

# Isle of Man

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## Part 1: Isle of Man

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## 1. General

1.1 The UK Finance Mortgage Lenders' Handbook is issued by UK Finance. Your instructions from an individual lender will indicate if you are being instructed in accordance with the Lenders' Handbook. If you are, the general provisions in part 1 and any specific requirements in **part 2** must be followed.

1.2 References to "we" and "our" mean the lender from whom you receive instructions.

1.3 The Lenders' Handbook does not affect any responsibilities you have to us under the general law or any practice rule or guidance issued by your professional body from time to time.

1.4 The standard of care which we expect of you is that of a reasonably competent solicitor or licensed conveyancer acting on behalf of a mortgagee.

1.5 The limitations contained in Practice Rule 7 of the Advocates Practice Rules 2001 of the Isle of Man as amended from time to time apply to the instructions contained in the Lenders' Handbook and any separate instructions. of Man as amended from time to time apply to the instructions contained in the Lenders' Handbook and any separate instructions. of Man as amended from time to time apply to the instructions contained in the Lenders' Handbook and any separate instructions.

1.6 You must also comply with any separate instructions you receive for an individual loan.

1.7 If the borrower and the mortgagor are not one and the same person, all references to "borrower" shall include the mortgagor.

1.8 References to "borrower" (and, if applicable, "guarantor" or, expressly or impliedly, the mortgagor) are to each borrower (and guarantor or mortgagor) named in the mortgage instructions/offer (if sent to the conveyancer). This applies to references in the Lenders' Handbook and in the certificate of title.

1.9 References to "mortgage offer" include any loan agreement, offer of mortgage or any other similar document.

1.10 If you are instructed in connection with any additional loan (including a further advance) then you should treat

references to "mortgage" and "mortgage offer" as applying to such "additional loan" and "additional loan offer" respectively.

1.11 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 them without our written consent. We will send you all the standard documents necessary to enable you to comply with our instructions, but please let us know if you need any other documents and we will send these to you. Check part 2 to see who you should contact. If you consider that any of the documentation is inappropriate to the particular facts of a transaction, you should write to us (see part 2) with full details and any suggested amendments.

1.12 In order to act on our behalf your firm must be a member of our conveyancing panel. You must also comply with any terms and conditions of your panel appointment.

1.13 If you or a member of your immediate family (that is to say, a spouse, co-habitee, parent, sibling, child, step-parent, step-child, grandparent, grandchild, parent-in-law, or child-in-law) is the borrower and you are a sole practitioner, you must not act for us.

1.14 Your firm or company must not act for us if the partner or fee earner dealing with the transaction or a member of his immediate family is the borrower, unless we say your firm may act (see part 2) and a separate fee earner of no less standing or a partner within the firm acts for us.

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

1.16 Nothing in these instructions lessens your duties to the borrower.

## 2. Communications

2.1 All communications between you and us should be in writing quoting the mortgage account or roll number, the surname and initials of the borrower and the property address. You should keep copies of all written communication on your file as evidence of notification and authorisation. If you use PC fax or email, you should keep a paper copy.

2.2 If you require deeds or information from us in respect of a borrower or a property then you must first of all have the borrower's authority for such a request. If there is more than one borrower, you must have the authority of all the borrowers.

2.3 If you need to report a matter to us, you must do so as soon as you become aware of it so as to avoid any delay. If you do not believe that a matter is adequately provided for in the Handbook, you should identify the relevant Handbook provision and the extent to which the issue is not covered by it. You should provide a concise summary of the legal risks and your recommendation on how we should protect our interest. 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 before exchange of contracts because we may have to withdraw or change the mortgage offer.

## 3. Safeguards

3.1 You must follow the guidance given by the Law Society or the Isle of Man Financial Supervision Commission on mortgage fraud, undertakings and, to the extent that it applies, comply with the Anti-Money Laundering Code.

3.2 If you are not familiar with the seller's advocates, you must verify that they are currently on record with the Law Society as practicing at address shown on their notepaper.

