Australian Securities and Investments Commission

National Consumer Credit Protection Act 2009 – Paragraph 163(1)(b) – Revocation and Exemption

National Credit Code – Subsection 203A(1) – Revocation and Exemption

Enabling Power

1. The Australian Securities and Investments Commission (***ASIC***) makes this instrument under:

   (a) paragraph 163(1)(b) of the *National Consumer Credit Protection Act 2009* (the ***Act***); and

   (b) subsection 203A(1) of the National Credit Code (the ***Code***).

   Note: The Code is Schedule 1 to the Act.

Title

2. This instrument is ASIC Instrument 23-0027.

Commencement

3. This instrument commences on the day it is signed.

Revocation

4. This instrument revokes Instrument 22-1033.

Exemptions

5. ASIC exempts an equity finance contract provided by Midkey LOR Pty Ltd (ACN 658 316 502) (***Midkey LOR***) from:

   (a) subsection 23(1) of the Code to the extent the contract provides for a credit fee or charge covered by subregulation 79A(1) of the National Consumer Credit Protection Regulations 2010 that is a credit fee or charge (the ***deferred payments variable fee***) that is:
      (A) to be paid on or in relation to the termination of the contract; and
      (B) calculated by reference to a percentage of any increase, over the term of the contract, in the market value of the residential property that secures obligations under the contract.

   (b) section 133DB of the Act;

   (c) section 133DC of the Act;

(d) section 133DD of the Act;

(e) section 18B of the Code; and

(f) regulation 28LC of the National Consumer Credit Protection Regulations 2010.

Where exemptions apply

6. The exemption in subparagraph 4(a) applies for so long as Midkey LOR, as the credit provider under the equity finance contract:

   (a) ensures that the terms of the contract that specify the method of calculation of the deferred payments variable fee cannot be varied during the term of the contract; and

   (b) prominently discloses the following matters in the precontractual statement and the contract documents:

      (i) the basis on which the deferred payments variable fee is calculated;

      (ii) a warning that the deferred payments variable fee may constitute a significant lump sum amount in the event of a significant increase in the value of the residential property or if the contract remains in force for a lengthy period of time; and

      (iii) worked dollar examples of how the deferred payments variable fee is calculated, including the effect on the amount of the payment of variations to the time of termination of the contract and changes to the value of the residential property.

7. The exemption in subparagraphs 4(b) to 4(f) applies where Midkey LOR, Allied or a person who provides a credit service, has, before a preliminary assessment for the purposes of paragraph 115(1)(c) or (2)(a), or an assessment for the purposes of paragraph 128(c), is made, in connection with the equity finance contract:

   (a) shown the consumer in person, or given by mail, email or another form of written or electronic communication agreed to by the consumer, projections that:

(i) relate to the value of the dwelling or land that may become reverse mortgaged property, and the consumer's indebtedness, over time if the consumer were to enter into the contract; and

(ii) are made substantially in accordance with Schedule A of this instrument; and

(c) given to the consumer in person, by mail, email or another form of written or electronic communication agreed to by the consumer, an information statement substantially in the format set out in Schedule C of this instrument.

8. The exemptions in subparagraphs 4(b) to 4(f) apply where Midkey LOR, Allied or a person who provides a credit service has made the information statement referred to in paragraph 7(c) available:

   (c) on any website used by Midkey LOR, Allied or a person who provides a credit service that provides information about the contracts; and

   (d) if requested by a consumer and the consumer provides their name and contact details.

Conditions

9. If an exemption in paragraph 4 is relied on, the entity that relies on the exemption must:

   (e) if an interest rate used in the projections given to a consumer under paragraph 6 (a) are increased – give to the consumer, or ensure the consumer has been given, an updated copy of the projections substantially in the format set out in Schedule A of this instrument; and

   (f) make, or ensure that there is, available a calculator that will provide projections that relate to the value of the reverse mortgaged property, and the consumer's indebtedness, over time if the consumer were to enter into the contract, substantially in accordance with Schedule A.

10. Midkey LOR must include in each statement of account given under section 33 of the Code the amount of interest that has accrued but not been debited to the account at the date of the statement of account and that would become payable if the contract were terminated.

