

Instruction to Conveyancers

Version 9.

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We confirm that **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** (our conveyancer) to act on **our** behalf in relation to this matter include:

- a. the **instructions** (the **Additional Instructions**) set out in this document from and including the heading ‘General’ below;
- b. “**our Handbook Part 2**”, being **our** current Part 2 **instructions** in respect the current edition of the UK Finance Mortgage Lenders’ Handbook for England and Wales;
- c. “**the Handbook Part 1**”, being Part 1 of the current edition of the UK Finance Mortgage Lenders’ Handbook for England and Wales except as qualified and supplemented by our **Handbook Part 2** and in the **Additional Instructions** below; and
- d. any other **instructions** in the **mortgage offer**.

Please obtain a copy of our **Handbook Part 2** from the UK Finance website:
(www.cml.org.uk/cml/handbook).

Expressions defined in the edition of **our** Mortgage Conditions referred to in the form of mortgage deed provided by **us** to **you** in relation to this matter shall (except where defined differently in the **instructions**) have the same meaning in the **instructions** but, for this purpose, treating references in those Mortgage Conditions to “you” and “your” as references to the **borrower**. A definition of an expression set out in this document shall prevail to the extent inconsistent with a definition of the same expression in the **Handbook Part 1**.

In the **instructions** (including the answers, but excluding the questions, set out in **our Handbook Part 2**):

1. **you** and **your** means the firm of solicitors or licensed conveyancers to who act for **us** in connection with the **mortgage documents** relating to the matter in which the **instructions** relate.
2. **we**, **us** and **our** means Fleet Mortgages Limited of 2nd Floor, Flagship House, Reading Road North, Fleet, Hampshire, GU51 4WP (registered in England and Wales as company number 08663979) and anyone who at any time in the future is entitled (as legal, equitable or beneficial owner) to all or any of the lender’s and/or mortgagee’s rights under the **mortgage documents** (including as a result of a **mortgage transfer**, a merger or consolidation with another person, a take-over and/or a group reorganisation).
3. **borrower** means at any time each person indicated in the application form relating to this matter as an applicant or, following issue of a **mortgage offer**, each person indicated in the then most recent **mortgage offer** as being a mortgagor or **borrower** and, in each case, (if there is more than one) all of them together (and includes that person’s personal representatives and any person to whom title to the **mortgage property** passes).
4. **mortgage transfer** includes a transfer, assignment (whether absolute or by way of security), mortgage, charge, agreement to sell or other disposal (in law or in equity) of all or any of **our** rights, title, interests, benefits and obligations in respect of the **instructions**, any document provided by **you** (including a certificate of title) in connection with the **instructions**, the **mortgage documents** and/or the **mortgage property**.

General

Please read the **instructions** carefully and provide as much information and detail to **us** as possible to ensure that this transaction proceeds smoothly. Please remember to allow sufficient time between any certificate of title from **you** and **completion** to allow **us** to consider any information provided. Delays are rarely as a result of **us** being provided with too much information but may arise if **we** are provided with too little and have to come back to **you** with further requests for information.



You must promptly report anything (including providing any relevant documents) which ought to be considered relevant to, or which might influence, **our** decision to lend.

Completion funds and mortgage transfers

You must not request funds from **us** until **you** have satisfied **our** requirements. **You** have no authority to release funds unless **you** have complied with all of **our instructions**.

We have arrangements pursuant to which **our** rights under the **mortgage documents** are sold and assigned to the person identified in the cover letter accompanying the **mortgage offer** (the "**purchaser**") immediately upon **completion** although, unless notified otherwise, **we** will continue to be 'lender of record' and hold the legal title and deal with the **borrower** in relation to the **mortgage documents**. As part of these arrangements, the **completion** funds will be transferred from an account in the name of the **purchaser**, being part of the consideration payable to **us**. **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 1 **business day** of the scheduled date indicated in **your** certificate of title, **you** must immediately return all of the funds directly to the account of the **purchaser** identified in the cover letter accompanying the **mortgage offer**.

You acknowledge to **us** and agree with **us** 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** agree with **us** that **we** may pass any information **we** have now or in the future in connection with **you**, **your** firm, the **instructions** and/or **our** rights against **you** in connection with the **mortgage documents** to any interested or potentially interested person in connection with any **mortgage transfer**. Any person falling within the definition of "**us**" may rely on **your** obligations, liabilities and duties in relation to this matter to the same extent as though they were originally owed and incurred to, and the certificate of title was originally also made to, that person.

Security for our advance

The **advance** must be secured by a first legal charge against the **mortgage property**.

As the **advance** will be secured against a **mortgage property** that is or will be let, **you** must ensure that any tenancy agreement affecting the **mortgage property** complies with **our Mortgage Conditions**, the requirements of **our Handbook Part 2** and the general and special conditions of the **mortgage offer**. **You** should also let **us** know if the **borrower** has any connection whatever to whoever occupies or is intending to occupy the **mortgage property**. **You** must also advise **us** immediately should **you** become aware that the **borrower** intends to reside in the **mortgage property**.

