

PENRITH BUILDING SOCIETY MORTGAGE INSTRUCTIONS FOR SCOTLAND

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Viewing instructions only for Scotland

A GENERAL

(This section deals with important preliminary and general matters including the nature of our instructions and communications with us.)

DEFINITIONS

A.1. "We", "Us", "Our", "the Society" – means Penrith Building Society (or its subsidiary) from whom you receive instructions.

A.2. "Borrower", "Guarantor" – references to "borrower" (and, if applicable, "guarantor" or, expressly or impliedly, the proprietor) are to each borrower (and guarantor or proprietor) named in the mortgage instructions/offer (if sent to the conveyancer). This applies to references in these Mortgage Instructions and in the certificate of title. If the borrower and the proprietor are different people we shall not lend.

A.3. "Certified copy" means a photostat copy of an original document which has been certified as a true copy of an original by a solicitor

A.4. "Common parts" – means the structure, main walls, roof, solum, foundations, services, grounds and any other common areas or parts serving the building or estate of which the property forms part.

A.5. "Conveyance" – includes a disposition and any other deed of transmission of heritable property, and in relation to leasehold property, an assignment.

A.6. "Immediate family" – means a spouse, civil partner, co-habitee, parent, sibling, child, step-parent, step-child, grandparent, grandchild, parent-in-law, or child-in-law.

A.7. "Management company" – means the company, including without prejudice to generality any company of property factors, formed to carry out the maintenance and repair of the common parts;

A.8. "Mortgage/Mortgage offer" – references to "mortgage/mortgage offer" include any loan agreement, offer of mortgage, standard security, or any other similar document. If you are instructed in connection with any additional loan/further advance then you should treat references to "mortgage" and "mortgage offer" as applying to such "additional loan/further advance" and "additional loan/further advance offer" respectively.

A.9. Regulation, legislation or legislative provision – any reference to any regulation, legislation or legislative provision shall be interpreted as a reference to that regulation, legislation or legislative provision as amended, re-enacted or extended at the relevant time.

OUR INSTRUCTIONS

A.10. These mortgage conveyancing instructions are produced by us. Changes or revisions to these instructions will be notified to you and other interested parties.

A.11. In addition to these instructions you must also comply with any additional instructions you receive from the case officer at the Society for an individual loan.

A.12. In order to act on our behalf your firm or company must have a minimum of three partners/principals and provide copies of the acting parties'/principals' practising certificates. You

must also be a member of our conveyancing panel and must comply with the terms and conditions of your panel appointment as may be notified to you by us from time to time.

A.13. These Mortgage Instructions do not affect any responsibilities that you have to us under the general law or any practice rule or guidance issued by your professional body from time to time.

A.14. Nothing in these instructions reduces your duties to the borrower.

A.15. The standard of care that we expect of you and which you agree to provide is that of a reasonably competent solicitor or independent qualified conveyancer acting on behalf of a heritable creditor.

COMMUNICATIONS

A.16. All communications between you and us should be in writing quoting the mortgage account number, the surname and initials of the borrower and the property address. You should keep copies of all written communications on your file as evidence of notification and authorisation. If you use fax, e-mail or any other electronic form of communication, you should retain a copy.

A.17. If you require deeds or information from us in respect of a borrower or a property then you must have the borrower's prior authority (or, if there is more than one borrower, the authority of both or all of the borrowers) for such a request. We shall assume in our dealings with you that you have such authority.

A.18. If you need to report a matter to us, you must do so as soon as you become aware of it, since in certain circumstances it may impact on whether we are willing to lend. This may also avoid any delay. Please contact the case officer at the Society.

A.19. If you do not believe that a matter is adequately provided for in these Mortgage Instructions, you should identify the relevant Mortgage Instructions' provision and the extent to which the matter is not covered by it. You should provide –

- a concise summary of the legal risks, and
- your recommendation on how our interest can be protected.

A.20. After reporting a matter you should not complete the mortgage until you have received our further written instructions. We recommend that you report such matters as soon as practicable, and before conclusion of missives because we might have to change or withdraw the mortgage offer.

B BORROWER

(This section deals with the borrower and other persons who, while not necessarily parties to the mortgage, potentially have rights that could affect our security.)

FINANCE AND COSTS

B.1. You must ask the borrower how the balance of the purchase price is being provided. If you become aware that the borrower is not providing the balance of the purchase price from his own funds and/or is proposing to give a second charge over the property, you must report this to us if the borrower agrees to establish if we are still willing to lend, failing which you must return our instructions and explain that you are unable to continue to act for us as there is a conflict of interest.

B.2. The purchase price for the property must be the same as that set out in our instructions. If it is not, you must tell us.

B.3. You must tell us if the missives provide for –

- a cashback to the buyer, or
- part of the price includes a non-cash incentive to the buyer (eg paid stamp duty land tax).

The case officer at the Society will determine if we are still willing to lend. Without limiting the generality we shall not be willing to lend if –

- an offer of loan is not taken up within six months of the date of offer,
- there is non compliance by the borrower with any loan condition,
- the borrower and/or you fail to disclose any relevant information and

- it is discovered that information provided to us is fraudulent or misleading

B.4. You must report to us if you will not have control over the payment of all of the purchase money (for example, if it is proposed that the borrower pays money to the seller or a third party direct), other than a reservation fee and/or deposit of not more than £1000 paid to a builder or developer.

B.5. Your fees and outlays are payable by the borrower and should be collected from the borrower on or before settlement. You must not allow non-payment of fees or outlays to delay the procurement of the appropriate stamp duty land tax certificate and registration of documents.

