

# **Home Equity Release**

## **Proposed Code of Practice**

Office for Senior Citizens

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# PART ONE – INTRODUCTION

## Purpose

- 1 Home equity release (HER) products:
  - 1.1 usually involve a customer's largest asset
  - 1.2 involve older people who would be disproportionately affected by a financial setback and who may have little or no capacity to recover from it
  - 1.3 may cause customers disproportionate harm if products do not include a no-negative equity guarantee or lifetime occupancy protection.
- 2 Poorly crafted home equity release schemes could lead to deteriorating financial circumstances for customers. This is undesirable and is good reason for regulating these products. There is likely to be strong growth in the use of home equity release schemes in the medium to long term, and it is important that both customers and product providers understand the products and the law related to them.
- 3 The purpose of this Code of Practice is to present in a single document the proposed legislative requirements and some additional provisions for home equity release schemes. While the Code sets out these requirements and protections, it does not reduce consumers' responsibility for their own decisions. Before making decisions, home owners should:
  - 3.1 become fully informed about the nature of HER products and their effects on home equity
  - 3.2 obtain independent legal advice before deciding to proceed.

## Relationship of this Code to legislation on consumer contracts, financial advisers etc

- 4 This Code has been drafted to be consistent with the safeguards in legislation and to provide some additional protections for users of home equity release schemes. The Code does not limit or invalidate the protections already provided by consumer and other legislation.
- 5 In the event that product providers adopt the Code on a voluntary basis before proposed legislation on financial service providers, credit contracts and consumer finance is finalised or comes into effect, the Office for Senior Citizens proposes to consult with product providers, that have adopted the Code, with a view to amending the Code to align it with any relevant changes to legislation.

## Parts to this Code

- 6 This Code is in three parts:
  - 6.1 Part One applies to all home equity release schemes and product providers
  - 6.2 Part Two applies to mortgage-based products – often called reverse mortgages. Home owners who are considering a **mortgage-based product** should read Part One and Part Two
  - 6.3 Part Three applies to products that involve the sale of the property or a share in the equity – often called reversion schemes. Home owners who are considering **selling their home or a share of the equity** through a home equity release scheme should read Part One and Part Three.

## Principles

- 7 The following principles underlie the provisions of this Code:
- 7.1 *Consumer understanding* – potential consumers need to be provided with information that helps them to understand the products, how they work, and what they would cost over the lifetime of a consumer
  - 7.2 *Full disclosure* – providers and their agents must disclose the terms and conditions, the charges and costs for consumers, the benefits for product providers and agents, and the responsibilities of each party under an agreement
  - 7.3 *No negative equity* – a consumer's liability under a home equity release scheme must not exceed the net realisable sale price for the home
  - 7.4 *Lifetime occupancy guarantee* – a consumer must have the right to remain in their home until they choose to leave it
  - 7.5 *Independent legal advice* – consumers must obtain independent legal advice before any agreement is signed
  - 7.6 *Regular updates* – consumers must receive regular financial reports on their financial position under the agreement
  - 7.7 *Access to a complaints and dispute resolution process* – consumers and other parties must have access to a complaints process and an independent and accessible disputes resolution process.

## Exclusions

- 8 This Code does not cover:
- 8.1 private arrangements between older people and members of their families and/or their family trusts
  - 8.2 social assistance available to older people, such as local government rates deferral schemes, advances for home maintenance, and the Residential Care Subsidy Loan Scheme
  - 8.3 mortgage-to-invest schemes, whether or not these are designed for older people.

## Glossary

- 9 In this Code, the terms listed below have the following meanings:
- 9.1 **Agent:** any person or corporate entity engaged, contracted or paid by a provider to promote, market or recommend a home equity release scheme on behalf of a product provider
  - 9.2 **Cooling-off period:** the period following the signing of a sale agreement, during which the home owner has the right to cancel the agreement without cause. (see paragraphs 31 and 74)
  - 9.3 **Equity:** the value in a property that a home owner can borrow against, or receive as the net proceeds of the sale, and after meeting relevant liabilities when the property is sold. In respect of retirement villages and similar residential arrangements, this means the net sale proceeds after discharging all financial obligations arising from the purchase and occupancy of the unit
  - 9.4 **Home owner:** any older person who owns the home or has a legal or equitable interest in the home in which he or she is living ,or if the person's residency is secured by a licence to occupy or other means, who has a right to be repaid a capital consideration paid for his or her occupation right, and is considering, or has entered into, an agreement to take up a home equity release scheme
  - 9.5 **Lawyer:** a person who is a lawyer as defined by the Lawyers and Conveyancers Act 2006

