

Risks of acting for private lenders

Presented by

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Today

1. What's in it for you
2. Statistics
3. Scenario
4. Case studies
5. Scenario discussion



What's in it for you

- Recognise that acting for private lenders can be high risk
- Understand the most common mistakes made when acting for private lenders
- Recognise the scenarios that can contribute to mistakes being made
- Know what steps to take to avoid the common mistakes



Poll

Do you act for private lenders:

1. Yes, regularly, more than 5 times a year
2. Yes, occasionally – 1 to 5 times a year
3. No, I act for commercial lenders only
4. No, I don't act for lenders



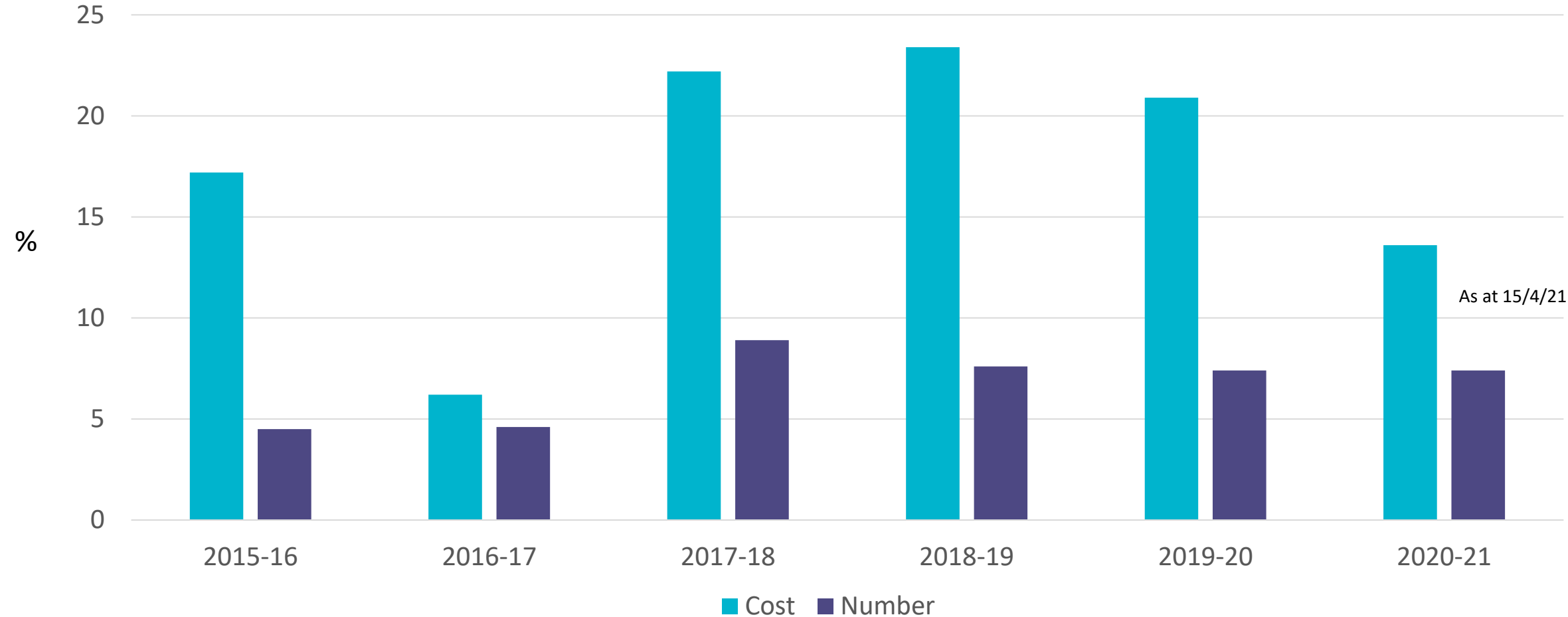
Poll

Are you seeing an increase in the number of private lenders?

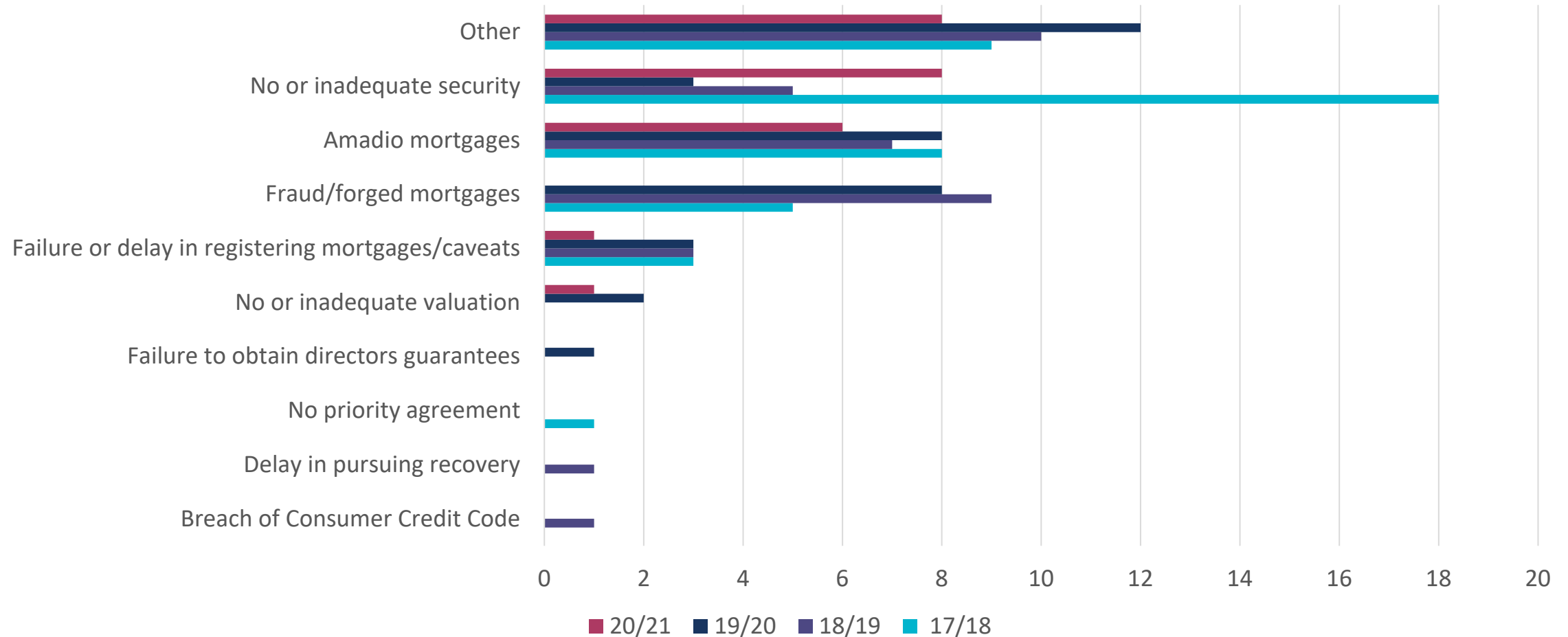
1. Yes, quite a lot in my area
2. Yes, a few more in my area
3. No
4. Don't know