3.3 Unless you personally know the signatory of a document, you must ask the signatory 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; or
- a valid UK or Isle of Man Photo-card driving licence; or
- any other document listed in the additional list A in **part 2**.

## List B

- 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
- a firearm and shot gun certificate; or
- a receipted utility bill less than three months old; or
- a rates bill less than three months old; or
- a local authority or Local Government Board rent book showing the rent paid for the last three months; or
- a mortgage statement from another lender for the mortgage accounting year just ended; or
- any other document listed in the additional list B in **part 2**.

You should check that any document you use to verify a signatory's identity appears to be authentic and current, signed in the relevant place. You should take a copy of it and keep the copy on your file. You should also check that the signatory's signature on any document being used to verify identity matches the signatory's signature on the document we require the signatory to sign and that the address shown on any document used to verify identity is that of the signatory.

3.4 All your duties to us under the Lenders' Handbook in relation to identifying signatories of documents will be satisfied by you complying with paragraphs 3.1, 3.2 and 3.3.

#### 4. Valuation of the property

##### 4.1 Valuation

4.1.1 Check **part 2** to see whether we send you a copy of the valuation report or if you must get it from the borrower. If you are sent, or are required to obtain, a copy of the valuation report:

4.1.1.1 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 which a reasonably competent conveyancer should obtain, and, if there are, you must tell us immediately; and

4.1.1.2 you should take reasonable steps to verify that the assumptions stated by the valuer about the title (for example, its tenure, easements, boundaries and restrictions on its use) in the valuation are correct. If they are not, please let us know as soon as possible (see **part 2**) 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.

4.1.2 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 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 that we have obtained, 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 obtains 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.

4.2 Re-inspection 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 (see **part 2**). 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 (see **part 2**).

#### 5. Title

##### 5.1 Surrounding circumstances

5.1.1 Please report to us (see **part 2**) if the owner or registered proprietor has been registered for less than six months or the person selling to the borrower is not the owner or registered proprietor unless the seller is:

- a personal representative of the registered proprietor; or
- an institutional mortgagee exercising its power of sale; or
- a receiver, trustee-in-bankruptcy or liquidator; or
- developer or builder selling a property acquired under a part-exchange scheme.

5.1.2 If any matter comes to the attention of the fee earner dealing with the transaction which 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 misleading information to us or the information which 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.

##### 5.2 Searches and reports

5.2.1 In carrying out your investigation, you must make all usual and necessary searches and enquiries, including a search in bankruptcy against the borrower and any other owners of the legal estate in the Isle of Man General Registry.

5.2.2 In addition, you must carry out any other searches which may be appropriate to the particular property, taking into account its locality and other features.

5.2.3 All searches except where there is a priority period must not be more than six months old at completion.

5.2.4 For local authority searches under paragraph 5.2.1, check **part 2** to see if we accept personal searches. If we do accept personal searches, you must ensure a suitably qualified search agent carries out the personal search and has indemnity insurance that adequately protects us. You must be satisfied that you will be able to certify that the title is good and marketable.

### 5.3 Planning and building regulations

5.3.1 You must by making appropriate searches and enquiries take all reasonable steps (including any further enquiries to clarify any issues which may arise) to ensure:

- the property has the benefit of any necessary planning consents; 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.

5.3.2 If there is such evidence and the seller (or the borrower in the case of a remortgage) is not providing a sufficient undertaking to satisfy those outstanding conditions by completion, then this must be reported to us (see **part 2**). Check **part 2** to see if copies of planning permissions, building regulations and other consents or certificates should be sent to us.

5.3.3 If the property will be subject to any enforceable restrictions, for example under an agreement (such as an agreement under section 18 of the Town and Country Planning Act 1991) or in a planning permission, which, at the time of completion, might reasonably be expected materially to affect its value or its future marketability, you should report this to us (see **part 2**).

5.3.4 We will accept a position where a house has been converted into flats without planning permission, provided you are satisfied that:

- the conversion began before 5 July 1934; and;
- the use as flats has continued since then without challenge.

