 'tenancy protection provision' before providing a credit service (i.e. providing credit assistance or acting as an intermediary). Lenders must not enter into a credit contract until the lender has told the borrower in writing that the contract does not contain a 'tenancy protection provision'.

18C Regulations may require borrowers to obtain legal advice prior to entering into a credit contract.

86A A borrower can terminate at any time by paying the market value of the property even if that amount is less than the amount owing.
Comment:
There is a risk for lenders as borrowers could 'play the market' and repay when values are low. Although, SEQUAL Members accept this as a commercial risk associated with providing their customers with the protection of a meaningful No Negative Equity Guarantee (NNEG), it is appropriate that this amendment be limited to an "arm's length" sale to a non-related party.

88(1) In addition to a s88 notice, before beginning enforcement proceedings in respect of a reverse mortgage, the lender must speak by phone or in person to the borrower, borrower's lawyer, or borrower's attorney to confirm receipt and understanding of the default notice. Unlike most other provisions, this provision will apply to credit contracts entered prior to 1 July 2012.

93A Extra requirements for enforcing reverse mortgages in the limited circumstances when a borrower can be pursued for any shortfall.

185A If the lender's credit policy allows a person other than the borrower to occupy the property, the lender must keep records of occupants.
Comment:
This amendment should be limited to the extent that the borrower has informed the lender of that occupancy.

Co-Regulation –Delivering Meaningful Consumer Protection

The Australian Investments and Securities Commission (ASIC) provides a helpful consumer guide "Thinking about Using the Equity in Your Home" wherein (at page 34) it advises consumers to: "Check with the broker or adviser to see if they have training and experience (for example, having completed a skills-based program designed and/or endorsed by SEQUAL) "

The new consumer website provided by ASIC also acknowledges the meaningful consumer protection provided by SEQUAL, as follows:

"We strongly recommend that you only use a lender that is a member of SEQUAL www.sequal.com.au (the industry association). All their members agree to minimum standards".

This statement can be found at the following URL:

http://www.moneysmart.gov.au/superannuation-and-retirement/income-sources-in-retirement/home-equity-release/reverse-mortgages#2

Ensuring Quality Advice for Seniors

"In the relatively brief period before many baby boomers must begin to make concrete decisions about their retirement, most will have a series of choices to make about how they can maximise their retirement nest eggs.

It is those boomers that take full advantage of the range of options available to them who are likely to be better off. Invariably, to get this right, people will need to access good financial advice".[7]

It is crucial that market practitioners are willing and able to provide reliable advice to Senior Australians. Regulators have acknowledged the contribution being made by industry and they have delivered on their undertaking to *"work with industry to promote best practice and identify and appropriately deal with risks for consumers."*[8]

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[7] "Boomers Doing It For Themselves", AMP.NATSEM Income and Wealth Report Issue 16. March 2007
[8] ASIC Report 59 Equity Release Products –November, 2005. Download at: http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Equity_release_report.pdf/$file/Equity_release_report.pdf
[9] Phase Three Structure –Issues Paper –December, 2009 http://www.supersystemreview.gov.au/content/downloads/structure_issues_paper/Phase_3_Structure.pdf

How Should Government Policy assist the Development of the Equity Release Market?

The Australian Equity Release market is both efficient and ethical. Older Australians have access to well-designed products both in the form of Reverse Mortgages and Home Reversion Schemes. A degree of competition between major banks and non-bank specialist providers delivers a robust environment for consumer benefit. It is therefore not necessary for a Government-backed equity release scheme to be developed.

However, there are a number of important ways in which the Australian Government can encouraged the development of the equity release market and assist older Australians to access the stored value in their homes through legitimate equity release options.

Aiming to find the right balance between public funding and private funding for the care of older Australians (as stated in the key points on page 201 of the Productivity Draft Report), the Government should continue to focus on the existing Taxpayer-funded "Pay-as-You Go" subsidy pillar and "User-Pays" pillar, but also provide more support to strengthen a third funding pillar –Equity Release.

This support for Equity Release should focus on government backed, but privately operated, equity release schemes. There may also be a limited place for government operated schemes which fill the 'gaps' that are less attractive to private providers (i.e. small and gradual draw down of equity via the Centrelink Pension Loans Scheme or similar).

However, a Government-provided equity release scheme would face the same funding issues and costs as private providers and together with administration inefficiencies it would be unlikely to provide a scheme at a significantly lower cost.

While the Australian Government is already actively involved in providing information about equity release options via ASIC, a much broader education program is needed. There is a low awareness of equity release and equity release options. Likewise, there low acceptability of equity release to fund aged care, and more so, to fund a better lifestyle in retirement.

Consumer information should address the entitlement of older Australians to access the equity in their own home as well as identify the options available for achieving this and describe the associated risks and benefits in an unbiased way. The information provided by ASIC is helpful but many consumer advocates argue that the national regulator is a poor channel for proactive information dissemination.

There are clear examples of effective and appropriate Government support for Equity release markets elsewhere in the world (in particular, the USA and United Kingdom).

Some Government initiatives are likely to deliver better outcomes for older Australians. For example, the Australian Government could encourage greater competition in the market and increase consumer confidence by providing a No Negative Equity Guarantee (similar to the US market structure), rather than actively compete with industry participants by sponsoring an equity release product. Depending on how this would affect private provider provisions, it may also improve the pricing of equity release products.

Government Response to Capital Market Disruption.

Since the deregulation of the financial system, the Residential Mortgage-Backed Securities (RMBS) market has provided an important source of funding for new and smaller mortgage lenders to compete with the major banks. However, the recent disruption to the international capital markets has adversely impacted liquidity in the RMBS market.

The Treasurer announced on the 26th September, 2008 that the Australian Office of Financial Management (AOFM) would purchase Australian RMBS as part of the Government's commitment to strong and effective competition in Australia's mortgage markets.

This action followed legislation passed by the Rudd Government in June, 2008 which expanded the range of high-quality assets in which the AOFM can invest. At the time, the Treasurer stated "The Rudd Government is committed to ensuring that Australia's financial markets continue to perform strongly and provide Australian households with a wide range of financial products at competitive prices"

In the past, few Australian Reverse Mortgage providers have accessed the RMBS market (RV-RMBS issuance) in order to fund their reverse Mortgage portfolios, as they have been able to readily access funding through bank-provided credit facilities. In more recent times, the availability of bank funding has tightened as a consequence of the impact of the global credit crisis.

In this environment, the RMBS market could be an important source of funds for Reverse Mortgage providers. However, the Selection Criteria established for the AOFM to invest in RMBS does not provide for Reverse Mortgage transactions.

The combination of these factors has constrained the ability of some Reverse Mortgage providers to access funding and the effect of these conditions is that a number of SEQUAL Members have either withdrawn from the market or have significantly scaled-back their participation.

Given the public interest issues associated with the emergence of an efficient Senior Equity Release market in Australia, consideration must now be given to a timely and effective Government Initiative aimed at preserving competition within the Australian Equity Release market and ensuring that Senior Australians have choices when considering Senior's Equity Release as a means by which to assist them to meet their retirement funding needs.