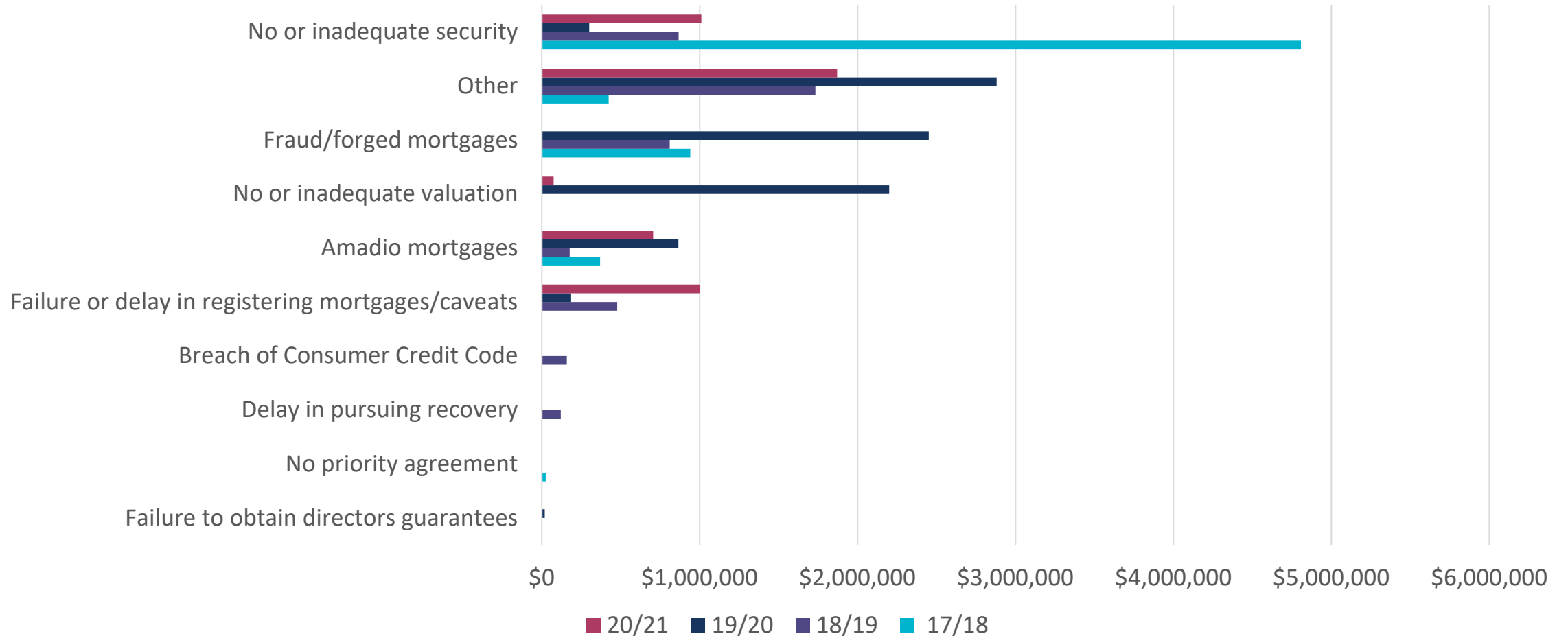
Mortgage claims 2015-16 to 2020-21



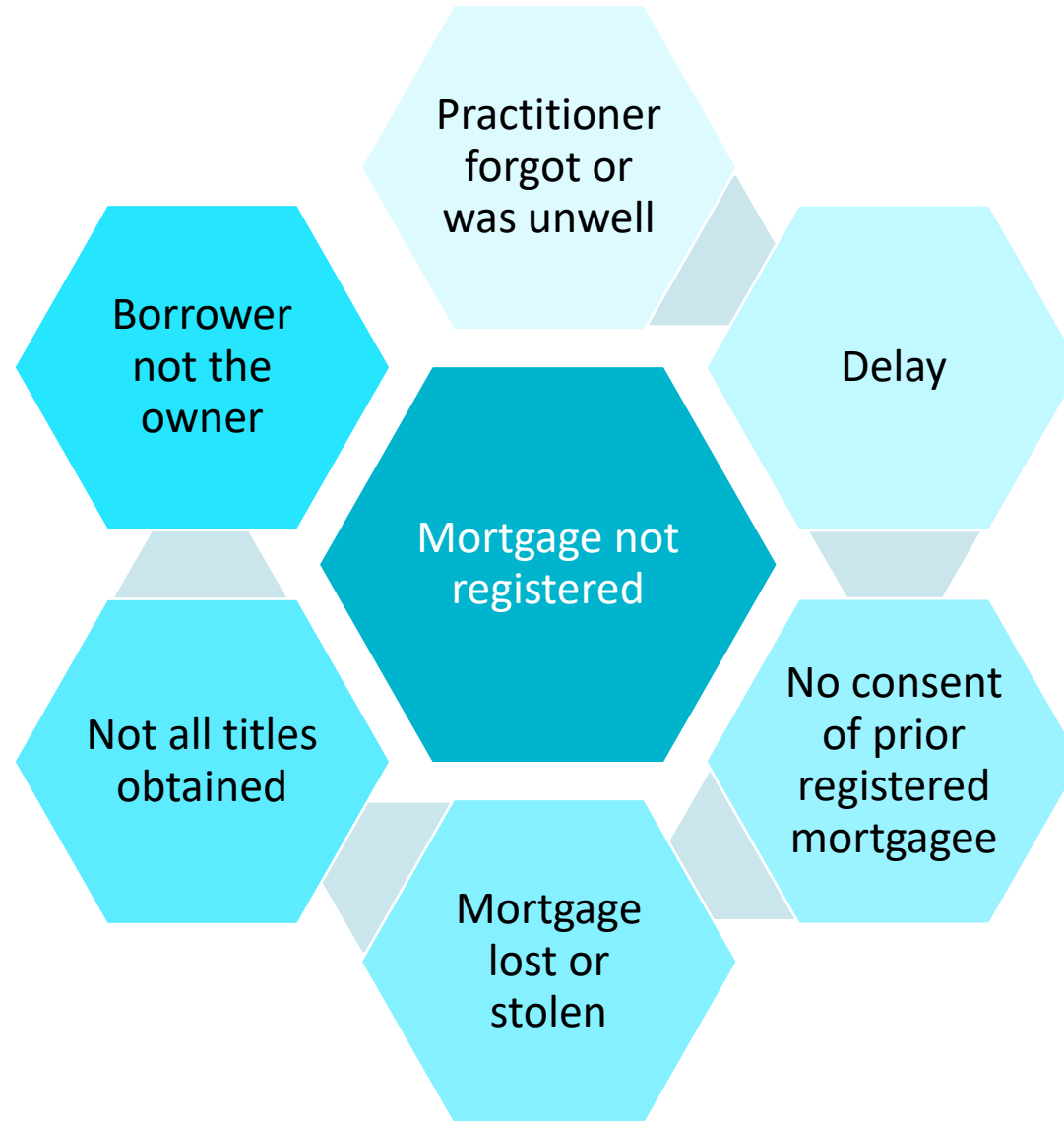
Mortgage mistakes by number 2017/18 - 2020/21



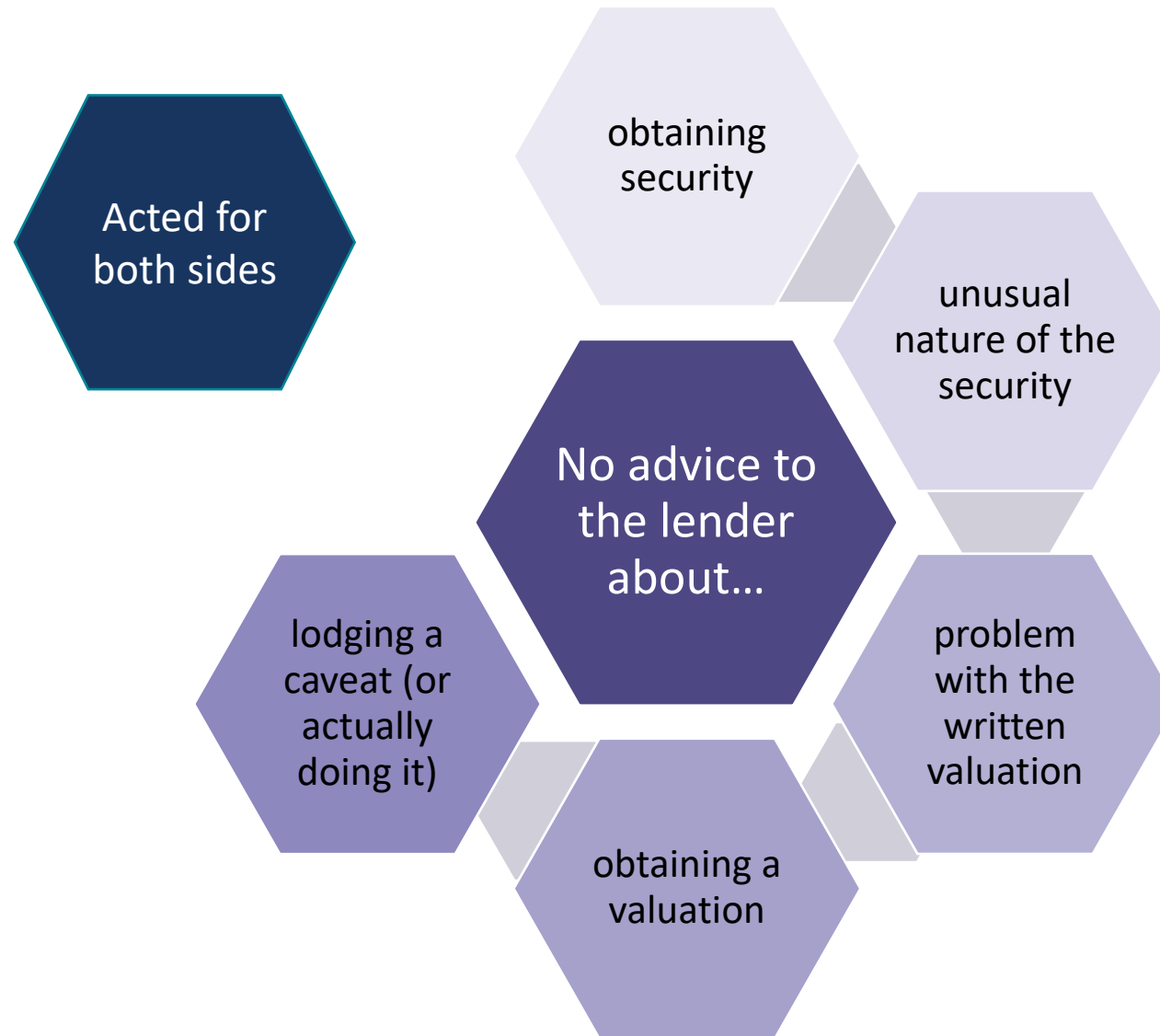
Mortgage mistakes by cost 2015/16 - 2017/18



