

# INDUSTRY SUBMISSION

National Credit Reform  
Phase 2 –Green Paper

August, 2010

**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.

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## Mission and Objectives of SEQUAL

Since its inception as the peak industry body for the Australian Equity Release market, SEQUAL has worked in the interest of the Australian community.

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 Submission –Overview

SEQUAL supports the consideration of enhancements to the regulatory framework for equity release products and welcomes the opportunity provided by The Treasury to comment on the matters outlined in the “Enhancing Confidence and Fairness in Australia’s Credit Law” Green Paper.

In providing comment, SEQUAL submits that it is appropriate that the impact of any regulatory change be carefully considered and proper regard given to the extensive industry self-regulatory initiatives that currently exist and which provide meaningful consumer protection in the Australian Seniors Equity Release market.

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 has established an Industry Accreditation protocol in order to raise Professional Standards above the Minimum Education Requirements imposed by regulation.

SEQUAL’s role as the peak industry body for the Australian Senior’s Equity Release market is well established and there is wide support for market practitioners to gain Industry Accreditation with SEQUAL. 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 is committed to the development of an efficient and ethical Seniors Equity Release market in Australia. Home ownership is an important foundation for the retirement plans of many Senior 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.

Equity release is likely to emerge as a significant part of retirement funding and the current debate around advice and regulatory review needs to be carefully considered against that growing demand to ensure choices and legitimate strategies in retirement funding are not extinguished through unnecessary regulatory change.

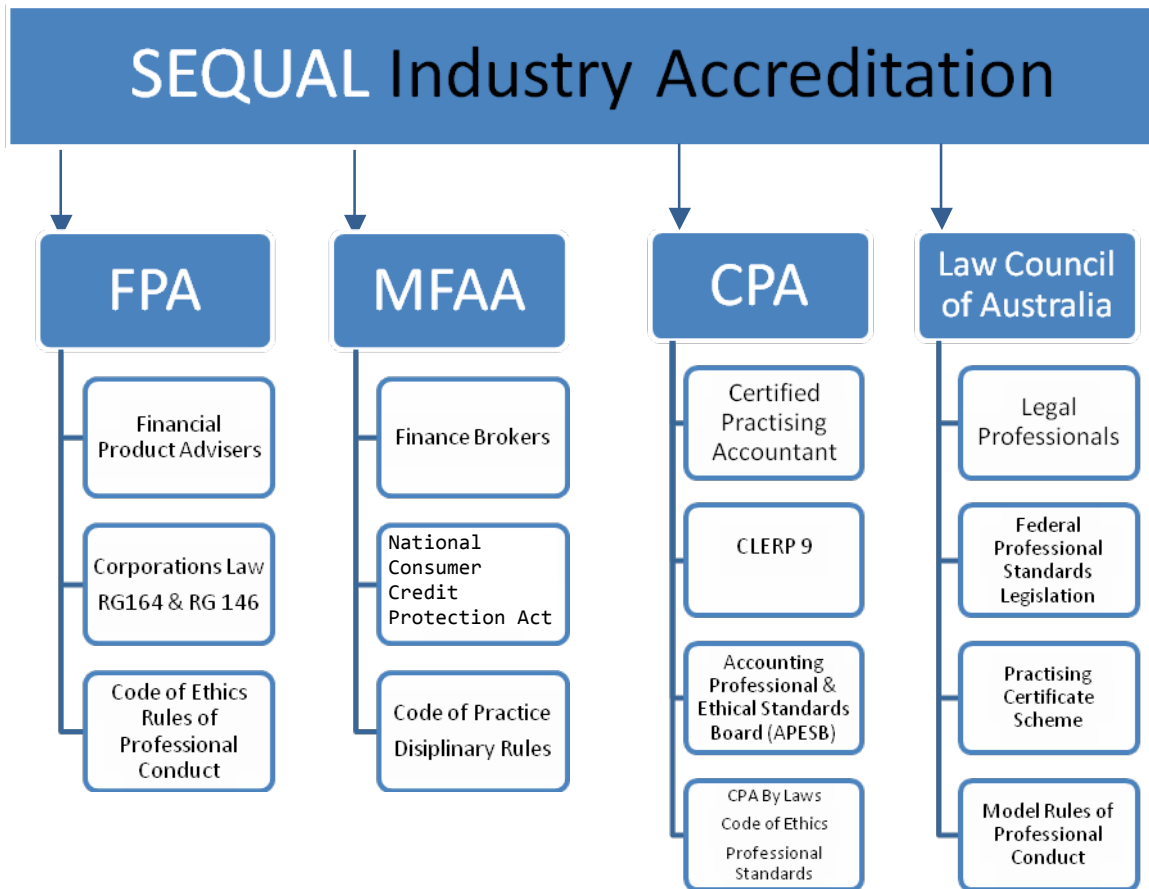
This Industry Submission outlines the high standards of conduct imposed through SEQUAL Membership and SEQUAL Accreditation and provides a response to the matters raised in Chapter 3 of The Treasury Green Paper.

## SEQUAL Code of Conduct

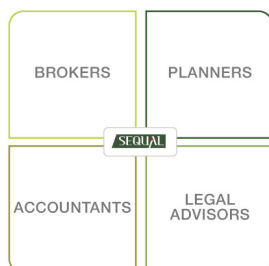
Each Member of SEQUAL agrees its equity release product(s) will adhere to, and be measured against the following Code of Conduct in dealing with Senior Australians their families and advisers. As a minimum, Members of SEQUAL shall:

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.

## Equity Release Industry Accreditation



SEQUAL has established an Industry Accreditation protocol in order to raise Professional Standards above the Minimum Education Requirements imposed by regulation and Industry Association Membership.



To give effect to this protocol, SEQUAL has developed the educational standards required for market practitioners to achieve the designation of **Equity Release Consultant ("SERC")**.

The SERC designation forms an important part of SEQUAL's commitment to assisting consumers to identify properly-trained market practitioners.

Participation in the SEQUAL Equity Release Accreditation program (the "SEQUAL Program"), assists Brokers, Planners, Accountants and Legal Advisers to establish the skills required to be considered a "trusted source" and act in the best interest of their clients.

## Maintaining Industry Accreditation

### Professional Practice Guidelines

SEQUAL issues Professional Practice Guidelines to assist SERC's to adopt Client Management methods that deliver consistently high standards of consumer protection, across all industry sectors (i.e. Brokers, Planners, Accountants and Legal Advisers).

The **SEQUAL Guideline –Equity Release Proper Process** takes account of the various reports published by ASIC and is modelled on the guide authored by the Council of Mortgage Lenders (UK), as further developed by the current SEQUAL CEO during his term as MFAA Head of Education (refer Attachment B).

### Continuing Professional Development (“CPD”) Compliance

In order to maintain Industry Accreditation as a Reverse Mortgage Consultant, SERC's are required to accumulate an annual minimum of Fifteen (15) SEQUAL CPD Activity Points (“CPD Points”).

SERC's are expected to accumulate their CPD Points across a range of competencies which include;; Product & Process, Client Management, Business Development, Ethics & Regulatory Compliance etc.

The accumulation CPD Points is on a self-assessed basis. However, a SEQUAL CPD Activity Record Sheet together with evidence of participation must be retained by the SERC until it is required to be lodged with their annual Industry Accreditation renewal.

The CPD Record may be subject to audit by an authorised SEQUAL Education Officer.

The SEQUAL Education audit considers the Content, Context and Educational Value of the CPD Activities undertaken. RMC's selected for audit are required to submit their Supporting Documents. If the audit results in the claimed CPD Points being inadequate, the SERC will be provided with an opportunity (90 Days) to remedy the non-compliance with CPD Policy.

### SEQUAL Practising Certificate

The broad intent of Equity Release Industry Accreditation is to maximise the opportunity for consumers to access properly-trained Equity Release market practitioners across all industry sectors (i.e. Broker, Planner, Accountant or Legal Adviser).