CONFLICTS OF INTEREST

B.6. If you or a member of your immediate family is the borrower you must not act for us unless the case officer at the Society is specifically notified of this by you in writing and approves this in writing and subject to any conditions the case officer may impose. Reference is made to A13 above.

B.7. Your firm or company must not act for us if the partner or fee earner dealing with the transaction, or a member of his or her immediate family, is the borrower unless the case officer at the Society is specifically notified of this by you in writing and approves this in writing and subject to any conditions the case officer may impose. Reference is made to A13 above

B.8. If any matter comes to your attention that you should reasonably expect us to consider important in deciding whether or not to lend to the borrower (such as whether the borrower has given us misleading information or the information that you might reasonably expect to have been given to us is no longer true) and you are unable to disclose that information to us because of a conflict of interest, you must cease to act for us and return our instructions stating that you consider a conflict of interest has arisen.

B.9. If there is any conflict of interest, you must not act for us and must return our instructions.

FINANCIAL CRIME PREVENTION

B.10. Solicitors must follow the current Solicitors (Scotland) Accounts Rules and, to the extent that they apply, comply with the Money Laundering Regulations 2003 (see the Law Society of Scotland's Simple Guide to those Rules and Regulations in the Parliament House Book) and the Proceeds of Crime Act 2002. Independent qualified conveyancers must follow any guidance issued by their supervisory body.

B.11. If you are not familiar with the seller's solicitors or independent qualified conveyancers, you must verify that they appear in a legal directory or they are currently on record with the Law Society of Scotland or other supervisory body as practising at the address shown on their note paper. If the seller has no legal representation you must refer the matter to the case officer at the Society for determination as to whether the Society is prepared to lend.

B.12. All your duties to us under these Mortgage Instructions in relation to identifying signatories of documents will be satisfied by your complying with paragraphs B.10 and B.11. You must ask the signatory of any deeds and documents to provide evidence of identity, which you must carefully check. You should check the signatory's identity against one of the documents from list A or two of the documents in list B.

List A

- a valid full passport, or
- a valid H M Forces identity card with the signatory's photograph, and
- a valid UK Photocard driving licence.

List B

- a cheque guarantee card, credit card (bearing the Mastercard or Visa Logo), American Express or Diners Club card, debit or multi-function card (bearing the Switch or Delta logo) issued in the United Kingdom with an original account statement less than three months old or
- firearm and shot gun certificate, or
- receipted utility bill less than three months old, or
- council tax bill less than three months old, or
- council rent book showing the rent paid for the last three months, and
- a mortgage statement from another building society or bank for the mortgage accounting year just ended.

POWERS OF ATTORNEY

B.13. If any document is being executed under power of attorney, you must see an extract registered power of attorney, the original or a certified copy, and ensure that it is, on its face, properly drawn up, that it is adequate for the transaction contemplated, that it appears to be properly executed by the granter and that the attorney knows of no reason why such power of attorney will not be subsisting at settlement. In the case of joint borrowers, neither borrower may appoint the other as attorney. If a standard security is to be signed under Power of Attorney please refer this to the case officer at the Society (before missives are concluded) to enable the Society to consider whether it will still lend and to avoid delay.

B.14. A power of attorney must not be used in connection with a regulated loan under the Consumer Credit Act 1974.

B.15. You must ensure that the original, an extract or a certified copy of the power of attorney is sent to us after settlement. Where the Power of Attorney is a general Power of Attorney and was completed more than twelve months before the date of settlement we shall require a statutory declaration by the attorney that it has not been revoked.

OTHER OCCUPIERS

B.16 You must ensure that there are no occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended, or under the Civil Partnership Act 2004 as amended which will have priority over our security. Any deed required for this purpose must be executed prior to settlement.

B.17. You must ensure that no liferent has been created which could result in our not obtaining vacant possession in the event of enforcing our security against the borrower.

SEPARATE REPRESENTATION

B.18. You must not advise –

- any borrower who does not personally benefit from the loan, or
- any guarantor, or
- anyone intending to occupy the property who is to execute a consent to the mortgage, and you must arrange for them to seek independent legal advice.

B.19. You must advise any non-entitled spouse or non-entitled civil partner intending to occupy the property who is to execute a consent to the taking of the loan, or a renunciation of occupancy rights, to obtain independent legal advice for the purposes of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended, or the Civil Partnership Act 2004 as amended. We do not allow you to advise these individuals. If despite being advised by you to obtain independent legal advice they elect not to do so you must obtain a written declaration from them that you have so advised them and that they have nevertheless elected to proceed in the absence of obtaining independent legal advice.

C SECURITY PROPERTY

(This section covers matters relating to the property being offered as security)

VACANT POSSESSION

C.1. Unless otherwise stated in your instructions, it is a term of the loan that vacant possession is obtained. The contract must provide for this. If you doubt that vacant possession will be given, you must not part with the advance and should report the position to us.

VALUATION

C.2. A copy of the valuation report should accompany these instructions.

C.3. You must take reasonable steps to verify that there are no discrepancies between the description of the property as valued and the title and other documents that a reasonably competent conveyancer should obtain, and, if there are, you must tell us immediately.

C.4. You should take reasonable steps to verify that the assumptions stated by the valuer about the title in the valuation are correct. If they are not, please let us know as soon as possible, as it will be necessary for us to check with the valuer whether the valuation needs to be revised. We are not expecting you to assume the role of valuer. We are simply trying to ensure that the valuer has valued the property based on correct information.