You must also inform **us** if it appears that the **mortgage property** is of an unusual construction or subject to any encumbrance or restriction (such as tenancies or rights of occupation or use of the **mortgage property**), whether legal or physical, which ought to be considered relevant to, or which might influence, **our** decision to lend or proceed. This includes, but is not limited to:

- Houses subject to any agricultural occupancy restrictions;
- Properties with occupancy restrictions, including retirement flats and sheltered accommodation;
- Uninsurable properties;
- Properties with Overage Clauses;
- Landlocked properties;
- Properties with greater than 5 acres of land as part of the title.

If **you** are in any doubt as to the position please contact **us** immediately.

It is also important that the **borrower(s)** fully understand the transaction and the terms relevant to the **advance** (including the terms of the **mortgage offer**, the **Mortgage Conditions** and any special conditions). This should include 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 **borrower(s)** 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 a representation and warranty by **you** to **us** as confirmation that either:

- **you** have given such advice; or
- if appropriate, that independent legal advice has been provided by another qualified practising solicitor and that **you** hold a completed certificate confirming that independent advice has been given.

Where the **borrower** is a limited company, personal guarantees are required from the persons named in the **mortgage offer**.

Your firm

You must return these **instructions** to **us** unless **you** have been appointed to **our** panel. If there have been changes to **your** firm or company since **your** appointment **you** must report these to **us** and await **our** further **instructions**.

You must abide by the terms of **your** panel appointment and, in particular, with reference to insurance. In the event of any inconsistency between those terms and the **instructions**, the **instructions** prevail.

You must keep the entire file(s) including the financial records and ledgers for a minimum period of six years from **completion**. The **borrower** has waived any right to confidentiality and/or privilege in respect of the entire file(s) by signing the declaration relating to the mortgage application form and the entire file must be sent to **us** promptly should **we** request it from **you** either before or after **completion**.

Communication with us

If you report anything to us, whether as a qualification of your certificate of title or offering any advice to us, you must make sure that we have received and acknowledged it. You should not assume that the transaction can proceed to complete unless we have confirmed that that is the case or we have confirmed what further steps we require you to take.

We require a minimum of 5 working days from the submission of the certificate of title before funds can be released.

If we receive an unqualified certificate of title from you, you agree that this constitutes a representation and warranty by you to us that you have complied in full with our instructions and your obligations.

Our standard documentation

We enclose a pack containing some of our standard documents for use by you in complying with the instructions. For further copies and/or other forms that you require, please contact our Completions Department (see our Handbook Part 2 for contact details).

You must use **our** form of pro forma documentation that has been provided to **you** and, in particular, **you** are responsible for completing the documentation fully and accurately with the relevant details (including, but not limited to, 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 that has been provided to **you**, please contact Completions Team (address and telephone number at start of **our Handbook Part 2**) to find out whether **we** have an appropriate pro forma.

Avoidance of fraud

You must be fully aware of and comply with all relevant guidance and practice notes issued by the SRA, the Law Society and UK Finance.

You must carefully consider the entire transaction and report to **us** immediately anything which is unusual, does not appear to be in the interests of either **us** or the **borrower** or which ought otherwise to be considered relevant to, or which might influence, **our** decision to lend or proceed.

This includes, but is not limited to, reporting the following;

- Where the beneficial interest in the **mortgage property** is held by the **borrower** in trust for as nominee for someone else;
- Where there is any connection between the **borrower** and any other party to the transaction (including, where any of the parties is a limited company, as a director or shareholder of any of the parties) or where the transaction appears to be other than at arm's length;
- Where the **advance** is used for purposes other than the purchase or remortgage of the **mortgage property** in accordance with the **mortgage offer**;
- Where the purchase price of the **mortgage property** is not the same as that set out in the **mortgage offer** or where the sum actually paid for the **mortgage property** at **completion** is not the same as that set out in the **mortgage offer**;
- Where any discounts, incentives (including the inclusion of furniture or fixtures and fittings, contributions towards fees or stamp duty or similar) or rental guarantees are received by the **borrower** or any other party to the transaction;
- Where the **borrower** is not providing the balance of the purchase price of the **mortgage property** from his own resources and/or is taking out any further borrowing in respect of the transaction
- Any payment is said to have been made directly between any of the parties, where any amount of the purchase price is said to be gifted and/or where the full amount of any purchase price will not be passing through **your** client account,
- The name of the seller and of the registered proprietor if they are different;
- Details of any relationship between the parties or giving confirmation that there is no relationship between the parties;
- Where the seller, or **borrower** if the transaction is a remortgage, has not owned the **mortgage property** for at least six months at the date of **your instructions**;
- In the case of a remortgage of the **mortgage property**, if the property is currently unencumbered.
- Full details of the transaction, including all parties and the prices paid by each party at each stage of the transaction, if the transaction is proceeding by way of a sub-sale, a back to back sale, an assignment of a contract to purchase, the granting of a lease at the direction of a party other than the seller or any similar transaction;
- Where the seller, previous owner or any member of their family is to remain in occupation of the **mortgage property** after **completion**;
- Where **instructions** are given to in **you** relation to the transaction from someone other than the **borrower**;
- Whether the **mortgage property** is being purchased through a property location firm, property club or other property investment firm or syndicate.
- In transactions involving a purchase, the full details of the solicitors or conveyancers who are acting for the seller