It may be appropriate to apply existing Government Initiatives (from both Australia and Overseas) to ensure that the Australian Equity Release market is both competitive and stable. For example:

- An extension of the Selection Criteria for investment by the AOFM in RMBS to provide support for Reverse Mortgage RMBS issuance (RV-RMBS)[9],
- The provision of a Government Guarantee to stabilise bank-provided funding[10] and,
- Government Insurance (Lenders Mortgage Insurance) of Reverse Mortgage transactions.[11]

SEQUAL is committed to working with the Australian Government to assist Senior Australians to meet the challenge of Living Longer and Living Well.

[9] Arrangements for the Purchase of RMBS: http://www.aofm.gov.au/content/notices/09_2008.asp
[10] The Australian Government Guarantee Scheme: http://www.guaranteescheme.gov.au/
[11] The US Home Equity Conversion Mortgage (HECM): http://www.hud.gov/offices/hsg/sfh/hecm/hecmabou.cfm

The Role of the Superannuation Industry

The recent disruption to the international capital markets has constrained the ability of some Reverse Mortgage providers to access funding and the effect of these conditions is that a number of SEQUAL Members have either withdrawn from the market or have significantly scaled-back their participation.

Given the public interest issues associated with the emergence of an efficient senior's equity release market in Australia, consideration must now be given to a timely and effective response from the superannuation industry.

SEQUAL supports the view expressed in the Issues Paper provided by the Review Panel that encourages super funds to identify and support innovative products such as Reverse Mortgages.

"... is there any reason why super funds shouldn't be able to compete in the Reverse Mortgage market (as this seems peculiarly compatible with the retirement income function of super funds?"[9]

Attachments:

Attachment A:
SEQUAL Guideline –No Negative Equity Guarantee

Attachment B:
SEQUAL Guideline –Key Facts

Attachment C:
SEQUAL Guideline Equity Release Proper Process

Attachment D:
Financial Planning association Guidance Note

Attachment E:
Mortgage & Finance Association of Australia Guidelines

Attachment F:
CPA Australia Guidance Note for Advising on Reverse Mortgages

Attachment A: SEQUAL Guideline –No Negative Equity Guarantee

SEQUAL Guideline No Negative Equity Guarantee and Default Conditions

1. Background

The SEQUAL Code of Conduct requires all SEQUAL Members to offer a No Negative Equity Guarantee (NNEG). The NNEG provides that the borrower shall never owe more than the value of the property provided they comply with the terms of the contract.

It is necessary that the SEQUAL Code of Conduct be enhanced such that a No Negative Equity Guarantee must be in force without reference to whether the customer is in default. It is also necessary to limit the effect of default clauses on consumers by ensuring proper process is followed.

This Guideline sets out the general conditions which must be contained in contracts as a minimum as well as the minimum process required in the instance of defaults. This Guideline is considered mandatory for all SEQUAL Members as part of their compliance with the SEQUAL Code of Conduct, and is deemed for this purpose to be part of that Code of Conduct.

2. Minimum Contract Requirements – No Negative Equity Guarantee

It is required that the terms of the contract with the borrower must be in the following general terms:

- The NNEG must apply in any situations where a repayment trigger event occurs under the contract.
- The NNEG must guarantee that the lender will not have recourse to recover amounts in excess of the net sales proceeds of the property (i.e. after reasonable sales costs including any government taxes) from the borrower or their estate or any other person in any circumstance other than those specified below:
  - When the repayment trigger is a sale of the property, it is acceptable that the contract specifies that it must be sold at arms-length and only following express permission of the lender prior to the sale, and that non-compliance with this requirement will invalidate the NNEG.
  - The only other situations in which the NNEG can be invalidated where it would otherwise apply is where there has been fraud by the borrower or wilful damage to the security property by the borrower which has resulted in the shortfall.
- If the borrower is in default under the loan for any other reason, the lender cannot use this as a reason to invalidate the NNEG.

3. Minimum Procedural Requirements on Default

- Where there are default conditions in the loan contract, these must be fair and reasonable.
- Where there is a serious default under the contract, it is permissible that the lender can require the loan to be repayable immediately or apply a default rate of interest.
- Except in a situation where there is an immediate threat to the value of the underlying security, the lender must act in accordance with the Uniform Consumer Credit Code as regards notice and follow the process outlined below prior to moving to require the loan to be repaid or applying a default rate of interest:

- Send the borrower a written notice of default specifying a period for rectification of the default (such period being reasonable taking into account the particular circumstances of the default).
- The Lender (or their representative) must personally contact (or make a reasonable attempt to contact) the borrower (or their legal personal representative) prior to the expiry date of the notice to ensure that they have received the notice and understand the consequences of not rectifying the default
- If the borrower remains in default after the period of notice has expired, the lender may commence action for the loan to be repaid in full at that point. Alternatively, it is permitted that the lender can, in these circumstances, choose to charge a higher default rate of interest until the default is rectified, as long as the default rate is reasonable in the circumstances having regard to the nature or cost of the default to the lender.

4. Date of Operation

This Guideline came into operation from 1 January 2008 and applies to all contracts issued on or after that date or the date of amendment of the standard contract to comply with this Guideline, whichever is the earliest.

All contracts were reviewed by SEQUAL by or on 1 January 2008, and are reviewed whenever they are amended, or at least annually to ensure compliance with this requirement. SEQUAL maintains a list of complying members, which is available to interested parties, as required.

Attachment B: SEQUAL Guideline –Key Facts

SEQUAL Guideline: Equity Release Key Fact

SEQUAL provides effective consumer protection through a **Member Code of Conduct** and **Industry Accreditation** of Brokers, Planners, Accountants and Legal Advisers.
Find a SEQUAL-accredited Equity Release Consultant at: **www.sequal.com.au**
This SEQUAL Key Facts Guide explains key features of Reverse Mortgages and provides a checklist of issues you will need to carefully consider. The guide contains only general information and does not state the Terms & Conditions of your contract or the particular options, fees and charges that may apply to the product that you select. You should read this guide together with your contract in order to make a fully informed decision.

Important Notice:

The decision to enter into an Equity Release transaction will require you to understand the legal, taxation and financial implications of binding loan documentation.
Before entering into a Reverse Mortgage transaction with a SEQUAL Member, you are required to obtain independent legal advice. SEQUAL highly recommends that you also seek independent financial advice to determine whether a Reverse Mortgage is the best option for you. It is important for you to properly consider the impact of Equity Release on both your current and future financial position. You may also want to discuss your decision with family members.

What is Equity Release?

Home Equity is the difference between the value of your home and any outstanding loans you have secured by a mortgage.
The personal wealth of many Senior Australians has been achieved through home ownership but they face retirement with inadequate savings making them “Asset rich but Cash Poor”.
Equity Release enables you to access the wealth you have stored in your home and use your home in order to meet other financial needs.

What is a Reverse Mortgage?

A Reverse Mortgage is a loan which, subject to the options available for the product you select, may be advanced as a lump sum, line of credit or scheduled instalments.
Typically, no regular repayments are required to be made under the terms of a Reverse Mortgage as the loan will capitalise over the duration of the facility.
You must provide mortgage security but you do not sell your home in order to obtain a Reverse Mortgage. The loan must be repaid when you decide to sell your home.
All SEQUAL Members are required to provide the protection of a **No Negative Equity Guarantee** which limits the maximum you can owe to the value of the security you have offered.

What are the Key Issues that will impact my Home Equity?

By releasing equity through a Reverse Mortgage you will affect your level of Home Equity.
Your prospects for preserving Home Equity will depend on a range of factors, including:

- How long your Reverse Mortgage continues.
- The interest rate movements that occur during the term of your loan.
- Changes to the value of your home over this time.