C.5. We recommend that you should advise the borrower that there may be defects in the property which are not revealed by the inspection carried out by our valuer and there may be omissions or inaccuracies in the valuer's report which do not matter to us but which would matter to the borrower. We recommend that, if we send a copy of a valuation report on which we are basing our decision to lend, you should also advise the borrower that the borrower should not rely on the report in deciding whether to proceed with the purchase and that he may wish to obtain his own more detailed report on the condition and value of the property, based on a fuller inspection, to enable him to decide whether the property is suitable for his purposes.

C.6. Where the mortgage offer states that a final inspection is needed, you must ask for the final inspection at least 10 working days before the advance is required. Failure to do so may cause delay in the issue of the advance. Your certificate of title must be sent to us in the usual way.

BOUNDARIES

C.7. Wherever possible, these must be clearly defined by reference to a suitable plan or description. They must also accord with the information given in the valuation report, if this is provided to you. You should check with the borrower that the plan or the description accords with the borrower's understanding of the extent of the property to be mortgaged to us. You must report to us if there are any discrepancies.

PROPERTIES LET AT SETTLEMENT

C.8. Unless otherwise stated in your instructions, it is a term of loan that any letting of the property, or part of it, is prohibited without our prior consent. Where the property, or part of it, is already let, or is to be let at settlement, then you should check the details set out in the mortgage offer or any consent to let we issue. If no such details are mentioned or no consent to let issued, you must report the position to the case officer at the Society before missives are concluded for us to determine if we still wish to lend and to avoid any delay.

C.9. Extracts or certified copies of all tenancy agreements, leases and notices in respect of existing tenancies must be sent to us after settlement.

C.10. Where we have consented to the letting, and subject to any conditions that apply to the letting in these Mortgage Instructions and/or the details set out in the mortgage offer and/or any consent to let we issue, then:

C.11. The letting must be a Short Assured Tenancy and the borrower must serve notice on the prospective tenants before the tenancy commences on the basis of Ground 2 of Schedule 5 of the Housing (Scotland) Act 1988 that the property is subject to a heritable security and that we may seek to recover possession of the property in the event that the borrower fails to keep to the conditions of the loan. If the property is already let, and the existing letting does not comply with these requirements, you must report the position to the case officer at the Society for a decision as to whether we are willing to lend and to avoid any delay; and

C.12. You must confirm with the borrower that he is registered as a landlord on the register of landlords with the local authority where the property is situated in terms of the Antisocial Behaviour, etc, (Scotland) Act 2004 and that any letting agent employed by the borrower in respect of the property is also registered under that Act. You must report any failure to the case officer at the Society for a decision as to whether we are willing to lend and to avoid any delay; and

C.13. Where the property falls within the definition of a house in multiple occupation under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 as amended, you must confirm with the borrower that the property meets the requirements of the Order and that the borrower has obtained any licence required in respect of the property under the Order. You must report any failure to the case officer at the Society for a decision as to whether we are willing to lend and to avoid any delay.

NEW PROPERTIES

C.14. If the property is newly built, or newly converted, or to be occupied for the first time, you must ensure that it was built or converted under a new home warranty scheme acceptable to us. Those schemes acceptable to us are NHBC; Zurich Municipal; and HAPN. We may also accept certain professional certificates. To verify which are acceptable to us please refer to the case officer at the Society.

C.15. Before you send the certificate of title, you must obtain a copy of a new home warranty provider's cover note from the developer. The cover note must confirm that the warranty provider has carried out a final/pre-handover inspection and that the new home warranty will be provided. This does not apply to self-build schemes. All new home warranty documentation should be sent to us after settlement.

C.16. We do not insist that notice of assignation of the benefit of the new home warranty agreement be given to the builder in the case of a second and subsequent purchase(s) during the period of the insurance cover. We require that any assignations of building standards indemnity schemes which are available should be sent to us after settlement.

C.17. You should check with us as soon as possible and in any event before conclusion of missives whether we will accept the monitoring of a newly built or newly converted property to be occupied for the first time by a professional consultant since it may affect our decision to lend and may avoid delay. You should ensure that the professional consultant properly completes the Professional Consultant's Certificate as we may provide on request from you. The professional consultant should also confirm to you that he has appropriate experience in the design or monitoring of the construction or conversion of residential buildings and has one or more of the following qualifications –

- fellow or member of the Royal Institution of Chartered Surveyors (FRICS or MRICS);
- fellow or member of the Institution of Structural Engineers (F.I.Struct.E or M.I.Struct.E);
- fellow or member of the Chartered Institute of Building (FCIOB or MCIQB);
- fellow or member of the Architecture and Surveying Institute (FASI or MASI);
- fellow or member of the Association of Building Engineers (FB.Eng or MB.Eng);
- member of the Chartered Institute of Architectural Technologists (formally British Institute of Architectural Technologists) (MCIAT); or
- architect registered with the Architects Registration Board (ARB). An architect must be registered with the Architects Registration Board, even if also a member of another institution, for example the Royal Institute of British Architects (RIBA) or the Royal Incorporation of Architects in Scotland (RIAS);

- fellow or member of the Institution of Civil Engineers (FICE or MICE).

C.18. At the time he issues his certificate of practical completion, the consultant must have professional indemnity insurance in force for each claim for the greater of either –

- the value of the property once completed; or
- £250,000 if employed directly by the borrower or, in any other case, £500,000. If we require a collateral warranty from any professional adviser, this will be stated specifically in the mortgage instructions.

C.19. The consultant's certificate must be sent to us after settlement.

C.20. If the property is newly built, or newly converted, or to be occupied for the first time, before you send the certificate of title you must check that, where the erection or conversion of the property is in terms of a building warrant issued before 1 May 2005, that the property has been inspected, where appropriate, by an officer from the local building control authority and the officer has passed the property as suitable for human habitation and has either –

- issued a completion certificate in connection with the construction or conversion of the property, or
- issued a temporary certificate authorising the occupation of the property.

