



Advice on equity release products

Taking instructions		
	Did the client obtain financial advice before seeing you? If not, recommend the client seeks financial advice first.	
	Have other alternatives been considered?	
	What is the money for?	
	Is the money really needed upfront (with interest accumulating and possible Centrelink payment implications) rather than accessible on demand?	
	Who is the money intended to benefit?	
	Are family members or heirs aware of the proposed borrowing?	
	Does anyone live at the property who is not on title but whose rights might be adversely affected by the transaction? Would a non-borrower spouse be better protected by being a co-borrower?	
	How long does the client envisage remaining in the family home?	
	Are there any health issues likely to affect the client's plan to remain at home?	
	If the client intends to retire to a nursing home or facility where an aged care accommodation bond is required, will there be sufficient equity left to achieve this?	

CHECK	LIST
August 2020	DER LEGAL PRACTITIONERS LIABILITY COMMITTEE
	Has the client made a realistic assessment of other future needs and expenses including medical treatment and day-to-day living expenses?
	Does the client currently receive any Centrelink or Department of Veterans Affairs' entitlements or other government benefits that might be affected by receipt of a lump sum or annuity, or gifting of the loan money to third parties?
	Is there more than one borrower?
	If so, see them.
Explain	to the client the effect of the transaction
	When title passes to the lender.
	The basic rights and obligations of the client.
	Whether there is a 'no negative equity' guarantee and recommend that the client finds a product with such a guarantee.
	If the product creates a life tenancy, the need to protect this by a caveat over the property.
	Where the client loses legal title to the property, the need to protect the client's interest by a caveat over the property.
	The general nature and effect of the mortgage securing the loan.
	The circumstances when repayment would be required.
	The client's various obligations to ensure a default is not triggered.

CHECKLIST

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The upfront costs and interest payable. If the product is a reverse mortgage, give the
client the compound interest payable for five, 10 and 15 years.

The effect of the loan on the client's aged pension or other government benefits.

What protections there are to remain in the home, including any tenancy protection provisions for the benefit of a non-borrower spouse, children or other third parties living in the home and recommend that the client finds a product with such a provision.

The consequences if the property is vacated for any length of time.

In what circumstances the property can be sold.

When the loan is repayable.

How the agreement assigns rights and obligations regarding maintenance and
insurance including:

• who is responsible for payment of building insurance, rates and taxes

•	any requirement to maintain upkeep of the property in order to avoid triggering
	default provisions

• details of any powers conferred on the lender to order repairs.

What constitutes a default and the consequences including default provisions that nullify the 'no negative equity' guarantee.

The effect of any entire agreement and unilateral variation clauses.

Consider issues of duress

Is the money for the benefit of a third party or to be transferred to a third party?

Is the money for repayment of a loan being made by an adult child?

Are there any indications of pressure from other parties or family members?

CHECKLIST

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Are any documents being signed pursuant to a power of attorney?

Are there communication difficulties because the client's first language is not English?

Is there family division, particularly between the client's adult children?

Is the client in an inexplicable rush to complete the transaction?

Generally

Make comprehensive file notes of the client's instructions and your advice, including the reasoning process, your client's response and duration of the meeting.

Confirm your advice to the client in writing.

Use the LIV approved form of certificate.

Charge an appropriate fee.

Keep your file.