Home Equity Preservation:

A Reverse Mortgage may assist you to fund retirement expenses without having to sell your home.

However, it is important to properly consider the likely impact of equity release on your overall financial position, now and in the future.

Reverse Mortgage Calculators can be helpful for estimating Home Equity Preservation, based on your own assumptions for key issues that impact Home Equity.

The Australian Securities and Investments Commission provides a Reverse Mortgage Calculator at their consumer website www.fido.asic.gov.au

Client Example:

Peter and Melissa are both aged 74. They own their home which is valued at $350,000.

They decide to take out a Reverse Mortgage for an overseas family visit, to purchase a new car and to supplement their pension with monthly income instalments of $150 for the next 10 years.

Based on borrowing **What they Need,** the Total Initial Mortgage is $68,000 which represents 19.5% of their Home Equity. However, the **Maximum Amount** they could typically have borrowed would provide a Total Initial Mortgage of $98,000 or 28% of their Home Equity. Peter and Melissa choose a Reverse Mortgage with the following Fees and Charges:

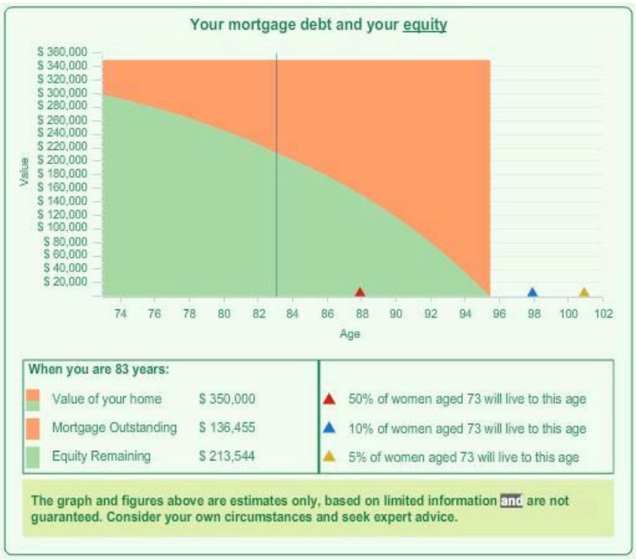
- ✓ Establishment Fee of $950,
- ✓ Ongoing Monthly Fees of $10 and
- ✓ Interest Rate of 7.50%.

Although they were confident that their home would increase in value over the next ten years, Peter and Melissa decided to assume that both the interest rate and the value of their property would not change over the term of the Reverse Mortgage to see what impact that scenario would have on their Home Equity.

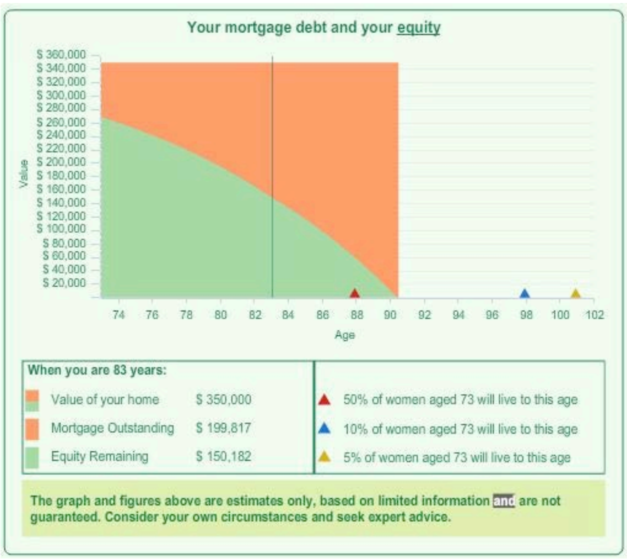
Scenario Outcomes:

The following scenarios are based on the assumptions made by Peter and Melissa and illustrate the expected impact on their Home Equity depending on whether they,

Borrow What They Need



Borrow Maximum Available



Important Notice

How much you owe depends on:

- How much you borrowed at the start
- How long you have the loan for
- Whether you receive your loan as a lump sum or as instalment payments
- The interest and fees you pay along the way
- Whether you borrow any more money, and
- Whether you have a No Negative Equity Guarantee (see below).

No Negative Equity Guarantee

All SEQUAL Members are required to offer a No Negative Equity Guarantee (NNEG).
The NNEG provides that the borrower shall never owe more than the value of the property provided they comply with the terms of the contract.
This means that if the balance of the loan exceeds the proceeds of sale of the secured property, no claim for this excess will be made against you or your estate.
It is important that you carefully review your Loan Agreement to identify whether the No Negative Equity Guarantee is subject to any conditions.
SEQUAL has issued a mandatory Code of Conduct Guideline that sets out the minimum general conditions which must be contained in a SEQUAL Member loan agreement as well as the minimum process required in the instance of defaults.
You can read the SEQUAL Code of Conduct and Guidelines at: www.sequal.com.au

Costs:

Entry costs: You may be charged an application or establishment fee, plus valuation costs.

Other ongoing costs: You may be charged regular valuation fees and monthly administration fees. You will also have to pay for insurance, rates and maintenance of your home.

Exit costs: If you decide to repay the loan early, you may be charged an exit fee.

Interest: You will be charged ***compound*** interest on the loan. This means you pay interest on interest, plus interest on any fees or charges added to the loan added to the loan balance. Over time, compound interest will greatly increase the amount you owe.
You may have the option to choose between Variable and Fixed Interest Rates. However, not all Reverse Mortgage providers offer this choice. Variable Rates move up and down with the market but Fixed Rates do not change during the term of the Fixed Rate option. A Fixed Rate option means that you have certainty about the amount of interest you will pay. However, the Fixed Rate option will typically be priced higher than the prevailing Variable Rate and you may face significant Break Costs if you pay out your Reverse Mortgage before the Fixed Rate period ends.

Checklist:

Issues to Consider...
Borrow What You Need, When You Need It -Prepare a budget of your expenses.
Longevity Risk –Consider your future needs, you may live longer than you think.
Aged Care Needs -You may need to fund Aged Care in later life.
Zero Home Equity and the NNEG -Make sure you are protected from Negative Equity.
Expectations for Inheritance -Discuss your intentions with your family and advisers.

Cautions:

Limiting your options: The more money you borrow and the younger you are when you borrow it, the less money you will have to pay for your needs as you age. You may have high medical expenses and/or need to move into aged care accommodation and if you use up most of your equity too soon, your options may be limited.

Impact on your pension: A reverse mortgage may impact on your pension, especially if you take it as a lump sum, or buy an asset like a car. Contact Centrelink on 132 300 and make an appointment with a Financial Information Service Officer to make sure your pension isn't adversely affected.

Managing the property: Some terms and conditions in the contract may limit your ability to manage the property. For example, you may need to get the lender's approval before you go on a long holiday or wish to bring a new resident into your home, renovate, lease or sell the property. You will also be required to maintain the property to a standard set by the lender.

Forced sale of your home: In some circumstances, if you don't meet the terms and conditions in your contract, your credit provider may be entitled to begin enforcement action, which could include selling your home.