### 5.4 Good and marketable title

5.4.1 The title to the property must be good and marketable, free of any restrictions, covenants, easements, charges or encumbrances which, at the time of completion, 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) and which may be accepted by us for mortgage purposes. Our requirements in respect of indemnity insurance are set out in paragraph 9. You must also take reasonable steps to ensure that, on completion, the property will be vested in the borrower.

5.4.2 Good leasehold title will be acceptable if:

- a marked abstract of the freehold and any intermediate leasehold title for the statutory period of 15 years before the grant of the lease is provided; or
- you are prepared to certify that the title is good and marketable when sending your certificate of title (because, for example, the landlord's title is generally accepted in the district where the property is situated); or
- you arrange indemnity insurance. Our requirements in respect of indemnity insurance are set out in paragraph 9.

5.4.3 A title based on adverse possession or possessory title will be acceptable if there is satisfactory evidence by statutory declaration of adverse possession for a period of at least 21 years. In the case of lost title deeds, the statutory declaration must explain the loss satisfactorily;

5.4.4 we will also require indemnity insurance where there are buildings on the part in question or where the land is essential for access or services;

5.4.5 we may not need indemnity insurance in cases where such title affects land on which no buildings are erected or which is not essential for access or services. In such cases, you must send a plan of the whole of the land to be mortgaged to us identifying the area of land having possessory title. We will refer the matter to our valuer so that an assessment can be made of the proposed security. We will then notify you of any additional requirements or if a revised mortgage offer is

to be made.

### 5.5 Flying freeholds, freehold flats and other freehold arrangements

5.5.1 If any part of the property comprises or is affected by a flying freehold or the property is a freehold flat, check **part 2** to see if we will accept it as security.

5.5.2 If we are prepared to accept a title falling within 5.5.1:

5.5.2.1 (unless we tell you not to in **part 2**) you must report to us that the property is a freehold flat or flying freehold; and

5.5.2.2 the property must have all necessary rights of support, protection, and entry for repair as well as a scheme of enforceable covenants that are also such that subsequent buyers are required to enter into covenants in identical form; and

5.5.2.3 you must be able to certify that the title is good and marketable; and

5.5.2.4 in the case of flying freeholds, you must send us a plan of the property clearly showing the part affected by the flying freehold. If our requirements in 5.5.2.2 are not satisfied, indemnity insurance must be in place at completion (see paragraph 9).

### 5.5.3 Other freehold arrangements

Unless we indicate to the contrary (see **part 2**), we have no objection to a security which comprises a building converted into not more than four flats where the borrower occupies one of those flats and the borrower or another flat owner also owns the freehold of the building and the other flats are subject to long leases.

5.5.3.1 If the borrower occupying one of the flats also owns the freehold, we will require our security to be:

- the freehold of the whole building subject to the long leases of the other flats; and
- any leasehold interest the borrower will have in the flat the borrower is to occupy.

5.5.3.2 If another flat owner owns the freehold of the building, the borrower must have a leasehold interest in the flat the borrower is to occupy and our security must be the borrower's leasehold interest in such flat.

5.5.3.3 The leases of all the flats should contain appropriate covenants by the tenant of each flat to contribute towards the repair, maintenance and insurance of the building. The leases should also grant and reserve all necessary rights and easements. They should not contain any unduly onerous obligations on the landlord.

5.5.4 Where the security will comprise:

5.5.4.1 one of a block of not more than four leasehold flats and the borrower will also own the freehold jointly with one or more of the other flat owners in the building; or

5.5.4.2 one of two leasehold flats in a building where the borrower also owns the freehold reversion of the other flat and the other leaseholder owns the freehold reversion in the borrower's flat; check **part 2** to see if we will accept it as security and if so, what our requirements will be.

5.6 Restrictions on use and occupation 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 (see **part 2**). In some cases, we may accept a restriction, particularly if this relates to sheltered housing or to first time buyers.

### 5.7 Restrictive covenants

5.7.1 You must enquire whether the property has been built, altered or is currently used in breach of a restrictive covenant. We rely on you to check that the covenant 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 5.7.2) that indemnity insurance is in place at completion of our mortgage (see paragraph 9).

