



TRAP^S OF THE TRADE

OLDER AUSTRALIANS SHOULD TAKE CARE AND SEEK GOOD ADVICE BEFORE UNLOCKING THE EQUITY IN THEIR HOMES TO FUND THEIR NEEDS IN RETIREMENT, A PARLIAMENTARY INQUIRY HAS HEARD.
Story: Sharon Palmer

THEY have pockets of money and generally advertise in major daily newspapers. They charge a lot, have no regard whatsoever for your circumstances, and systematically avoid the consumer protection legislation.

They are “lenders of last resort”, according to Katherine Lane, principal solicitor for the Consumer Credit Legal Centre in New South Wales.

Unlike banks and credit unions or the larger mortgage brokers, these other lenders fly below the regulatory radar, often preying on vulnerable people who need cash fast.

“They say ‘if you’re in trouble and the sheriff is at the door, come to us’,” Ms Lane told the House of Representatives Legal and Constitutional Affairs Committee as part of its investigation into older people and the law.

Among their victims are elderly Australians who are asset rich but cash poor. In its submission to the committee’s inquiry, the Consumer Credit Legal Centre indicated that many older people are vulnerable to financial difficulties, often leading them to borrow against the value of their home to pay for things they need. But, without proper care and advice, they could end up losing everything.

In one recent example from the legal centre’s case files, a pensioner applied for a loan of \$40,000 to buy a car. He owned his own home, but his sole source of income was the aged pension. He approached a broker for assistance. The broker talked him into a line of credit loan of \$150,000 so all his expenses and needs would be covered. The broker included false information in the loan application form, obtained an Australian Business Number and even lodged a tax return on the pensioner’s behalf. The broker arranged the loan with a major bank. The pensioner is now facing the prospect of losing his home as he has a debt he cannot afford to repay.

The parliamentary inquiry has heard irresponsible lending is one of the significant financial abuse issues affecting the elderly. Equity loans from irresponsible lenders are a particular concern, as the effects, including loss of the family home, can be devastating if problems arise.

The warnings about unscrupulous lenders come at a time when equity loans, which allow people to borrow against their homes, are on the increase. The variety of products now available can be quite mind-boggling, as can be the choice of lenders.

One equity product, the reverse mortgage, has really taken off. Research indicates that more than 27,500 reverse mortgages are currently on issue in Australia, representing an 80 per cent increase in uptake over the past 12 months.

Reverse mortgages are loans where the amount borrowed is repaid from the person’s estate after the person has died or the home is sold, with the proceeds from the sale being used to repay the debt.

In the April 2007 edition of *Choice* magazine, the Australian Consumers’ Association road-tested 23 reverse mortgages against six standards for consumer protection. Disturbingly, none of the 23 financial institutions met the good practice standard set by *Choice* for protecting borrowers from the forced sale of their home. Its advice to consumers was to shop around and be sure of what you are getting.

“A reverse mortgage is designed to stay with you for the rest of your life, or close to it, so you need to know exactly what you’re getting into,” *Choice* said. “The loan contract should be in plain English, be crystal-clear and contain fair and reasonable conditions that don’t place you under excessive risk.”

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The National Seniors Association is so concerned about the implications of some equity release products, it has written to attorneys-general across Australia and to the federal government requesting better regulation of the reverse mortgage industry.

Appearing before the Legal Committee in Canberra, National Seniors policy manager Peter Brady said while reverse mortgages had certain attractions, they were also something to be cautious about.

“We are saying generally the product is good because it provides that sort of benefit to older people who do not have cash but who have an asset. However, we need to provide appropriate legal protection and appropriate information ... because there are some unscrupulous practitioners.

“The two ways we see a good result are legislation and providing good information to older people.”

Mr Brady said there was a lot of confusion in the market because there were a number of different types of equity release products and some people were unwittingly signing up for the wrong thing.

“I think there are something like three or four products that are loosely referred to as reverse mortgages for which the interest rates and the cost of the mortgage may have an effect on

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what the older person does with their property,” he said.