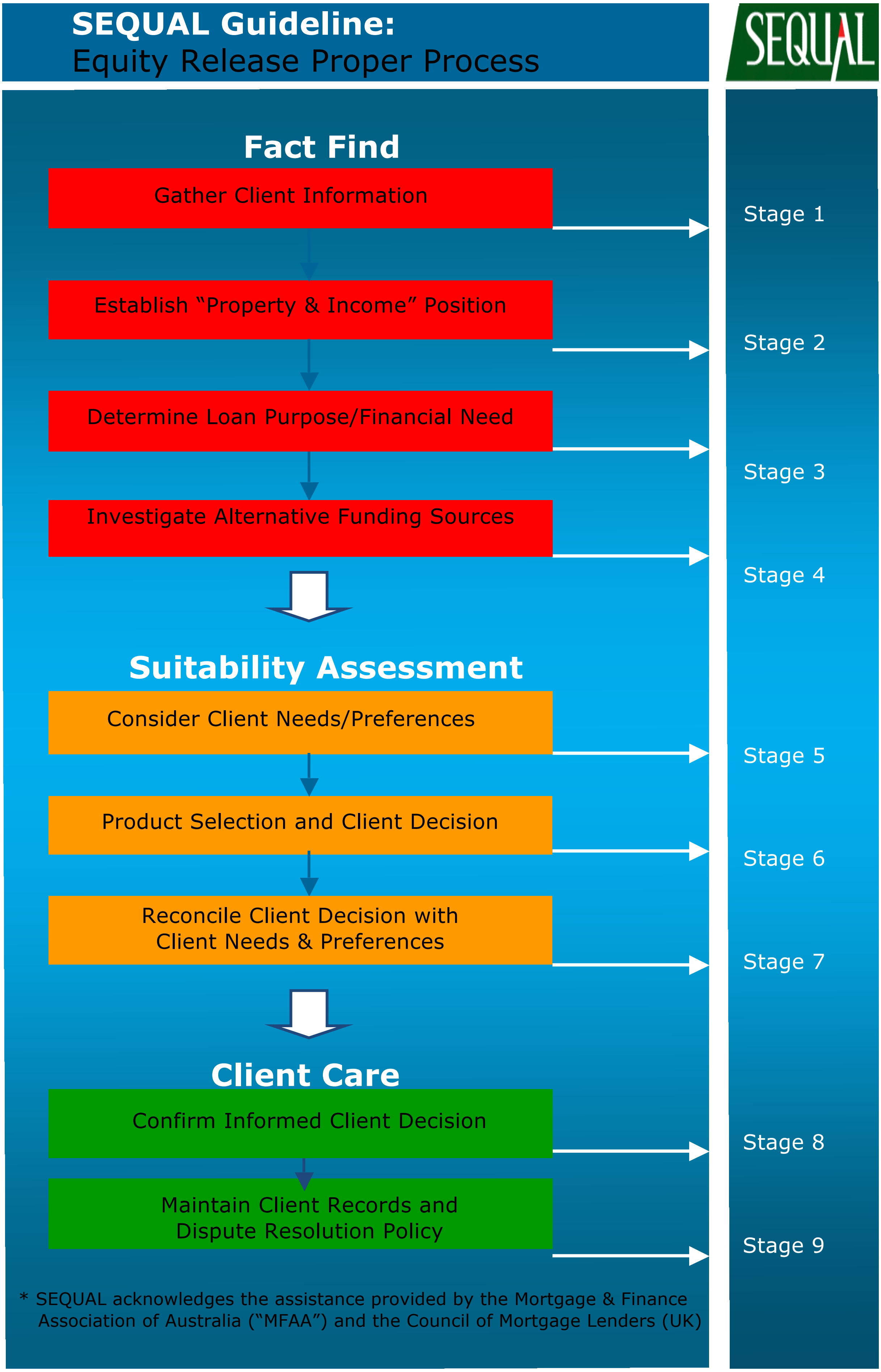
Your partner's rights: If you are living with someone who is not also a borrower under the contract and you die, the loan may become repayable and the other resident may not have any rights. *Tip: some reverse mortgage contracts protect the right of a resident who isn't the borrower to stay in the house after all borrowers have died.*

Your children: The decision to use a Reverse Mortgage may impact your capacity to leave an inheritance to your children. You may want to discuss your decision with your family.

References:

SEQUAL –Senior Australians Equity Release Association of Lenders
Website: www.SEQUAL.com.au
Email: info@sequal.com.au
ERRMIS –Equity Release/Reverse Mortgage Information Service
Website: http://reversemortgage@nicri.org.au
Email: reversemortgage@nicri.org.au
Phone: 1800 615 676
ASIC –Australian Securities and Investments Commission
Website: www.fido.gov.au
Phone: 1300 300 630
The Department of Veterans Affairs
Website: www.dva.gov.au
Email: GeneralEnquiries@dva.gov.au
Phone: 13 32 54
Australian Taxation Office
Website: www.ATO.gov.au
Phone: 13 28 61

Attachment C: SEQUAL Guideline – Equity Release Proper Process



Stage 1
Gather Client Information

Regulatory Obligations

- ☑ Trade Practices Act
- ☑ Privacy Act
- ☑ Uniform Consumer Credit Code
- ☑ Anti Spam Provisions
- ☑ Do Not Call Register

Client Interview

- ☑ Consistent Interview Process and Fact Find
- ☑ Plain English Documentation
- ☑ Broker **"Face to Face" Availability** is critical
- ☑ Client Option to involve "Other Parties"
- ☑ "Complete & Accurate" information
- ☑ Opportunity to Consider and/or Withdraw

Record of Interview

Record:

- ☑ Names of Interview Participants
- ☑ Sequence of Discussion
- ☑ Matters Impacting Client Decision

Guidelines:

- Regulatory Obligations should be considered from the perspective of a "somewhat vulnerable" consumer considering "unfamiliar" products. Apart from strict adherence to Regulation, Reverse Mortgage Consultants ("RMC's") need to consider their clients particular needs. For example, the involvement of "other parties" should always be the Client's decision (caution Trade Practices Act - "Undue Influence").

- The Client Interview should be conducted according to a consistent method/policy in order to eliminate doubt regarding "Proper Process".
- The Client's decision-making preferences must be accommodated. Older Client's require sufficient opportunity to carefully consider their decisions.

- Detailed and contemporaneous "Diary Notes" should be maintained for Equity Release transactions as part of a comprehensive Fact Find. Key Issues such as the Client's Risk Tolerance, Product Selection, Financial Need, Family Circumstances, and Future Expectations etc. should be carefully recorded.

Stage 2
Establish "Property & Income" Position

Property

- ☑ Check Type & Location against product criteria
- ☑ Observe/Discuss Property Condition and any Modification for Client Need
- ☑ Establish Client Valuation and record Evidence

Occupancy

- ☑ Verify Ownership status. Ensure that all Owners are Transaction Parties.
- ☑ Check use of property is within product criteria.
- ☑ Check occupancy other than Borrowers.
- ☑ Explain any waiver requirements for non-borrower occupants.

Income

- ☑ Determine Available Income (all sources).
- ☑ Client to confirm that they are receiving their Maximum Benefit Entitlement.
- ☑ Discuss potential Change of Circumstances (Loss of Spousal Income, impact of Equity Release etc.)