The designation of SEQUAL-accredited SERC reinforces the professional standards set by the various Industry Associations (i.e. FPA, MFAA, CPA or State-based Law Societies).

**The SEQUAL Practising Certificate** is to be issued annually to SERC's that have met their on-going obligations for Industry Accreditation. The certificate will confirm the standing of SERC's within the Seniors Equity Release market and **enables consumers to easily recognise professionals who have established and maintain their competency to provide reliable Seniors Equity Release information and advice.**

## Consultation – The Treasury Green Paper

### The Treasury Questions and SEQUAL Responses

#### **NATIONAL CREDIT REFORM –Green Paper: July, 2010**

#### **-SEQUAL Member Responses.**

1. What evidence is there that borrowers consider home reversion schemes and reverse mortgages to be alternatives?

#### Response:

Although Reverse Mortgages and Home Reversion Schemes operate quite differently, they are competing products. Each product is offered as an equity release strategy whereby the consumer can draw income from the wealth accumulated through property ownership (Home Equity) whilst retaining the right to occupy the property without the obligation to make regular repayments under the funding facility.

The market for these products is common to both the Reverse Mortgages and Home Reversion Schemes, so-called “Asset Rich but Cash Poor” retirees. These consumers share important considerations when making informed decisions about equity release such as; the desire to preserve Government-funded benefit entitlement, the need to carefully consider changing circumstances (e.g. Aged Care.), the ambition to leave a legacy through inheritance etc.

The most significant common feature is that each product is secured by real property (typically the consumer’s Owner-Occupied home) either by way of a charge (Reverse Mortgage) or a conveyance (Home Reversion Scheme).

However, it is important to acknowledge that the product features of Reverse Mortgage and Home Reversion Schemes can vary significantly and that the appeal of each product category is likely to be based, at least in part, on the objectives and preferences of individual consumers. It is likely that consumers will be better placed to make informed decisions when they are able to easily to compare and contrast such features.

2. Are there potential detrimental consequences of home reversion schemes and reverse mortgages coming under different regulatory arrangements?

#### Response:

Uniform regulatory obligations reduce the compliance costs imposed on industry, contribute to more reliable compliance standards and avoid regulatory arbitrage between the product categories.

However, unless there is a transfer to the Commonwealth of the full regulatory responsibility in respect of home reversion schemes, it is difficult to see how uniform regulatory obligations could be developed for the equity release market. Given that home reversion schemes are property transactions such a transfer of powers would need to include matters relating to property law and property transaction costs such as stamp duty.

3. Is there any need for specific measures to address issues relating to any of the product features discussed above, or any other product features of reverse mortgages?

Response:

Existing self-regulatory initiatives introduced by SEQUAL should be adopted and imposed across the equity release industry.

In particular, the consumer protection measures offered by the SEQUAL Guideline on No Negative Equity Guarantee and Default Conditions should be a mandatory requirement for all Equity Release providers and the protection against No Negative Equity should apply to both the Provider and the Consumer.

Minimum age and maximum loan to value ratios.

This is a risk to the lender; not the consumer and accordingly, does not require regulatory intervention.

Default Clauses

This issue is now subject to Australian Consumer Law (unfair contract terms) and accordingly, does not require further regulatory intervention.

Procedure upon default

As these products do not have repayment default and only limited default conditions, procedures should be based on the existing SEQUAL Guidelines and is best managed through self regulation, as it is currently.

Lack of protection for non-title holding residents

Customers of SEQUAL Members must obtain independent legal advice. This protocol adequately addresses the issue. The extension of protection for non-title holding residents presents significant legal and credit risk issues. An imposition of mandated protection for non-title residents would likely reduce the availability of product choice for consumers. This is essentially a commercial matter that quite appropriately should be self-regulated by the market.

4. Are any of the issues raised above relevant to the regulation of home reversion schemes?

Response:

Yes. However, as a property transaction, home reversion schemes are distinctly different to reverse mortgages. For example, the issue of a no-negative equity guarantee is not relevant whereas the issue of protection for non-title holding residents is relevant.

5. Is there a need for specific responsible lending conduct obligations applicable to reverse mortgage providers and other intermediaries such as brokers?

Response:

ASIC Guidance in Regulatory Guide 209 already contemplates Equity Release products like reverse mortgages. Reasonable inquiries about a consumers requirements and objectives includes inquiries about whether the consumer seeks particular features (e.g. no regular repayment) and any additional risks (e.g. capitalised interest). Responsible lending is premised on the product being not unsuitable.

However, It is not clear to SEQUAL how some aspects of RG 209 will apply to equity release transactions and it is highly desirable that the degree of ambiguity that arises through devices such as “Scalability” and “Reasonable Inquiry Obligations” be eliminated through clearer Regulatory Guidance.

SEQUAL’s submission in response to ASIC’s Consultation Paper 115 was intended to form the basis of further discussion between industry and regulator. SEQUAL welcomes ASIC’s stated intention to further discuss the guidance.

6. Are the examples of possible mandatory reverse mortgage-specific responsible lending enquiries and assessments listed above appropriate?

Response:

The self-regulatory initiatives introduced by SEQUAL should be applied across the Equity Release market.

Importantly, the SEQUAL Guideline –Equity Release Proper Process (refer attachment) extends the examples of Equity Release (not limited to Reverse Mortgages) Responsible Lending Enquiries listed in Treasury’s Green Paper.

However, SEQUAL does not support the imposition of mandatory Reverse Mortgage Responsible Lending Enquiries.

7. Are there additional requirements that should be imposed on licensees in relation to responsible lending for reverse mortgages?

Response:

SEQUAL considers the current Australian Credit Licence requirements appropriate for licensees in relation to the responsible lending expectations for equity release transactions.

However, professionalism in the Equity Release market relies on market practitioners developing competencies beyond minimum education requirements imposed by regulation.

The opportunity for market practitioners to acquire specialist equity release skill and gain Industry Accreditation is made available through programs offered by SEQUAL and SEQUAL-accredited Training Providers.

SEQUAL works in close co-operation with the various industry-sector associations in order to maintain consistent industry standards of Competency Assessment and Accreditation. The peak industry associations (e.g. FPA, MFAA, CPA etc.) actively encourage their members to complete the SEQUAL Industry Accreditation program.

Significantly, 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.”<sup>1</sup>

The Australian Investments and Securities Commission (ASIC) provides a clear consumer guide at [www.fido.asic.gov.au/equityrelease](http://www.fido.asic.gov.au/equityrelease), where it is stated that:

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<sup>1</sup> 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](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Equity_release_report.pdf/$file/Equity_release_report.pdf)

“The best way to address some of these risks and ensure you get the product that is most appropriate for your needs is to get independent legal and financial advice.

1. Make sure you get a lawyer to read the terms and conditions and explain exactly what you're signing up for.
2. On the financial side talk to someone who understands financial matters, knows your personal needs and will put your interest ahead of anything else. Always check how your adviser is being paid for the advice they give you.
3. If you are using a mortgage broker, look for one who has received industry accreditation.
4. Consult the Centrelink Financial Information Service or the Department of Veterans Affairs to see if it may impact on your pension entitlements.
5. Talk it over with your family.

In Australia advice about loans is fairly loosely regulated so be fussy about the people who advise you”.

8. Are any of the issues and options raised above relevant to home reversion schemes?

Response:

The professional standards of practice established by the various SEQUAL self-regulatory initiatives are critical to the development of an efficient and ethical equity release market in Australia. Accordingly, these standards should apply across the various product categories and not be limited to the Reverse Mortgage product. Care is needed to avoid regulatory arbitrage.

9. Which of the above regulatory approaches is preferred and why? Are there any other options that should be considered?

Response:

Effective Negative Equity protection is available via appropriate self-regulation and therefore whilst it is our preference is to continue with self regulation, we are not opposed to statutory protection in the same terms.

10. If Option 2 is preferred, are the terms mentioned above which may void the statutory protection against negative equity appropriate? Are there others that should be considered?