No or inadequate security mistakes

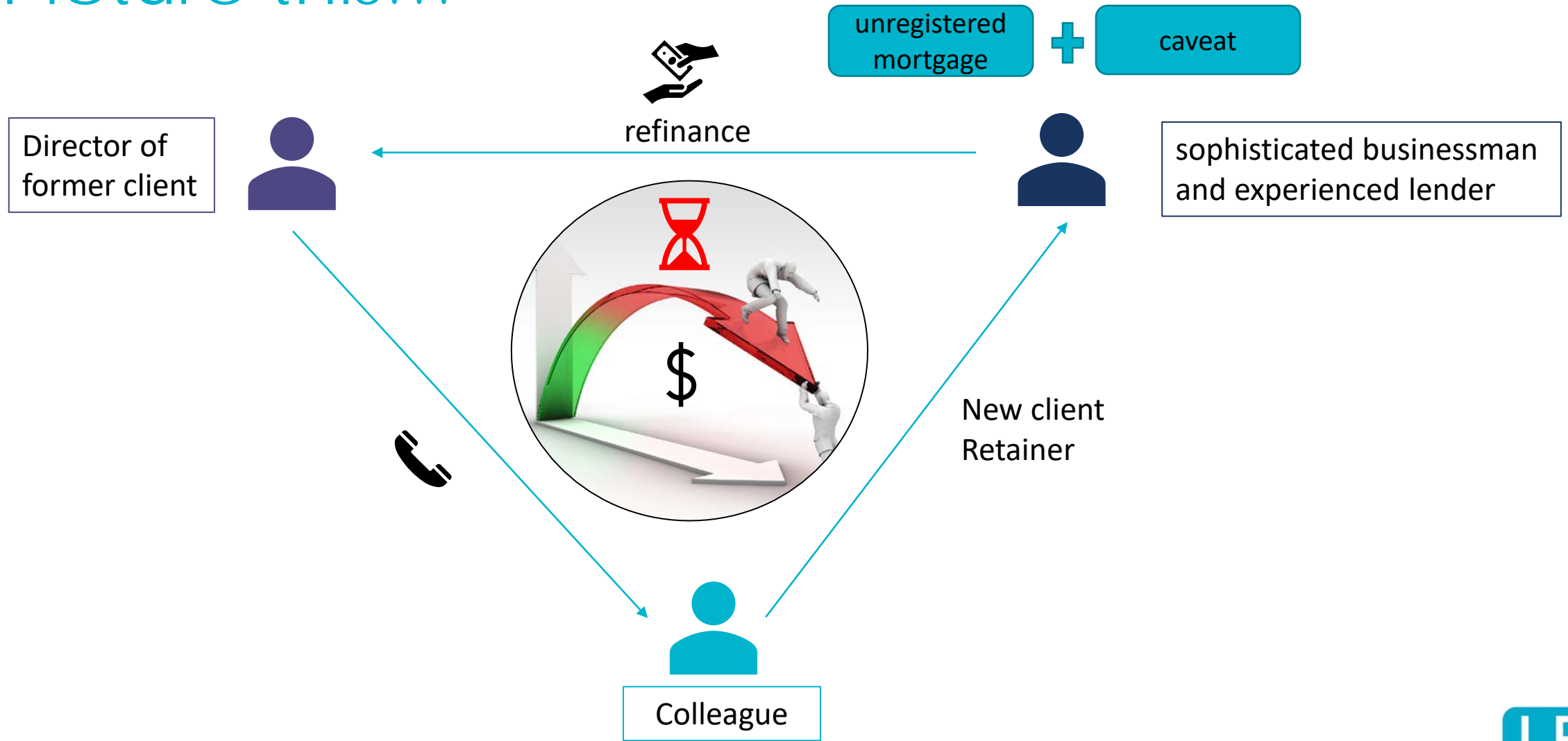


No or inadequate security mistakes

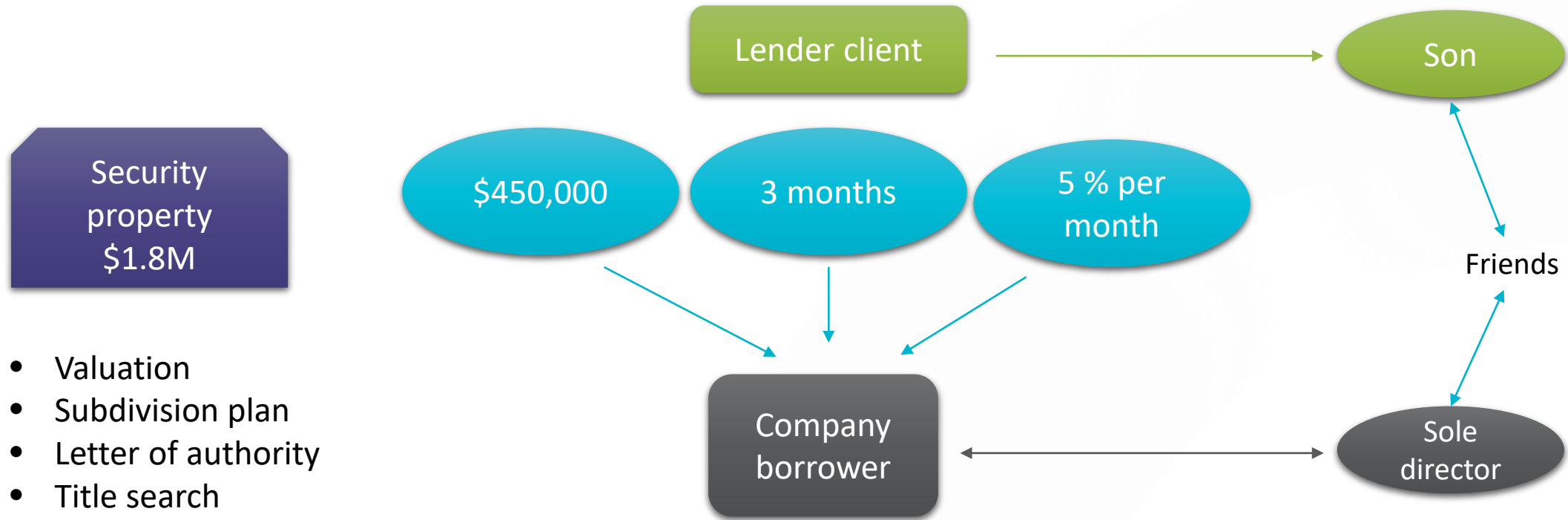


See LPLC's [Managing Mortgage Risk practice risk guide](#)

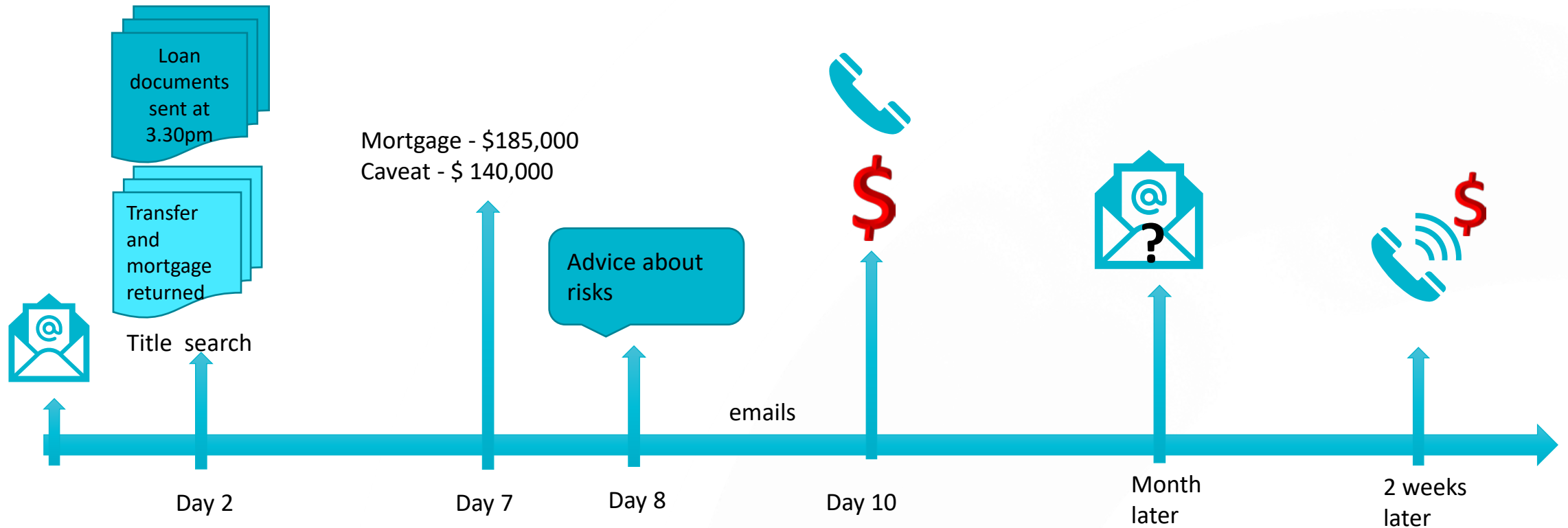
Picture this...



Case study 1 - Urgent short-term loan



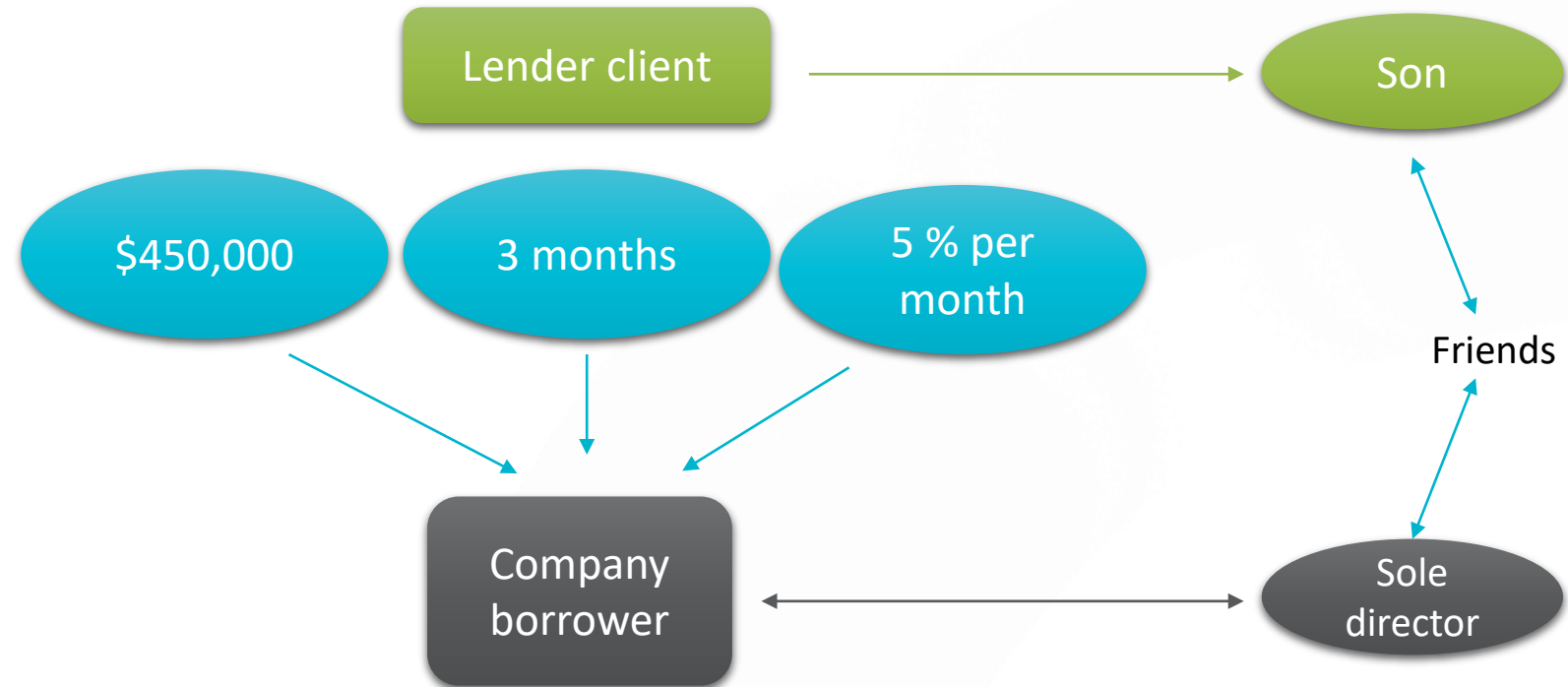
Case study 1 - Urgent short-term loan



Case study 1 - Urgent short-term loan

FRAUD

- Valuation
- Subdivision plan
- Letter of authority
- Title search



Case study 1 - Urgent short-term loan

Question?