Stage 3
Determine Loan Purpose/Financial Need

Application of the Equity Release proceeds.	☑ Consider the UCCC implications for Use of Funds. ☑ Verify Client Benefit for any third-party distribution. ☑ Licensed Financial Planner to provide advice on Investments (Using Equity Release proceeds to invest is deemed to be a "High Risk" strategy.)
Refinancing Financial Obligations	Issues to consider include: ☑ Extending the debt period & total interest, ☑ Securing a previously unsecured loan? ☑ Evaluate costs and benefits of refinancing. ☑ Early Repayment Penalty and other Transaction Costs. ☑ Opportunity to enter into Arrangements with creditors.
Adequacy of Equity Release proceeds.	☑ Match the proposed Equity Release proceeds with the identified Financial Needs. ☑ Discuss both Present <u>and</u> Future Financial Needs. ☑ Compare the potential future Transaction Costs for accessing further Equity Release with the Carrying Cost of any "surplus" or unallocated proceeds.
Lump Sum Drawdown	☑ Calculate the expected Cost of Funding (Capitalised Interest etc.). ☑ Calculate the expected Equity Position (Property Value movements) ☑ Consider any Benefit Entitlement impact of Unallocated Funds.
and/or	
Progressive Drawdown	☑ Match expected expenditure pattern with the income schedule. ☑ Consider any Benefit Entitlement impact of Accumulated Funds. ☑ Consider any Counterparty Risk with un-drawn funds.

Stage 4
Investigate Alternative Funding Sources

Moving to a cheaper Property.

- ☑ RMC's should discuss (and if qualified to do so, offer advice on) alternative strategies to Equity Release with their Clients.
- ☑ Moving to a cheaper property involves financial as well as emotional issues.
- ☑ Some of the considerations for this strategy include:
  - Proximity to Family & Friends
  - Conveyancing & Moving Expense
  - Access to Medical Services
  - Accommodation of Co-Habitants

Converting other Assets

- ☑ A Client's Other Assets may no longer suit their needs and might be considered suitable for conversion into Available Funds in order to meet their Current Needs.

Access to other Funds?

- ☑ If the Client has significant liquid funds or investments, Equity Release may not be necessary.
- ☑ Family members may be prepared to assist. Particularly, where they have an Inheritance Expectation".

Government Agency Assistance

- ☑ A Pension Loans Scheme
- ☑ Lump Sum Pension Advance
- ☑ Home Start (S.A. only)

Benefits Entitlement

- ☑ Eligibility for Benefits, which are not currently claimed may reduce or eliminate need for borrowing

Guidelines:

- Unless qualified to do so, RMCs MUST NOT PROVIDE CLIENT ADVICE.
- RMC's must assist their clients to make fully-informed decisions by providing accurate and complete information.
- Clients should be encouraged to consider alternative strategies to Equity Release and make contact with relevant Agencies (Centrelink, Veterans' Affairs, Department of Family & Community Services etc.

Stage 5
Consider Client Needs/Preferences

Client's attitude towards Property Value Uncertainty	☑ This view may indicate the most suitable Equity Release option (Reverse Mortgage, Home Reversion Scheme etc.)
Client's attitude towards Interest Rate Uncertainty	☑ An unoptimistic view may indicate a Capped Rate, Fixed Rate or Fixed for Term option is more suitable
Client Understanding of the Longevity Effect	☑ Life Expectancy will influence Client's Assumptions for Equity Preservation
Client's attitude to providing for an Inheritance Legacy	☑ If the customer considers this to be an important factor, a Protected Equity Option may be suitable.
Client's attitude to future Aged Care Needs	Consider: ☑ Security Substitution ☑ Consequence of Permanent Move Out ☑ Access to Accommodation Bond Funding ☑ Occupancy Rights of Co Habitants ☑ Financial impact of Aged Care
Voluntary Interest payments	☑ Compare and contrast merits of paying interest monthly with Capitalisation and affordability of interest
Consider other Client Needs/Preferences	Amongst other factors this could include: ☑ Reliance on guarantee of future funds ☑ Availability of Further Advances ☑ Establishment Fees ☑ Early repayment Payments ☑ Modification of Secured Property ☑ Maintenance of Secured Property ☑ Death of Spouse ☑ Marriage and/or Re-marriage ☑ Right to Occupy

Stage 6
Product Selection and Client Decision

Identify Most Suitable Equity Release Product	☑ Provide "Accurate & Complete" Product Information. Highlight "Key Facts". ☑ Outline Transaction & Other Costs (Insurance, Maintenance, Rates etc.) ☑ Match Product Features to Client Needs ☑ Explain the link to Client Objectives and Preferences.
Explain application process	☑ Ensure customer fully understands the Product Selection and Application Process ☑ Explain documentation required from the customer. ☑ Set expectations of timings etc. ☑ Explain roles of Transaction Parties
Invite Family Involvement	Including: ☑ Product selection ☑ Alternative funding ☑ Voluntary Interest Payments ☑ Inheritance Expectations ☑ Right to Occupy Secured Property etc.
Independent Financial and Legal Advice	☑ SEQUAL Code of Conduct ☑ Lender's Requirements ☑ Tailor Process to Client Capacity/Need
Client Decision	☑ Fully Informed Decision

Stage 7
Reconcile Client Decision with Client Needs & Preferences

Size & Timing of Equity Release Funding

- ☑ Arbitrary or Excessive Equity Release is to be avoided. RMC's should assist their Clients to "Map" the Equity Release Funds (both in terms of Size and Timing), to their Financial Needs.

Benefits Entitlement

- ☑ RMC's must be mindful of the potential impact of Equity Release on their Client's Benefits Entitlement and future Financial Options.
- ☑ Clients should be encouraged to carefully consider these important matters.

Risk Tolerance

- ☑ A Client's Risk Tolerance should be properly considered in the Product Selection Process.
- ☑ A clear explanation of the difficulty in predicting the impact of Longevity, Interest Rate Movements and Future Property Values should be provided.
- ☑ Remember: Unless qualified to do so, an **RMC cannot provide Advice.**

Changed Circumstances

- ☑ A Client's Present & Expected Future Needs should be clearly identified.
- ☑ Potential Changed Circumstances (Marriage, Health, Family Support etc.) should be properly considered.

Stage 8
Confirm Informed Client Decision

Know Your Client

- ☑ Have you verified that the Client Understands the Product Description and Documentation you have provided?
- ☑ Are you satisfied that the Client understands the Benefits & Risks associated with the Product they are Buying?

Alternative Products & Strategies

- ☑ Confirm that the Client has had the opportunity to investigate any Alternative Products & Strategies identified earlier in the Transaction

Know Your Product

- ☑ Product "Key Facts" Accurate & Complete?
- ☑ Transaction Costs Identified & Explained
- ☑ Scenario Analysis presented using Client Assumptions?

Informed Client Decision

Proofs of Proper Process:

- ☑ Prove you "Know Your Client"
- ☑ Prove you Investigated Alternative Products & Strategies
- ☑ Prove you "Know Your Product"
- ☑ Prove you Explained the Risks & Benefits
- ☑ Prove your Client understood and accepted the Risks & Benefits

Stage 9
Maintain Client Records
Dispute Resolution Policy

Client Contact Information

- ☑ Do you keep a copy of all Client Correspondence including a completed Fact Find?
- ☑ Could you Retrieve this Information if required?
- ☑ Do you keep a Record of Product Key Facts?
- ☑ Do you keep Meeting & Telephone Notes?