Response:

The terms replicate self-regulation and therefore we agree with these terms. SEQUAL does not believe that it is necessary for other terms to be considered.

11. Which of the above regulatory approaches is preferred and why? Are there other options, which should be considered?

Response:

Self-regulation through SEQUAL Membership imposes an obligation to ensure that consumers obtain independent legal advice and therefore SEQUAL supports this aspect of Option One.

SEQUAL Members are also obliged to strongly recommend that their customers obtain financial advice but not all SEQUAL Members believe that this needs to be independent. SEQUAL is concerned about the lack of availability of competent legal and financial advice and has initiated measures to improve the training and competency of both Legal and Financial Advisers through its Industry Accreditation programs.

Option two is also addressed via self -regulation as prescribed by the SEQUAL Guideline “Key Facts” (see attachment).

12. Would there be merit in considering both options?

Response:

SEQUAL believes that there is merit in considering both options provided that there is proper consideration of existing industry self-regulation and that any regulatory change is consistent with the various SEQUAL Guidelines.

13. What advice could be usefully provided pre-contractually and which post-contractually?

Response:

The SEQUAL Guideline “Key Facts has been adopted by industry and is considered to provide appropriate pre-contractual advice.

14. Would there be any merit in the options raised above being applied to home reversion schemes?

Response:

Yes. As previously stated, the consumer protection measures provided through SEQUAL Membership are common to each of the product categories.

15. Are current arrangements provided under the Code and industry practice adequate, or are other measures required? Please provide details.

Response:

The Code and industry standards of practice associated with SEQUAL Membership provide adequate consumer protection in respect of default procedures and should be applied across the equity release market.

16. If a reverse mortgage specific default procedure is required, what could this involve (for example, a requirement for lenders to make personal contact with borrowers, prior to the expiry of a default notice)?

Response:

Some but not all SEQUAL Members support a specific default provision for equity release facilities (not limited to the Reverse Mortgage product) that would require a provider to make personal contact with customers, in addition to writing to them prior to the expiry of a default notice. If mandated, this should be in the same terms as the Code provisions.

## 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.

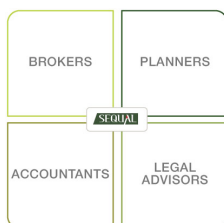
#### **4. Date of Operation**

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 Advisors.

Find a SEQUAL-accredited Equity Release Consultant at: [www.sequal.com.au](http://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](http://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%.

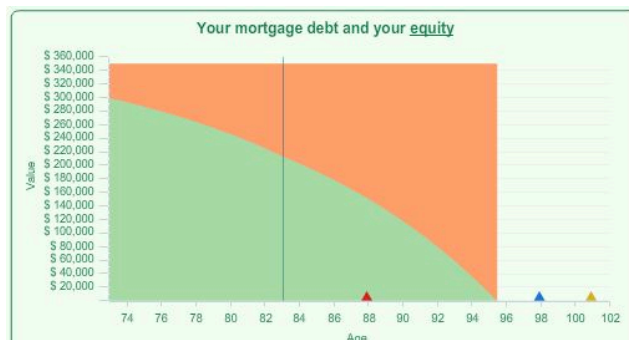
Although they were confident that their home would increase in value over the next ten years, Peter and Melissa decided to assume that both the interest rate and the value of their property would not change over the term of the Reverse Mortgage to see what impact that scenario would have on their Home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

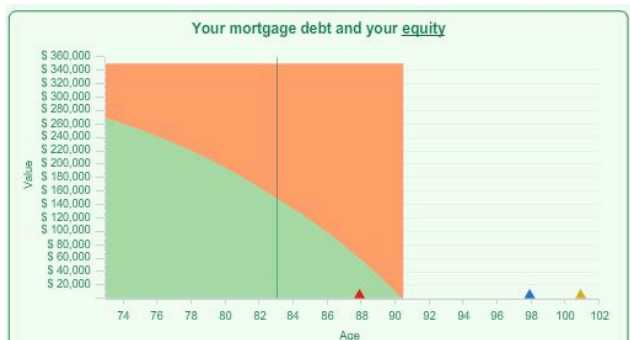
#### Borrow What They Need



When you are 83 years:			
Value of your home	\$ 350,000	▲	50% of women aged 73 will live to this age
Mortgage Outstanding	\$ 138,455	▲	10% of women aged 73 will live to this age
Equity Remaining	\$ 213,544	▲	5% of women aged 73 will live to this age

The graph and figures above are estimates only, based on limited information and are not guaranteed. Consider your own circumstances and seek expert advice.

#### Borrow Maximum Available



When you are 83 years:			
Value of your home	\$ 350,000	▲	50% of women aged 73 will live to this age
Mortgage Outstanding	\$ 199,817	▲	10% of women aged 73 will live to this age
Equity Remaining	\$ 150,182	▲	5% of women aged 73 will live to this age

The graph and figures above are estimates only, based on limited information and are not guaranteed. Consider your own circumstances and seek expert advice.



### 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](http://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](http://www.SEQUAL.com.au)

Email: [info@sequal.com.au](mailto:info@sequal.com.au)

**ERRMIS –Equity Release/Reverse Mortgage Information Service**

Website: <http://reversemortgage@nicri.org.au>

Email: [reversemortgage@nicri.org.au](mailto:reversemortgage@nicri.org.au)

Phone: 1800 615 676

**ASIC –Australian Securities and Investments Commission**

Website: [www.fido.gov.au](http://www.fido.gov.au)

Phone: 1300 300 630

**The Department of Veterans Affairs**

Website: [www.dva.gov.au](http://www.dva.gov.au)

Email: [GeneralEnquiries@dva.gov.au](mailto:GeneralEnquiries@dva.gov.au)