C.21. Where the erection or conversion of the property is in terms of a building warrant issued on or after 1 May 2005, that the property has been inspected, where appropriate, by a verifier authorised and appointed under the Building (Scotland) Act 2003 and the verifier has either accepted the submission of a completion certificate in connection with the construction or conversion of the property, or granted permission for the temporary occupation of the property without a completion certificate.

ROADS , FOOTPATHS,SEWERS AND WATER

C.22. If the roads and footpaths serving the property are not adopted or maintained at public expense, but it is intended that they should be so, there must be a road bond in existence where required by statutory regulation or you must make an appropriate retention from the purchase price or you must report to us in order that we determine whether we are willing to lend. Where a retention is being made you are responsible for ensuring that the retention is sufficient to meet the cost of completing the roads and footpaths to such standard as may be required by the local authority.

C.23. The property must be served by a public sewer or by private sewerage arrangements which have the necessary approvals from the sewerage authority or you must report to us in order that we determine whether we are willing to lend.

C.24. The property must be served by a public water supply or by a private water supply arrangement and in which latter case there must exist and be delivered to us after settlement all requisite consents from the local and/or public authorities as regards such private water supply being sufficient and wholesome for human consumption for use in connection with a private dwellinghouse as may be required by law and/or as may be reasonably required by a purchaser of the property.

SERVITUDES

C.25. You must take all reasonable steps to check that the property has the benefit of all servitudes necessary for its full use and enjoyment. This would include, for example, rights of way (both vehicular and pedestrian), the use of services and any necessary rights of entry for repair. All such rights must be enforceable by the borrower and the borrower's successors in title. If they are not, you must report to us in order that we determine whether we are willing to lend

C.26. If the borrower owns adjoining heritable property over which the borrower requires access to the property or in respect of which services are provided to the property, the heritable property over which such access is to be taken or over or through which such services are to be provided must also be included in our security.

REDEVELOPMENT, etc

C.27. The property enquiry certificate or the enquiries of the seller or the seller's conveyancer should not reveal that the property is in an area scheduled for redevelopment or in any way materially affected by road proposals. If it is, please report this to us in order that we determine whether we are willing to lend.

RIGHTS OF PRE-EMPTION, etc

C.28. You must ensure that there are no rights of pre-emption, restrictions on resale, options or similar arrangements in existence at completion which will affect our security. If there are, please report this to us in order that we determine whether we are willing to lend.

IMPROVEMENTS AND REPAIR GRANTS

C.29. Where the property is subject to an improvement or repair grant that will not be postponed, discharged or waived on settlement, you must report the matter to us in order that we determine whether we are willing to lend.

INSURANCE

C.30. Where we do not arrange the insurance, you must –

1. arrange that the insurance cover starts from no later than settlement
2. ensure that the buildings cover is indexed linked
3. check that the amount of buildings insurance cover is at least the amount referred to in the mortgage offer.

C.31. You must ensure –

- (a) the property is insured in the joint names of us and the borrower, or our interest noted on the policy
- (b) if the property is part of a larger building and there is a common insurance policy, the total sum insured for the building must be not less than the total number of flats multiplied by the amount set out in the mortgage offer for the property
- (c) that the excess does not exceed £1,000
- (d) that there is obtained before settlement the insurer's confirmation that the insurer will notify us if the policy is not renewed or is cancelled
- (e) that you send us a copy of the buildings insurance policy and the last premium receipt to us.

C.32. You must confirm to us that all the following risks are covered in the insurance policy –

- (a) fire
- (b) lightning
- (c) aircraft
- (d) explosion
- (e) earthquake
- (f) storm
- (g) flood
- (h) escape of water or oil
- (i) riot
- (j) malicious damage
- (k) theft or attempted theft
- (l) falling trees and branches and aerials
- (m) subsidence
- (n) heave
- (o) landslip
- (p) collision
- (q) accidental damage to underground services

- (r) professional fees, demolition and site clearance costs, and
- (s) public liability to anyone else.

Submission of a clear certificate of title will be treated as your confirmation that these risks are covered.

D TITLE

(This section covers the title that we require for the security and related matters.)

GOOD AND MARKETABLE TITLE

D.1. You must check your instructions and ensure that there are no discrepancies between them and the title documents and other matters revealed by your investigations.

D.2. The title to the property must be good and marketable free of any restrictions, burdens, servitudes, charges or encumbrances which, at the time of settlement, might reasonably be expected to materially adversely affect the value of the property or its future marketability (but excluding any matters covered by indemnity insurance). Our requirements in respect of indemnity insurance are set out in paragraphs D.22-23. You must also take reasonable steps to ensure that, on completion, the property will be vested in the borrower.

D.3. Where the property comprises a flat, and in the event that the terms of the Tenements (Scotland) Act 2004 do not apply, the cost of maintenance, repair and renewal of the roof and Common parts of the building of which the flat forms part must be borne by the owners of the building of which the flat forms part in equitable proportions in terms of the title.

FIRST RANKING STANDARD SECURITY

D.4. On settlement, we require a fully enforceable first ranking standard security over the property validly executed by all proprietors of the security subjects. All existing charges must be redeemed at or before settlement, unless we agree that an existing charge may be postponed to rank after our security. If we have an appropriate standard form of ranking agreement this must be used.

SEARCHES AND ENQUIRIES

D.5. In carrying out your investigation, you must ensure that all usual and necessary searches and enquiries have been carried out, taking into account the locality and other features of the property.