What are the  for this scenario?

Please put one (or more) in the Q&A/Chat.



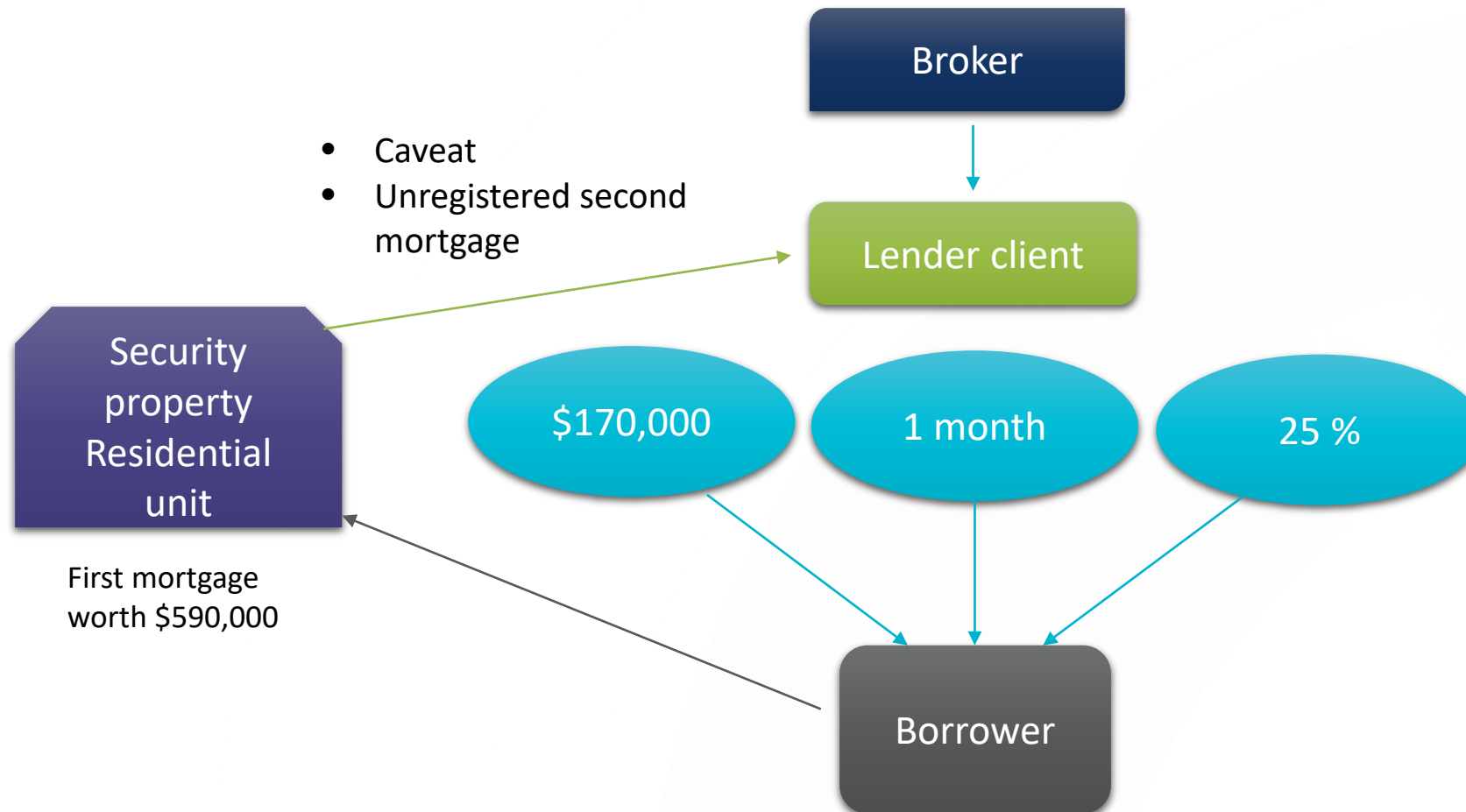
Case study 1 - Urgent short-term loan



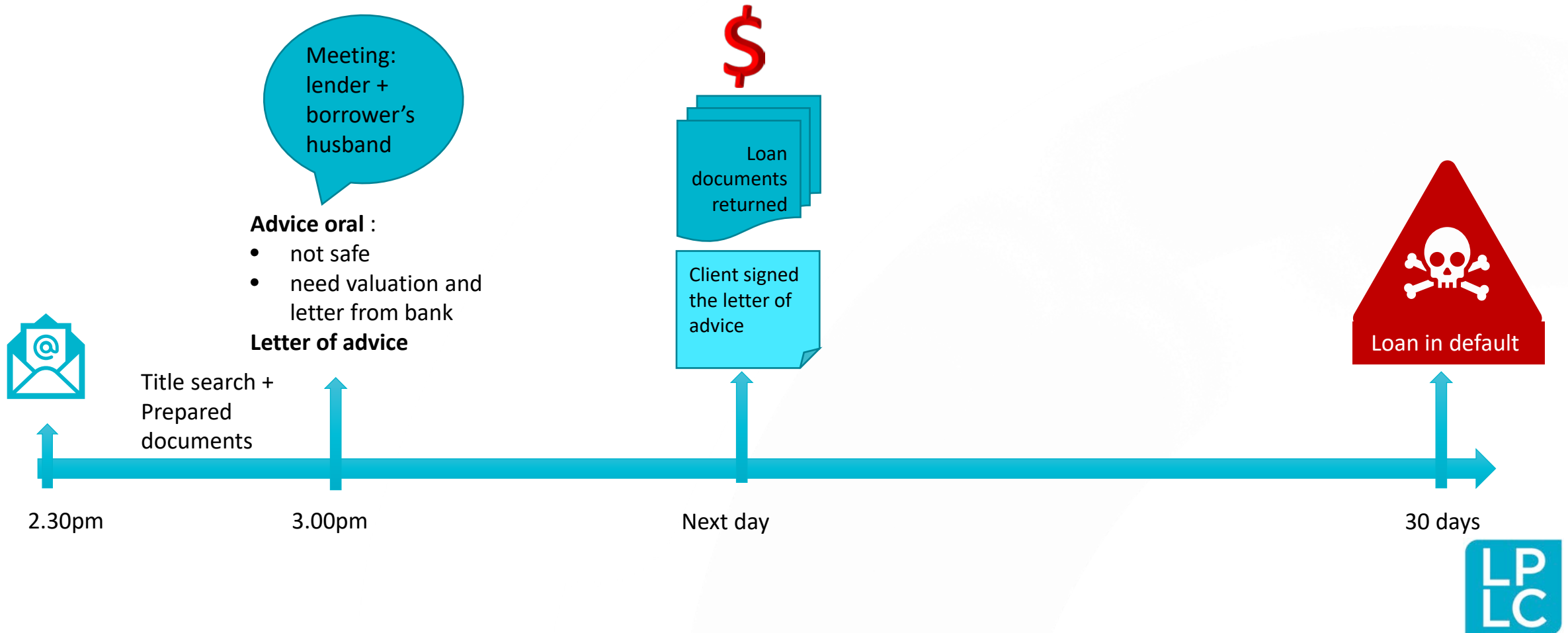
- an urgent matter
- parties had a personal connection
- high interest, short term loan – a good deal
- third party security & no checks – no independent advice and solicitor's certificate
- security in another state



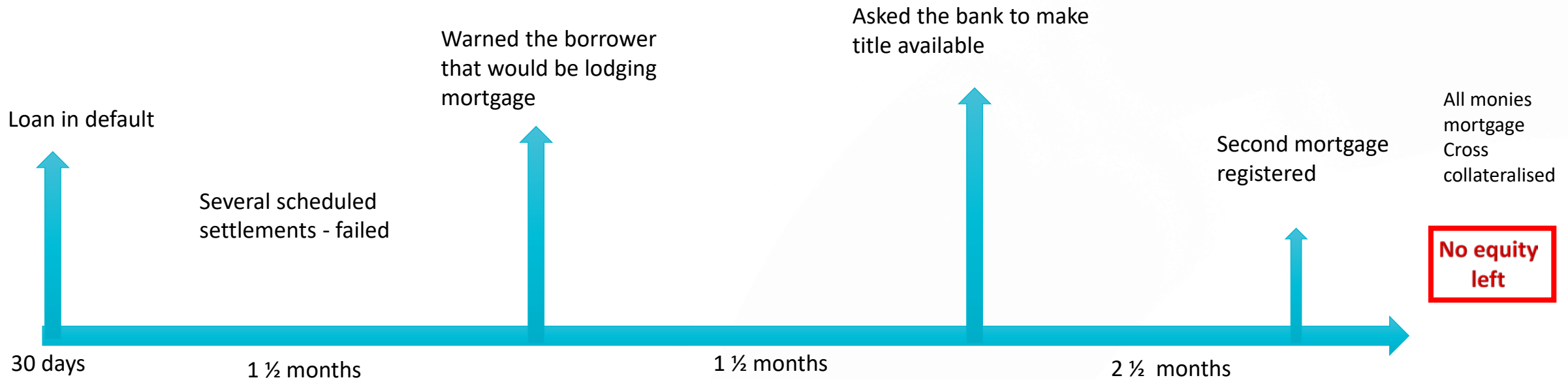
Case study 2 - Urgent short-term loan



Case study 2 - Urgent short-term loan



Case study 2 - Urgent short-term loan



Case study 2 – urgent short term loan

Allegations

The practitioner:

- gave no advice about the risks of a second mortgage
- delayed in registering the second mortgage
- didn't discover the cross-collateralisation
- didn't advise of the risks of taking the loan documents away to sign with no VOl of borrower/mortgagor



Case study 2 – urgent short-term loan - reflections

- Advice
- File notes
- Letters
- Proactive action



Avoid paying a large amount of money

Some clients will be persistent in looking for gaps



Not every client is a good client



Case study 2 – urgent short-term loan - reflections

Sophisticated
businesspeople



Nuances of the
law

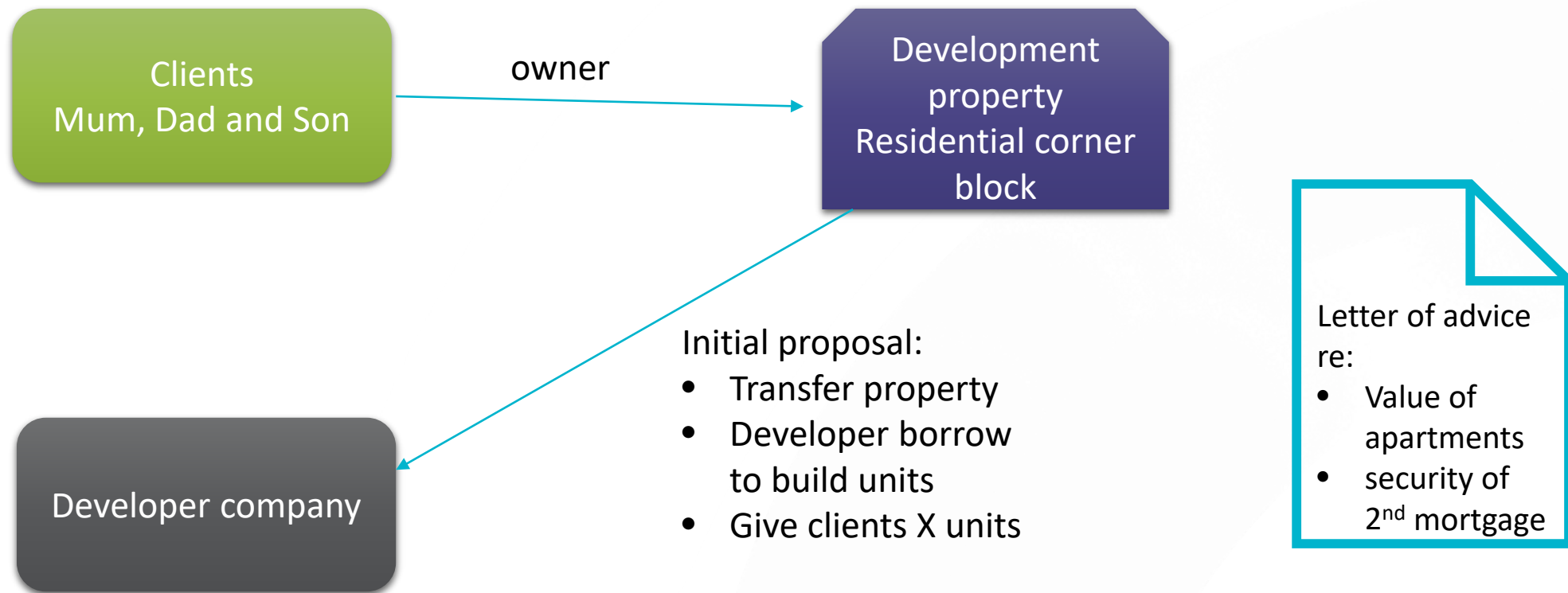
Forceful advice

More than once
and more than
one medium

Give time to
absorb the
message



Case study 3 – joint venture

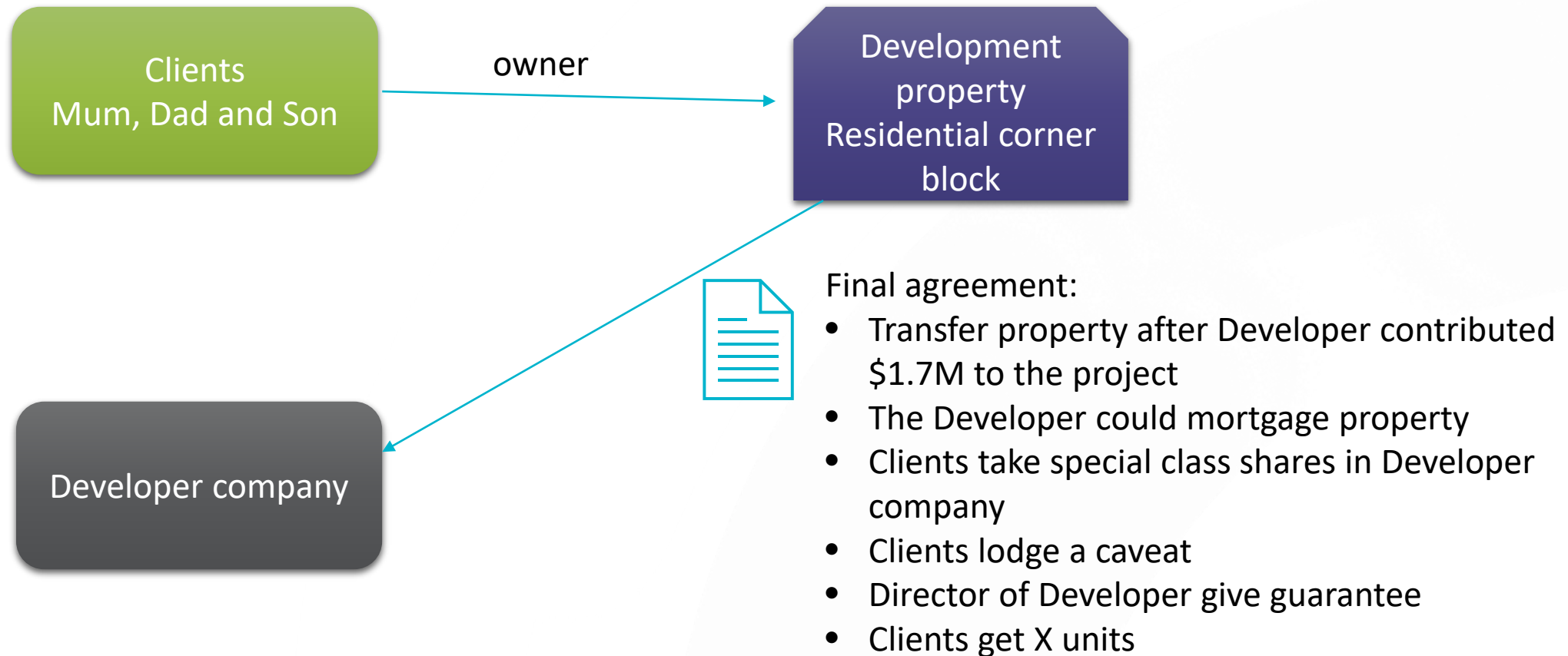


Case study 3 – joint venture

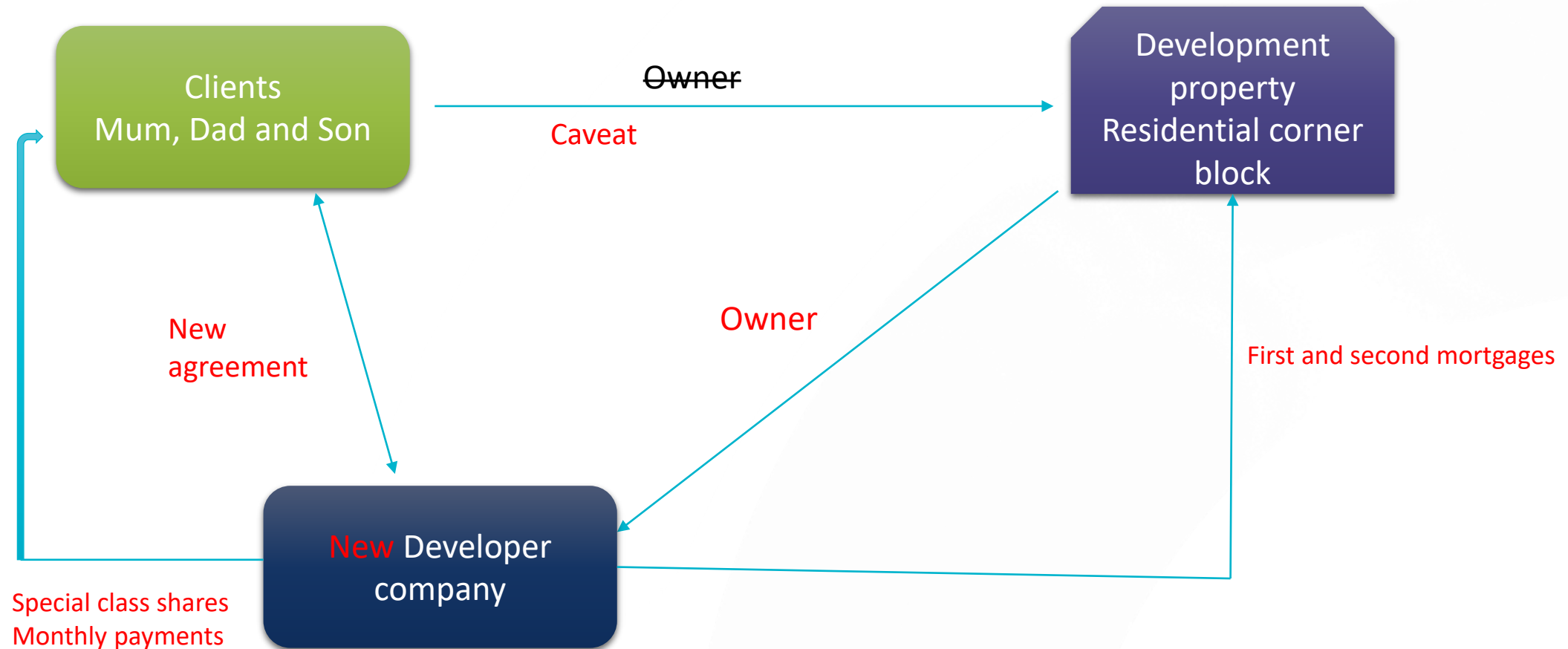
Oral advice

"You could lose your land. You should not let them borrow against your land, you are better off just selling the land, as it is too risky."

