

# **Instruction to Conveyancers**

Version 10.

# Instruction to Conveyancers

We engage you to act for us in relation to a mortgage transaction involving us obtaining a first priority charge by way of legal mortgage in respect of the mortgage property as security for, among other things, a proposed advance to the borrower(s).

Our instructions to you to act on our behalf in relation to this matter incorporate:

- a. the instructions set out in this document;
- b. the letter sent to you with the relevant mortgage offer;
- c. the current edition of the UK Finance Mortgage Lenders' Handbook for Conveyancers for England and Wales, including our Part 2 Replies (**UK Finance Handbook**); and
- d. any other instructions in the mortgage offer.

You must comply with our instructions and all applicable regulatory and professional obligations.

Expressions defined in the edition of our mortgage conditions referred to in the form of mortgage deed relevant to this matter shall (unless defined differently in this letter) have the same meaning in this letter.

## Reporting to us

You must review the entire transaction and report to us immediately anything unusual or which may affect our decision to lend or proceed, including (without limitation) potential indicators of fraud and any matters required to be reported under the UK Finance Handbook.

Please also inform us immediately if:

- the legal and beneficial interests in the mortgage property are held by different persons or on trust for someone else;
- there is a connection between the borrower and the seller (including directors or shareholders of any of the parties);
- the transaction appears to be other than at arm's length;
- the amount (to be) paid for the mortgage property is different to the purchase price set out in the mortgage offer;
- the full amount of any purchase price will not be passing through your client account;
- any payment is (to be) made directly between any of the parties;
- any of the purchase funds are gifted;
- any discounts, incentives (including the inclusion of furniture or fixtures and fittings, contributions towards fees or stamp duty or similar) or rental guarantees are (to be) received by the borrower or any other party to the transaction;
- instructions are given to you from someone other than the borrower; or
- (in the case of a remortgage) the mortgage property is currently unencumbered.

If you report anything to us, whether as a qualification to your certificate of title or otherwise, you must make sure that we have received and acknowledged it. You should not assume that the transaction can proceed unless we have confirmed that is the case.

If we receive an unqualified certificate of title from you, this constitutes confirmation by you that you have fully complied with our instructions and your obligations.



### **Your files**

You must keep the entire file relating to a mortgage transaction for a minimum period of six years from completion. Each borrower has waived any right to confidentiality or privilege in respect of the entire file by signing the declaration to the mortgage application. The entire file must be sent to us promptly upon our request.

### **Our standard documentation**

You must use our pro forma documentation relevant to the mortgage in question. You must ensure you use the correct versions of the pro forma documents and must complete the documentation fully and accurately, obtaining and checking the information needed to do so.

If you need a form of document which is not included in the pro forma documentation, please contact our Completions Team, whose contact details can be found below.

### **Completion funds**

You must only request funds from us if you have satisfied all our requirements. You have no authority to release funds unless you have fully complied with our instructions.

You will hold all funds provided to you to our order in a client account in accordance with SRA rules and upon trust for us, to be applied only in accordance with our instructions.

If completion does not occur within one business day of the scheduled completion date indicated in your certificate of title, you must immediately return all the funds to us.

### **Security for our advance**

Our advance must be secured by a first legal charge over the mortgage property.

### **Tenancies and the mortgage property**

As the mortgage property is (or will be) let, you must ensure that any tenancy complies with our mortgage conditions, UK Finance Handbook requirements, and the terms of the mortgage offer. You must notify us of any connection between the borrower and any occupier and inform us immediately if the borrower or someone related to them intends to reside at the mortgage property.

You must also inform us if the mortgage property is of unusual construction or subject to any legal or physical restriction or encumbrance that may affect our decision to lend, including uninsurable or landlocked properties, properties subject to overage clauses or titles exceeding five acres.

### **Guarantors**

In cases involving a limited company borrower, we require a personal guarantee from each director and from any shareholder holding 25% or more. Where this does not result in guarantees from shareholders holding at least 75% of shares, guarantees must be obtained from additional shareholders to reach that threshold.

You must ensure that each guarantor receives independent legal advice from a qualified practising solicitor working for a firm which is regulated by the SRA or CLC.



It is for you to decide whether such advice can be given by your firm and whether any conflict of interest exists between the borrower and the guarantor. If a conflict arises, you must require the guarantor to obtain advice elsewhere.

The solicitor providing the advice must complete our standard certificate confirming that independent legal advice has been given. When we receive a certificate of title from you, you agree that this constitutes confirmation that you hold a validly completed certificate confirming that independent legal advice has been given.

The guarantee must be signed by the guarantor (not by anyone acting on their behalf) and dated the same date as the mortgage deed.

### **Borrowers**

It is important that each borrower fully understands the transaction and the terms relevant to the advance, including the implications of having more than one mortgage with us, whether in their own name or jointly with someone else, or acting as a guarantor under any other mortgage.

In the case of joint borrowers, we expect each borrower to be separately advised about the terms of the mortgage offer. When we receive a certificate of title from you, you agree that this constitutes confirmation from you that:

- you have given such advice; or
- you hold a completed certificate in our standard form confirming that another qualified practising solicitor working for a firm which is regulated by the SRA or CLC has given independent advice.

### **Corporate borrowers**

Where the borrower is a limited company, you must ensure that the following requirements are met:

- The borrower must be registered in England and Wales.
- The charges created under the mortgage deed must be registered at Companies House within 21 days.
- When submitting form MR01, in addition to the legal charge over the mortgage property, the boxes “other charge or fixed security” and “negative pledge” must be ticked 'yes', as our mortgage deed includes a fixed charge over the property, fixed charges over ancillary assets and a negative pledge.
- You must search the borrower at Companies House to ensure that:
  - no liquidator, administrator or receiver has been appointed or any petition presented;
  - no resolution to wind up the borrower has been passed;
  - the borrower has the power to carry on its existing business;
  - the proposed advance and mortgage documents are consistent with the borrower's constitution;
  - the borrower has the power to borrow in the terms and in the manner proposed;
  - the mortgage property is not subject to any other mortgages or charges other than a floating charge (and if any floating charge exists and ensure all necessary consents, releases and certificates of non-crystallisation are obtained prior to completion); and
  - the transaction has been approved in accordance with the borrower's constitution.



### **Mortgage transfers**

You agree that at any time and from time to time we may make a mortgage transfer to anyone without notice to you. You consent and agree to each such mortgage transfer and agree that no further consent or agreement is required from you and no further notice need be given to you. You acknowledge and agree that any transferee can rely on your obligations, liabilities and duties in relation to this matter and can exercise our rights and enforce your obligations.

You agree that we may pass any information we have now or in the future in connection with you, your firm, the instructions and our rights against you in connection with any mortgage agreement or other transaction to any interested or potentially interested person in connection with any actual or potential mortgage transfer.

### **Contact Details**

If you are unsure about any of our requirements, please contact our Completions Team on 01252 931 399.

# Fleet Mortgages

See how we can help **01252 916 800**  
[fleetmortgages.co.uk](https://fleetmortgages.co.uk)

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