



SEQUAL Guideline

Ensuring borrowers receive appropriate Legal Advice

August 2007

1. Background

The provision of mandatory legal advice is seen as a crucial part of the SEQUAL Code of Conduct. Legal advice helps to ensure that the borrower is capable of understanding, and in fact does understand, the legal ramifications of the transaction, as well as helping to ensure that the circumstances are appropriate for the borrowing. This is a crucial protection for the consumer as well as for the lender.

There are two issues regarding the issue of ensuring the borrowers receive appropriate legal advice as required under the SEQUAL Code of Conduct, being:

- Who can give legal advice, and
- whether lenders can be certain that a borrower has in fact received legal advice

This Guideline sets out the steps that SEQUAL Members must take to ensure that appropriate legal advice is obtained by the borrower in all cases.

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. Who can give Legal Advice?

Independent legal advice for the purpose of the SEQUAL Code of Conduct can only be provided by a practicing solicitor who is not paid for, recommended or retained in any way by the lender. It is not acceptable for any other quasi-legal practitioner, such as a Conveyancer or Settlement Agent, to provide this advice.

3. How can a Member ensure that all borrowers receive legal advice?

It is essential that the SEQUAL Member be reasonably satisfied that the borrower has actually received legal advice in all cases.

In order to be reasonably satisfied that legal advice has been received by the borrower, the Member must either:

- Send all documentation for signing directly to the solicitor nominated by the borrower (it is acceptable to also send a copy to the borrower noting that the originals are with their solicitor), or
- Receive a statement signed by the solicitor that they have provided legal advice to the borrower or

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- Receive a Statutory Declaration signed by the borrower(s) which either names the solicitor who has given the advice or is witnessed by the solicitor who has given the advice.

4. *Date of Operation*

This Guideline comes into operation from 1 October 2007.