5.7.2 We will not insist on indemnity insurance:

- if you are satisfied that there is no risk to our security; and
- the breach has continued for more than 20 years; and
- there is nothing to suggest that any action is being taken or is threatened in respect of the breach.

5.8 First ranking deed of conditional bond and security On completion, we require a fully enforceable first charge by way of legal mortgage over the property executed by all owners of the legal estate. All existing charges must be redeemed on or before completion, unless we agree that an existing charge may be postponed to rank after our mortgage. Our standard deed or form of postponement must be used. Where the mortgage and the purchase are completed on the same day, the mortgage deed must have the same date as the document vesting the property in the borrower.

5.9 Other loans 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 (see **part 2**), 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.

5.10 Leasehold property

5.10.1 Our requirements on the unexpired term of a lease offered as security are set out in **part 2**.

5.10.2 There must be no provision for forfeiture on the insolvency of the tenant or tenant (whether contained in the lease itself or implied into it by statute).

5.10.3 The only situations where we will accept a restriction on the mortgage or assignment (whether by a tenant or a mortgagee) of the lease is where the person whose consent needs to be obtained cannot unreasonably withhold giving consent. The necessary consent for the particular transaction must be obtained before completion. If the lease requires consent to an assignment or mortgage to be obtained, you must obtain these on or before completion. You must not complete without them.

5.10.4 You must take reasonable steps to check that:

- there are satisfactory legal rights, particularly for access, services, support, shelter and protection; and
- there are also adequate covenants and arrangements in respect of the following matters, buildings insurance, maintenance and repair of the structure, foundations, main walls, roof, common parts, common services and grounds (the "common services").

5.10.5 You should ensure that responsibility for the insurance, maintenance and repair of the common services is that of:

- the landlord; or
- one or more of the tenants in the building of which the property forms part; or
- the management company - see paragraph 5.11.

5.10.6 Where the responsibility for the insurance, maintenance and repair of the common services is that of one or more of the tenants;

5.10.6.1 the lease must contain adequate provisions for the enforcement of these obligations by the landlord or management company at the request of the tenant.

5.10.6.2 In the absence of a provision in the lease that all leases of other flats in the block are in, or will be granted in, substantially similar form, you should take reasonable steps to check that the leases of the other flats are in similar form. If you are unable to do so, you should effect indemnity insurance (see paragraph 9). This is not essential if the landlord is responsible for the maintenance and repair of the main structure.

5.10.6.3 We do not require enforceability covenants mutual or otherwise for other tenant covenants.

5.10.7 We have no objection to a lease which contains provision for a periodic increase of the ground rent provided that the amount of the increased ground rent is fixed or can be readily established and is reasonable. If you consider any increase in the ground rent may materially affect the value of the property, you must report this to us (see **part 2**).

5.10.8 You should enquire whether the landlord or managing agent foresees any significant increase in the level of the

service charge in the reasonably foreseeable future and, if there is, you must report to us (see **part 2**).

5.10.9 If the terms of the lease are unsatisfactory, you must obtain a suitable deed of variation to remedy the defect. We may accept indemnity insurance (see paragraph 9). See **part 2** for our requirements.

5.10.10 You must obtain on completion a clear receipt or other appropriate written confirmation for the last payment of ground rent and service charge from the landlord or managing agents on behalf of the landlord. Check **part 2** to see if it must be sent to us after completion. If confirmation of payment from the landlord cannot be obtained, we are prepared to proceed provided that you are satisfied that the absence of the landlord is common practice in the district where the property is situated, the seller confirms there are no breaches of the terms of the lease, you are satisfied that our security will not be prejudiced by the absence of such a receipt and you provide us with a clear certificate of title.

5.10.11 Notice of the mortgage must be served on the landlord and any management company immediately following completion, whether or not the lease requires it. If you cannot obtain receipt of the notice then, as a last resort, suitable evidence of the service of the notice on the landlord should be provided. Check **part 2** to see if a receipted copy of the notice or evidence of service must be sent to us after completion.

5.10.12 We will accept leases which require the property to be sold on the open market if re-building or reinstatement is frustrated provided the insurance proceeds and the proceeds of sale are shared between the landlord and tenant in proportion to their respective interests.