Internal Dispute Resolution

- ☑ Does your organisation and/or the product provider have Complaint Handling Policy and a Designated Complaint Handling specialist?
- ☑ Do you Log Complaints by Source & Nature?
- ☑ Do you Monitor and Action Complaints?
- ☑ Do you Modify Operational Practice, if necessary?

External Dispute Resolution

Consumer Complaints against SEQUAL Members or SEQUAL-accredited RMC's:

a) If the Client is seeking monetary compensation:

If the complaint remains unresolved after going through the RMC's and Product Provider's IDR procedures, the Client can refer the matter to an External Dispute Resolution (EDR) scheme. The EDR Scheme must be approved by ASIC for example, The Credit Ombudsman Service Limited (COSL). All RMC's should be a member of, or be covered by a membership of an ASIC approved EDR scheme.

b) If the Client is not seeking monetary compensation and the complaint is claimed to be a breach of the SEQUAL Code of Conduct:

A Client can refer the matter to the SEQUAL Code Compliance Committee for investigation. SEQUAL has a process to deal with complaints of alleged misconduct against SEQUAL Members and SEQUAL-accredited RMC's.

The SEQUAL Code Compliance Committee has the power to impose various sanctions on a SEQUAL Member or SEQUAL-accredited RMC for misconduct -including expulsion from membership of SEQUAL or removal of the SEQUAL-accredited RMC designation.

Consumer Complaints against providers who are not SEQUAL Members or practitioners who are not SEQUAL-accredited RMC's:

Various Government or Consumer Advocacy Agencies may able to assist. Alternatively, Clients should seek their own Professional Advice.

Attachment D: Financial Planning Association Guidance Note

Advising on Reverse Mortgages

Guidance for FPA members, November 2007

Reverse mortgages or equity release products have the potential to significantly improve the quality of life of older people with few assets other than the family home. However they do have their risks and are not suitable in all cases so care needs to be taken when advising clients on these products.

One of the major risks with all reverse mortgages is the compounding effect of interest charges which means the accruing debt will usually double every 10 years, rapidly reducing the remaining equity in the home[12]. Whilst some of the earlier products, particularly in the UK developed a bad reputation, the current models have generally overcome these issues particularly those from product issuers who are members of SEQUAL. Many of these new products include features such as interest rate protection and "no negative equity" guarantees. All members of SEQUAL abide by a voluntary industry code of conduct designed to increase awareness of the risks of equity release products and minimise consumer risk.

Notwithstanding these developments, care is still required in selecting equity release products and determining that they are suitable for the client. The FPA has therefore developed these guidelines to assist planners in advising clients on whether equity release products such as reverse mortgages are suitable. The guidance does not in itself make any recommendations about specific reverse mortgage products, although FPA does strongly recommend that advisers should have completed an FPA or SEQUAL accreditation program before advising on these products.

Current Regulations

Unlike most other financial products, reverse mortgages are not regulated under the Financial Services Chapters of the *Corporations Act 2001* as they are deemed to be a "credit facility" and are regulated under the Uniform Consumer Credit Code (UCCC)[13]. Failure to comply with the Code can lead to civil penalties up to $500,000 and criminal charges. Information on compliance with the Code is provided in the *Consumer Credit Code Business Checklist*. It should be noted, however, that the UCCC should not provide applicable requirements for advice in this area.

There are discussions currently underway at state and Federal level that may result in reverse mortgages and like products becoming subject to the same disclosure requirements as other financial products based on a national regulatory model. In the meantime guidance on providing advice in this area is covered by the general requirements of industry bodies such as FPA and organizations such as SEQUAL.

Providing Advice on Reverse Mortgages

A 2006 survey on reverse mortgages[14] reported that only 32% of overall sales of reverse mortgage products were made by financial planners. Many reverse mortgage product providers require a mortgagor to obtain a certificate from a financial planner to confirm that the potential consequences and appropriateness of reverse mortgages have been explained to the client. This may be required notwithstanding that the mortgage has been sold by a mortgage broker.

[12] ASIC Fido page on reverse mortgages [http://www.fido.gov.au/fido/fido.nsf/byheadline/Reverse+mortgages?openDocument]

[13] http://www.creditcode.gov.au/

[14] Trowbridge Deloitte industry survey – November 2006 http://www.deloitte.com/dtt/press_release/0,1014,sid%253D5527%2526cid%253D136530,00.html

Whilst the FPA is not wholly comfortable with this approach it accepts that members should make their own decisions on these matters and may charge a fee commensurate with the work undertaken.

This Guidance therefore is limited to (A) providing general advice on the appropriateness of reverse mortgage for a client and (B) providing specific product advice on reverse mortgages. Obviously, part (B) should not be undertaken in isolation and specific product advice and any recommendations should follow Part (A) and Part (B) guidelines.

(A) Key Issues to consider when advising on reverse mortgages

1. *Have alternatives to equity release been considered?*

There are a variety of options which may be more appropriate for a client other than a reverse mortgage or other equity release products depending upon the client's requirements. An alternative strategy may be downsizing the family home and thus releasing the required cash.

2. *Does the client understand how reverse mortgages work?*

It is vitally important that the client fully appreciates the effects of compounding interest and its effect on their remaining home equity. A model such as ASIC's FIDO calculator should be given to the client.

3. *Has the Client's Health and life expectancy been taken into account?*

The client's health and life expectancy are important issue to consider when advising on reverse mortgages. Whilst health and life expectancy are uncertain issues which are difficult even for experts to determine with any certainty, a client's age and existing health should be taken into account.

4. *Has the effect of changing house values been taken into account?*

One of the positive factors with reverse mortgages has been the continuing increase in value of house prices which has to a greater or lesser degree offset the effect of compounding interest. Recent slowing of the property market suggests that any future projections in property values should take account of possible slower growth in property values.

5. *Has the proposed use of the funds been determined?*

Due to the nature of compounding interest it is important that the client only borrow enough to meet their essential requirements. These requirements may include one-off purchases such as a new car or a holiday or home improvements. Conversely it would generally be inappropriate to use the funds to re-invest in other investments such as shares or high risk family ventures depending on the client's circumstances.

6. *Has the client's needs, objectives and future plans been taken into account?*

Due to the nature of equity release products and their potentially far reaching effects on that basic family asset, the home, it is important that they fulfill the client's stated objectives. For example, if the client's longer term plan is to use the equity in the home to fund their entry to a retirement village it is important that there will be sufficient equity remaining to meet this objective.

7. *Has the effect of the client's eligibility for pensions and benefits been considered?*

It is possible that any equity release may have an effect on a client's pension or other social security benefits particularly in the short term. Due to the exemption of the family home from most social security benefit tests any equity release should generally not have any long term detrimental effects on entitlements. The client should clearly understand these issues.

8. *Is the client's family aware of the client's proposal?*

The issue of family inheritance is often the cause of much friction and indeed litigation and it may be appropriate that family members are made aware of the client's proposal and the effect it may have on their inheritance.

In addition to completing the attached checklist of the key issues to be considered, a detailed Record of Advice should also be provided to the client and a copy maintained by the planner. The eight point checklist is designed to provide a guide of the issues to be considered when determining if a reverse mortgage is appropriate for the client. Once that has been determined it will then be necessary to undertake the usual product evaluation and recommendation process.

(B) Providing Product Advice

When making reverse mortgage product recommendations to a client the financial planner should ensure that all applicable and regulatory requirements are met and, in addition to following the Part (A) checklist, the usual procedure should be followed as with any product regulated under FSRA.

