

## EQUITY RELEASE COUNCIL

### SOLICITOR'S CERTIFICATE: LIFETIME MORTGAGES (SCOTLAND)

(This must be completed only by a Solicitor, Licensed Conveyancer, Barrister or Chartered Legal Executive in Private Practice who holds a current Practising Certificate, Licence or equivalent and has the benefit of Professional Indemnity Insurance in place which meets the minimum requirements of their respective Regulator.)

Type of Contract: ("the Loan")

Name of Lender:

Name of Borrower[s]:

Property Address:

Mortgage Account Number:

Limit/Amount of Loan:

#### 1. Certification

I [name of advising solicitor] hereby certify that **the Borrower has not received face-to-face legal advice in person** in order to comply with the current requirement by HM Government to stay at home due to COVID-19 (Coronavirus). For the avoidance of doubt, "face-to-face" means a physical meeting and does not include Skype, FaceTime or other video call.

Legal advice has been conducted by the following methods (tick all that apply):

- a. Provided by telephone contact
- b. Provided by video conferencing
- c. Provided by postal contact

I remain responsible for the legal advice given and compliance with the Equity Release Council requirements, other than conducting a physical face-to-face meeting with the Borrower.

I confirm that whichever method I have used to give legal advice, where there is more than one Borrower I have also spoken to each one on the telephone and verified that they are in agreement.

I confirm that the Borrower's signature to the Mortgage Deed has been witnessed by an independent adult who is, to the best of my knowledge, based on reasonable enquiry of the Borrower(s) not a named beneficiary of the Borrower and who is not intended to benefit financially from the Loan.

I confirm that I have carried out all four Mandatory Contact Points as defined in the Guidance Notes attached to this Certificate and I am satisfied with the outcome of each one.

#### 2. Confirmation of advice

I further confirm that I have explained the terms and implications of the above Loan to the Borrower and in particular I have drawn [his/her/their] attention to the following:

1. [He/She/They] might wish to discuss the matter with [his/her/their] heirs/beneficiaries because repayment of the Loan will reduce the Estate proceeds on [his/her/their] death[s].

2. The amount of State or other benefits to which [he/she/they] may be entitled, either now or in the future may be reduced as a result of proceeding with this Loan.

3. The obligations, including those for ongoing insurance and maintenance of the property, placed on [him/her/them] by the Loan.
4. The circumstances in which the Loan becomes repayable.
5. The (E&W and NI) legal charge/(Scotland) standard security provides [him/her/them] with security of tenure for the duration of his/her/their loan provided that she complies with the covenants.
6. [He/She/They] [has/have] agreed to proceed with the above Loan as being suitable to [his/her/their] requirements, based on advice provided by [*name of financial adviser*].

Having considered the above, and on the basis of advice given by, the Borrower wishes to enter this Loan.

### **3. Confirmation of independence of Solicitor**

I confirm that I am acting independently of [*name of financial adviser*] and [*name of lender*], and that I have acted and advised in the best interests of the Borrower and complied with all relevant obligations within either:

- the Solicitors Code of Conduct 2011 (as amended); or
- the Handbook published by the Council for Licensed Conveyancers
- the Solicitors (Scotland) Standards of Conduct, which are contained in Rule B1 of the Law Society of Scotland's Practice Rules (which came into effect on 1 November 2011)

and in all cases the Rules and Guidance issued by the Equity Release Council and guidance notes which accompany this Certificate, other than the requirement to have a face-to-face meeting with the Borrower.

### **4. Confirmation of Identity**

I also confirm that I am satisfied, insofar as it is reasonably possible without having conducted a physical face-to-face meeting with the Borrower, that appropriate steps have been taken to verify in accordance with the said rule 8.3 the identity and signature of the Borrower, and the Borrower has/have sufficient mental capacity and is/are not under any duress or undue influence to enter into the Loan.

Advising Solicitor's Name:

Advising Solicitor's Signature:

Advising Solicitor's Firm and Address:

Advising Solicitors Reference:

Date:

### **5. Confirmation of receipt of advice by the Borrower**

I confirm that I have been given the advice set out in clause 2 above. I agree to proceed in the absence of a face-to-face meeting with my solicitor in order to proceed with my Loan immediately during HM Government's restrictions on movement. I understand that the opportunity to meet my solicitor face-to-face affords me additional protection but I do not wish to wait until the restrictions on movement are lifted. I therefore give my unequivocal authority to my solicitor to proceed with my Loan without having received face-to-face legal advice.

Borrower's Name

Borrower's Signature

Date

Borrower's Name

Borrower's Signature

Date

[name and address of firm of solicitors]

## Guidance notes for Solicitors on completing the Solicitor's Certificate

### **MANDATORY STAY AT HOME SOLICITORS PROCESS ("SAH")**

***This process can ONLY be used whilst HM Government has directed the public to stay at home in response to Covid-19. The ERC has issued notification on 27th March 2020 that remote legal advice can be used until further directive from HM Government and notice from the ERC. Procedural Notes***

1. **"MANDATORY CONTACT POINT 1"** Initial onboarding call with the Borrower(s) but, in the event of SAH being invoked, to explain that a face-to-face meeting with a solicitor will not be possible.