11. If Allied or a person who acts provides a credit service relies on an exemption in paragraph 4, Allied or the person who provides a credit service must not provide a credit service in relation to the equity finance contract unless:

(g) the contract includes a provision (a ***tenancy protection provision***) for a person other than the debtor to have a right against the credit provider to occupy the reverse mortgaged property; or

(h) if the contract does not include a tenancy protection provision, Allied, Midkey LOR or a person who provides a credit service has given to the debtor in writing a statement substantially in the format set out in Schedule B of this instrument.

Interpretation

12. In this instrument:

equity finance contract means a credit contract under which any of the amount of credit is secured over residential property and which contains each of the following terms:

(a) the debtor is not required to make periodic repayments under the contract;

(b) the credit provider is entitled to charge, and the debtor is obliged to pay, simple interest on the credit provided under the contract, on or in relation to the termination of the contract;

(c) the credit provider is not entitled to debit interest charges to the debtor under the contract prior to termination of the contract, except where an early partial repayment is made, and accrued interest charges do not form part of the unpaid principal balance that attracts interest under the contract;

(d) the credit provider may be entitled to charge, and the debtor may be required to pay, a deferred payments variable fee, on or in relation to the termination of the contract;

(e) no deferred payments variable fee is payable on or in relation to the termination of the contract where the property value has decreased in value from origination of the contract;

(f) the method of calculating the deferred payments variable fee is the same at the expiry of the term of the contract and on termination of the contract at a date earlier than the expiry of the term of the contract; and

(g) if the credit contract is secured by:

(ii) a first mortgage, the maximum loan to value ratio of the credit contract at origination is 35%; or

(iii) a second mortgage, the maximum loan to valuation ratio of the credit contract at origination is 30%.

deferred payments variable fee means a fee that is calculated by reference to a percentage of any increase, over the term of the contract, in the market value of the residential property that secures obligations under the contract.

interest means simple interest.

loan to value ratio means:

$$\frac{A \times 100}{B}$$

where:

A is the amount of credit owed under the credit contract for the reverse mortgage (including any interest that would be payable if the contract were to end at that time)

B is the value of the reverse mortgaged property.

reverse mortgage has the meaning given by section 13A of the Code.

Dated this 17 January 2023

Signed by Sean Gilmour

as a delegate of the Australian Securities and Investments Commission

Schedule A

This projection is a requirement under ASIC instrument 23-0027

PROJECTIONS

These projections are for the Deferred Payments Loan (which is a form of reverse mortgage)

Your baseline projection

This is how your home equity may change over time (based on your assumptions of 3% per annum property growth and interest of [x% per annum])

	Now	In 5 years	In 10 years	In 15 years
Age				
Projected home value				
Loan amount borrowed				
Interest owing				
Fees owing				
Total amount owing on the Deferred Payments Loan				
Principal owing on your 1st mortgage (when the Midkey Deferred Payments Loan is a 2nd mortgage)*				
Property equity				
Equity as % of property				

* Midkey's estimates of your principal repayments are based on the current interest rate of your 1st mortgage you have provided Midkey during your application

What if interest rates were 2% per year higher?

If interest rates were [y] per year (instead of [x] per year), the amount of simple interest that accrues on your outstanding Deferred Payments Loan will increase faster and your resulting equity will be diminished.

	Now	In 5 years	In 10 years	In 15 years
Age				
Projected home value				
Loan amount borrowed				
Interest owing				
Fees owing				
Total amount owing on the Deferred Payments Loan				
Principal owing on your 1st mortgage (when the Midkey Deferred Payments Loan is a 2nd mortgage)*				
Property equity				
Equity as % of property				

* Midkey's estimates of your principal repayments are based on the current interest rate of your 1st mortgage you have provided Midkey during your application plus 2%

What if your home value remains constant?

If the value of your home does not increase, your outstanding Deferred Payments Loan will constitute a greater proportion of its value.