This concern is shared by the Consumer Credit Legal Centre. “We are seeing more and more people who have signed up for things that kind of looked and smelled like reverse mortgages but in fact were not,” said coordinator Karen Cox. “They were short-term interest-only loans where the house would have to be sold after five years, and that sort of thing.”

National Seniors wants the state, territory and federal governments to ensure all mortgage providers are licensed, suitable accreditation standards are introduced, better information is provided to consumers, and an appropriate and effective dispute resolution mechanism is put in place.

The need for tighter regulation of the mortgage market has also been raised by Western Australia’s Minister for Seniors, David Templeman, who in his submission to the inquiry quoted from a wide-ranging review of consumer credit matters by Consumer Affairs Victoria.

“One of the recommendations arising from this review was that the Ministerial Council of Consumer Affairs should analyse the need for and nature of additional regulation in relation to reverse mortgages, including a prohibition on negative equity and a requirement that consumers get a comprehensive information statement on the distinctive features of reverse mortgages, such as interest capitalisation,” the minister said.

Mr Templeman supported the recommendation, in a November 2005 report by the Australian Securities and Investments Commission into equity release products, that “federal and state and territory regulators monitor closely the development of the market, consumer complaints and problems they point to and keep under review the adequacy of the regulatory structure to address them”.

ASIC would also like to see a ‘no negative equity guarantee’ as part of any reverse mortgage equity release



Cartoon: Pat Campbell

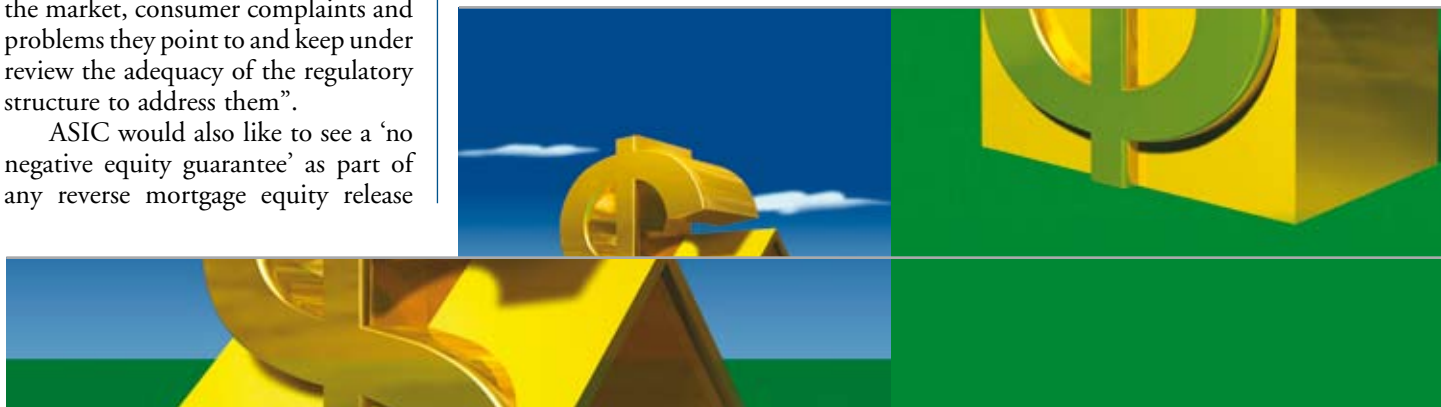
product. While many financial institutions incorporate it into contracts, some still do not. A negative equity occurs when the interest compounding on the loan results in a debt which exceeds the value of the property.

Independent legal advice should also be an essential requirement before a consumer takes out a reverse mortgage, according to ASIC, with consumers ideally consulting a financial adviser, Centrelink and their family before they proceed.

ASIC said while a majority of lenders required consumers to obtain

legal advice, not all did and not all legal practitioners were willing to provide advice on complex financial products such as reverse mortgages.