1. Before embarking on advising on reverse mortgages members should have completed an accredited training program through one of FPA's accredited courses (see FPA website [LINK]).

2. Members should only provide product advice on those products which are on their Licensee's approved list and on which they have received training.

3. Any product being recommended to a client should meet the SEQUAL Code of Conduct or an equivalent which would include matters such as a no "negative equity" guarantee and clearly defined repayment conditions.

Additional references and guidance may be found at the following locations;

SEQUAL Code of Conduct: www.sequal.com.au

CPA Guidance Notes on reverse mortgages: www.cpaaustralia.com.au

CHOICE information on reverse mortgages: www.choice.com.au

Australian Securities Investment Commission: www.asic.com.au

All ASIC publication on reverse mortgages can be found by searching for "reverse mortgage"

Attachment E: Mortgage & Finance Association of Australia Guidelines

The Mortgage and Finance Association of Australia (MFAA)

The MFAA was established in 1980 and is a leading provider of service and advocacy for mortgage brokers, finance brokers, mortgage managers, lenders (bank and non-bank), and originators to assist them develop, foster, and promote the mortgage and finance industry.

The MFAA states its objectives as follows:

- Advocate on behalf of the mortgage and finance professional
- Set and enforce standards which define professionalism for members
- Promote excellence through best practice for the benefit of customers
- Provide relevant, cost effective services and learning and development opportunities for members
- Support the evolution of the mortgage and finance industry

There are currently over 13,000 members of the MFAA.

Equity Release Products

The MFAA Board has resolved that an MFAA member who does not hold SEQUAL accreditation and who sells an equity release product will be guilty of misconduct and subject to sanctions under the MFAA Disciplinary process. MFAA members were given until 31 March 2008 before this protocol was enforced.

The MFAA's measures to ensure that its members adopted appropriate standards when involved in equity release transactions include:

- Promulgating 'The Equity Release Code of Proper Process" in February 2007 to ensure its broker members sold Reverse Mortgage products appropriately.
- Establishing the SEQUAL accredited MFAA Equity Release Education program, which some 400 members have now completed.
- Declaring it a breach of the MFAA Code of Conduct for its members to sell reverse mortgage products if they are not SEQUAL accredited by 31 March 2008.
- Making it a condition of MFAA membership that all members belong to an ASIC approved External Disputes Resolution (EDR) Scheme.

FINANCIAL ADVISORY SERVICES

Guidance Note for advising on Reverse Mortgages

Guidance for CPA Public Practitioners

March 2007

With 21% of the Australian population expected to be 65 or over by 2031, and many not having sufficient funds to meet their retirement needs, it's not surprising that older Australians are looking outside the more traditional means of superannuation and pensions to fund their retirement needs. And with the massive growth in house prices in recent times, releasing equity in their own home could be a viable option for your clients.

The market for equity release products is growing rapidly. As at June 2006, the market for reverse mortgages was around $1.1 billion in outstanding loans, an increase from $850 million at the end of 2005, and up from $460m at the end of 2004[1]. By 2010, this market could grow to between $12 and $15 billion[2].

Equity release products have the potential to significantly improve the quality of life for older people, when used appropriately. However, there is a risk that these products will develop a bad reputation, as has been the case in the UK where a combination of poor product design, unfavourable economic conditions and poor sales and advice practices led to problems in the 1980s. Whilst many of those product design flaws have now been rectified in today's generation of equity release products in Australia, care should still be taken to understand the level to which customers are truly protected from issues outside of their control.

The target group for these products are often under-funded seniors who can be vulnerable to making poor decisions, especially as they can involve complex financial and legal issues, and older consumers are not in a position to recover their position if they make a mistake.

These guidelines have therefore been developed to assist members when advising on these products and set a standard of best practice. They are NOT intended to provide detail about the features of an equity release product that should be taken into account, but rather the process and factors that should be considered in determining if an equity release product is appropriate.

The guidance notes focuses on three areas:

1. The different types of equity release products;
2. Key factors members should take into account when recommending reverse mortgages; and
3. The regulations currently in place in relation to equity release products.

[1] SEQUAL/Trowbridge Deloitte, *Reverse Mortgage Study*, June 2006

[2] Trowbridge Deloitte, *The Equity Release Opportunity for Financial Planners*, July 2005

SEQUAL
Senior Australians Equity Release
Association of Lenders

CPA
AUSTRALIA

Guidance Note for advising on Reverse Mortgages

1. Different types of equity release products

A reverse mortgage is the dominant equity release product in Australia and hence the subject of this Guidance Note. However, there are others.

Reverse mortgages

The reverse mortgage allows the consumer to borrow money against the equity in their home. No principal or interest is required to be repaid until the home is sold or the borrowers die or, in some cases, when they vacate the home permanently (e.g. to move into a retirement home).

Home reversion schemes

The consumer sells part or all of their home for less than the market price (usually between 35 to 60 per cent) and, in return, is allowed to stay in the property until they leave or die.

Shared appreciation mortgages

The consumer gives up the right to some of the capital gain on the property (usually 2 to 3 times the proportion of the property borrowed against) in return for paying reduced or no interest.

2. Key reasons for considering a reverse mortgage

Lifestyle	For many retirees, their home is their only significant asset. They are living longer and in better health than their parents and grandparents and reverse mortgages could allow them to live a more comfortable lifestyle in retirement.
Ability to stay in own home	Many retirees do not want to leave their home, and reverse mortgages are a way to fund a comfortable lifestyle without the disruption and cost of moving. While downsizing has been the traditional means of unlocking equity, it results in a range of emotional issues (such as moving from the family home and away from support networks) as well as cost issues (the cost of selling and buying can be between 5 and 10 per cent of the value of the house). In many cases, it is better for the retirees' state of mind to remain in the family home for as long as they can.
Cash flow management	Traditionally, reverse mortgages were only available as a lump sum, and were used to buy capital items such as cars, renovate the house or go on a holiday. Now, most reverse mortgages allow the retiree to take the funds in monthly instalments. This provides flexibility for clients to better manage their cash flow needs on a regular basis, and also keeps the cost of interest down.

Because there are costs involved with a reverse mortgage, the use of the funds drawn will be a factor in determining whether it is appropriate. While there are many potential uses, below is a guide of some of the more appropriate uses for the funds, and some that may not be so suitable.

APPROPRIATE USES	INAPPROPRIATE USES
Lump sums ✓ To pay for one-off purchases like a car or a holiday ✓ To provide some emergency funds ✓ To pay off high-interest loans, such as credit cards ✓ Home improvements ✓ To provide funds for nursing or aged home care ✓ To assist family members in appropriate circumstances **Income** ✓ To provide regular income to meet day to day expenses	× Re-investment into other investments, such as the share market × To provide funds if the client already has other liquid investments which are appropriate to be used × Helping family members in high risk ventures or where inappropriate pressure has been applied

3. Key factors you should take into account when recommending reverse mortgages

Given the complex nature of these products and the often vulnerable position clients are in, it is essential that a range of issues be considered with the client before recommending an equity release product.