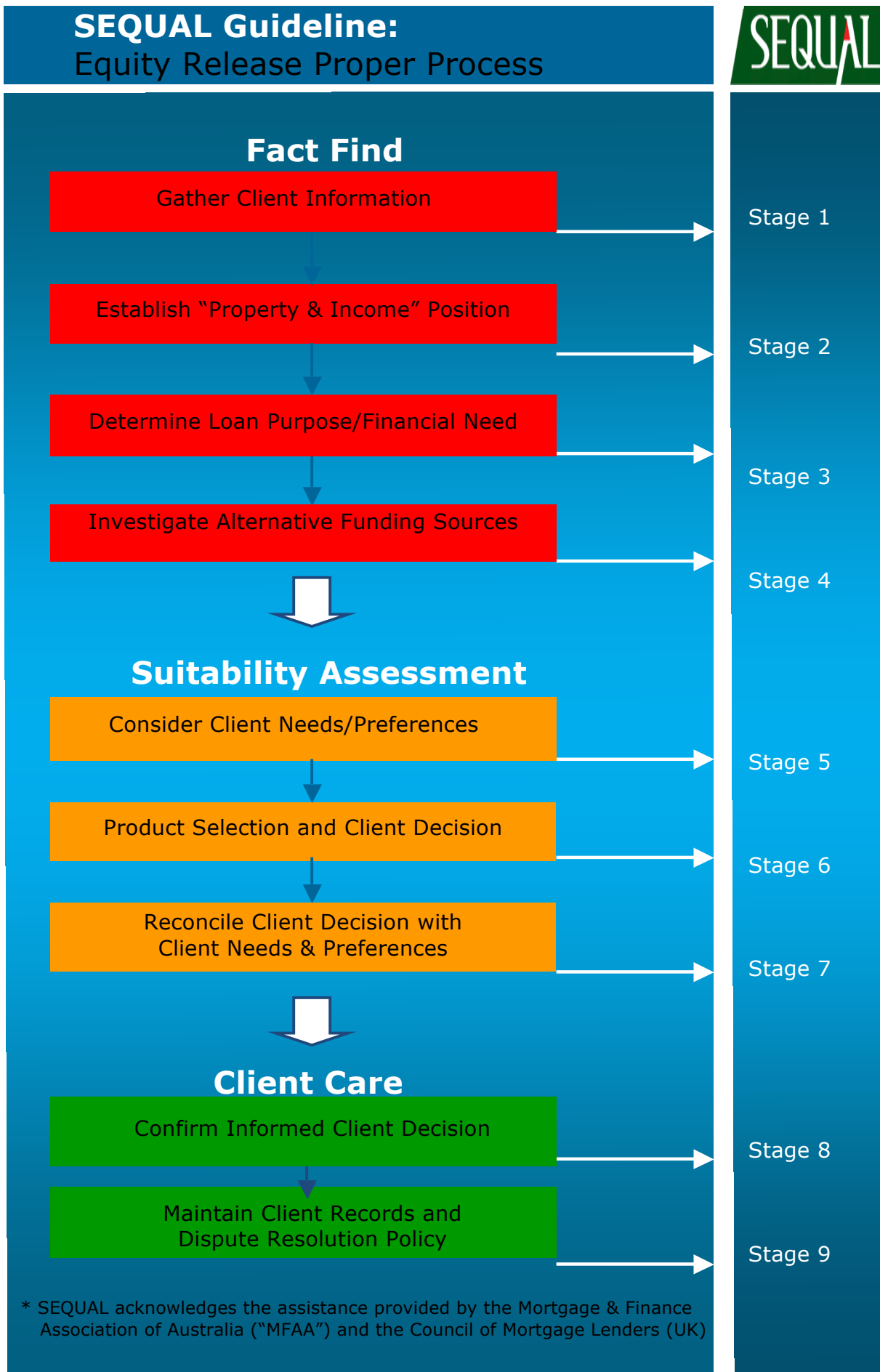
Phone: 13 32 54

**Australian Taxation Office**

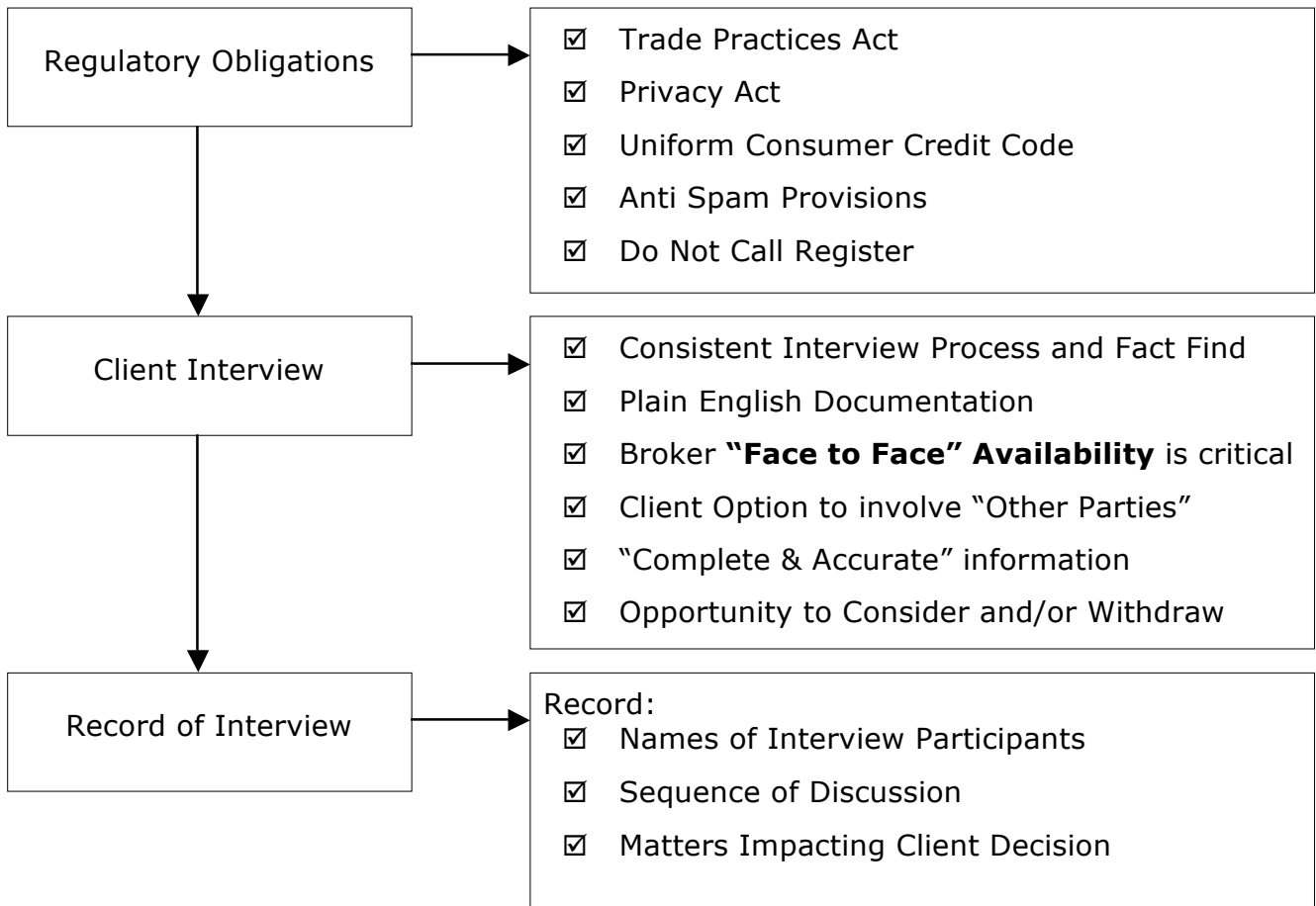
Website: [www.ATO.gov.au](http://www.ATO.gov.au)

Phone: 13 28 61

Attachment C: SEQUAL Guideline – Equity Release Proper Process



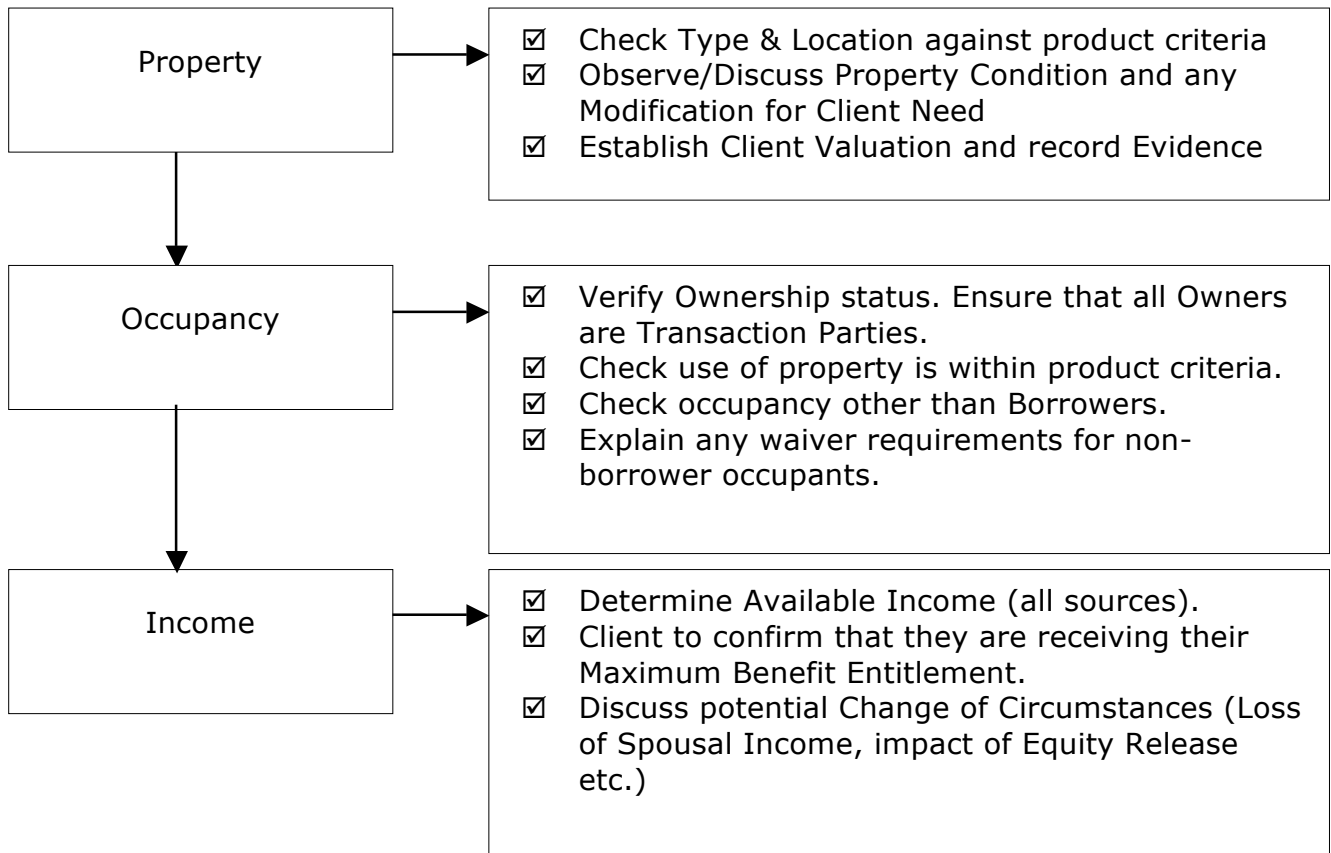
**Stage 1**  
**Gather Client Information**



