

Please release me

Equity release is becoming increasingly popular. **Ross Milnes** introduces the key issues

IN THIS ARTICLE I am introducing the concept of equity release. I will look at other issues affecting practitioners and their clients in subsequent articles. As equity release is a relatively niche market for legal practitioners, an overview should assist those with no experience of it – indeed, there is a view that this is a market which should only be dealt with by specialist practitioners.

Equity release is currently a very buoyant market place, with a growing ageing population seeking to increase their income by unlocking some or all of their capital in property. Equity release is typically aimed at those over the age of 55.

With the current ‘credit crunch’, it is predicted that more mainstream lenders will begin to look at equity release products. However, for lenders, equity release is a minefield of appropriate regulations which have been designed to protect the vulnerable section of society which enters into these schemes.

Welcome regulation

A welcome addition to the equity release market was the regulation of home reversion plans by the Financial Services Authority (FSA). This change came into force on 6 April 2007 and brought home reversion plans into the regulatory sphere in line with lifetime mortgages, which were already regulated by the FSA. Home reversion plans involve a borrower selling part or all of their home to a plan provider.

Regulation has the effect of increasing protection for consumers and ensuring the consumer receives good-quality advice from their financial adviser or intermediary, taking into account their circumstances and needs. Regulation is intended to prevent rogue plan providers offering services to the elderly, as they will need to be registered with the FSA to offer home reversion products. However, the marketing of sale and leasebacks appear to have increased since the regulations came into force, and some organisations may be seeking to bypass the regulations. Those acting on behalf of elderly clients undertaking a non-regulated sale and leaseback will need to be vigilant when advising their clients: the risk to the client is greatly increased because it is likely they will not be afforded the protections they would receive if proceeding with a regulated product.

Most mainstream product providers adopt the Safe Home Income Plans (SHIP) code of practice, including some providers that are not members of SHIP. The legal adviser acting for clients undertaking a SHIP member’s plan will need to provide a certificate on completion, which confirms that the solicitor has advised the client on the scheme. There is an additional safeguard, in that the client seeking to undertake a lifetime mortgage, home income plan or home reversion plan must receive comprehensive independent legal advice and the legal practitioner will be bound by the certificate that they give prior to completion of the transaction.

transaction will have risks as well as benefits. Advice must be comprehensive and understandable, and clients should not be advised to proceed until the legal adviser is certain that the client understands both the risks and benefits, together with their ongoing obligations. Alarm bells should ring about possible negligence issues that can arise when acting for equity release clients and as such it is advisable that you adopt an internal risk management process to counter them.

You should never comment on the appropriateness of the scheme to a client’s financial circumstances as legal practitioners should never give financial advice.

Property: take care before unlocking the equity

I know that this is obvious, but in the field of equity release, clients may raise financial concerns and queries, and they should be immediately referred to their financial adviser.

A good starting point when acting for a client on equity release is establishing that they have the requisite mental capacity and there are no elements of undue influence or fraud.

As the plan they undertake is likely to reduce their estate upon death, it is advisable that a client discusses the matter with their beneficiaries. Equity release can be a very sensitive subject for families and if clients choose not to tell their beneficiaries, it can be a shock when it comes to light. Indeed, good practice is to advise the client to make their beneficiaries aware of the move.

There may be tax or state benefit implications, about which the client must be informed and provided with or referred to the appropriate advice.

There are other elements to consider when advising clients on equity release plans. You should be aware of the regulations governing the schemes and the obligations placed on you when providing advice to this vulnerable section of society. I will look at some of these in further detail in later articles.



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Thus there are significant specialist factors to consider when acting for clients on equity release transactions. It is not the same as providing advice on a re-mortgage and so a number of law firms have specialist departments that deal solely with equity release.

Risky business

When acting for clients on equity release, you must remember that you are acting for a vulnerable section of society and that the

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