- 9.6 **Life expectancy table:** a table that shows the life expectancy, for men and for women, at each year of age from age 50; not to be confused with the more well-known data on 'life expectancy at birth'
- 9.7 **Person claiming through the home owner or borrower:** a person nominated in the agreement for a home equity release scheme who lives in the home at the time the agreement is entered into, and who is the spouse, civil union or de facto partner, or other dependant, of the home owner
- 9.8 **Product provider:** a person or corporate entity providing home equity release schemes of any sort.
- 10 In this Code the terms relating to **reverse mortgages** have the following meanings:
- 10.1 **Borrower:** any older home owner who has entered into or is considering entering into an agreement to borrow against the equity in their home
- 10.2 **Compounding interest:** interest on a loan that is added to the principal at specified intervals, with the effect of increasing the amount of principal on which interest is payable
- 10.3 **Draw-downs:** periodic transfers of loan money to the borrower. Some loans allow borrowers to arrange further draw-downs after the first transfer of funds from the lender
- 10.4 **Lender:** a person, trust or corporate entity that offers a loan to a borrower in the form of a home equity release scheme but excluding private arrangements between older people and members of their families and/or their family trusts
- 10.5 **Loan:** any money advanced to a borrower by a lender as a home equity release scheme, either as a lump sum or by way of periodic payments
- 10.6 **Reverse mortgage products:** products that involve, generally an older person, borrowing against the equity in his or her home by way of a mortgage. The interest on the loan is accumulated and (unless otherwise provided for in the agreement) the amount of the loan, together with accumulated interest, is not repayable until the home is sold upon the death of the borrower, or their permanent departure from the home. Loan repayments, either principal or interest, are not normally required until the home is sold.
- 11 In this Code the terms relating to products that involve **reversion schemes** have the following meanings:
- 11.1 **Landlord:** a property owner who rents a property to a tenant
- 11.2 **Products that involve the sale of the home or a share in the equity:** the home owner receives part of the purchase price as a cash payment or payments over a deferred settlement period and may share with the purchaser in any capital growth. After receiving the balance of the purchase price as a lump sum payment on final settlement date, the home owner may have the right of lifetime occupancy and remain in the home sometimes as a paying tenant. In order to protect their right of occupancy as a tenant, the home owner may need to set aside funds to cover the payment of rental costs during the expected period of the tenancy. These products are often called reversion schemes
- 11.3 **Purchaser:** a person or corporate entity that enters into an agreement with a home owner to purchase either the home owner's property or a share in the equity in the property. The purchaser may be a person or entity other than the product provider.

## **PART TWO**

### **HOME EQUITY RELEASE SCHEMES INVOLVING A REVERSE MORTGAGE**

12 A reverse mortgage home equity release scheme allows an older person to borrow against the equity in their home. Interest on the loan is accumulated and added to the principal of the loan, with the loan not being repayable until the borrower dies or leaves the home permanently, or the home is sold. When there is more than one borrower, such as a married couple, the loan is repayable on the death or permanent departure from the home of the last surviving borrower or other nominated person agreed to by the lender.

#### **Advertising**

13 The advertising of home equity release schemes must conform to the Advertising Code of Ethics and the Code for Financial Advertising.

#### **Advice from product providers**

14 Each product provider must observe good practice when they advise on home equity release schemes. They must ensure that good practice standards are observed by their staff and agents who advise and negotiate with home owners.

15 For the purposes of this Code, good practice includes but is not limited to:

15.1 ensuring that the home owner has canvassed the available alternatives for meeting their financial aims for which home equity release is being considered

15.2 matching products available to the provider or the agent to the specific needs of the home owner

15.3 demonstrating the effects of different levels of borrowing, different rates of interest and charges, inflationary effects and future changes in house prices, for the products they are advising on

15.4 advising the home owner on the product options available from the product provider relevant to the home owner

15.5 advising the home owner of the requirement to obtain independent legal advice

15.6 suggesting that the home owner discuss the matter with their family

15.7 advising whether a no negative equity guarantee is given

15.8 advising whether a lifetime occupancy guarantee is given

15.9 advising whether further advances under any agreement are as of right

15.10 advising on the home maintenance requirements associated with the product

15.11 completing sales procedure documentation so that there is a record of good practice having been followed.

