

# Lenders' Handbook

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## Part 3: England and Wales

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## Separate Representation Standard Instructions([Back to contents](#))

### Part 3 - Instructions and Guidance

**These instructions have been developed to apply where you are representing the lender only in a residential conveyancing transaction, i.e. there is separate legal representation of the borrower and the lender.**

**Reference to 'paragraph numbers' are references to paragraph numbers in Part 1 of the Handbook unless indicated to the contrary.**

## 1. Introduction

1.1 This Part applies where you are representing us only in a residential conveyancing transaction. Your retainer with us will be varied by the requirements of this Part 3 and any additional instructions we send you, specific to the transaction. Where Part 3 applies, it should be read in conjunction with Parts 1 and 2 of the Handbook.

1.2 The following Paragraphs do not apply when instructed in accordance with this Part:

- 1.17 (Duties to the Borrower)
- 2.2 (Borrower's authority for release of deeds)

- 5.3.1 (Conflict of interest)
- 10.4 (Release of the loan)
- 14.3.3 (Joint ownership of your file)

1.3 For the avoidance of doubt, the instructions in Parts 1 and 2 apply except where varied or specifically excluded by Part 3 or our specific instructions.

1.4 An example [Standard Requirements Letter](#) sent by the Lender's conveyancer to the Borrower's conveyancer in order to certify title as being good and marketable is available for you to use; it should be noted that:

- This is a suggested format only and you must decide if you require additional information from the Borrower's conveyancer, in order to certify title;
- the letter can be adapted by you or us as we see fit; and
- we may also have our own specific requirements which we will tell you about when instructing you.

## **2. General**[\(Back to contents\)](#)

**2.1** For the avoidance of doubt, as you are representing us only on the residential conveyancing transaction, the limitations on our instructions referred to in Chapter 3 of the Solicitors' Code of Conduct 2011 do not apply.

**2.2** Where Parts 1 and 2 of the Handbook refer to making enquiries, searches or investigations of the Borrower or providing advice or information to the Borrower, you should make enquiries of the Borrower's conveyancer instead to ensure that these enquiries, searches or investigations have been undertaken or the relevant advice or information provided (for example, complying with Part 1 paragraphs 4.4, 9.2 and 13.1); and retain sufficient evidence of this.

**2.3** We will leave it to you to judge what constitutes 'sufficient evidence' in each case bearing in mind that we may call upon you at some point in the future to produce the evidence you have retained to assist us in demonstrating to the Borrower, his representative or anyone else, that the relevant Handbook requirement has been met. By way of illustration only, you may consider that 'sufficient evidence' would comprise of the following in respect of these Handbook Part 1 requirements:

- Paragraph 3.1.7 - a copy of any document you retain certified as a true copy of the original with the name and date of the signatory making the certification being clear on the certified copy.
- Paragraph 4.4 - either a copy of the letter which the Borrower's conveyancer has sent to the Borrower covering these points or written confirmation from the Borrower's conveyancer confirming that these points have been explained to the Borrower 'face-to-face'.
- Paragraph 6.2.1 - either a copy of a letter from the Borrower confirming that the plan or the extent of the property to be mortgaged is correct or written confirmation from the Borrower's conveyancer confirming that this has been discussed with the Borrower 'face-to-face' and the Borrower has confirmed that the description is correct.

If you are in any doubt as to what constitutes 'sufficient evidence', you should contact us.

## **3.Safeguards**

**3.1** In all cases, whether or not the Borrower is known to the Borrower's conveyancer, we require you to obtain copies of documents required under Paragraphs 3.1.6 and 3.2.5, which have been certified by the Borrower's conveyancer. We expect you to use this documentation to comply with Paragraphs 3.1.6, 3.1.7, 3.2.5 and 3.2.6.

**3.2** You are required to comply with Paragraphs 3.1.4 and 3.2.3 to verify both the Borrower's and Seller's conveyancer by checking with the Law Society, the Solicitors' Regulation Authority, or the Council for Licensed Conveyancers.

## **4. Valuation of the Property**[\(Back to contents\)](#)

**4.1** Paragraphs 4.2 and 4.3 will only apply where we send you a copy of the report.

## **5. Title**

**5.1** You must satisfy yourself that you will be able to certify that the title will be 'good and marketable'.

## **6. The Property - Balance of Purchase Monies([Back to contents](#))**

**6.1** You should ensure you have sufficient evidence of how the balance of monies have been paid, for example that these are paid into the Borrower's conveyancer's client account.

## **7. Other Occupiers**

**7.1** You should refer to our instructions in Part 2 paragraph 7.3 of the Handbook or in our letter of instruction with regard to obtaining a signed deed or form of consent for all occupants aged 17 and over who are not party to the mortgage.

## **Circumstances Requiring Independent Legal Advice([Back to contents](#))**

**8.1** You should refer to our instructions in Part 2, paragraph 8.1 of the Handbook or in our letter of instruction with regard to obtaining a signed deed or form of consent where part of the loan is not for the benefit of all joint Borrowers. You should also refer to paragraph 8 of Part 1 of the Handbook.

## **9. Loan and Certificate of Title**

**9.1** When certifying title you must use our standard form of Certificate or Report on Title, and you must ensure that this is sent to us.

**9.2** In order to satisfy Paragraphs 10.5 and 10.6 of Part 1, you must obtain an undertaking from the Borrower's conveyancer to carry out their obligations to complete and submit stamp duty land tax returns under these Paragraph. If they will not give such an undertaking, then you must report this to us and you should not complete the mortgage transaction unless and until instructed to do so by us.

## **10. Mortgage Documentation([Back to contents](#))**

**10.1** You must write to the Borrower's conveyancer enclosing the mortgage documents and request that they explain to each Borrower the legal implications of entering into the mortgage and confirm to you in writing that they have done so.

## **11. Transfer of Mortgage Funds and Completion**

**11.1** You must transfer the mortgage advance directly to the Seller's conveyancer. The Seller's conveyancer must be required to hold the mortgage advance on the terms of the required undertaking. The example borrower's conveyancer's undertaking letter includes a specific example of the seller's undertaking.

## **12. After Completion([Back to contents](#))**

### **12.1 Registration**

**12.1.1** You must ensure that the Borrower's conveyancer provides you, on or before completion, with all the necessary forms and supporting documents to register the mortgage and any related transactions at the Land Registry (within the priority period of the Land Registry search) and if appropriate, at Companies House. You will be the 'sending' conveyancer for the purposes of panel 7 in AP1 (or other Land Registry application forms).

## **13. Legal Costs and disbursements**

**13.1** You must ensure that you are able to cover your legal costs and disbursements. If we have any specific requirements

these will be set out in our letter of instruction, otherwise please make arrangements through the Borrower's conveyancer to collect your legal costs and disbursements.

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