D.6. All property enquiry certificates must not be more than three months old at settlement.

D.7. Where it is reasonable to believe that the property could be affected by underground mine workings, you must –

- (a) follow the current edition of The Law Society of Scotland Guidance Notes on coal mining reports and obtain a Coal Mining Report from the Coal Authority. If the results of the report from the Coal Authority are such that the property is not affected by any of the matters mentioned in the report then we do not need to be notified of its contents. Subject to that, you should advise us if any entries are revealed in the same way as you would advise the borrower. You should not simply send us a copy of the coal mining report; and
- (b) obtain a report on any other underground mine workings where appropriate, which report must not be more than six months old at settlement. Again, if the results of that report are such that the property is not affected by any of the matters mentioned in the report then we do not need to be notified of its contents. Subject to that, you should advise us if any entries are revealed in the same way as you would advise the borrower. You should not simply send us a copy of the report.

D.8. We accept searches from private firms in the Register of Sasines, Land Register of Scotland, Register of Inhibitions and Adjudications, Register of Companies and Register of Insolvencies. We also accept property enquiry certificates from private firms subject to you ensuring that there is in existence adequate search insurance to safeguard our interests as heritable creditors. It is your

responsibility to check that the policy adequately protects us. You must be satisfied that you will be able to certify that the title is good and marketable.

D.9. You must advise us of any contaminated land entries revealed in the property enquiry certificate (see D.10), in which event only we shall additionally require that environmental or contaminated land reports are obtained on our behalf.

D.10. You must ensure that the property enquiry certificate answers the following questions relating to contaminated land. You should advise us only if any matters are revealed by the answers in the same way as you would advise the borrower –

- (a) Please list any entries relating to the property in the Register maintained under s. 78R(1) of the Environmental Protection Act 1990.
- (b) Has the council served or resolved to serve any notice relating to the property under s. 78B(3)?
- (c) Has the council consulted, or resolved to consult, with the owner or occupier of the property under s.78G(3) in relation to anything to be done on the property as a result of adjoining or adjacent land being contaminated?
- (d) Has any entry been made in the Register, or any notice served or resolved to be served, under s. 78B(3) in relation to any adjoining or adjacent land which has been identified as contaminated because it is in such a condition that harm or pollution of controlled waters might be caused on the property?

Advice of any of the foregoing matters should be given by you to us as soon as possible since it may influence whether we are willing to lend.

INSOLVENCY

D.11. You must obtain a clear personal search against each borrower (and each proprietor or guarantor, if any) at a date not more than three working days prior to the date of completion of the advance. You must fully investigate any entries revealed by your personal search against the borrower (or proprietor or guarantor) to ensure that they do not relate to them.

D.12. Where an entry is revealed against the name of the borrower (or the proprietor or guarantor) –

- you must certify that the entry does not relate to the borrower (or the proprietor or guarantor) if you are able to do so from your own knowledge or enquiries (for example, in the Register of Insolvencies), or
- if, after enquiry, you are unable to certify that the entry does not relate to the borrower (or the proprietor or guarantor) or you are able to establish that it does so relate you must report this to us, even if, in the case of an inhibition, it pre-dates the borrower's acquisition of the property. We may as a consequence decide to withdraw our mortgage offer.

OWNER AND REGISTERED PROPRIETOR

D.13. Please report to us if the proprietor has owned the property for less than six months, or the person selling to the borrower is not the proprietor, unless the seller is -

- (a) a personal representative of the registered proprietor, or
- (b) an institutional heritable creditor exercising its power of sale, or
- (c) a trustee in sequestration, receiver, administrator, or liquidator, or
- (d) a developer or builder selling a property acquired under a part-exchange scheme.

RESTRICTIONS ON USE OR OCCUPATION

D.14. You must check whether there are any material restrictions on the occupation of the property as a private residence or as specified by us (for example, because of the occupier's employment, age or income), or any material restrictions on its use. If there are any restrictions, you must report details to us since it may influence our decision on whether to lend. In some cases, we may accept a restriction, particularly if this relates to sheltered housing or to first time buyers.

REAL BURDENS

D.15. You must enquire whether the property has been built, altered or is currently used in breach of a real burden. We rely on you to check that the real burden is not enforceable. If you are unable to provide an unqualified certificate of title as a result of the risk of enforceability you must ensure (subject to paragraph D.16) that indemnity insurance is in place at settlement (see paragraphs D.22-23).

D.16. We will not insist on indemnity insurance –

- if you are satisfied that there is no risk to our security, and
- the real burden has been extinguished by acquiescence or negative prescription in terms of the Title Conditions (Scotland) Act 2003 and
- there is nothing to suggest that any action is being taken or is threatened in respect of the breach.

PLANNING AND BUILDING REGULATIONS

D.17. You must by making appropriate searches and enquiries take all reasonable steps (including any further enquiries to clarify any issues that may arise) to ensure the property has the benefit of all necessary planning consents (including listed building consent) and building regulations approvals for its construction and any subsequent alterations to the property and its current use, and –

- there is no evidence of any breach of the conditions of that or any other consent or certificate affecting the property, and
- that no matter is revealed which would preclude the property from being used as a residential property or that the property may be the subject of enforcement action.

D.18. If there is such evidence and all outstanding conditions will not be satisfied by completion, then this must be reported to us. Copies of planning permissions, building warrants and other consents or certificates should be sent to us after settlement.

D.19. If the property will be subject to any enforceable restrictions, for example under an agreement (such as an agreement under section 75 of the Town and Country Planning (Scotland) Act 1997) or in a planning permission, which, at the time of settlement, might reasonably be expected materially to affect its value or its future marketability, you should report this to us.