16 Each product provider must provide a written statement of the fees, commissions and other charges payable, as far as these can be determined based on the assumption of the known facts at the time the agreement is signed:

16.1 for providing advice and negotiating the agreement with the home owner

16.2 when the application is approved

16.3 over the lifetime of the agreement.

## **Advice from agents**

- 17 Product providers must ensure that agents who advise on, or sell, their products meet the requirements of this Code.
- 18 Each agent must, through their training and qualifications, be competent to provide advice on home equity release schemes. Each agent or other financial adviser must be subject to the rules and requirements of any approved regulatory body that may have affiliation to the services they provide.
- 19 Each agent must observe the same standards of good practice as product providers related to advice and the sale of home equity release schemes and described in paragraph 15 of this Part Two.
- 20 The agent must provide the home owner with a written statement setting out the fees, commissions or other payments the agent will receive, as far as these can be determined at the time the agreement is signed:
  - 20.1 for providing advice and negotiating the agreement with the home owner
  - 20.2 when the application is approved
  - 20.3 over the lifetime of the agreement.
- 21 Where an agent advises on home equity release schemes from more than one product provider, they must disclose to the home owner the fees and commissions for each of the products they advise on.
- 22 The agent must advise the home owner of any sole agency arrangement they have with a product provider.
- 23 The agent must advise the home owner of any actual or potential conflict of interest related to the service being provided by the agent, as soon as it arises.

## **Early information disclosure and access to a home equity release calculator**

- 24 A home owner requesting information about a home equity release scheme must be provided with a copy of this Code of Practice and with information:
  - 24.1 on the nature of the different types of home equity release schemes
  - 24.2 on the effects of compounding interest, for mortgage-based products that accumulate the interest and add it to the principal
  - 24.3 about where to access a standardised home equity release calculator – for example, from a product provider or from the Retirement Commissioner’s website.
- 25 The calculator must be able to show, for reverse mortgage products:
  - 25.1 the amount of any loan the intending borrower is considering, plus any fees payable
  - 25.2 the effect of compound interest on the amount of the loan
  - 25.3 the effect of potential changes in the value of the property on the borrower’s net equity
  - 25.4 the effect of living up to and beyond the normal life expectancy of a borrower on the amount of the loan to be repaid
  - 25.5 the borrower’s net equity at different intervals over the period of the loan, taking into account the effect of these variables.

## **Decision disclosure**

- 26 Before a home owner enters into an agreement for a home equity release scheme, the product provider must provide written disclosure, in plain English, of the matters listed in paragraphs 26, 27 and 28:
- 26.1 the name and contact details of the product provider
  - 26.2 the name and contact details of the agent (if any)
  - 26.3 the name and contact details of the home owner, and the legal description of the property
  - 26.4 a statement of the right of lifetime occupancy
  - 26.5 a statement of the no negative equity guarantee
  - 26.6 a statement about the need for independent legal advice.
- 27 Additional disclosure requirements for mortgage-based products –
- 27.1 an explanation of the nature of the security to be taken by the lender and the rights which this security gives the lender
  - 27.2 the amount of the loan
  - 27.3 information about the effect of the 15-day cooling-off period on the release of funds
  - 27.4 the interest rate to be applied and any interest rate options available for the loan, such as fixed, capped and variable rates
  - 27.5 a statement about the way the interest is calculated and, if it is compounded, at what intervals it is added to the loan
  - 27.6 a statement about how the interest rate of a variable interest loan will be determined in the future
  - 27.7 a table and a diagram showing the growth of accumulated or compounding interest and the amount of debt compared with the estimated future value of the property at 5-yearly intervals until the borrower reaches 100 years of age
  - 27.8 three scenarios for changes in property values based on clearly stated assumptions, and including a decrease, a nil increase, and an increase in property value
  - 27.9 any options for the borrower to make further borrowings against the property and the terms and conditions related to further borrowings
  - 27.10 a statement of the lender's terms and conditions for early repayment of the loan, and any additional interest or charges to be applied in the event of early repayment
  - 27.11 a statement as to whether the loan is transferable to another home property on the sale of the existing home property
  - 27.12 a statement of the borrower's position, in the event that the lender sells the loan to another lender
  - 27.13 a statement as to whether the borrower is permitted to arrange other borrowing from other lenders on the security of the home on which the home equity release mortgage is registered.
- 28 Disclosure must also include:
- 28.1 an itemised statement, in percentage or dollar terms, of the fees and charges that a home owner will incur in the process of making an application, as well as ongoing charges for management of the arrangements under the agreement
  - 28.2 a statement that the right of occupancy extends to each person nominated in the agreement