	Now	In 5 years	In 10 years	In 15 years
Age				

Projected home value				
Loan amount borrowed				
Interest owing				
Fees owing				
Total amount owing on the Deferred Payments Loan				
Principal owing on your 1st mortgage (when the Midkey Deferred Payments Loan is a 2nd mortgage)*				
Property equity				
Equity as % of property				

* Midkey's estimate s of your principal repayments are based on the current interest rate of your 1st mortgage you have provided Midkey during your application

Notes:

1. The reverse mortgage calculator on the Australian Securities and Investments Commission Moneysmart website (moneysmart.gov.au) uses compound interest so will not show an accurate projection for our loan which uses simple interest.

Your circumstances

2. Is there anyone living in the house who will not be a co-borrower?

   If you are the homeowner and someone else is living with you, find out if the other resident would have to move out when the loan becomes repayable. Some reverse mortgage contracts including the Deferred Payments Loan may protect the rights of the other (non-title-holding) resident by allowing them to stay in the home. If you want this option, make sure you discuss this with your lender before taking out a reverse mortgage.

3. Are you currently receiving money from the Home Equity Access Scheme?

You may be ineligible for the scheme if you take out a reverse mortgage, including the Deferred Payments Loan. Check your eligibility on the Services Australia website.

4. Are you currently receiving pension/Centrelink?

   Before you take out a Deferred Payments Loan you should discuss the possible impact with Centrelink. If you do take out a Deferred Payments Loan, you need to contact Centrelink and let them know.

5. Before you decide to sign up for a reverse mortgage, including the Deferred Payments Loan:
   - Discuss your assumption about interest rates and the growth in your home value with your lender
   - Use the Midkey Deferred Payments Loan calculator to test different scenarios and see how they effect the equity in your home.

Schedule B

This disclosure is a requirement under ASIC instrument 23-0027

Disclosure about the Deferred Payments Loan

The rights of any spouse, partner or other resident in your home will be affected by the Deferred Payments Loan

IMPORTANT
THIS NOTICE INFORMS YOU HOW THIS DEFERRED PAYMENTS LOAN WILL AFFECT THE RIGHTS OF OTHER PEOPLE LIVING IN YOUR HOME.

When this Deferred Payments Loan needs to be repaid (for example if the house is to be sold or the owner dies or moves to aged care), if another person (including a spouse, partner or other family member) is living in your house THEY WILL HAVE TO MOVE OUT SO YOUR HOUSE CAN BE SOLD.

BEFORE YOU SIGN THE CONTRACT FOR THIS DEFERRED PAYMENTS LOAN - You should carefully consider whether you want other people to continue living in the house, even if, for example, you move into aged care accommodation. To help you, you may wish to obtain independent legal advice.

If it is important to you that other people who live with you continue to have the right to remain in your home, then you should consider other options apart from the Deferred Payments Loan that provide rights to other residents

Schedule C

This information statement is a requirement under ASIC instrument 23-0027

KEY INFORMATION ABOUT THE DEFFERED PAYMENTS LOAN

What is a Deferred Payments Loan?

A Deferred Payments Loan allows you to borrow money using the equity in your home as security. Fees and interest will be charged on the Deferred Payments Loan but you usually don't need to make repayments until the end of the loan. The loan must be repaid in full including fees or interest, when you sell the secured property, 12 months after you die, if you own the property as joint tenants: 12 months after the last of you dies, if you own the property as tenants in common: 12 months after anyone of you die, or when one of the other events set out in the contract occurs.

What fees and interest are charged on a Deferred Payments Loan?

You will be charged interest on the loan amount you borrow. Simple interest will accrue monthly on the Deferred Payments Loan. You will usually not be required to pay any of this interest until the loan ends unless the loan to value ratio of the loan exceeds 100%. The interest rate is also variable so could increase over the life of the loan.

A deferred payments variable fee will also be charged at the end of the loan or if an early partial repayment is made. The deferred payments variable fee is based on any increase in the value of the property between when the loan was entered into and when it ends.

For example, if you take out a Deferred Payments Loan of $50,000, the effect of the interest and Deferred Payments Fee means that after 10 years you will owe $98,446.

Loan Term	Interest	Deferred Payments Fee	Total amount owing
1 year	$3,125	$1,500	$54,625
2 years	$6,250	$3,045	$59,295
10 years	$31,250	$17,196	$98,446

The example is based on a rate of 6.25% pa, 3%pa property price appreciation and no repayments.