LEASEHOLD PROPERTY

D.20. You must refer to us to check whether long lease titles are acceptable to us as security. If title to a property is constituted by way of a long lease recorded in the Register of Sasines or registered in the Land Register of Scotland, you must –

- (a) check the terms of the lease on, for example, the period left to run (which must not be less than the term of the mortgage/standard security plus fifty years), options to break, rent, casualties, right to assign, limitations on use, onerous conditions, irritancy and any requirement for landlord's consent;
- (b) advise us as soon as possible of any adverse conditions which might make the lease inappropriate as a form of security;
- (c) take all necessary steps to ensure that we are given a valid first ranking security over the lease.

DEED OF GIFT

D.21. If you are aware that any transfer of the title to the property may be open to challenge as a gratuitous alienation or an unfair preference, then you must be satisfied that we will acquire our interest in good faith and will be protected under the relevant statutory provisions against our security being set aside. You must also obtain clear personal searches against all parties to any such transfer. If you are unable to give an unqualified certificate of title, you must arrange indemnity insurance (see paragraphs D.22-23).

INDEMNITY INSURANCE

D.22. You must effect an indemnity insurance policy whenever these Mortgage Instructions identify that this is an acceptable or required course in order to ensure that the property has a good and marketable title at completion. The policy must be sent to us after settlement.

D.23. Where indemnity insurance is effected –

- (a) you must approve the terms of the policy on our behalf
- (b) the limit of indemnity must be for the greatest of the purchase price or valuation of the property or valuation of the property upon its final construction and completion and must be index linked against inflation and in any event for not less than an amount which equates with an increase of five percent per annum for each year of the indemnity compounded.
- (c) the policy must be effected without cost to us
- (d) you must disclose to the insurer all relevant information which you have obtained
- (e) the policy must not contain conditions which you know would make it void or prejudice our interests
- (f) you must provide a copy of the policy to the borrower and explain to the borrower why the policy was effected and that a further policy may be required if there is further lending against the security of the property
- (g) you must explain to the borrower that the borrower will need to comply with any conditions of the policy and that the borrower should notify us of any notice or potential claim in respect of the policy, and
- (h) the policy should always be for our benefit and, if possible, for the benefit of the borrower and any subsequent proprietor or heritable creditor. If the borrower will not be covered by the policy, you must advise the borrower of this.

E MORTGAGE

(This section covers the mortgage deeds, documentation and related matters.)

THE MORTGAGE DOCUMENTATION

E.1. You must use our current standard documents in all cases, including the mortgage deed (standard security), and must not amend or generate them without our written consent. We will send you all the standard documents necessary or tell you where to obtain all standard documentation to enable you to comply with our instructions. If you consider that any of the documentation is inappropriate to the particular facts of a transaction, you should write to us with full details and any suggested amendments.

E.2. The standard security incorporates our current mortgage conditions and, where applicable, loan conditions.

E.3. You should explain to each borrower (and except where specifically prohibited in terms of these Mortgage Instructions any other person signing or executing a document) his responsibilities and liabilities under the documents referred to in paragraph E.1 and any documents he is required to sign.

HIGHER LENDING CHARGE

E.4. You are reminded to tell the borrower that we (and not the borrower) are the insured under any higher lending charge relating to any mortgage indemnity or similar form of insurance policy for which a higher lending charge is payable, and that the insurer will have a subrogated right to claim against the borrower if it pays us under the policy.

THE MORTGAGE OFFER

E.5. The loan to the borrower will not be made until all relevant conditions of the mortgage offer which need to be satisfied before settlement have been complied with, and we have received your unqualified certificate of title. Mortgage offers are usually subject to a time limit (eg. 3 or 6 months), therefore it may be necessary to refer back to the society in case of expiry.

E.6. You should tell us as soon as possible if you have been told that the borrower has decided not to take up the mortgage offer.

RETENTIONS

E.7. If we make a retention from an advance (for example, for repairs, improvements or road works) we are not obliged to release that retention, or any part of it, if the borrower is in breach of any of his obligations under the security, or if a condition attached to the retention has not been met or if the loan has been repaid in full. You should, therefore not give an unqualified undertaking to pay such retention to a third party.

E.8. We will release the retention to you. You are responsible for ensuring that the retention is then paid to the party entitled to receive same.

THE LOAN AND THE CERTIFICATE OF TITLE

E.9. You should not submit your certificate of title unless it is unqualified or we have authorised you in writing to proceed notwithstanding any issues you have raised with us.

E.10. We shall treat the submission by you of the certificate of title as a request for us to release the mortgage advance to you. The mortgage advance will be paid electronically or by cheque as we shall determine. We shall require a minimum of three days notice for us to issue payment. Where appropriate we may deduct a higher lending charge and any other administration or other charges detailed in the offer of loan from the mortgage advance.

E.11. You must hold the loan on trust for us until settlement.

E.12. You are authorised to release the loan only when you hold sufficient funds to complete the purchase of the property and pay all stamp duty land tax and registration fees to perfect the security as a first legal mortgage (standard security) or, if you do not have them, you accept responsibility to pay them yourself.

E.13. You must ensure that, where a stamp duty land tax return is required, it is completed and submitted to allow registration of the charge to take place in the priority period afforded by the search.

E.14. If, after you have requested the mortgage advance, settlement is delayed you must telephone or fax us immediately after you are aware of the delay and you must inform us of the new date for settlement.

E.15. If settlement is delayed, you must return the loan to us by return. If you do not, we will assume that the mortgage has been completed. We reserve the right to charge the borrower interest under the mortgage and/or require you to pay interest on the amount of the mortgage advance.