- 28.3 a statement of the rights of the product provider, including rights to remedy any breach or default
- 28.4 the conditions of the agreement related to the borrower's occupancy of the property, such as any limit on the time the borrower may leave the property vacant, or conditions on renting the property
- 28.5 a statement about the regular reports and notices the product provider will supply to the borrower over the life of the agreement, in line with the continuing disclosure requirements and the general requirements of the Credit Contracts and Consumer Finance Act 2003
- 28.6 a statement of the responsibilities of the borrower and the product provider for insurance, rates and the maintenance of the home, including any measure that the product provider may take if the borrower does not fulfil their obligations
- 28.7 a statement of the type and frequency of inspections of the property that the product provider will make
- 28.8 a statement of the process for dealing with complaints and disputes.

### **Independent valuation report**

- 29 The initial valuation report on the property must be that of a registered valuer that is independent of the lender.

### **Agreement not conditional on purchase of any other product**

- 30 No home equity release scheme may be offered on the condition that all or part of the money received by the borrower is to be used for the purchase of, or is committed to the purchase of, any other financial product being offered by the product provider or the agent. This would not preclude the use of a loan to pay off a mortgage or similar obligation to the lender or to fund an annuity.

### **Cooling-off period**

- 31 A minimum cooling-off period of 15 working days is to apply.
- 32 The cooling-off period is to apply from the date the agreement is signed by the home owner.

### **Right of lifetime occupancy and "no negative equity guarantee"**

- 33 Each home equity release agreement must include the right of lifetime occupancy. This means that the borrower and any person claiming through the home owner or borrower has the right to remain in the property, or any subsequent home to which the agreement is transferred with the consent of the product provider, until:
  - 33.1 the death of the last surviving person named for this purpose in the agreement; or
  - 33.2 the last surviving person named in the agreement leaves the home permanently.
- 34 The home owner must have the right of lifetime occupancy regardless of the amount of the loan, the accumulated interest and the value of the borrower's house.
- 35 The no negative equity guarantee must also provide that, when the lender seeks repayment, the loan and the accumulated interest charges must not exceed the net realisable sale price for the home where the home is sold at its market price. In respect of retirement villages this means the net proceeds due to the borrower after the sale or disposal of the unit after discharging all financial obligations arising from the purchase and occupancy of the unit. In any case where, on sale of the home, the amounts owed under the loan exceed the net realisable sale price for the home, recovery of the outstanding balance cannot be sought against any other income or assets of a borrower, the estate of a borrower, or from the beneficiaries of the borrower.

36 This right of lifetime occupancy and the no negative equity guarantee must not be voided by any breach, other than material non-compliance by the borrower, or fraud or misrepresentation of their situation by the home owner as it relates to the terms or conditions of the home equity release scheme.

### **Independent legal advice**

37 No product provider may enter into an agreement with a home owner for a home equity release scheme unless the provider has received a certificate signed by a lawyer retained by the borrower, independently of the product provider, stating that:

37.1 the lawyer has taken reasonable steps to identify the home owner

37.2 the home owner has received independent legal advice

37.3 the nature of the home owner's obligations, set out in the agreement, has been fully explained to the borrower

37.4 the lawyer has no reason to suspect that the home owner is mentally incapable of understanding the terms of the agreement and the obligations associated with it

37.5 the terms of the agreement provide for the home owner and any person nominated in the agreement to remain in the home until the death or permanent departure from the home of the last surviving person

37.6 the lawyer witnessed the home owner's signature to the agreement.