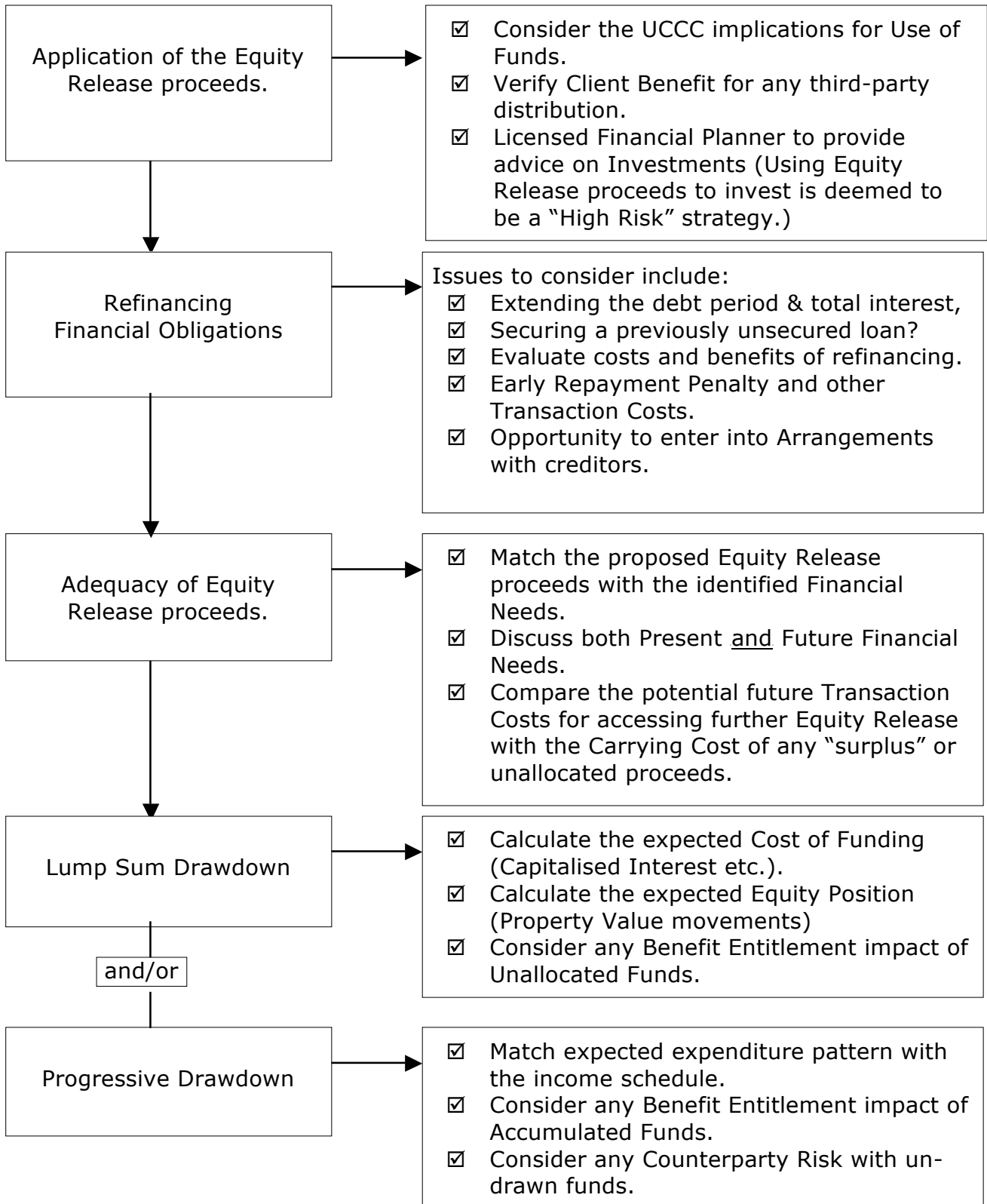
**Guidelines:**

- 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.

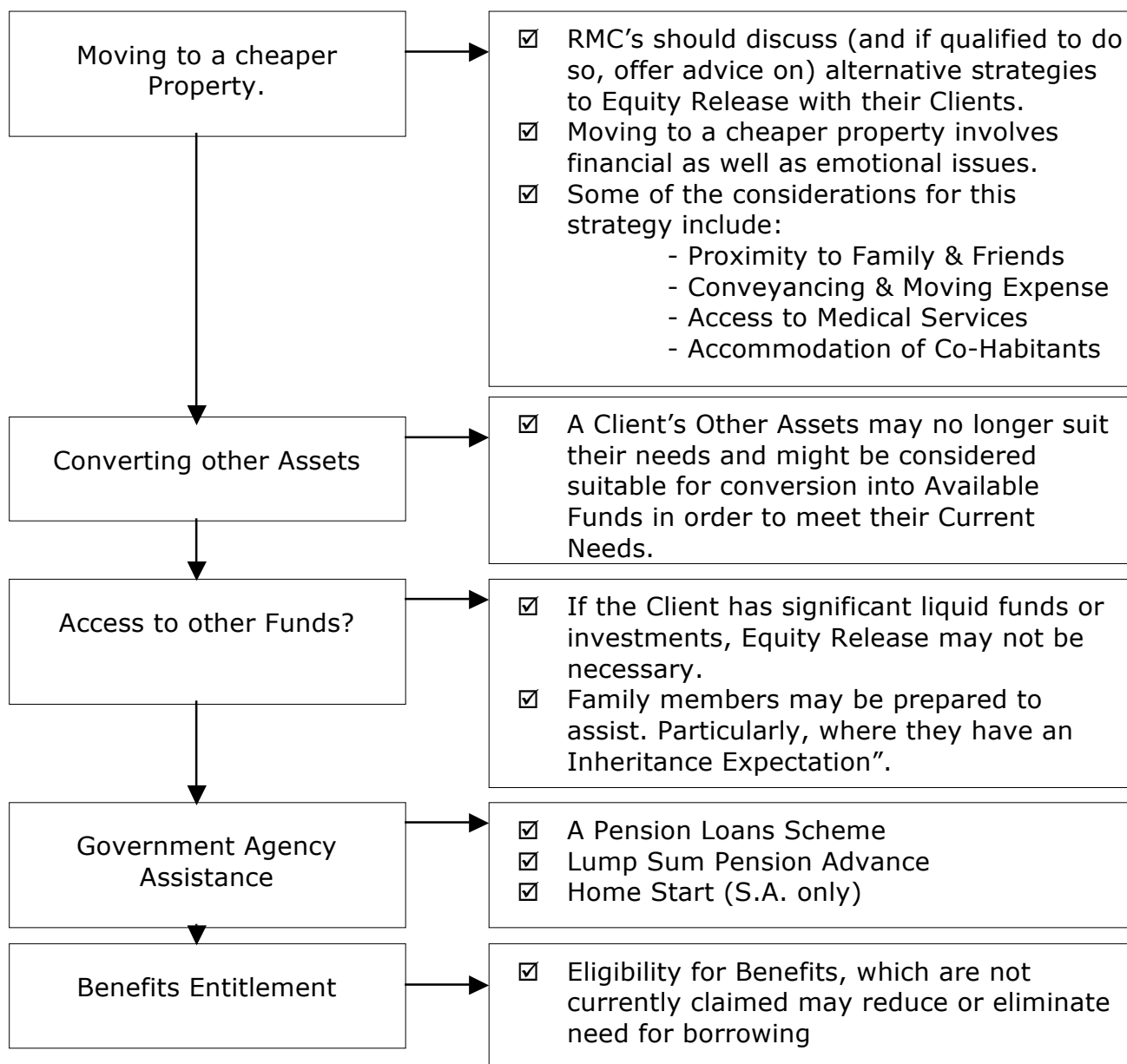
Stage 2  
Establish "Property & Income" Position