E.16. You should note that although your certificate of title will be addressed to us, we may at some time transfer our interest in the mortgage (standard security). In those circumstances, our successors in title to the security and persons deriving title under or through the security will also be entitled to rely on your certificate.

INSTALMENT MORTGAGES AND MORTGAGE ADVANCES RELEASED IN INSTALMENTS

E.17. If the cost of the building is to be paid by instalments as work progresses (for example, under a building contract) the amount of each instalment which we will be able to release will be based on a valuation made by our valuer at the time. Whilst we will not be bound by the terms of any building contract, we will endeavour, where we consider it appropriate, to meet the reasonable requirements of the borrower and builder as far as practicable.

E.18. The borrower is expected to pay for as much work as possible from his own resources before applying to us for the first instalment. No instalment can be released unless our security has been,

or will forthwith be, recorded in the Register of Sasines or registered in the Land Register of Scotland as appropriate.

E.19. The borrower is responsible for our valuer's fees for interim valuations as well as the first and final valuations and the cost of which may be deducted from any advances.

E.20. In the case of applications for part of the advance, as in the case of a normal mortgage account, funds for instalment mortgages may be sent to you. However, instalment cheques (apart from the first which will be sent to you to enable you to complete the mortgage) can be made payable to, and sent directly to, the borrower on request of the borrower or you. We may make further payments and advances without reference to you. This E.20. is subject to E.8.

E.21. To allow time for a valuation to be carried out, any request for intermediate funds should be sent to us at least 10 days before the funds are required.

E.22. We will not lend on the security of a building contract unless we tell you to the contrary. As a result the mortgage must not be completed and no part of the advance released until the title to the legal estate in the property has been vested by the borrower.

REGISTRATION

E.23. You must forthwith after settlement record/register our standard security in the Register of Sasines or Land Register of Scotland as appropriate. Before making your application for registration, you must place on your file certified copies of the disposition or other conveyance in favour of the borrower, our standard security and any discharge from a previous heritable creditor. Following recording/registration, you must check the Land and Charge Certificates for accuracy and forward these to us. In Sasines cases you must check that the deeds appear to have been properly recorded and that the completed Searches disclose the relevant deeds, with no adverse entry and forward these to us.

In relation to dealings under the ARTL System operated by the Registers of Scotland: –

- (a) You must comply with the Solicitors (Scotland) (Automated Registration of Title to Land Mandates) Practice Rules 2006 and any other Practice Rules or Guidance Notes issued by the Law Society of Scotland and/or the Registers of Scotland.
- (b) You must check your instructions and/or our specific requirements to see whether we allow you to complete and register our standard security on ARTL. Where we do, you should send a copy of the standard security to the borrower. Where we have more than one style of standard security held on ARTL you should check your instructions to see which style you should use.
- (c) You should check with the case officer of the Society or the ARTL System to see whether we will digitally execute the discharge. As with a paper discharge, if we have digitally executed the discharge and have returned it to you prior to redemption, you must hold the discharge as undelivered until you have sent the redemption money to us.
- (d) You should check whether we require completed paper copy Land and Charge Certificates to be sent to us after registration of the borrower's title and/or the standard security.

THE TITLE DEEDS

E.24. All title deeds, searches, enquiries, consents, requisitions and documents relating to the property must be held to our order and you must not create or exercise any lien over them. Unless otherwise instructed by us, they must be sent to us with the schedule supplied by us as soon as possible after return of the relevant documents from Registers of Scotland after recording/registration. In particular you must send us paper Land and Charge Certificates and associated documentation relating to the property as might additionally be required by a purchaser of the property acting reasonably. If such return will take longer than usual you should advise us in writing with a copy of any correspondence from Registers of Scotland explaining the delay and substantiating that the borrower's title and the Society's standard security have been registered.

E.25. You should obtain the borrower's instructions concerning the retention of documents we tell you not to send us.

YOUR MORTGAGE FILE

E.26. For evidential purposes, you must keep your file for at least ten years from the date of the mortgage before destroying it. Microfiching or data imaging is suitable compliance with this requirement. It is the practice of some fraudsters to demand the conveyancing file on completion in order to destroy evidence that may later be used against them. It is important to retain these documents to protect our interests.

E.27. Where you are processing personal data (as defined in the Data Protection Act 1998) on our behalf, you must –

- take such security measures as are required to enable you to comply with obligations equivalent to those imposed on us by the seventh data protection principle in the 1998 Act, and
- process such personal data only in accordance with our instructions.

In addition, you must allow us to conduct such reasonable audit of your information security measures as we require to ensure your compliance with your obligations in this paragraph.

E.28. Subject to any right of lien or any overriding duty of confidentiality, you should treat documents comprising your file as if they are jointly owned by the borrower and us, and you should not part with them without the consent of both parties. You should on request supply certified copies of all documents on the file or a certified copy of the microfiche to either the borrower or us, and may make a reasonable charge for copying and certification.

F LATER TRANSACTIONS

(This section covers transactions taking place after the settlement and registration of our standard security eg further advances and transfers of equity.)

DOCUMENTS

F.1. In any transaction during the lifetime of the mortgage when we instruct you, you must use our current standard documents in all cases and must not amend or generate them without our written consent. We will send you all the standard documents necessary or you can obtain all the standard documentation to enable you to comply with our instructions from the Society. Please let us know if you need any other documents and we will send these to you. Please contact the case officer at the Society if you consider that any of the documentation is inappropriate to the particular facts of a transaction and in which event, you should write to us with full details and any suggested amendments.