38 The certificate signed by the lawyer must also confirm, for home equity release loans, that the terms of the loan state that, on repayment, the maximum amount payable by the borrower or the borrower's estate is limited to the net realisable sale price of the property.

39 No product provider may retain a lawyer to act for them in relation to an agreement for a home equity release scheme when the lawyer has given a certificate in relation to the borrower.

### **Maintenance standards**

40 Any maintenance standards set in the agreement must be reasonable and appropriate to the age, style and location of the home. Where the agreement provides for reviews of maintenance work undertaken, the product provider will allow a reasonable period of time for the home owner to complete any required maintenance work.

### **Reports and notices to home owners**

41 Product providers must supply home owners with statements of the financial position under the agreement, as required by the Credit Contracts and Consumer Finance Act 2003.

42 The statements to the home owner about the financial position must include, for home equity release loans:

42.1 the interest accumulated on the loan since the previous statement

42.2 the balance of the loan, including accumulated interest at the end of the reporting period

42.3 details of any approved line of credit, or future draw-downs, variations in interest or similar options available to the borrower.

43 In addition, reports and notices must:

43.1 show any adjustments that have been made to ensure rates and insurance or other compliance requirements are met

43.2 give notice of any valuations, inspections or other measures to be undertaken by the product provider or the purchaser in the period until the next notice.

- 44 Product providers must give reasonable notice to the home owner before an inspection for home maintenance takes place.

### **Breaches of terms and conditions**

- 45 Each agreement must set out the situations that constitute a default or breach of the agreement, as well as any additional charges or other consequences of a default or breach.
- 46 Any remedy or additional charge arising from a breach of the agreement must be appropriate to the nature and extent of the breach, in form and in application.
- 47 Any action in respect of a breach, other than misrepresentation on the original application, must be conducted in accordance with the following processes:
- 47.1 the product provider must notify the home owner in writing of the nature of the breach, the remedy sought by the provider, and the consequences of the breach if it is not remedied
  - 47.2 the notice must set out that, unless the soundness of the property would be materially affected in the interim period, the home owner has three months to remedy the breach before any remedial action is taken by the provider
  - 47.3 the notice must set out that the home owner has the right to use the nominated complaints and disputes resolution process, if the home owner disputes that the breach has occurred, or disputes the additional charges or other consequences arising from it
  - 47.4 the notice must set out how the home owner can access the complaints and disputes procedure, as well as any time limits for doing so.

### **Complaints and dispute resolution**

- 48 All product providers and their agents must have a process for receiving and investigating complaints by home owners about any product and the service received.
- 49 All providers and their agents must have access to an independent disputes resolution process. Any complaints that cannot be resolved between the home owner and the provider or agent must be referred to the disputes resolution body.
- 50 The complaints and disputes resolution processes must be available to home owners at no charge except where it is determined through the disputes resolution process that the complaint is mischievous or vexatious.
- 51 The complaints and disputes resolution processes must comply with the principles of natural justice.
- 52 The disputes resolution body must, if it finds in favour of the complainant, give such relief to the complainant as it considers appropriate in the circumstances.
- 53 Both parties are bound to abide by the decisions of the disputes resolution body, subject to statutorily available review or appeal processes.

## **PART THREE**

### **HOME EQUITY RELEASE SCHEMES INVOLVING THE SALE OF THE HOME OR A SHARE IN THE EQUITY**

54 Where the product involves the sale of the home or a share in the equity, the home owner receives cash payments of the purchase price over a deferred settlement period and may share equally with the purchaser in any growth in the capital value. After receiving the balance of the purchase price as a lump sum payment on final settlement date, the home owner must have the right of lifetime occupancy as a tenant or the choice to remain in the home as a paying tenant indefinitely. In order to protect their right of occupancy as a tenant, the home owner may be required to set aside funds to cover the payment of rental costs during the expected period of the tenancy.

#### **Advertising**

55 The advertising of home equity release schemes must conform to the Advertising Code of Ethics and the Code for Financial Advertising.

#### **Advice from product providers**

56 Each product provider must observe good practice described below when they advise on home equity release schemes. They must ensure that good practice standards are observed by their staff and agents who advise and negotiate with home owners.

