



RESIDENTIAL MORTGAGE LENDING

LAW SOCIETY APPROVED GUIDELINES (1999 EDITION)

**GUIDELINES TO BE FOLLOWED BY SOLICITORS WHEN COMPLYING
WITH SOLICITOR'S UNDERTAKING AND COMPLETING CERTIFICATE OF
TITLE (LAW SOCIETY APPROVED FORMS (1999 EDITION))**

1. The Solicitor should ensure that there should be compliance with any requirements specified in the Conditions in the Lender's Facility Letter/Letter of Offer (the "Facility Letter") insofar as they relate to Matters of Title.
- 2(a) It is a matter for the Borrower to comply with all conditions in the Facility Letter before the loan cheque is requisitioned. The Borrower will be instructed by the Lender to contact the Lender direct regarding insurance, valuation and any other matter not of a title nature.
- 2(b) In those cases where it is a Lender's practice to furnish the Facility Letter direct to the Solicitor, or to the client with a recommendation that it be completed in the Solicitor's presence, it is acknowledged by the Lender that the Solicitor shall have no responsibility to the Lender to explain the conditions to his/her client. This however does not affect the Solicitor's duty to his/her client to explain the said conditions.
3. The title must be Freehold, or Leasehold with an unexpired term of at least 70 years, unless you are satisfied that the Lessee has a statutory right to purchase the Fee Simple under the Ground Rents legislation. If Land Registry title, it must be either Absolute or Good Leasehold.
4. The Property must be free from encumbrances to ensure that the Lender shall have a first legal Mortgage/Charge.
5. The Law Society has already advised Solicitors that Stage Payment transactions are undesirable in view of the potential difficulties they create for both Purchasers and their Solicitors. If, however, despite this advice, the Borrower is willing to make such payments to a Builder/Developer who is registered with HomeBond, in advance of title vesting in the Borrower, and the Lender has specifically agreed to advance funds for the purpose of making such Stage Payments, the following qualification should be inserted in the Schedule to the Undertaking :

"The Property is being purchased by Stage Payments. Stage Payments up to the limits covered by the HomeBond scheme are to be released in advance of title vesting in the Borrower and the Supplemental Stage Payments Undertaking set out in the LAW SOCIETY APPROVED GUIDELINES (1999 EDITION) shall be deemed to be incorporated in this Undertaking".

**RESIDENTIAL
MORTGAGE
LENDING**

**LAW SOCIETY
APPROVED
GUIDELINES
(1999 EDITION)**



**RESIDENTIAL
MORTGAGE
LENDING**

**LAW SOCIETY
APPROVED
GUIDELINES
(1999 EDITION)**

(Contd.)

The Supplemental Stage Payments Undertaking reads as follows :

"Property being Acquired - Stage Payments to Builder/Developer

Where stage payments are being paid to the Builder/Developer, to ensure:

- a) that a valid and enforceable fixed price contract has been exchanged to obtain good marketable title to the Property upon completion of the construction thereof and the completion of the purchase formalities
- b) that the Property is registered with HomeBond, and
- c) that prior to payment of any stage payment which the Lender may agree to lend in excess of the amount covered by the HomeBond scheme, title to the Property (including the right to immediate possession) is unconditionally vested in the Borrower and that there is compliance with all the requirements of paragraph 2 of the SOLICITOR'S UNDERTAKING LAW SOCIETY APPROVED FORM (1999 EDITION)"

N.B. Not all lenders will advance stage payments on the basis of the foregoing, Solicitors are cautioned to check with the individual lenders.

6. The consideration expressed in the Purchase Deed/Building Agreement must be as stated in the Facility Letter. If there is any discrepancy, this must be brought to the attention of the Lender prior to drawing down the cheque. The amount of the loan may be reduced in the event of such a discrepancy.
7. There must be no restrictions on mortgaging the Property. Any necessary consent from a Housing Authority, for example, must be obtained and compliance with any condition procured.
8. The Borrower's signature on the Mortgage (including any non-owning spouse or other person who may be required to join in the Mortgage) must be made in the presence of and witnessed by a Solicitor.
9. For "once off" properties or those not forming part of a housing estate, there must be with the title a Declaration of Identity declaring that the Property and its essential services (e.g. septic tank and well etc.) are entirely within the boundaries of the lands the subject matter of the Lender's security. If any such services are not within the boundaries of such lands, then a Grant of Easement must be furnished unless a prescriptive right thereto is established and this is verified by an appropriate Statutory Declaration.
10. Any qualification of the Certificate of Title must be specifically agreed in writing with the Lender prior to furnishing the Undertaking. It may or may not be acceptable to the Lender. Where the Lender agrees to accept any qualification it shall be understood that the responsibility for explaining the nature of the subject matter of the qualification to the Borrower rests with the Solicitor and the acceptance of the qualification shall not be taken to imply any responsibility or liability to the Borrower on the part of the Lender.



11. If Title to the Property vests in the sole name of one spouse, and if the Family Home Protection Act, 1976 applies, a prior consent to the Mortgage must be completed, signed and dated by the Mortgagor's spouse.
(Note : Even if the Property will not become a Family Home vesting in sole name until immediately after completion it is, nonetheless, recommended that the prior consent is signed by the relevant spouse as possession may have been taken informally or partially beforehand. To avoid doubt, it is prudent to get the consent completed in any such case).
- 12.(a) There must be no person other than the Borrower with any estate or interest, beneficial or otherwise in the Property and this must be confirmed by a Statutory Declaration of the Borrower. (Some Lenders may require such a Declaration prior to drawdown).
- (b) If there is any such person with any such estate or interest by reason of making a contribution to the purchase price or otherwise howsoever, that person should, after the Mortgagor signs the Mortgage, execute a Deed of Confirmation so as to supplementally mortgage any such estate or interest to the Lender. (The confirmation is non recourse i.e. it does not of itself impose a liability on the beneficiary to repay). Where appropriate the beneficiary's spouse should sign his/her prior consent to the Deed of Confirmation.
- (c) If there is a right of residence the person entitled thereto must sign a Deed of Confirmation except in the event of such right being an exclusive right -in which event the right of residence must be released prior to the execution of the Mortgage (but such right may be reconstituted thereafter).
- (d) It should be noted that a sole Mortgagor's spouse although signing the prior Family Home Protection Act "Consent to Mortgage" may be a beneficiary nonetheless because of e.g. direct or indirect financial contribution/s. If there is any doubt in this respect, the beneficiary should, after the Mortgagor signs the Mortgage, execute a Deed of Confirmation so as to supplementally mortgage any such estate or interest to the Lender. (The confirmation is non recourse i.e. it does not of itself impose personal liability on a beneficiary to repay).
13. If the Lender requires that the non-owning spouse joins the Mortgage there should be compliance with this requirement.
14. Any spouse signing the Family Home Protection Act consent or any non-owning spouse joining in the Mortgage or any person signing the Deed of Confirmation or consent thereto must receive independent legal advice (or, after receiving legal advice from the Borrower's Solicitor of the serious implication of not taking such advice, must sign an explicit waiver of the right to be so advised which waiver must be placed with the title deeds).
15. Searches must include those against the Borrower and, when a purchase is completed in advance of the Mortgage, searches must be updated to the date of the Mortgage.
16. The Certificate of Title together with all the Title Documents when stamped and registered must be lodged with the Lender within a reasonable time. All documents accompanying the Certificate of Title should be properly scheduled in the interest of efficiency and a quick response from the Lender.

RESIDENTIAL MORTGAGE LENDING

LAW SOCIETY APPROVED GUIDELINES (1999 EDITION)

(Contd.)