CHECKLIST

August 2020

LEGAL PRACTITIONERS' LIABILITY COMMITTEE

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?

- [ ] 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.

- [ ] 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?

- [ ] Is the client mentally or physically infirm?
- [ ] Does the client have decision-making capacity?
- [ ] Is the client dependant on family members to look after their financial affairs?
- [ ] Are children involved in the loan application?
- [ ] 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.