57 For the purposes of this clause, good practice includes but is not limited to:

57.1 ensuring that the home owner has canvassed the available alternatives for meeting the financial aims for which home equity release is being considered

57.2 matching products to the specific needs of the home owner

57.3 demonstrating the effects of different levels of borrowing, different rates of interest and charges, inflationary effects and future changes in house prices, for the products they are advising on

57.4 advising the home owner on the product options available from the product provider

57.5 advising the home owner of the requirement to obtain independent legal advice

57.6 suggesting that the home owner discuss the matter with their family

57.7 advising whether a lifetime occupancy guarantee is given, and whether further advances under any agreement are guaranteed

57.8 advising on the home maintenance requirements associated with the product

57.9 completing sales procedure documentation so that there is a record of good practice having been followed.

58 Each product provider must provide a written statement of the fees, commissions and other charges payable, as far as these can be determined at the time the agreement is signed:

58.1 for providing advice and negotiating the agreement with the home owner

58.2 when the application is approved

58.3 over the lifetime of the agreement.

## **Advice from agents**

- 59 Product providers must ensure that agents who advise on, or sell, their products meet the requirements of this Code.
- 60 Each agent must, through their training and qualifications, be competent to provide advice on home equity release schemes. Each agent or other financial adviser must be subject to the rules and requirements of an approved regulatory body when the empowering legislation takes effect.
- 61 Each agent must observe the same standards of good practice as product providers, related to advice and sale of home equity release schemes as described in paragraph 57 of this Part Three.
- 62 The agent must provide the home owner with a written statement setting out the fees, commissions or other payments the agent will receive, as far as these can be determined, based on the assumption of known facts at the time the agreement is signed:
- 62.1 for providing advice and negotiating the agreement with the home owner
  - 62.2 when the application is approved
  - 62.3 over the lifetime of the agreement.
- 63 Where an agent advises on products from more than one product provider, they must disclose to the home owner the fees and commissions for each of the products they advise on.
- 64 The agent must advise the home owner of any sole agency arrangement they have with a product provider.
- 65 The agent must advise the home owner of any actual or potential conflict of interest related to the service being provided by the agent, as soon as it arises.

## **Early information disclosure and access to a home equity release calculator**

- 66 A home owner requesting information about a home equity release scheme must be provided with a copy of this Code of Practice and with information:
- 66.1 on the nature of the different types of home equity release schemes
  - 66.2 on the effect for the home owner of selling their home or a share in the equity in their property
  - 66.3 about where to access a standardised home equity release calculator, for example, from a product provider or from the Retirement Commissioner's website.
- 67 The calculator must be able to show, for products involving the sale of the property or a share in the equity, the changing value of the property and the home owner's net equity at different intervals until final settlement, and the likely rental costs to the home owner, should they decide to take up a tenancy final settlement.
- 68 The calculator should enable the following variables to be applied:
- 68.1 estimates of the value of the home at the time of the deferred settlement
  - 68.2 estimates of the home owner's share of any capital gain over the period from signing the agreement until final settlement
  - 68.3 payments made by the purchaser over the deferred settlement period, and the amount of the final settlement
  - 68.4 estimates of rental costs for the property after the final settlement date and over the lifetime of the home owner.

## Decision disclosure

- 69 Before a home owner enters into an agreement for a home equity release scheme, the product provider must provide written disclosure, in plain English, on matters listed in paragraphs 69, 70 and 71:
- 69.1 the name and contact details of the product provider
  - 69.2 the name and contact details of the agent (if any)
  - 69.3 the name and contact details of the home owner, and the legal description of the property
  - 69.4 a statement of the right of lifetime occupancy
  - 69.5 a statement about the need for independent legal advice.
- 70 Where a product involves the sale of the property or a share of the equity of the property, the product provider must also provide written disclosure, of the following:
- 70.1 the name and contact details of the purchaser (if the purchaser is not the product provider)
  - 70.2 the final settlement date
  - 70.3 the amount of each of the payments the home owner will receive from the purchaser upon signing the agreement and until the final settlement
  - 70.4 the intervals at which any payments will be made by the purchaser to the home owner
  - 70.5 any options that the home owner may have to receive increased or more frequent payments until final settlement
  - 70.6 the amount, if any, that the home owner is to set aside at final settlement date to cover the rental costs of remaining in the property, should they decide to take up a tenancy at final settlement
  - 70.7 a statement about the arrangement the home owner will make with regard to any funds to be set aside for rental costs, in order to protect their right to lifetime occupancy as a tenant
  - 70.8 a statement of the ongoing role of the product provider in relation to the home owner and the purchaser, including:
    - 70.8.1 furnishing reports to the home owner described in paragraphs 84 to 87
    - 70.8.2 providing access to a complaints and dispute resolution process.
  - 70.9 a statement of the consequences of the purchaser defaulting on any payment, or making a late payment
  - 70.10a statement of the fees and charges that the purchaser will pay to the product provider for setting up the agreement, and for managing the arrangement until final settlement date
  - 70.11a statement about the process and timeframes for the home owner to signal their intention to take up the option of remaining in the property as a tenant
  - 70.12a statement of the home owner's rights as a tenant under the Residential Tenancies Act 1986, once the property has transferred to the purchaser and the homeowner has taken up the option to remain in the property as a tenant.

