



9th March 1999

Dear Colleague,

The Conveyancing Committee in conjunction with the Legal Advisers of the undermentioned Financial Institutions is pleased to inform you that agreement has been reached on revised standard forms of Solicitor's Undertaking, Certificate of Title and Approved Guidelines ("the agreed documents") for future use in residential property mortgage transactions.

Specimen copies of the agreed documents are enclosed. It is proposed that the agreed documents be used for all residential property mortgage loan transactions approved on or after **1st April 1999**.

The Committee unhesitatingly recommends practitioners to utilise the agreed documents for all residential mortgage loans approved after **1st April 1999**. **No alternative documentation should be used.** This recommendation is endorsed by the Solicitors Mutual Defence Fund Limited and Solicitors are advised that failure to utilise the agreed documents may engender difficulty with their Professional Indemnity Insurance Cover. Henceforth any alterations to or revisions of the agreed documents necessitated either by future legislation or changes in conveyancing practice shall be introduced only by the Committee in consultation with the Lending Institutions.

The revisions of and the alterations to the existing Certificate of Title documentation were sought by the Committee in the light of the terms of Opinions procured by the Committee from two eminent Senior Conveyancing Counsel, both of whom advised that it was highly desirable that the respective roles and responsibilities of Borrowers' Solicitors and Lenders should be re-stated and clarified so as to

- (a) define and absolutely limit the responsibility of certifying solicitors to matters of title only and
- (b) establish that Borrowers' Solicitors do not act for Lenders.

All matters which are not related to title, such as credit worthiness of Borrowers, loan repayment arrangements, property valuations and all insurance matters shall be the responsibility of the Lenders and not of Borrowers' Solicitors save as directed by the Approved Guidelines. While the Approved Guidelines acknowledge that the Borrowers' Solicitors has no responsibility to the Lender to explain the conditions of the Facility Letter to the Borrower this does not affect the Solicitor's duty to his/her client in that regard.

In general terms, the agreed documents require that certifying Solicitors will carry out proper

THE SOCIETY'S CERTIFICATE OF TITLE SYSTEM (1999 EDITION)

**THE SOCIETY'S
CERTIFICATE
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SYSTEM
(1999 EDITION)**

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investigation of title to the Borrower's property, attend to the execution of the relevant purchase and mortgage documentation including, where applicable, guarantees and assignments of Life Policies and stamp and register the Borrower's deeds of purchase and mortgage prior to furnishing to the Lending Institution a properly completed Certificate of Title together with all relevant documents as soon as practicable.

Practitioners are earnestly advised to read the Approved Guidelines carefully as they set out requirements, inter alia, in relation to non-owning spouses, Deeds of Confirmation and Rights of Residence. Practitioners particularly should note that because of the nature of an exclusive right of residence, a Deed of Release will be required.

When utilising the agreed documents, practitioners should ensure compliance with the following practice recommendations viz:

- (a) all security documents should be signed in the presence of and witnessed by a Solicitor.
- (b) all Solicitor's Undertakings should be signed either by a partner or principal or a Solicitor duly authorised in writing by a partner or principal for that purpose. (Note: The foregoing has been specifically agreed with the Lenders to facilitate instances where the Partner or Principal is unavailable).
- (c) before signing Undertakings, Borrowers' Solicitors should ensure that their clients sign the Form of Retainer and Authority endorsed on such Undertakings and obtain a spouse's prior consent to the giving of the Retainer and Authority and Undertaking when applicable.
- (d) all intended qualifications to the Certificate of Title must be previously agreed in writing with the Lender and should be set out in the Schedule to the Solicitor's Undertaking.
- (e) before negotiating the loan cheque Borrower's Solicitors should ensure that all security documents have been executed and should be in funds to discharge all stamp duty and registration outlays in connection with the purchase and mortgage transaction.



- (f) all Certificates of Title should be signed by a partner or principal. Practitioners particularly should note that the Documents Schedules comprised in their Certificates of Title should be properly completed.

It should be noted that some Lenders may offer an Electronic Funds Transfer Facility for payments of the loan funds. In such cases the Lender will include the approved wording in the Letter of Undertaking requiring the insertion of the relevant Solicitor's client account details.

In relation to transactions involving stage payment purchases of new houses, practitioners are reminded of the terms of the various practice notices issued by the Committee expressing its disapproval of such form of house purchases and warning Solicitors of the potential risks both for their clients and themselves in allowing their clients to enter into such transactions.

