



The Legal Quest Mortgage Challenge

What is it all about?

If you are reading this article, then you have heard about the fact that 8 out of 10 UK mortgages have apparently been sold by the main high street Banks and Building Societies under the banner of “Residential Mortgage Backed Securities”.

The majority of UK borrowers will say:

“So What! How does it affect me?”

Or some form of similar, knee jerk response, which is really sad because if they took the time to look into this important topic, they would be very surprised and probably shocked by their discovery.

This is not a new discovery or one which has not been publicised in the past. In 1991, over 25 years ago, the Law Commission presented a detailed report and Draft Bill to the House of Commons regarding proposed changes in the law regarding Land & Land Mortgages in which they notified the government that a problem was emerging.

The Bill was not passed and rejected by subsequent governments and the mortgage industry, despite the fact that the law on mortgages has not been changed since 1925, when over 85% of the population lived in rented accommodation.

It is difficult to think of any other section of the law so central to people’s lives today.

Back to the main point of this article, Mortgage Securitisation was firmly blamed for the financial crash of 2008.

Seemingly, this was due to the fact that the banking sector ignored all the self-imposed regulations of having sufficient reserves to meet the needs of their customers.

The traditional ‘rule’ of 10 times capital adequacy was completely ignored and, at the time of the crash in 2008, the average was a staggering 81 times capital!

What is Mortgage Securitisation? In a nutshell, it is a very clever accounting mechanism which allows a lender to ‘sell’ their future income from the mortgage payments that UK borrowers have promised to pay on their loans.

It is important to understand that the loan money was then used to buy property and against which a legal charge was registered at HM Land Registry, sometimes many months later and that the ACTUAL security for the loan was the mortgage.

“Again most borrowers will say - So what? – How does this affect me, the UK borrower?”

Please Read on.....!

The first thing ALL UK borrowers must be aware of is the fact that when they accepted a loan from a British bank or building society, and signed the loan offer documentation which will have had various terms & conditions attached or referred to.

What was NOT stated clearly to them was the fact that each borrower were granting the lender their irrevocable Power of Attorney (‘POA’) or equivalent rights.

These rights allow the lender to do any act or thing in the name of the borrower, without further consent or notification, this being the specific item the Law Commission warned the government about in 1991.

The use of the POA allows the lender to 'securitise' the mortgage and transfer the debt to someone else, without telling you.

"So is the story is now getting your attention?"

In principle there's nothing wrong with this, providing the terms and conditions are the same and the decisions regarding important things, such as interest rates, remain under the original loan terms.

Unfortunately, that does not apply in many securitised mortgage sale agreements.

The most recent proof of how this could affect the borrowers was evidenced by the West Bromwich Building Society case where, in June 2016, the Court of Appeals overturned a previous ruling.

6,000 borrowers were refunded £27.5m which was the extra interest which the building society charged them following their mortgages being securitised in 2013.

Had these borrowers taken the Legal Quest Mortgage Challenge, they might possibly have won a far greater amount if it was proven that the building society was actually paid in full.

Their loans will have been extinguished on the books of West Bromwich Building Society and transferred incorrectly to the new owners of their mortgage, when they were sold.

There is a further court case which underlines the fact that when a borrower's mortgage is sold which, by the way, is granted by the borrower NOT the lender, the new owner has no rights over the property which the mortgage was attached to.

Remember, the mortgage is simply a promise of payments (loan amount plus interest) for a number of years.

In the Santander v Carlin & Hughes Court of Appeals case in Northern Ireland in May 2013, a repossession order was overturned due to the fact that Santander had securitised the mortgage.

Having sold the equity and been paid, Santander had no repossession rights, the legal charge being unenforceable.

The new owners should have applied for the repossession order, however, they had not registered their interest at HM Land Registry, so were effectively 'unsecured'.

The Judge, in the decision, stated that Santander obtained the repossession order by 'at least misrepresenting the facts'.

Legal Quest believe the majority of all securitised UK mortgages may have errors or omissions in the paperwork, with statistics showing that possibly 8 out of 10 mortgages may qualify.

The biggest hurdle for UK borrowers to overcome, is how do they find out if their mortgage was securitised and if it was, what to do next. There is a minefield of lengthy complicated documentation, which really should be dealt with by a professional advisor, which costs far too much in real life terms.

Legal Quest recognised this as the main 'roadblock' for their challenge and, using the latest cutting edge technology which the Law Society (Gazette January 30 2017) have called 'Robotic Process Automation - RPA'.

They state that 'RPA removes the risk of human error, improves compliance and can bring a Service Level Agreement close to 100%'. Legal Quest use this to provide over £4,500 of legal services for a fixed fee of just £260.00 including VAT.

This opens up the possibility for over 10 million UK borrowers to, at the very least, check to see if their mortgage remains with the lender who they continue to pay their monthly repayments to.

The Legal Quest Mortgage Challenge is a two part process – the first part being the Validation Process comprising a full Data Subject Access Request (DSAR) and RPA review of the paperwork which costs the £260.00 incl. VAT and covers all of the fees, postage, stationery, costs etc.

There are no hidden amounts and this takes up to 4 months for them to complete.

At the end of the Validation Process, each mortgage (some UK borrowers have more than one mortgage, each having to be validated individually to determine if it was sold or not) Legal Quest will issue a legal opinion on the results of the DSAR.

There are only three legal opinions that can result from the Validation Process. The first is a negative opinion where the borrower has no further action, the other two being a positive opinion or a probable opinion where each borrower will be given 4 options to consider.

1. Do Nothing;
2. Continue with a claim on their own;
3. Take the opinion and files to their own legal professionals for them to continue with any claim; or
4. Sign a No Win - No Fee agreement with Legal Quest and join their Class Action against the particular lender.

Any borrower choosing the last option will then start the second part of the Legal Quest Mortgage Challenge and, with hopefully 1,000's of other borrowers. Legal Quest will make the same claim on their behalf against their particular lender with the strength of numbers and a louder voice more likely to be heard.

It may result in nothing more than a correction of the paperwork at HM Land Registry and no benefit of any kind will result to the borrower. Other than the fact that the borrower will know where or who their mortgage is with and have the ability to make an informed decision if they want to re-mortgage or move it.

If the paperwork is not correct and there are errors in the way in which their debt was sold on, that opens up a whole new position which Legal Quest will take up on behalf of their clients.

It needs to be understood that the original debt was paid off in full by the securitisation and a 'new' debt should have been created between the borrower and the new owner of their mortgage.

If this was done properly and a copy of the documents proves this to be the case, there is no benefit to the borrower, BUT, if the documents are not correct, Legal Quest are of the opinion that the only person who the borrower now owes is Legal Quest under the No Win – No Fee agreement.

They owe nothing further to their original lender who has been paid in full.

The value of this agreement is calculated at 25% + VAT of the balance of the mortgage at the time of settlement, which is why Legal Quest state that each borrower who is successful in their claim could benefit by 'up to a 70% reduction in the current mortgage liabilities (net of fees)'.

A significant win by any standards.

What should any UK borrower do now?

There's an Easy Answer! – All UK borrowers should at the very least find out if you have a case or not! Take the Legal Quest Mortgage Challenge today!

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