71 Disclosure must also include:

- 71.1 three scenarios for changes in property values based on clearly stated assumptions, and including a decrease, a nil increase and an increase in property value
- 71.2 an itemised statement, in percentage or dollar terms, of the fees and charges that a home owner will incur in the process of making an application, and ongoing charges for management of the arrangements under the agreement
- 71.3 a statement that the right of occupancy extends to each person claiming through the home owner or borrower
- 71.4 a statement of the rights of the product provider and the purchaser, including rights to remedy any breach or default
- 71.5 the conditions in the agreement related to the home owner's occupancy of the property, such as any limit on the time the home owner may leave the property vacant, or conditions on renting the property, or on having other people living at the property with them
- 71.6 a statement about the regular reports and notices the product provider will supply to the home owner over the life of the agreement for sale and purchase of the property and any subsequent tenancy agreement
- 71.7 a statement of the responsibilities of the home owner, the purchaser and the product provider for insurance, rates and the maintenance of the home during the period before final settlement, including any measure that any of the parties to the agreement may take if any other party does not fulfil their obligations
- 71.8 a statement of the type and frequency of inspections of the property that the product provider or purchaser will make
- 71.9 a statement of the process for dealing with complaints and disputes.

#### **Independent valuation report**

72 The initial valuation report on the property must be that of a registered valuer retained by the home owner independently of the product provider.

#### **Agreement not conditional on purchase of any other product**

73 No home equity release scheme may be offered on the condition that all or part of the money received by the home owner is to be used for the purchase of, or is committed to the purchase of, any other financial product being offered by the product provider or the agent.

#### **Cooling-off period**

74 A minimum cooling-off period of 15 working days is to apply.

75 The cooling-off period is to apply from the date the agreement is signed by the home owner.

#### **Right of lifetime occupancy and "no negative equity guarantee"**

76 Each home equity release agreement of this type must provide that the home owner and any person claiming through the home owner or borrower shall have the right of lifetime occupancy. This will be subject to the payment of a market rent, even though ownership of the property transfers to the purchaser on the agreed settlement date, and the home owner becomes a tenant in the property after that date. The right of lifetime occupancy is not negated by the exhaustion of funds set aside by the former home owners, now tenant's, to meet rental obligations unless:

76.1 the home owner, tenant, after settlement date fails to set aside the rental funds provided for in the sale and purchase agreement, disclosure document and budgets provided to the home owner and their solicitor at the commencement of the arrangement

76.2 the tenant(s) vacate the property permanently.

77 This right of lifetime occupancy must not be voided by any breach other than material non-compliance by the home owner, or fraud or misrepresentation of their situation by the home owner as it relates to the terms or conditions of the home equity release scheme.

78 Non-payment of rates and insurance on the security property should not, of itself, constitute a sufficiently serious breach of the terms and conditions of the sale and purchase agreement to require the early termination of the agreement, except where the cumulative cost to the product provider or purchaser of remedying the home owner's non-payments would significantly affect the product provider's or purchaser's margin of security in the property, and the process for addressing breaches has failed to resolve the matter. Nor must non-payment of rates or insurance by a purchaser result in removal of the lifetime occupancy right for the homeowner.

79 The right of lifetime occupancy must not be voided by the sale or transfer of ownership of the property by the purchaser to another purchaser.