**Stage 3**  
Determine Loan Purpose/Financial Need



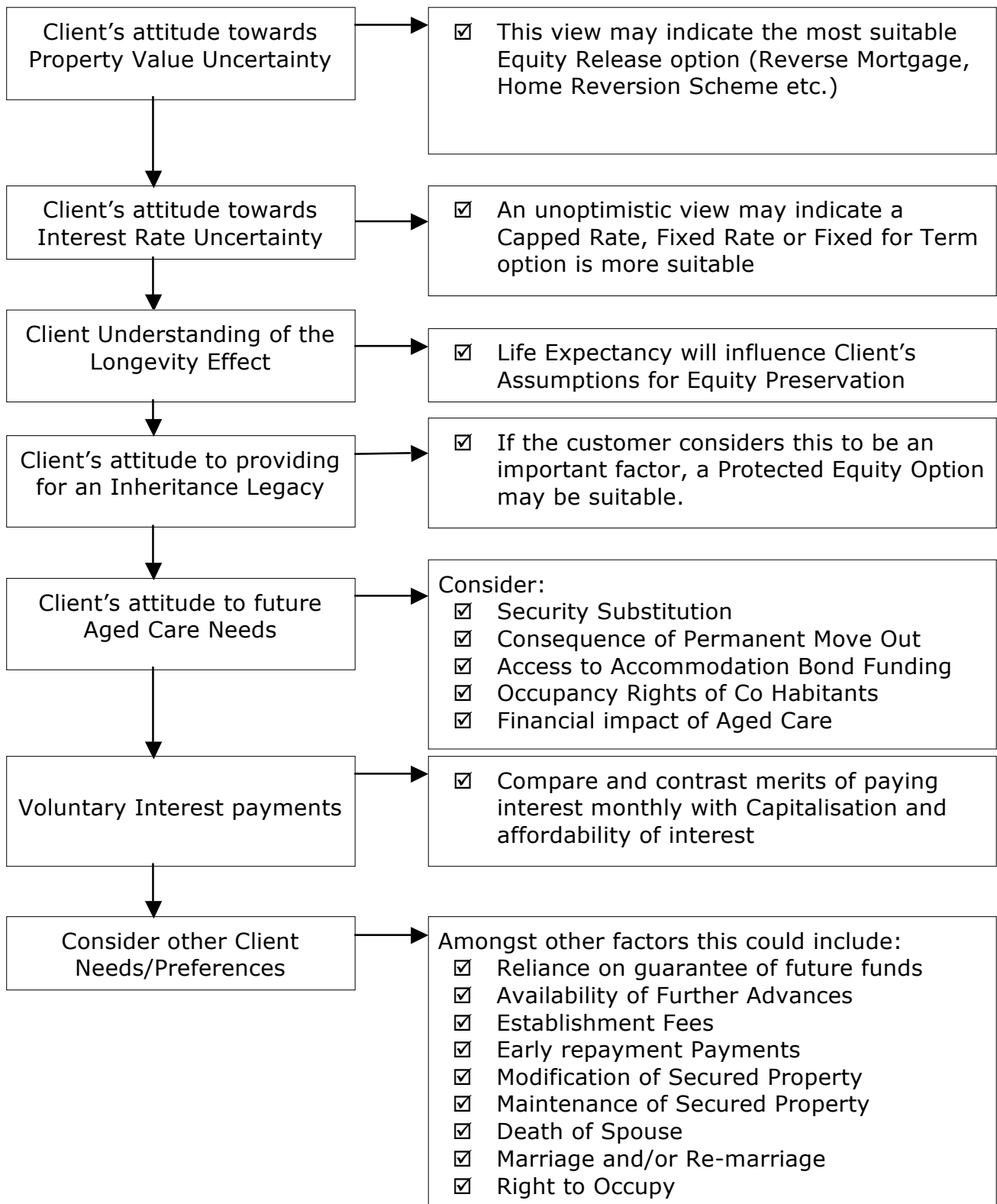
## Stage 4 Investigate Alternative Funding Sources



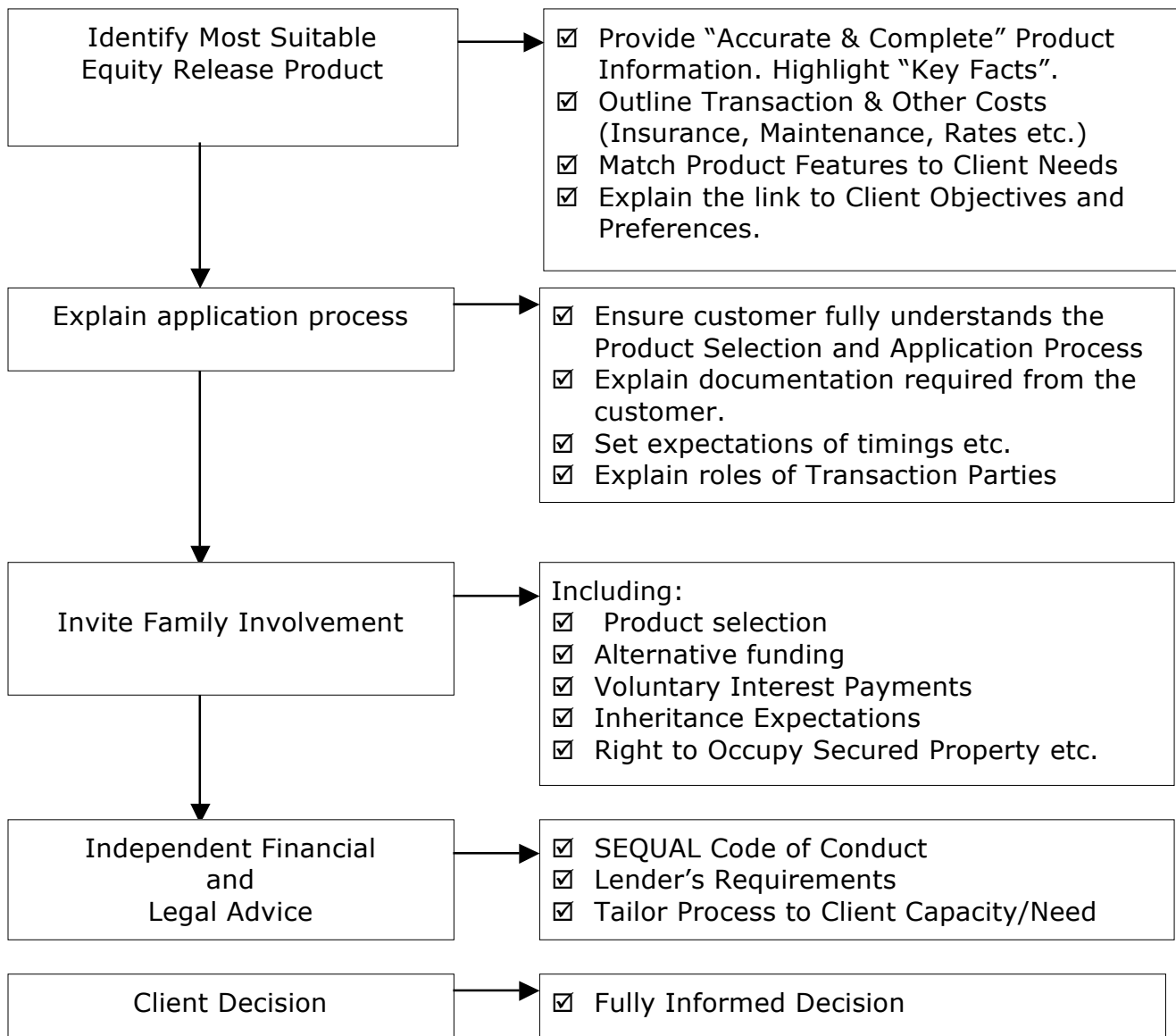
### Guidelines:

- 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).

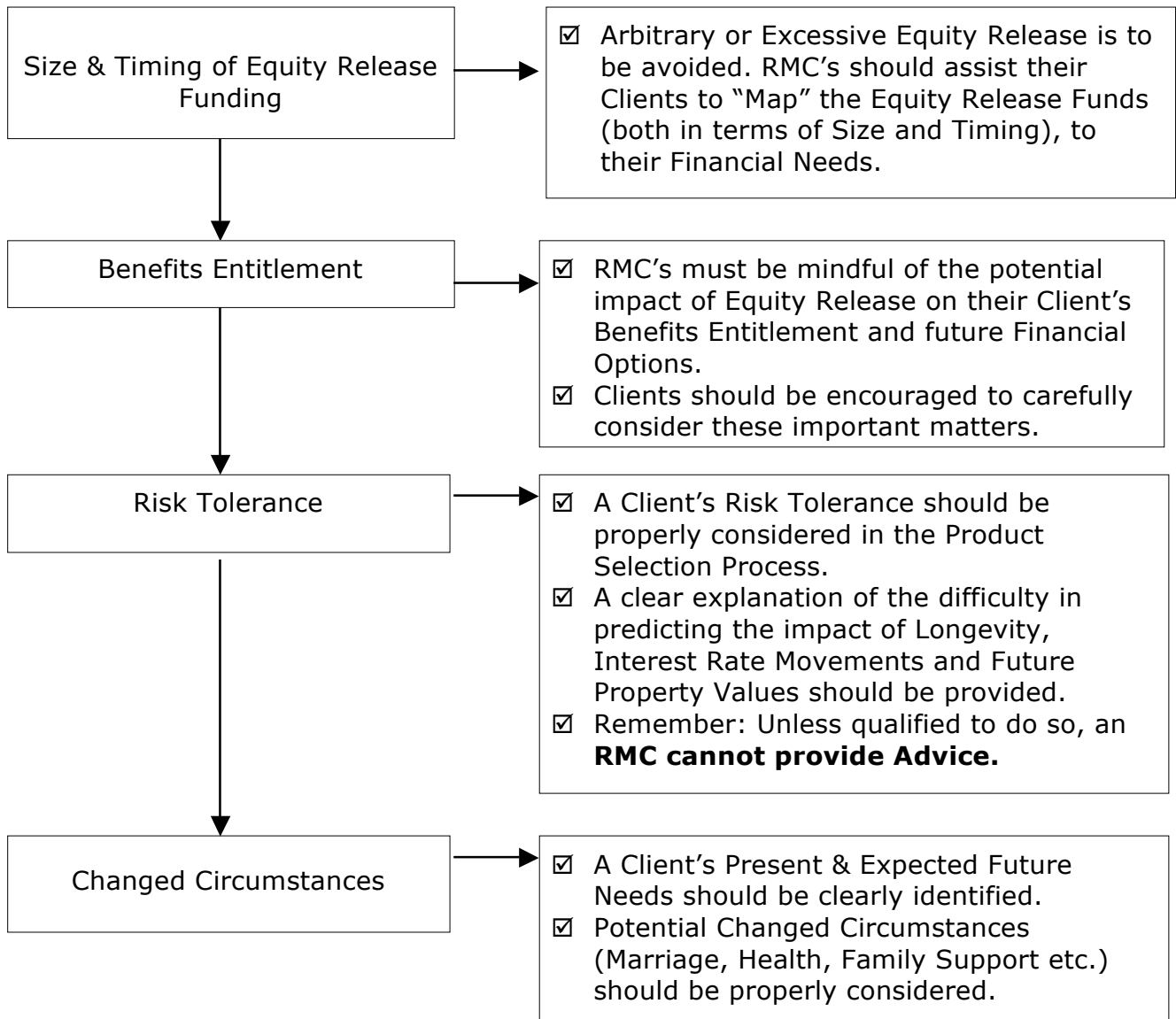
**Stage 5**  
Consider Client Needs/Preferences



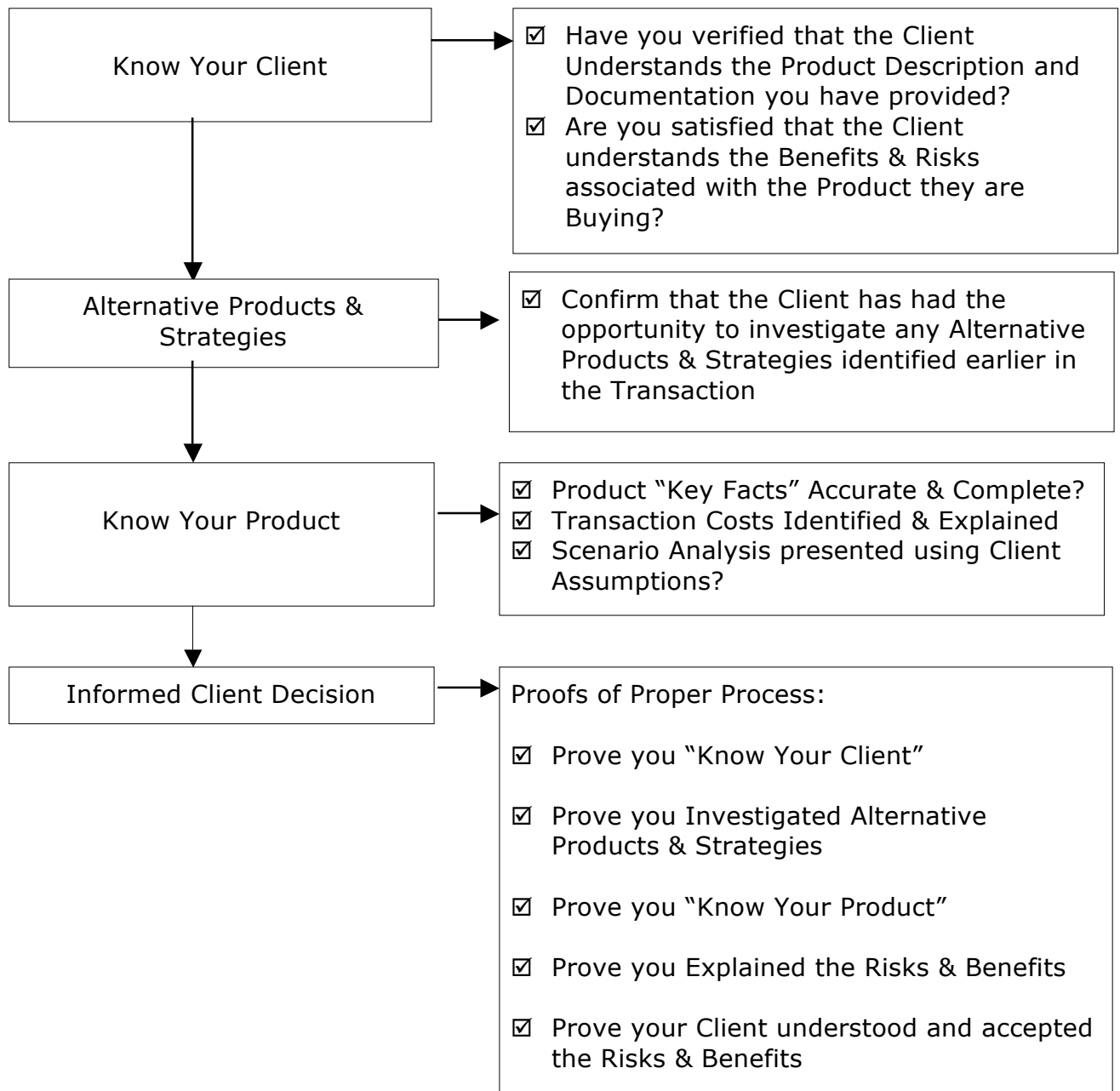
**Stage 6**  
Product Selection and Client Decision