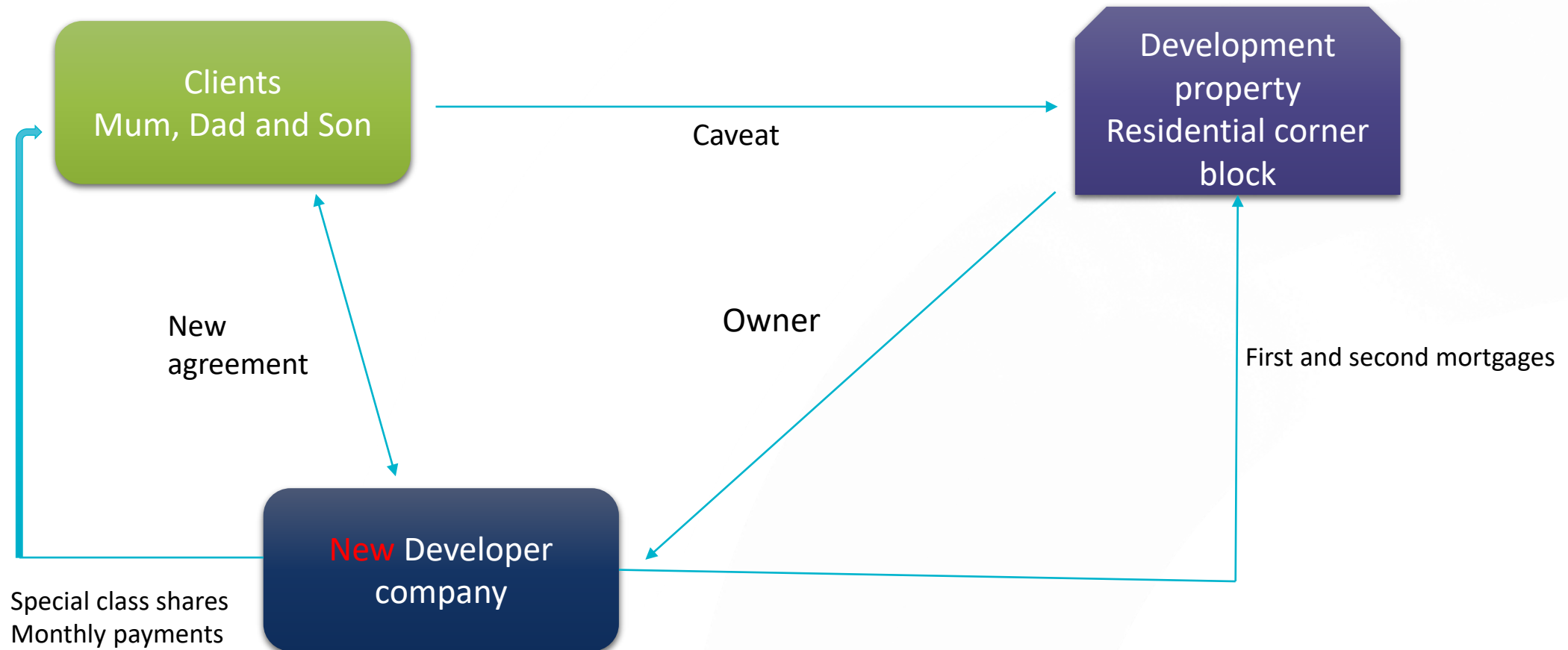
Case study 3 – joint venture



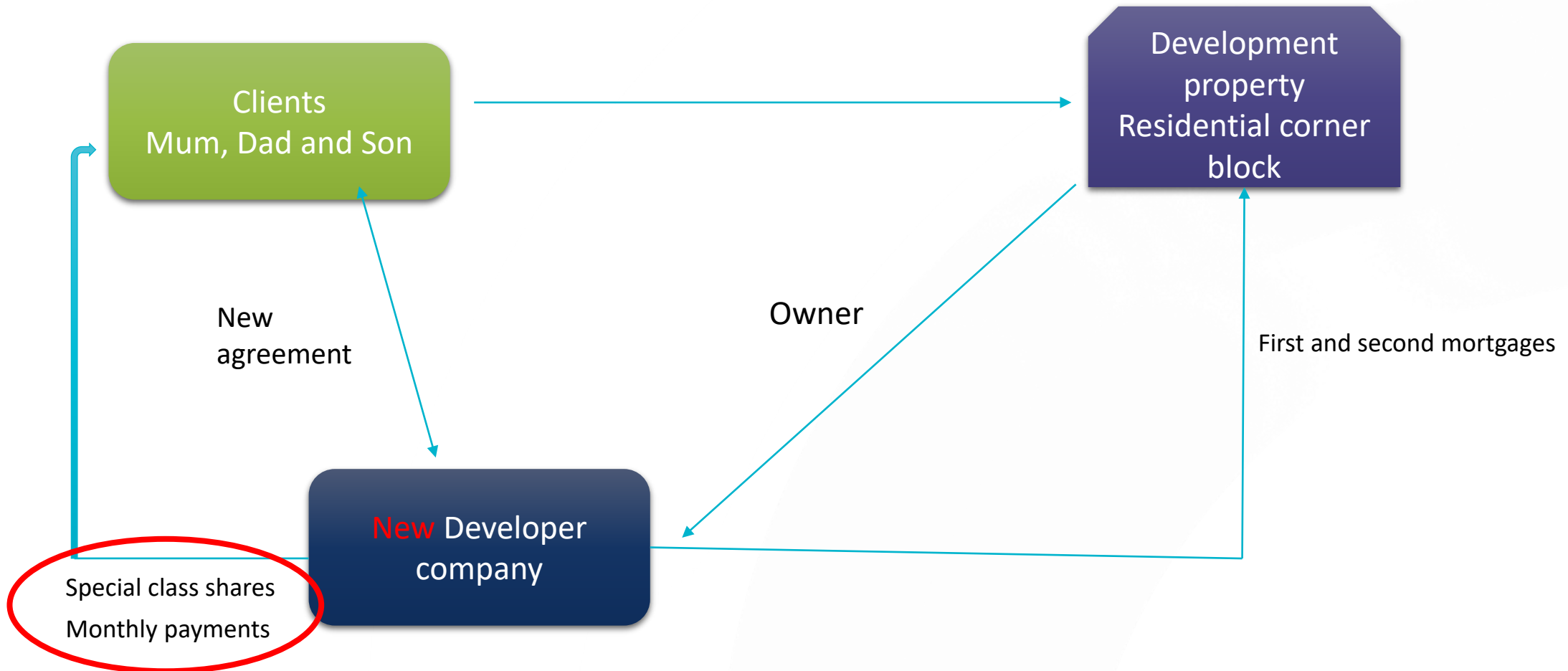
Case study 3 – joint venture – one year later



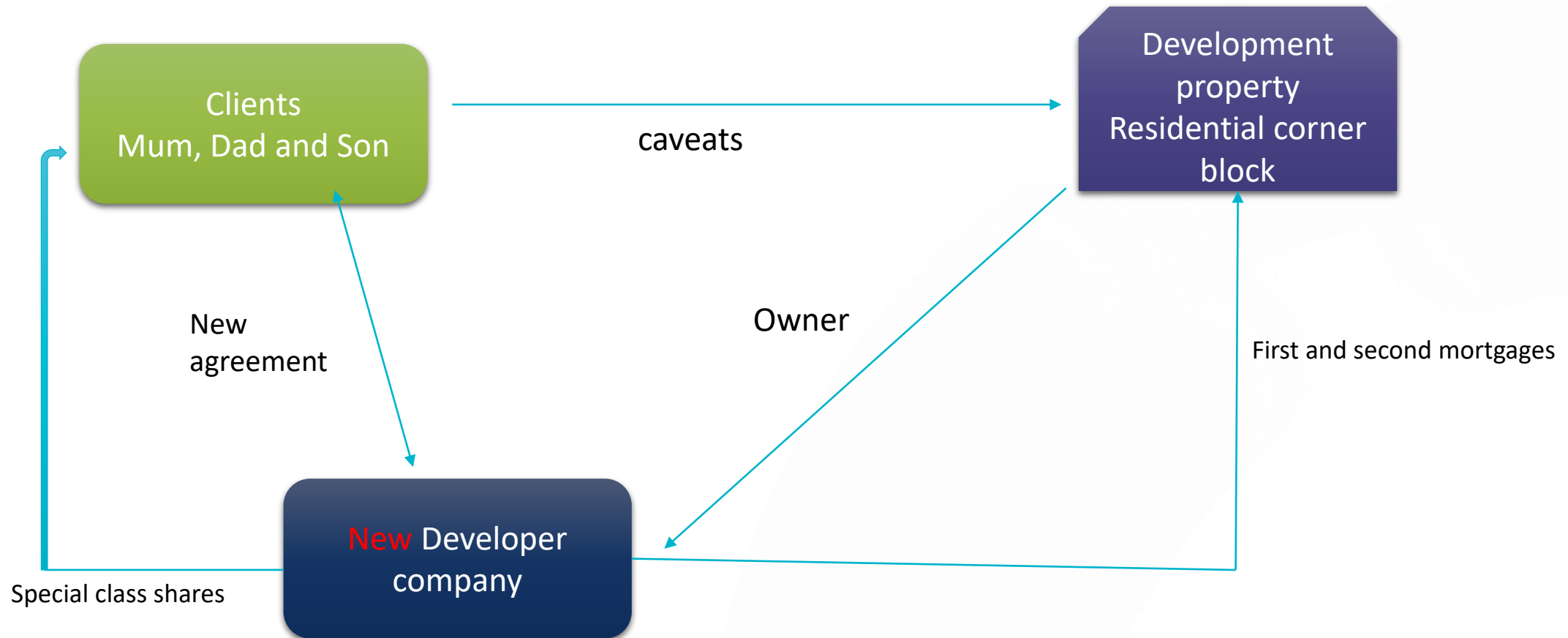
Case study 3 – joint venture – four months on