### **Independent legal advice**

80 No product provider may enter into an agreement with a home owner for a home equity release scheme unless the provider has received a certificate signed by a lawyer retained independently by the home owner stating that:

80.1 the lawyer has taken reasonable steps to identify the home owner

80.2 the home owner has received independent legal advice

80.3 the nature of the home owner's obligations, set out in the agreement, has been fully explained to them

80.4 the lawyer has no reason to suspect that the home owner is mentally incapable of understanding the terms of the agreement and the obligations associated with it

80.5 the terms of the agreement provide for the home owner and any person nominated in the agreement to remain in the home until the death or permanent departure from the home of the last surviving person

80.6 the lawyer witnessed the home owner's signature to the agreement.

81 No product provider may retain a lawyer to act for them in relation to an agreement for a home equity release scheme when the lawyer has given a certificate in relation to the home owner.

### **Maintenance standards**

82 Any maintenance standards set in the agreement must be reasonable and appropriate to the age, style and location of the home. Where the agreement provides for reviews of maintenance, the product provider as purchaser and any subsequent purchasers will allow a reasonable period of time for the home owner to complete any required maintenance work.

83 The home owner will allow a reasonable time to the purchaser to complete any required maintenance. Once the purchaser becomes responsible for maintenance, the purchaser will maintain the property to a reasonable and appropriate standard to protect the interests of the home owner.

### **Reports and notices to home owners**

- 84 Product providers must supply home owners with statements of the financial position under the agreement, as required by the Credit Contracts and Consumer Finance Act 2003.
- 85 The statements to the home owner about the financial position must include, for products involving the sale of the property or a share of the equity in the property:
- 85.1 details of any payments to the home owner made in the period
  - 85.2 details of any payments scheduled for the next period
  - 85.3 a summary of payments to date.
  - 85.4 any change to the valuation during the period, or review of the valuation scheduled for the coming period.
- 86 In addition, reports and notices must:
- 86.1 show any adjustments that have been made to ensure rates and insurance or other compliance requirements are met
  - 86.2 give notice of any valuations, inspections or other measures to be undertaken by the product provider or the purchaser in the period until the next notice.
- 87 Product providers must give reasonable notice to the home owner before an inspection for home maintenance takes place.

### **Breaches of terms and conditions**

- 88 Each agreement must set out the situations that constitute a default or breach of the agreement, as well as any additional charges or other consequences of a default or breach.
- 89 Any remedy or additional charge arising from a breach of the agreement must be appropriate to the nature and extent of the breach, in form and in application.
- 90 Any action in respect of a breach, other than misrepresentation on the original application, must be conducted in accordance with the following processes:
- 90.1 the product provider must notify the home owner in writing of the nature of the breach, the remedy sought by the provider, and the consequences of the breach if it is not remedied
  - 90.2 the notice must set out that, unless the soundness of the property would be materially affected in the interim period, the home owner has three months to remedy the breach before any remedial action is taken by the provider
  - 90.3 the notice must set out that the home owner has the right to use the nominated complaints and disputes resolution process, if the home owner disputes that the breach has occurred, or disputes the additional charges or other consequences arising from it
  - 90.4 the notice must set out how the home owner can access the complaints and disputes procedure, as well as any time limits for doing so.

## **Complaints and dispute resolution**

- 91 All product providers and their agents must have a process for receiving and investigating complaints by home owners against the product and the service received.
- 92 Once the purchaser takes ownership of the property, the home owner now tenant and the purchaser now landlord, shall have the same rights and obligations as set out in residential tenancies legislation in force in New Zealand. If any breach or dispute cannot be resolved through that means, a party or the parties may utilise the complaints and disputes resolution process established by the product provider.
- 93 All providers and their agents must have access to an independent disputes resolution process. Any complaints that cannot be resolved between the home owner and the provider or agent must be referred to the relevant disputes resolution body.
- 94 The complaints and disputes resolution processes must be available to home owners at no charge.
- 95 The complaints and disputes resolution processes must comply with the principles of natural justice.
- 96 The relevant disputes resolution body must, if it finds in favour of the complainant, give such relief to the complainant as it considers appropriate in the circumstances.
- 97 Both parties are bound to abide by the decisions of the disputes resolution body, subject to statutory review or appeal processes.

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