The following Lending Institutions participated in negotiations with the Committee in reaching agreement on the enclosed agreed documents viz:

A.I.B. Bank	ICS Building Society
Irish Permanent plc	Irish Life Homeloans
Bank of Ireland	Irish Nationwide Building Society
EBS Building Society	National Irish Bank
ACC Bank	TSB Bank
AIB Finance	Ulster Bank Limited
First Active plc	

The negotiations which led to agreement being reached on the enclosed documentation were very protracted and time consuming and, on behalf of the Profession, the Committee wishes to record its sincere appreciation of the huge commitment of time and effort contributed by the Members of its own Task Force and of the Lenders' Legal Advisers which resulted in the creation of the enclosed documentation which the Committee genuinely believes will be in the best interests of practitioners, their clients and the Lenders.

THE CONVEYANCING COMMITTEE

THE SOCIETY'S CERTIFICATE OF TITLE SYSTEM (1999 EDITION)

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NOTE (2006): Some of these lending institutions have had a change of name since the Law Society's Certificate of Title System was launched in 1999. In addition, some new lenders have entered the market and have received permission to use the Society's certificate of title documentation on the basis that they accept the terms of the system. Practitioners can check with the Conveyancing Committee to find out if a particular lending institution has received permission to use the documentation.



**RESIDENTIAL
MORTGAGE
LENDING**

**SOLICITOR'S
UNDERTAKING**

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

RESIDENTIAL MORTGAGE LENDING

SOLICITOR'S UNDERTAKING

LAW SOCIETY APPROVED FORM (1999 EDITION)

To: _____
("the Lender" its transferees, successors and assigns)

MY/OUR CLIENT(S) _____
("the Borrower")

ADDRESS(ES) _____

PROPERTY _____
("the Property")

YOUR REF/ACCOUNT NO. _____

In consideration of the Lender agreeing to the drawdown of a loan facility in respect of the Property before the Lender's mortgage security has been perfected and subject to the payment through me/us of the loan cheque(s), unless I/we have consented in writing to *another mode of payment, I/we, the undersigned Solicitor for the Borrower, HEREBY UNDERTAKE with the Lender as follows :

1. Good Title

Save for any qualification on title as agreed in writing with the Lender as set out in the Schedule hereto, to ensure, where the Borrower is acquiring the Property, that the Borrower will acquire good marketable title to it, or, where the Borrower already owns the Property, to satisfy myself/ourselves that such Borrower has good marketable title to it. (Note I).



2. Execution of Security Documents

To ensure, prior to negotiating the loan cheque(s) or the proceeds thereof that:

- a) the Borrower has executed a Mortgage Deed/Charge in the Lender's standard form as produced by the Lender (the "Mortgage") over the Property (and, if required by the Lender, that any non-owning Borrower has joined in the Mortgage),
- b) a Deed of Confirmation is executed by all necessary parties where the circumstances render such a Deed appropriate, and
- c) all the provisions of the Family Home Protection Act, 1976 and any Act amending, extending or replacing that Act are complied with in respect of the Mortgage and any such Deed of Confirmation.
such that the Mortgage ranks as a first legal Mortgage/Charge on the Property. (Note 2)
- d) the Borrower has executed the Lender's Standard Form of Life Policy Assignment, if specified in the Facility Letter/Letter of Offer (the "Facility Letter")
- e) a Guarantee in the Lender's Standard Form is executed, if specified in the Facility Letter
- f) I am/we are in funds to discharge all Stamp Duty and Registration Fees.

3. Stamping, Registration & Lodgment with the Lender

As soon as practicable, to stamp (if exigible) and to register the Mortgage in the appropriate Registry so as to ensure that the Lender obtains a first legal Mortgage/Charge on the Property and expeditiously, as soon as practicable thereafter, to lodge the following with the Lender :-

- a) all Deeds and documents to the Property, stamped and registered as appropriate, including, if applicable, the Assignment of the Life Policy, stamped collateral to the Mortgage
- b) the original Mortgage (with Certificate of Charge endorsed thereon, under Rule 156 of Land Registry Rules, 1972, if Land Registry title)
- c) if Land Registry title, the Land Certificate or, if not issued, an up-to-date Certified Copy Folio of the Property showing the Mortgage registered as a burden thereon, and
- d) my/our Certificate of Title in the Law Society's standard form.