In its submission to the inquiry, ASIC reiterated the concerns of other organisations that “in some cases default clauses applied for conduct as simple as not paying the rates on time or failing to submit a status report on the property at the end of the year”. Matters as minor as these could nullify the no negative equity guarantee and also result in borrowers losing their home.



Conscious of such concerns, reverse mortgage lenders have taken steps to ensure their reputation is not damaged by rogue lenders.

In 2005 the Senior Australians Equity Release Association of Lenders (SEQUAL) was established, with members signing up to a code of conduct. The code lists a number of protections, including that all products carry a no negative equity guarantee, and that lenders ensure borrowers obtain independent legal advice, clearly and adequately identify all costs, provide in writing a fair and complete package of equity release documents, participate in an ASIC approved external dispute resolution scheme, and ensure all loans are written under the uniform consumer credit code.

SEQUAL's executive director Keiran Dell believes reverse mortgages are a good product as long they are provided ethically and properly.

"Reverse mortgages have a lot of fantastic uses as long as the advice is good from the start, borrowers are encouraged to obtain independent legal and financial advice and it does not impact on their pension," Mr Dell said.

He believes equity release products such as reverse mortgages offer people an alternative to having to sell their home to pay for unexpected bills.

"Many people find themselves through no fault of their own and with no warning with \$20,000 to \$30,000 in medical expenses or their car breaks down and they need to buy a new car. They can now say 'hang on there's another option here'.

"Also we are seeing a shift and reverse mortgages are a popular market with the baby boomers as they move

into retirement and they have the same sort of aspirations in retirement as they had when they were working. They want to travel, buy a plasma TV, spoil the kids and grandkids and reverse mortgages can help them to do all of that."

It's been estimated around 95 per cent of the reverse mortgage lending market is currently covered by members of SEQUAL. Mr Dell said SEQUAL members should be the first port of call for those looking into reverse mortgages.

"We are seeing more and more people who have signed up for things that kind of looked and smelled like reverse mortgages but in fact were not."

"Our lenders have to meet every element of our code of conduct to join, it does not matter if they meet most of them, they have to meet all of the requirements," Mr Dell said.

At the same time, he conceded that the existing uniform credit code, which lenders must abide by and which is referred to in SEQUAL's own code of conduct, may not adequately cover equity loans because it was established well before those products became popular in Australia.

"I believe there is work to be done to update the code in line with the changes in the market over the years," Mr Dell said.

In addition to SEQUAL, a group of brokers has recently formed a company called Fortus which specialises in equity release products.

Under Fortus, members have to abide by a rigorous charter, which

stipulates that they must hold a reverse mortgage consultant accreditation from SEQUAL, must belong to a certified body like MFAA (Mortgage and Finance Association of Australia) or CPA (Certified Practising Accountants), hold accreditation of each product recommended to the client, hold at least a Certificate IV financial qualification and maintain membership of an ASIC approved external dispute resolution scheme.

"If a lender is not part of SEQUAL you would have to be asking why and similarly if a provider of equity release products is not a member of Fortus you would have to ask why," said interim chief executive of Fortus, Craig Swan. "And the simple answer is, they do not necessarily offer the guarantees for consumers expected by both bodies."

Despite these moves towards tougher self-regulation, concerns remain about the voluntary nature of bodies such as SEQUAL.

In its submission to the inquiry, the Law Society of Western Australia has called for a mandatory code of conduct for the lenders of reverse equity products, to ensure all lenders are covered.

And the issue of adequate protection for consumers may get more pressing, as housing affordability pressures mount.

The Consumer Credit Legal Centre expressed concern about "family members putting pressure on parents and grandparents to use reverse mortgages to improve their own lifestyles or to get into the housing market".

Similarly, the Legal Aid Commission of NSW has warned that older persons using the equity in their house to assist relatives enter the real estate market could become a matter of "growing concern". ■

For more information on the inquiry into older people and the law by the House of Representatives Legal and Constitutional Affairs Committee, visit www.aph.gov.au/house/committeelocal/olderpeople or email laca.reps@aph.gov.au or phone (02) 6277 2358.