F.2. All requests for deeds should be made in writing and sent to us. In making such a request, you must have and we shall assume you have the consent of all of the borrowers to apply for the deeds.

FURTHER ADVANCES

F.3. Our standard security secures further advances. Consequently, when a further advance is required for alterations or improvements to the property we will not necessarily require to instruct a member of our conveyancing panel.

F.4. If, however, additional land is to be secured or the further advance is required for some other purpose (for example, to purchase a co-proprietor's interest in the property), you may receive instructions to act for us in connection with that transaction.

TRANSFERS OF EQUITY

F.5. You must approve the conveyance and the deed of variation on our behalf. If we have a standard form of deed of variation this must be used unless it is inappropriate for the

purposes of safeguarding the interests of our security. When drafting or approving the deeds, you should bear in mind –

- (a) although the conveyance should state that it is subject to the standard security, it need give no details of the terms of the mortgage;
- (b) the deed of variation need not state the amount of the mortgage debt. If it does, the figure should include both principal and interest at the date of settlement, which you must obtain from the Society;
- (c) there should be no statement that all interest has been paid to date.

F.6. You must ensure that every person who will be a borrower after the transfer undertakes to pay the money secured by the security. If our standard deed of variation (if any) includes no appropriate clause, you must add a suitable undertaking. The wording of the undertaking should be as follows, or as near as circumstances permit: "The new borrower undertakes the whole obligations undertaken by the former borrower in the said standard security so far as they remain outstanding."

F.7. If we have agreed to release a borrower or a guarantor and our standard deed of variation (if any) includes no appropriate clause, you must add a simple clause of release. The release clause should be as follows, or as near as circumstances permit: "The lender in consideration of the new borrower undertaking to perform the whole obligations of the former borrower under the said standard security discharges the former borrower from all liability under the said standard security." You should check whether a guarantor who is to be released was a party to the standard security or to a separate guarantee.

F.8. You must obtain the consent of every guarantor of which you are aware to the release of a borrower or, as the case may be, any other guarantor.

F.9. We must be a party to any deed of variation. All other parties must execute the deed before it is sent to the Society for execution.

APPLICATIONS TO LET THE SECURITY PROPERTY

F.10. You should advise the borrower that any letting of the property is prohibited without our prior consent. If the borrower wishes to let the property after settlement then an application for consent should be made to us (see C.8). It is not necessary to send to us a copy of the proposed tenancy agreement when making the application.

F.11. If the application for our consent is approved and we instruct you to act for us, you must approve the form of tenancy agreement on our behalf. Subject to any additional conditions that may apply to our consent to let we may issue, then you should previously ensure, since our consent is conditional on, and you must advise the borrower of the requirements that –

- (a) he must register as a landlord on the register of landlords with the local authority where the property is situated in terms of the Antisocial Behaviour (Scotland) Act 2004 and that any letting agent employed by the borrower in respect of the property must also be registered under that Act; and
- (b) where the property falls within the definition of a house in multiple occupation under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 as amended, the borrower must obtain any licence required in respect of the property under the Order and ensure the property meets the requirements of the Order; and
- (c) the tenancy agreement must be a Short Assured Tenancy and the borrower must serve notice on the prospective tenants before the tenancy commences of Ground 2 of Schedule 5 of the Housing (Scotland) Act 1988 that the property is subject to a heritable security and that we may seek to recover possession of the property in the event that the borrower fails to keep to the conditions of the loan.

F.12. Please also note that –

- (a) an administration fee will be payable and added to the borrower's mortgage account if not separately paid for by the borrower for our consideration of the application whether or not consent is granted; and
- (b) the proposed rent must cover the borrower's gross mortgage payments at the time; and

- (c) we reserve the right to charge a higher rate of interest to the borrower in certain circumstances or change the terms of the mortgage.

DEEDS OF RECTIFICATION OR SERVITUDE

F.13. If we consent to any proposal for a deed of rectification or servitude, we will rely on you to approve the documents on our behalf and to safeguard the interests of our security.

F.14. Our consent will usually be forthcoming provided that you first of all confirm in writing to us that our security will not be adversely affected in any way by entering into the deed. If you are able to provide this confirmation, then we will not normally need to see a draft of the deed. If you cannot provide confirmation and we need to consider the matter in detail, then an additional administration fee is likely to be charged and added to the borrower's mortgage account if not separately paid for by the borrower.

F.15. The deed should be sent to us for sealing or signing with a brief explanation of the reason for the document and its effect together with your confirmation that it will not adversely affect our security.

RANKING AGREEMENTS

F.16 If we agree to enter into an arrangement with other lenders concerning the order of priority of their securities, we will rely on you to approve the documents on our behalf. You will be supplied with our standard form of deed, if any. In no case will we postpone our first charge over the property.

REDEMPTION AND DISCHARGE

F.17. When requesting a redemption statement you should quote the expected repayment date and whether you are acting for the borrower or have the borrower's authority to request the redemption statement in addition to the information mentioned in paragraph A.16. You should request this at least five working days before the expected redemption date. You must quote all of the borrower's mortgage account numbers of which you are aware when requesting the repayment figure. You must request a redemption statement only if you are acting for the borrower or have the borrower's written authority to request a redemption statement. We shall assume you have this authority.

F.18. To guard against fraud please ensure that, if payment is made by cheque, the redemption cheque is made payable to us, and you quote the mortgage account number or roll number and name of the borrower.

F.19. On the day of settlement you should send your remittance for the repayment to us. If you have previously sent us the discharge for execution and we have returned it to you prior to redemption, you must hold it as undelivered and to our order until we receive cleared funds representing the full extent of the redemption money.