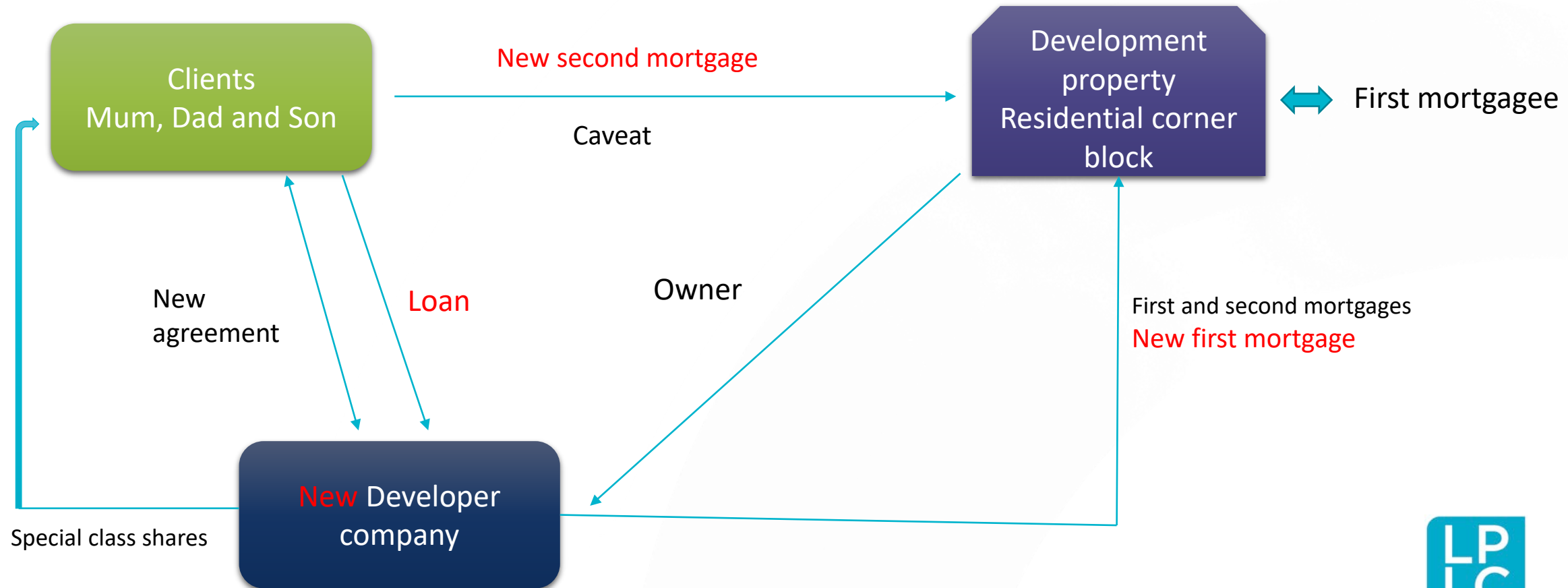
Case study 3 – joint venture – another four months on



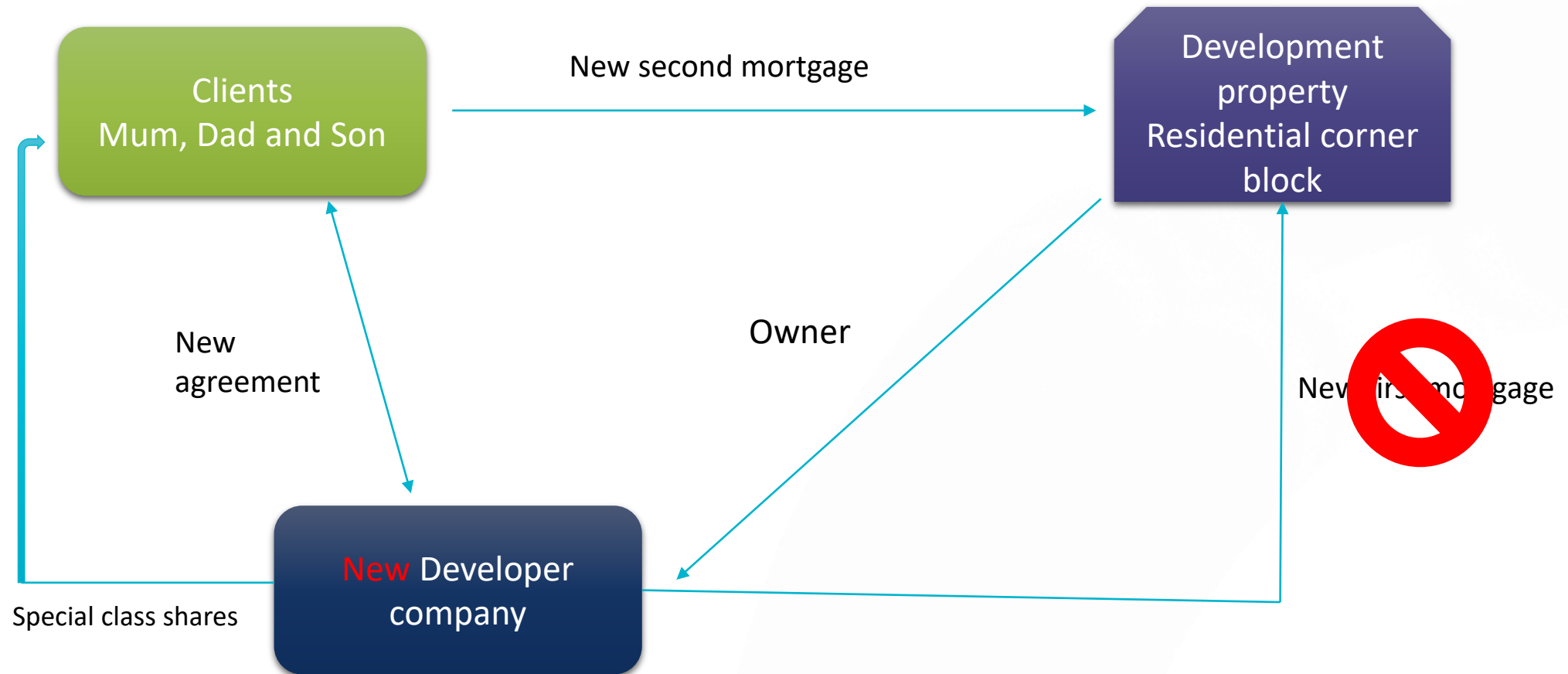
Case study 3 – joint venture – another six months on



Case study 3 – joint venture – nine + months later



Case study 3 – joint venture – a few months later



Case study 3 – joint venture

Allegations

The practitioner had:

- not protected the clients' interests when preparing the various agreements
- not given the clients appropriate advice when he removed the caveat to allow further borrowing on the property
- not advised the clients about enforcing the terms of the joint venture agreement
- wrongly advised them to lend the further money at the end



Case study 3 – joint venture -reflections

Joint venture arrangements are not easy

You need to protect the owner of the property

The other party needs to obtain finance

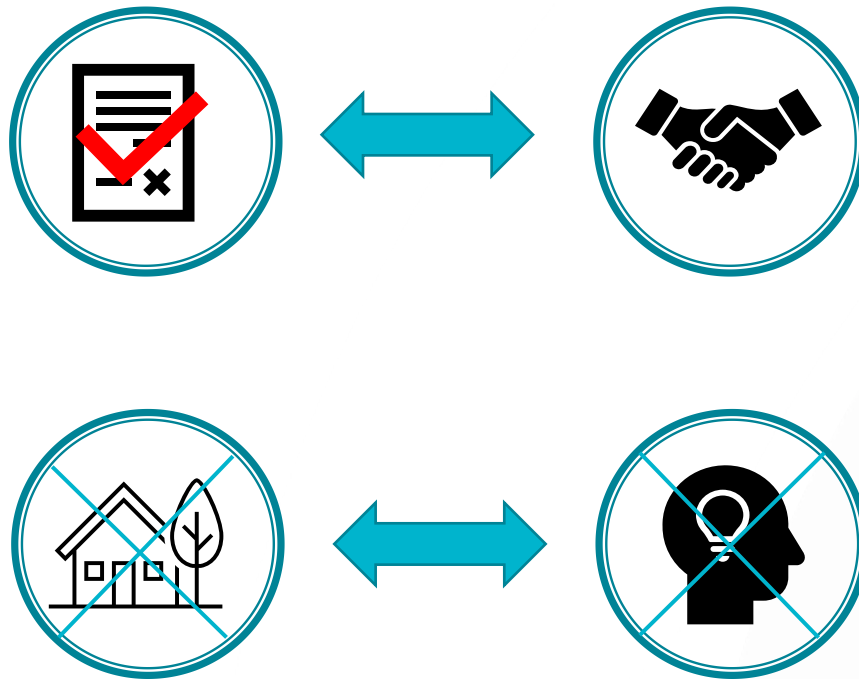
Clients can easily become inadvertent lenders

The partner's advice was the best here.
Don't do it!