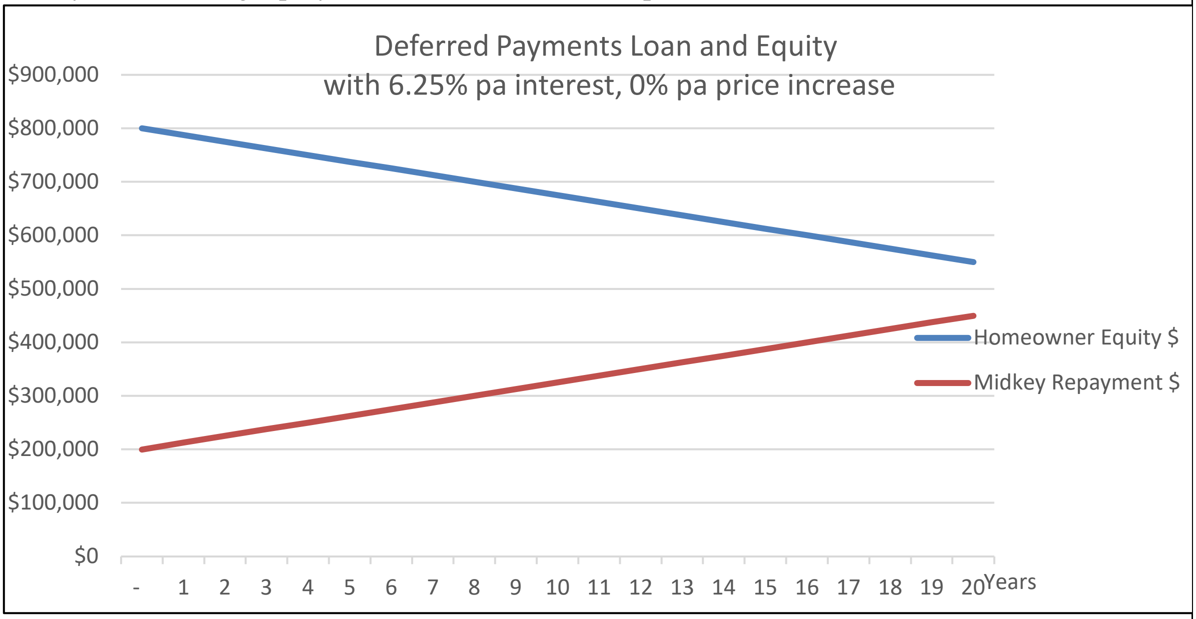
How much equity will I have left after my Deferred Payments Loan is repaid?

The amount of equity you have left in your home after repaying you Deferred Payments Loan will depend on how much money you borrow, the interest rate and how long you have the loan, and the value of your home.

To understand how a Deferred Payments Loan works, let's say that the value of the secured property is $1,000,000and you take out a $200,000 loan leaving you $8,00,000 in equity.

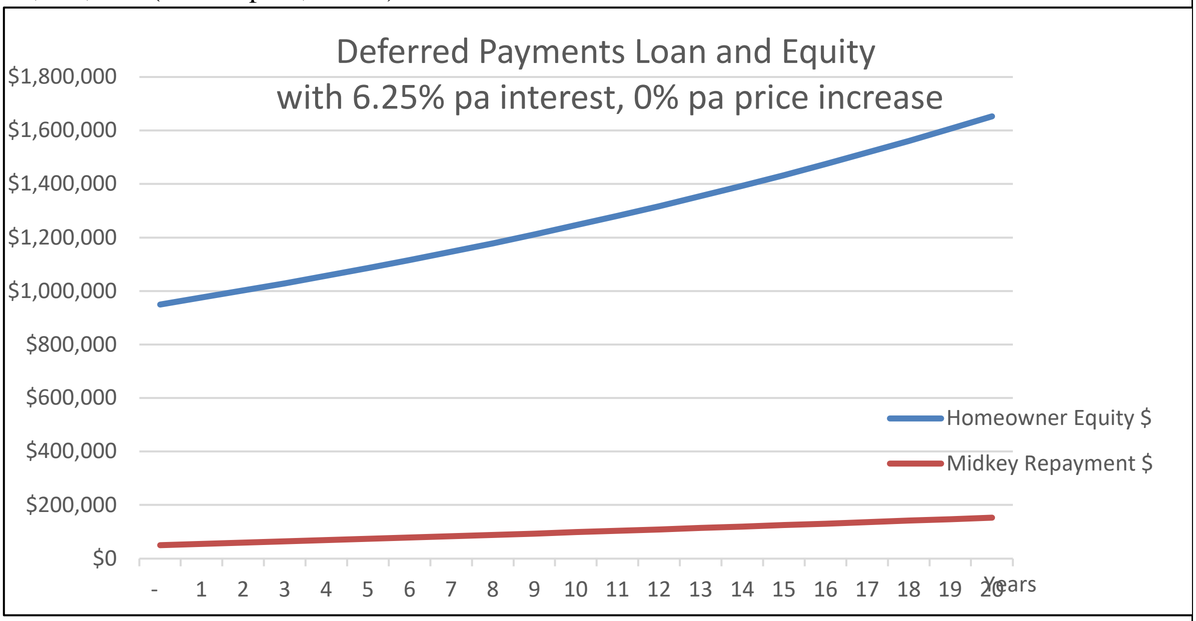
What if the value of your home stays the same?