To the extent to which the Lender has indicated that it will attend to stamping and registration or any other work referred to above this part of the Undertaking shall be deemed to be amended accordingly.

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4. Documents in Trust

Pending compliance with paragraph 3, to hold all title documents of the Property in trust for the Lender.

Authority

I/We confirm that I/we have the Borrower's irrevocable authority to give this undertaking and, where applicable, the Borrower's spouse's prior consent to give this undertaking.

Extent of Undertaking

This Undertaking is given by me/us in my/our sole capacity as Solicitor(s) for the Borrower and not as Solicitor(s) for or as agent/quasi agent of the Lender. It relates to Matters of Title and represents the sum of my/our obligations to the Lender in relation to this loan transaction. I/We have no responsibility for any matter of a non-title nature except insofar as any of the matters set out in this Undertaking may be deemed to be matters of a non-title nature.



SCHEDULE

Qualifications on Title (if any) agreed in writing with the Lender.

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Dated this _____ day of _____

SIGNATURE _____

NAME OF SOLICITOR SIGNING _____

(See Note 3)

STATE WHETHER PRINCIPAL/PARTNER
OR AUTHORISED SOLICITOR _____

NAME OF FIRM _____

ADDRESS OF FIRM _____

* Where it has been specifically agreed with the Lender that the funds shall issue by way of electronic funds transfer direct to the client account of the Borrower's Solicitor(s), please tick (and initial) the boxes and insert the details of that account

Name & Address of Bank _____

Bank Sort Code _____

Solicitor's Client Account Name _____

Solicitor's Client Account No. _____

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NOTES :

1. In this Undertaking "**good marketable title**" means a title of a quality commensurate with prudent standards of current conveyancing practice in Ireland. The latter entails, where the Property is being acquired, that the purchase was effected on foot of the current Law Society's Conditions of Sale and/or Building Agreement. It also entails that the investigation of the title to the Property was made in accordance with the current Law Society Requisitions on Title together with any additional Requisitions appropriate to the Property and that satisfactory Replies have been received. When the Property is already owned by the Borrower, the title shall be so investigated that if the said Requisitions had been raised, satisfactory Replies would have been obtained.

In this Undertaking "**Matters of Title**" means only such matters as relate to the title to the Property in the context of a conveyancing transaction and does not include any matters relating to the condition of the Property, the suitability or otherwise of the Borrower or any other matter (including the form or efficacy of the Mortgage).

Any dispute as to the quality of any title or as to whether or not any matter constitutes a Matter of Title (within the foregoing definitions) may be referred for a ruling to the Conveyancing Committee of the Law Society of Ireland, but without prejudice to the right of either party to seek a determination by the Court on the issue.

2. Where the Lender is a Building Society within the meaning of the Building Societies Act, 1989 and any Act amending, extending or replacing that Act, any prior Mortgage or Charge must be redeemed prior to or contemporaneously with the creation of the Mortgage.
3. The Undertaking must be signed by a **Partner** or, in the case of a sole practitioner, by the **Principal** or other Solicitor duly authorised in writing on behalf of the firm by either of the foregoing. (**Note** :Where signed by the latter, the original or a Solicitor's certified copy of the written authority in question MUST be attached to this Undertaking).



CLIENT(S) RETAINER AND AUTHORITY

To _____ Solicitor(s)
of _____

I/We irrevocably authorise and direct you to give an undertaking in the form and containing the information set out overleaf (including an undertaking to lodge with the Lender the Title Deeds of the Property including any Land Certificate which has issued in relation to the Property) to

(Name of Lender) _____

and in consideration of your giving the foregoing undertaking, I/we hereby undertake that I/we will not discharge your retainer as my/our Solicitor(s) in connection with the foregoing matter unless and until I/we have procured from the Lender your effective release from the obligations imposed by such undertaking and I/we hereby indemnify you and all your partners and your and their Executors, Administrators and Assigns against any loss arising from my/our act or default.

Dated the _____ day of _____

Signed by the Borrower _____

in the presence of _____

FAMILY HOME PROTECTION ACT CONSENT

I, _____
the lawful spouse of the above named Borrower

DO HEREBY GIVE MY PRIOR IRREVOCABLE CONSENT for the purposes of the Family Home Protection Act, 1976 (as amended) to the foregoing Retainer and Authority of my said spouse and to the within undertaking to be given by my spouse's Solicitor.