Key features of the call must be:

- a. Explanation of the benefits of usual r.8 face-to-face process and the risks of proceeding with SAH process.
- b. Explanation of requirement for independent witness ("IW") to physically witness the mortgage deed. Obtain details for the witness and explain the need for ID for that person. Explain ongoing Government requirement for social distancing when arranging witness to attend.
- c. Obtain specific authority from Borrower(s) to proceed on SAH basis.

2. **"MANDATORY CONTACT POINT 2"**

The purpose of the call is to ensure that the ID provided by the Borrower(s) and IW are physical matches, therefore contact by video call is preferred. If this is not possible then the Solicitor must satisfy themselves, as far as reasonably practicable, that they have spoken to the relevant individuals based on the information provided. This may involve seeking further documentary evidence, use of technology etc.

3. **"MANDATORY CONTACT POINT 3"**

The purpose of the contact is to ensure that the Borrower(s) is/are given legal advice regarding the Loan. They should be asked to confirm that there is nobody else present in the room. The solicitor should take all reasonable steps to satisfy themselves that they are dealing with the Borrower(s) and that the Borrower(s) understand the obligations attaching to the Loan.

If the Borrower(s) wish to proceed, and the Solicitor is satisfied, the Solicitor should guide the Borrower(s) through the signing of all documents except the mortgage deed.

Once all documents signed, except the mortgage deed, the Borrower(s) must make arrangements with IW to sign the mortgage deed, observing social distancing requirements mandated by HM Government. The Borrower must then make arrangements to return the documents to their solicitor.

4. **"MANDATORY CONTACT POINT 4"**

Final "health" check call with the Borrower(s) to ensure that he/she/they is/are:

- (a) alive;
- (b) wish to proceed;
- (c) final declarations re: sound mind, able and wish to enter into contract understanding that it is to last for remainder of lifetime (or permanent vacation of the Property Address);
- (d) entering into the contract of their own free will and not being forced by anyone to do this

### **The Solicitor's Certificate**

You will receive copies of all the literature provided to the Borrower(s) in relation to this transaction. You are required to explain the terms and implications of the plan to the Borrower(s) and, having done so, sign the Certificate. The provider will not complete the transaction until they have received a Certificate which has been signed and completed by both you and the Borrower(s), whereby you confirm that you have drawn the Borrower(s)' attention to the risks of entering into the Loan and the Borrower(s) confirms that he/she/they has/have been given the advice set out in the Certificate.

### **Guidance on Independence**

Borrowers must use a legal adviser who is independent of the provider's solicitor. If you are advising a Borrower in relation to an equity release transaction, the Equity Release Council requires you to consider whether you are independent of the provider firm or the adviser advising the Borrower on the transaction, by following EITHER –

- the Solicitor's Code of Conduct 2011 (as amended) (for transactions which take place in England or Wales); or
- the Handbook published by the Council for Licensed Conveyancers; or
- the Solicitors (Scotland) Standards of Conduct, which are contained in Rule B1 of the Law Society of Scotland's Practice Rules 2011, which came into force on 1 November 2011, for transactions which take place within Scotland; or
- any practice rules or guidance issued by the Law Society of Northern Ireland; AND, in all cases
- these guidance notes on the Equity Release Council's Rules & Guidance

### **Payment of Fees**

Whilst you may make payments to an introducer for genuine marketing initiatives, such payments are subject to this guidance. You may not make such a payment, or give other consideration, to a third party who refers Borrowers to you, unless you can show that the payment is wholly unconnected with the referral of any specific Borrower to you. You are therefore not permitted to pay referral fees on a case-by-case basis. Additionally, payments may not be calculated or aggregated on the basis of the number of cases referred.

This also applies regardless of how any referral fee payment (or other consideration) is described if it is connected with the payment of fees on a case-by-case-basis. For example, this would apply to the payment of administrative or marketing fees, payments described as "disbursements" which are not proper disbursements, and panel membership fees. "Other consideration" might include, for example, the provision of services and secondment of staff to the introducer, or an agreement to purchase services or products from the introducer (where such provision or purchase is a condition of referrals on a case-by-case basis being made). For the avoidance of doubt, certain marketing payments which are not connected with payment on a case-by-case basis are permitted, subject to the regulatory obligations of the parties concerned.

If the Borrower chooses not to instruct their own legal adviser, the adviser or provider (as appropriate) may offer the name of at least one local law firm which has knowledge of Loans. The adviser or provider must ensure that no pressure or financial inducement is involved in directing Borrowers to any particular law firm either by them or the intermediaries recommending their products.

### **Receipt of Payments**

If you are acting on behalf of the Borrower you may not receive payments or other consideration from the adviser or provider if that payment is dependent on the completion of a Loan.