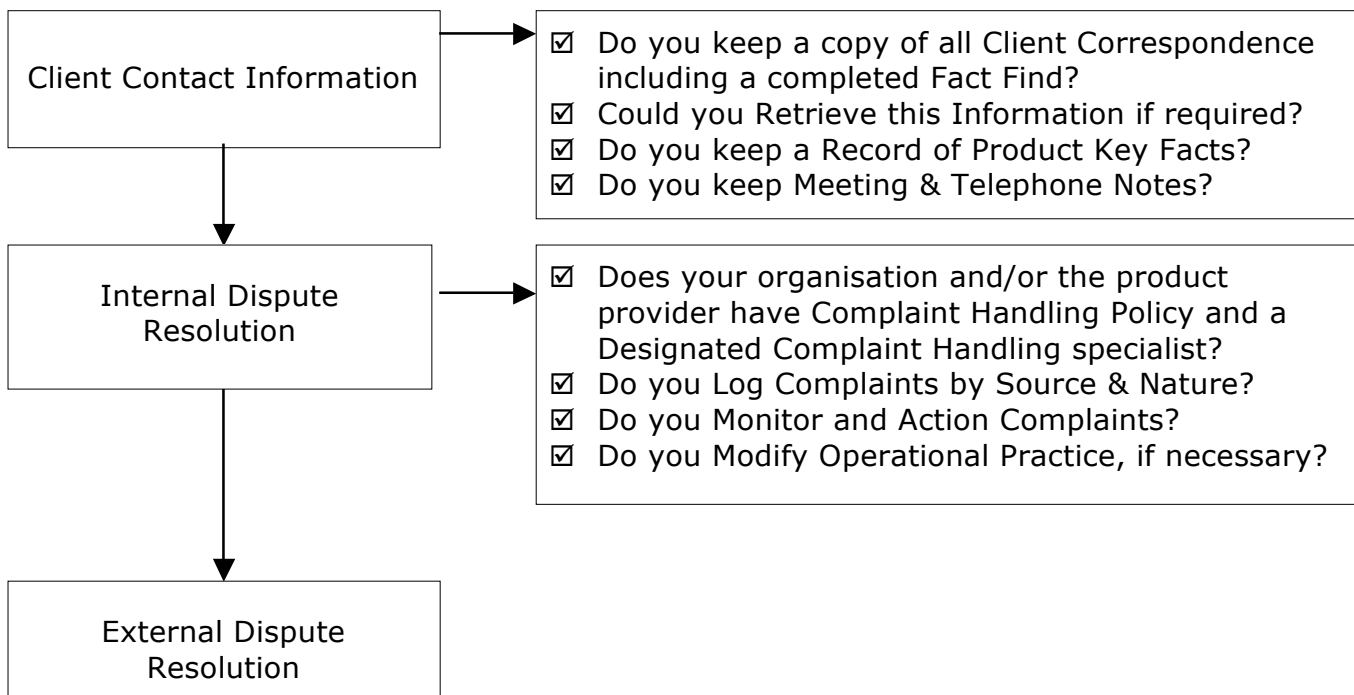
Stage 7  
Reconcile Client Decision with  
Client Needs & Preferences



Stage 8  
Confirm Informed Client Decision



**Stage 9**  
**Maintain Client Records**  
**Dispute Resolution Policy**



**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 be 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<sup>2</sup>. 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)<sup>3</sup>. 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<sup>4</sup> 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.

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<sup>2</sup> ASIC Fido page on reverse mortgages  
[<http://www.fido.gov.au/fido/fido.nsf/byheadline/Reverse+mortgages?openDocument>]

<sup>3</sup> <http://www.creditcode.gov.au/>

<sup>4</sup> Trowbridge Deloitte industry survey – November 2006  
[http://www.deloitte.com/dtt/press\\_release/0,1014,sid%253D5527%2526cid%253D136530,00.html](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](http://www.sequal.com.au)

CPA Guidance Notes on reverse mortgages: [www.cpaaustralia.com.au](http://www.cpaaustralia.com.au)

CHOICE information on reverse mortgages: [www.choice.com.au](http://www.choice.com.au)

Australian Securities Investment Commission: [www.asic.com.au](http://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.



# 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<sup>1</sup>. By 2010, this market could grow to between \$12 and \$15 billion<sup>2</sup>.

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.

<sup>1</sup> SEQUAL/Trowbridge Deloitte, *Reverse Mortgage Study*, June 2006

<sup>2</sup> Trowbridge Deloitte, *The Equity Release Opportunity for Financial Planners*, July 2005

# 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

<b>Lifestyle</b>	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.
<b>Ability to stay in own home</b>	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.
<b>Cash flow management</b>	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
<p><b>Lump sums</b></p> <ul style="list-style-type: none"> <li>✓ To pay for one-off purchases like a car or a holiday</li> <li>✓ To provide some emergency funds</li> <li>✓ To pay off high-interest loans, such as credit cards</li> <li>✓ Home improvements</li> <li>✓ To provide funds for nursing or aged home care</li> <li>✓ To assist family members in appropriate circumstances</li> </ul> <p><b>Income</b></p> <ul style="list-style-type: none"> <li>✓ To provide a regular income to meet day to day expenses</li> </ul>	<ul style="list-style-type: none"> <li>✗ Re-investment into other investments, such as the share market</li> <li>✗ To provide funds if the client already has other liquid investments which are appropriate to be used</li> <li>✗ Helping family members in high risk ventures or where inappropriate pressure has been applied</li> </ul>

# Guidance Note for advising on Reverse Mortgages

## 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?	<p>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.</p> <p>If they are not receiving a full Age Pension, they may also be eligible for the Centrelink Pension Loan Scheme for small amounts.</p> <p>Another common option is downsizing to a smaller home, with key issues being the costs, both financially and emotionally.</p> <p>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.</p> <p>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.</p>
Does the client understand how a reverse mortgage works?	<p>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.</p>
Have you taken the client's health and life expectancy in account?	<p>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.</p>
Have you taken into account the effect of changes in house values?	<p>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.</p> <p>SEQUAL currently requires all its members to provide you with a tool to assist with projections for clients.</p>
Have you confirmed what the funds will be used for?	<p>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.</p>

# 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](http://www.fido.gov.au) and search for 'Reverse'.

# Guidance Note for advising on Reverse Mortgages

## 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](http://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*

<http://www.sequal.com.au>

### SHIP

*Equity Release Checklist – a 10-point adviser guide to equity release*

[www.ship-ltd.org](http://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](http://www.asic.gov.au) and searching for 'reverse mortgage'

### CPA Australia

*FSR: Your Obligations and Options*

[www.cpaaustralia.com.au/links?14131\\_3937](http://www.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](http://www.mfaa.com.au)

## Acknowledgements

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