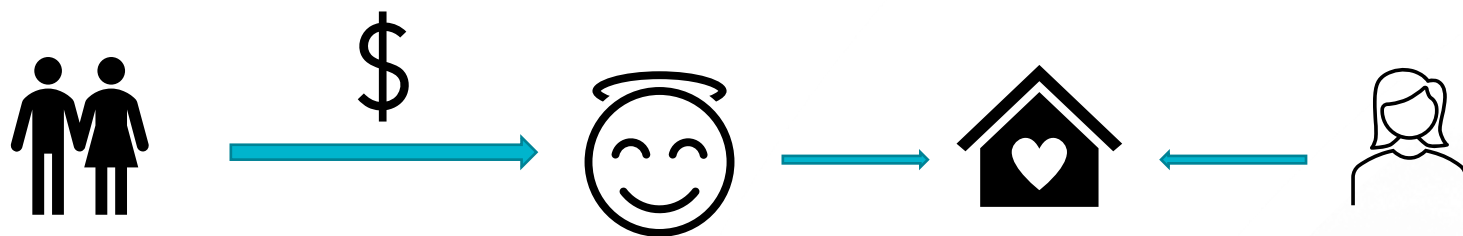


Case study 4 – the bank of Mum and Dad

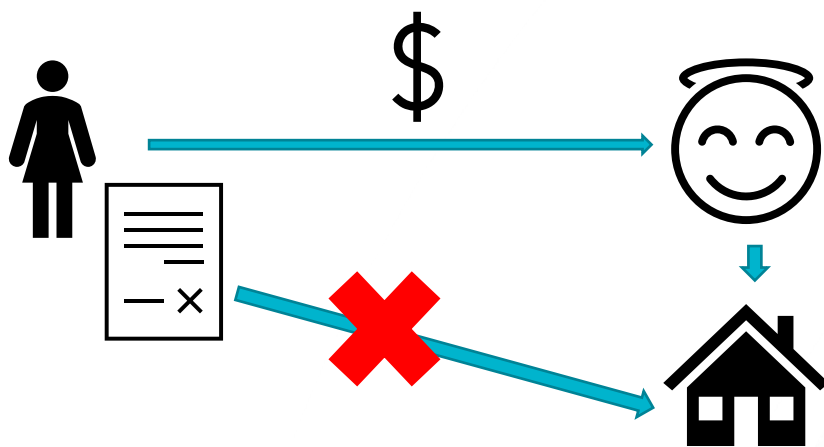
Risks



Case study 4 – the bank of Mum and Dad



Case study 4 – the bank of Mum and Dad



Sample file note and brochure

SAMPLE

Bank of Mum and Dad brochure

Helping your children buy a house is a great thing to do but there are some things you need to think about before you hand over the money.

Will the money be a loan or a gift?

Gift

You may be happy to treat the money you give to your child as a gift, but you should understand there are circumstances where that gift may be lost.

- Your child's spouse or domestic partner may be entitled to some of the equity in the property if they break up.
- If your child becomes a bankrupt the trustee in bankruptcy could be entitled to sell their assets including those your gift helped to buy.

Death

- If your child dies and the property is held as joint tenants with a spouse or domestic partner, the domestic partner would become the owner of the property.
- If you die, is the gift taken into account in your will?

Pension entitlements

- Any gifts given by you may affect your pension entitlements. You should obtain advice from Centrelink about this before making a gift.

Loan

While you may trust your child completely to repay the loan, that is not the complete answer if you want to protect your funds for yourself or your child. The money could still be lost in the same circumstances as listed above. Set out below are some things to think about and risks to consider.

The loan agreement should be in writing and signed by all the people to the agreement

- While everyone agrees to the arrangement and you may trust everyone it is easy for memories to fade and the detail of the arrangement to be incorrectly remembered later.
- It may also be important to prove to others such as banks, a trustee in bankruptcy, creditors, Centrelink or your child's future partner what the arrangements were.

SAMPLE

File note checklist

Advising parents providing financial assistance to their children

Date:	Start time:	End time:	Author:
Attendee (client):			File no.:

☐ What is the purpose of the financial assistance?

☐ Is it intended to be a gift? Yes /no

You may be happy to treat the money you give to your child as a gift, but you should understand that a gift is a gift and once it is given it is gone. You have no right to get it back if circumstances change such as your relationship sours with your child or your financial position deteriorates or a third party gets involved. There are circumstances where your child may lose the benefit of the gift which may not be what you intended. For example:

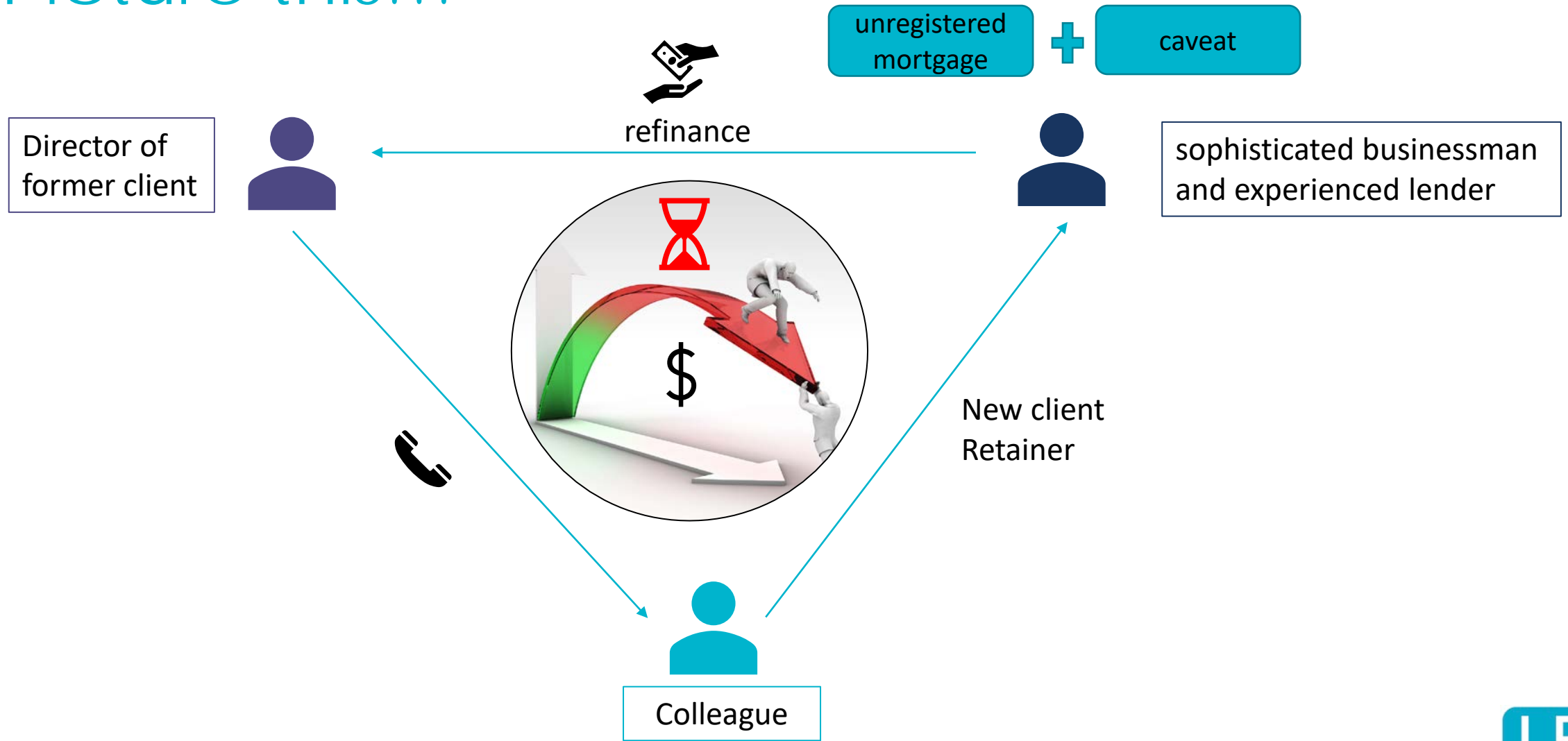
- your child's spouse or domestic partner may be entitled to some of the equity in the property if they break up.
- if your child becomes a bankrupt the trustee in bankruptcy could be entitled to sell their assets including those your gift helped to buy.

What happens to the gift if you die?

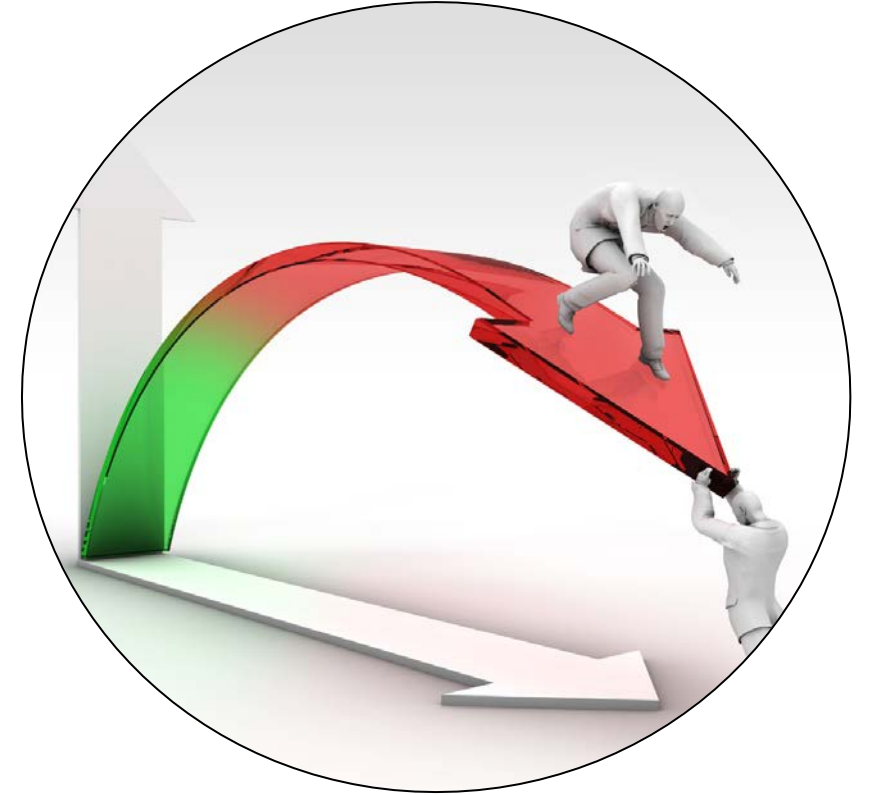
- If your child dies and the property is held as joint tenants with a spouse or domestic partner, the domestic partner will become the owner of the property.
- Do you want the gift taken into account in your will?

Pension entitlements

Picture this...



What are you worried about?



THANK YOU

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