Over 20 years your debt will grow from $200,000 to $450,000. If the value of the home stays the same your remaining equity will be $550,000 (see Graph 1, below)



What if the value of your home goes up?

If the value of your home goes up at the rate of 3% per year, after 20 years your home will be worth $1,806,111. You will owe $611,222 on your Deferred Payments Loan and your equity will be $1,194,889 (see Graph 2, below)



A DEFERRED PAYMENTS LOAN MAY NOT BE SUITABLE FOR EVERYONE. WHAT ARE THE ISSUES TO CONSIDER IN DECIDING IF IT IS RIGHT FOR YOU?

How will the loan affect your future choices?	When thinking about a Deferred Payments Loan, you need to consider both your current and future needs. The more you borrow now, and the younger you are when you borrow it, the less equity you will have in your home to pay for your needs as you age. How might your health and living situation have changed in 10, 20 or 30 years' time? If you use up too much of your equity too soon, you may not be able to afford future costs such as high medical expenses, the need to move into aged care accommodation, essential home maintenance or the purchase of a motor vehicle.
How much will you have to repay?	You can only estimate how much you will end up owing under the Deferred Payments Loan. The exact amount to repay will depend on how much you borrow, the interest rate, how long you have the loan, and the value of the home at the time of repayment.
At the end of the loan will you owe more than what your home is worth?	When your Deferred Payments Loan ends and you must repay the loan, if your Deferred Payments Loan is secured by a first ranking mortgage you will not have to pay back more than the value of your home. This is known as a no negative equity guarantee. If your Deferred Payments Loan is secured by a second mortgage, you will not have to pay Midkey more than the value of your home less the amount secured by your first mortgage. The no negative equity guarantee provided under the Deferred Payments Loan does not apply to any other debt secured by your property unless expressly stated by that lender.
Will other people living in your home be affected?	Generally, the Deferred Payments Loan must be repaid when you sell, refinance a first mortgage, or die. If you are the homeowner and someone else is living with you, the other resident may have to move out when the loan has to repaid. If you have concerns about this make sure you discuss this with your lender before entering into the Deferred Payments Loan.
Will you be able to leave your children an inheritance?	A Deferred Payments Loan will reduce the amount of equity in your home you can leave to your children or other beneficiaries. You may wish to discuss this with your family.
Are there alternatives more appropriate for you?	There may be alternatives to taking out a Deferred Payments Loan or other reverse mortgage that may be more suitable for your needs. These can include taking out a standard loan, downsizing, making arrangements with other family members,

	accessing government benefits, loans (such as the pension loans scheme), using savings or selling other assets or home reversion schemes.
Will you incur costs for repaying the loan early?	If you make a partial payment early, the deferred payments fee will be applied on a pro-rata basis based on the property value at the date of the partial payment.
Will your pension change	A Deferred Payments Loan may affect your pension or other Government entitlements. You can contact the Department of Human Services (Centrelink) on (Note 1) to talk to a Financial Information Service Officer about your pension may be affected. Note 1: provider to insert the Department of Human Services number