I acknowledge that it has been recommended to me that I should obtain independent legal advice with regard to the legal implications of giving this irrevocable consent. Where I have chosen not to take such advice, I declare that I did so voluntarily.

The Property is not adversely affected by section 5 of the Family Law Act, 1981, the provisions of the Judicial Separation and Family Law Reform Act, 1989, the Family Law Act, 1995 or the Family Law (Divorce) Act, 1996.

Dated the _____ day of _____

Signature of Spouse _____

Spouse's name in BLOCK CAPITALS _____

Witness _____

(Solicitor)

Address of Witness _____

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**CERTIFICATE
OF TITLE**

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RESIDENTIAL MORTGAGE LENDING

CERTIFICATE OF TITLE

LAW SOCIETY APPROVED FORM (1999 EDITION)

To : _____
("the Lender" its transferees, successors and assigns)

NAME(S) OF MY/OUR CLIENT(S) _____
("the Borrower")

ADDRESS OF PROPERTY _____

("the Property")

YOUR REF/ACCOUNT NO. _____

As Solicitor(s) for the Borrower, I/We have investigated the title to the Property and I/We hereby certify that the Borrower has good marketable title to the Property (save as set out in the First Schedule hereto), the description of which agrees with that stated in the Facility Letter/Letter of Offer for the tenure specified in the Second Schedule hereto, free from any mortgage, charge, lien or encumbrance and any lease or tenancy, except for your Mortgage which is in the form prescribed by you (the "Mortgage").

We hereby certify that your Mortgage ranks as a first Legal Mortgage/Charge over the Property.

All the documents evidencing the Borrower's title to the Property including your Mortgage are properly listed in the Third Schedule hereto and are furnished herewith.

My/Our Firm currently holds Professional Indemnity Insurance Cover with a qualified Insurer as defined under Statutory Instrument No. 312 of 1995 for a sum which is in excess of the amount being advanced to the Borrower.

I/We as Solicitor(s) for the Borrower, am/are giving this Certificate for the benefit of the Lender, having regard to (1) the current guidelines published by the Law Society to be followed when completing Certificates of Title for Lenders and (2) the current conveyancing recommendations of the Law Society.

This Certificate is being given by me/us in my/our sole capacity as Solicitor(s) for the Borrower and (other than as specifically set out herein) it relates only to Matters of Title.



This Certificate does not purport to certify anything in relation to the standard contents of the Mortgage executed by the Borrower. In particular, it does not certify that the Mortgage or any other document produced by the Lender in connection with the Loan complies with the requirements of the Consumer Credit Act, 1995 or the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995.

Signature _____

Name of Solicitor signing _____

State whether Principal/Partner _____

Name of Firm _____

Address of Firm _____

Dated this _____ day of _____

In this Certificate of Title "**good marketable title**" means a title of a quality commensurate with prudent standards of current conveyancing practice in Ireland. The latter entails where the Property is being acquired, that the purchase was effected on foot of the current Law Society's Conditions of Sale and/or Building Agreement. It also entails that the investigation of the title to the Property was made in accordance with the current Law Society Requisitions on Title together with any additional Requisitions appropriate to the Property and that satisfactory Replies have been received. When the Property is already owned by the Borrower, the title shall be so investigated that if the said Requisitions had been raised, satisfactory Replies would have been obtained.

In this Certificate of Title "**Matters of Title**" means only such matters as relate to the title to the Property in the context of a conveyancing transaction and does not include any matters relating to the condition of the Property, the suitability or otherwise of the Borrower or any other matter (including the form or efficacy of the Mortgage).

Any dispute as to the quality of any title or as to whether or not any matter constitutes a Matter of Title (within the foregoing definitions) may be referred for a ruling to the Conveyancing Committee of the Law Society of Ireland but without prejudice to the right of either party to seek a determination by the Court on the issue.

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APPENDIX 7

LAW SOCIETY CONVEYANCING HANDBOOK

CERTIFICATE OF TITLE
DOCUMENTATION



**RESIDENTIAL
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FIRST SCHEDULE

Qualifications on Title (if any)
(as previously agreed in writing with the Lender)

SECOND SCHEDULE

Tenure

THIRD SCHEDULE

See Schedule of Documents attached hereto.



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".

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(1999 EDITION)**

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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.

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