Corporate borrowers

You are reminded that all of this guidance also applies to limited companies and limited liability partnerships (LLP). **We** have the following **additional** requirements, however, if the **borrower** is a limited company;

- The charges created under the **mortgage deed** must be registered at Companies House within 21 days. The **mortgage deed** will not be enforceable if this is not done.
- To ensure the charges are properly registered at Companies House, when submitting form MR01 please ensure that in addition to the legal charge over the mortgage property, the boxes "other charge or fixed security" and "negative pledge" are ticked 'yes', as Fleet's standard mortgage deed includes a fixed charge over the property, fixed charges over ancillary assets and a negative pledge.



- **You** must check whether the **borrower** is registered in England and Wales. If they are not **you** must let us know immediately;
- **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** objects in the articles of association, where appropriate;
 - 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 charge or floating charge (if any floating charge exists any necessary consents or certificates of non-crystallisation must be obtained prior to **completion**);
 - the **borrower** has not granted any other mortgages or charges which apply to the **mortgage property** and/or contain a negative pledge. If they have, **we** will require the existing lender to enter into a deed of release in respect of the **mortgage property**;
 - all directors and shareholders of the **borrower** are **guarantors**.
 - and **you** must inform **us** if **you** are not satisfied about any of these matters.
- **You** must not proceed with **completion** until **you** are satisfied that the board of directors has approved the transaction in accordance with the **borrower's** memorandum and articles of association where appropriate.

Mortgages involving guarantors

In cases involving a limited company, **we** require a personal guarantee from each director and from any shareholder with at least a 25% shareholding. However, **we** do require guarantees from sufficient shareholders to ensure that **we** have guarantees from shareholders holding at least 75% of the shares.

In cases involving an LLP, **we** require a personal guarantee from each member of the LLP.

In cases where **we** require a **guarantor** **you** will need to ensure that each **guarantor** receives independent legal advice from a qualified practising solicitor.

It is for **your** firm to decide whether or not **your** firm, or someone within **your** firm, can give such advice and that there is no conflict of interest between the interests of the **borrower** and any **guarantor**. Where **you** consider that there may be a conflict of interest **you** must explain to the **guarantor(s)** that they must seek advice elsewhere. The solicitor giving independent advice to a **guarantor** must complete **our** standard certificate confirming that independent advice has been given.

When **we** receive a certificate of title from **you**, **you** agree that this constitutes a representation and warranty by **you** to **us** as confirmation that **you** hold a completed certificate confirming that independent advice has been given.

We expect each **guarantor** to be interviewed personally (which can include giving the advice via a video call if you are satisfied that this is appropriate given the circumstances of the transaction) and in the absence of any other **guarantor** or other party to the transaction. The advice must include (but is not limited to) the following;

- the detail of the proposed transaction, including the amount of the loan, and any risks to the **guarantor** associated with it (this should, where appropriate, include the guidelines from the decision in Royal Bank of Scotland -v- Etridge (No 2)[2002]);
- the fact that all monies due by the **borrower** under the **mortgage documents** (including any **further advances**) are covered by the guarantee and that there is no cap on liability under the guarantee;
- that, if there are other guarantors, they are jointly and severally liable for the full amount of the **borrower's** liability;
- that the guarantee will remain effective until the **borrower's** liability to **us** is discharged in full;

- that **we** can seek to enforce the guarantee without having pursued the **borrower**.



Clearly, there will also be matters specific to the transaction, or the borrowers or guarantor's circumstances, which you will consider ought properly to form part of the advice.

The guarantee must be signed by the **guarantor** and not by any attorney or anyone else apparently acting on their behalf and dated the same date as the **mortgage deed**.

Freehold & Leasehold Properties

Please note that **we** do not lend in the following circumstances:

- on freehold flats;
- where more than 10% of the **mortgage property** is affected by a flying/creeping freehold;
- where the **borrower(s)** has/have granted a lease to himself/themselves;
- where the **mortgage property** is freehold and parts of the **mortgage property** have been sold off on long leases;
- a lease that can be forfeited on insolvency.
- where the **mortgage property** is leasehold and there are outstanding ground rent or service charges or where notice has been served of a proposal to carry out major works.

If any of these circumstances exist they must be reported to **us** promptly. If **we** do decide to proceed **we** may impose **additional** requirements upon **you**.

Summary

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

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