FACTOR	ISSUES TO CONSIDER
Has the client considered alternatives to equity release?	There are a range of options that could be more appropriate for the client than an equity release product. You should explore if it is possible for your client to make better use of their existing assets or change their lifestyle. If they are not receiving a full Age Pension, they may also be eligible for the Centrelink Pension Loan Scheme for small amounts. Another common option is downsizing to a smaller home, with key issues being the costs, both financially and emotionally. Borrowing from family may also be considered, however, if this is an option, it should be formalised if possible, and the implications for estate planning documented and understood by all beneficiaries. Alternatively, family members may be able to assist by paying ongoing interest on a standard loan. This avoids the problems of compounding interest but formalisation of such an arrangement is important.
Does the client understand how a reverse mortgage works?	Client education on the key concepts such as compound interest, 'no negative equity' guarantees and loan to value ratio (LVR). ASIC's reverse mortgage calculator is a useful tool to demonstrate these.
Have you taken the client's health and life expectancy in account?	One of the difficulties in advising on reverse mortgage products is the amount of uncertainty with factors such as house prices, life expectancy, interest rates etc. However, if your client is in good health and has a fairly long life expectancy, it may be preferable to consider other options in the short term, rather than releasing too much too soon, and then not having this option when the client really needs it. Other equity release options may provide more certainty around the remaining equity, however this often comes at a cost of less flexibility in other areas including the treatment of regular draw downs or retaining a full beneficial interest in the property.
Have you taken into account the effect of changes in house values?	Over the past few decades, property prices have increased significantly in most areas. However, there is certainly a slowing in the market at the moment. In undertaking any projections for your clients, you need to ensure the projections for changes in house values are realistic in the current environment. SEQUAL currently requires all its members to provide you with a tool to assist with projections for clients.
Have you confirmed what the funds will be used for?	Given the compounding nature of reverse mortgage products, it is important to only release enough funds to meet existing requirements. This can be effectively done by taking the proceeds as a series of regular payments or in small amounts as needed.

Guidance Note for advising on Reverse Mortgages

FACTOR	ISSUES TO CONSIDER
Have you reviewed the client's needs and objectives, future plans and ongoing commitments?	It is important to project out the client's needs over a long period. This may include their need for aged care in the future, their need to move into aged accommodation, costs of moving home. How strong is their desire to leave an inheritance for their children?
Has the client spoken to family and other beneficiaries of their will, and/or sought independent legal advice?	Some family members may see reverse mortgage products as dipping into their inheritance. Releasing equity in a home can be a very emotive issue for the beneficiaries as well as the borrowers. While there may be circumstances where it is not appropriate for the borrowers to talk to their beneficiary, if possible it is accepted as a good idea. This ensures they are supportive or, at the least, not surprised down the track when their inheritance is reduced.
Have you considered the client's eligibility for pensions and the effect reverse mortgage benefits may have on them?	While reverse mortgage products will provide some immediate access to cash, there can be significant consequences on social security benefits. For example, if more than $40,000 is borrowed and not immediately spent, it is then counted as an asset under the asset test. It is also classed as a financial investment and subject to deeming under the social security income test. This is relatively easy to avoid by restricting the amount of each drawdown, ensuring the proceeds are spent as they are drawn, or by setting it up as a series of regular payments.

Selecting a reverse mortgage

The table above explores the factors that should be taken into account in determining if a reverse mortgage product is appropriate for your client.

Once that decision has been made, a separate evaluation process will be needed to determine ***which*** product is the right one for your client.

Issues that need to be considered include:

- Ensuring there is a 'no negative equity' guarantee (as required by all SEQUAL members) and understanding any default conditions which could negate this guarantee;
- Determining what the interest rates are (fixed, variable);
- Costs that will be charged for valuation, mortgage preparation, early repayment, undrawn balances, ongoing fees, stamp duty, building insurance;
- Loan valuation ratios, which often depend on age;
- Repayment conditions (e.g. whether the loan is repayable on moving into aged accommodation);
- Contract conditions (including requirements for maintenance and insurance and any restrictions on renovations);
- Whether payments can be made in a lump sum, regular drawdown or via a line of credit facility.

ASIC has put together a checklist to assist clients with this process. For a copy of the ASIC checklist, go to www.fido.gov.au and search for 'Reverse'.

4. Existing regulations relating to equity release products

Most financial products are now regulated under the Financial Services Reform Act (FSRA). However, there are currently a few notable exceptions. Property is one, and credit facilities are another.

As reverse mortgage products meet the definition of a credit facility, they are not regulated under FSRA.

(For details on what is regulated under FSRA, refer to CPA Australia's publication, FSR: *Your Obligations and Options*).

The primary source of regulation then falls back to the Uniform Consumer Credit Code (UCCC). Key requirements of the Code are a requirement to disclose relevant information to the consumer prior to the decision to purchase the credit facility, as well as recourse to dispute resolution processes.

The UCCC is administered on a State basis and was drafted in the mid 1990s so does not take into account some of the issues relating to reverse mortgage products.

These include:

- Requirement to discuss the risks associated with the product, particularly in relation to the complexities of the products themselves;
- Minimal disclosure requirements, which do not take into account the need to explain the effects of compound interest;
- Requirement to disclose the total costs but no requirement to calculate the expected equity retained at the end of the contract.

The Victorian Government has recently reviewed this area as part of its review of consumer credit laws, and has recommended some minor changes to the UCCC, including a requirement for a 'no negative equity' guarantee as well as increased consumer education. Any changes in Victoria will likely flow on to the other States.

In addition, the States are considering uniform legislation to regulate the activities of finance brokers. Currently only WA and ACT require finance brokers to be licensed, however the other States are likely to follow suit in the future.

SEQUAL Code of Conduct

To address the lack of regulation and promote an orderly market, SEQUAL has issued a Code of Conduct which is mandatory for its members to adhere to and which covers:

- Product design issues e.g. all products must have a 'no negative equity' guarantee
- Disclosure issues e.g. clear disclosure of all fees and charges, a complete and fair package of documents, and access to a calculator tool
- Advice issues e.g. a strong recommendation to get advice from a financial adviser of the client's choice and to consult their beneficiaries and Centrelink, as well as a mandatory requirement to get legal advice from the client's own solicitor
- Dispute resolution, with all SEQUAL members required to be part of an ASIC approved external dispute resolution scheme.

Both the full code of conduct and a list of members can be downloaded from SEQUAL's website, at www.sequal.com.au.

APS 12 Statement of Financial Advisory Service Standards

The professional standard relating to advisory services released in October 2005 explained that while members providing mortgage broking advice would not initially be required to meet the standard, they were encouraged to use the standard as a guide to professional practice.

Disclosure of adviser remuneration and setting fees at a level relating to the service provided are two key issues to be considered.

Guidance Note for advising on Reverse Mortgages

References You may find the following references useful.

SEQUAL

Code of Conduct
Equity Release Industry Accreditation

http://www.sequal.com.au

SHIP

Equity Release Checklist – a 10-point adviser guide to equity release
www.ship-ltd.org

Australian Securities Investment Commission

Equity Release Products An ASIC Report – November 2005
(A detailed discussion of all types of equity release products)

Your Guide to the FIDO reverse mortgage calculator
(A consumer focused resource)

Reverse mortgage checklist
(A consumer focused resource)

All ASIC publications can be found at **www.asic.gov.au** and searching for 'reverse mortgage'

CPA Australia

FSR: Your Obligations and Options
cpaaustralia.com.au/links?14131_3937
(A guide to licensing for accountants.)

Training

Mortgage and Finance Association of Australia – Equity Release Plans Online course
www.mfaa.com.au

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