5.10.13 You must report to us (see **part 2**) if it becomes apparent that the landlord is either absent or insolvent. If we are to lend, we may require indemnity insurance (see paragraph 9). See **part 2** for our requirements.

5.10.14 If the leasehold title is registered but the lease has been lost, we are prepared to proceed provided you have checked an Isle of Man Land Registry produced copy of the registered lease. Whilst this will not be an office copy of the lease you may accept it as sufficient evidence of the lease and its terms when approving the title for mortgage purposes provided it is, on its face, a complete copy.

## 5.11 Management company

5.11.1 In paragraph 5.11 the meanings shall apply: - "management company" means the company formed to carry out the maintenance and repair of the common parts; - "common parts" means the structure, main walls, roof, foundations, services grounds and any other common areas serving the building or estate of which the property forms part. If a management company is required to maintain or repair the common parts, the management company should have a legal right to enter the property; if the management company's right to so enter does not arise from a leasehold interest, then the tenants of the building should also be the members of the management company. If this is not the case, there should be a covenant by the landlord to carry out the obligations of the management company should it fail to do so.

5.11.1.1 For leases granted before 1 September 2000: If the lease does not satisfy the requirements of paragraph 5.11.1 but: you are nevertheless satisfied that the existing arrangements affecting the management company and the maintenance and repair of the common parts are sufficient to ensure the adequate maintenance and repair of the common parts; and you are able to provide a clear certificate of title, then we will rely on your professional judgement.

5.11.2 You should make a company search and verify that the company is in existence and registered at the Companies Registry. You should also obtain the management company's last three years' published accounts (or the accounts from inception if the company has only been formed in the past three years). Any apparent problems with the company should be reported to us (see **part 2**). If the borrower is required to be a shareholder in the management company, check **part 2** to see if you must arrange for the share certificate, a blank stock transfer form executed by the borrower and a copy of the memorandum and articles of association to be sent to us after completion (unless we tell you not to). If the management company is limited by guarantee, the borrower (or at least one of them if two or more) must become a member on or before completion.

## 5.12 Insolvency considerations

5.12.1 You must obtain a clear bankruptcy search against each borrower (and each mortgagor or guarantor, if any). You must fully investigate any entries revealed by your bankruptcy search against the borrower (or mortgagor or guarantor) to ensure that they do not relate to them.



5.12.2 Where an entry is revealed against the name of the borrower (or the mortgagor or guarantor):

5.12.2.1 you must certify that the entry does not relate to the borrower (or the mortgagor or guarantor) if you are able to do so from your own knowledge or enquiries; or

5.12.2.2 if you are unable to certify that the entry does not relate to the borrower (or the mortgagor or guarantor) you must report this to us (see **part 2**). We may as a consequence need to withdraw our mortgage offer.

5.12.3 If you are aware that the title to the property is subject to a deed of gift or a transaction at an apparent undervalue completed within ten years of the proposed mortgage then you must be satisfied that we will acquire our interest in good faith and will be protected at law against our security being set aside. If you are unable to give an unqualified certificate of title, you must arrange indemnity insurance (see paragraph 9).

5.12.4 You must also obtain clear bankruptcy searches against all parties to any deed of gift or transaction at an apparent undervalue.

5.13 Powers of attorney

5.13.1 If any document is being executed under power of attorney, you must ensure that the power of attorney is, on its face, properly drawn up, that it appears to be properly executed by the donor and that the attorney knows of no reason why such power of attorney will not be subsisting at completion. Where there are joint borrowers the power should comply with section 24 of the Trustee Act 1961, as amended by section 2 of the Law Reform Miscellaneous Provisions Act 1996. In the case of joint borrowers, neither borrower may appoint the other as attorney.

5.13.2 We will accept a power of attorney in proper form created under legislation of a country other than the Isle of Man, if you are satisfied that it is valid for use in relation to the transaction.

5.13.3 Check **part 2** to see if:

- the original or a certified copy of the power of attorney must be sent to us after completion;
- where the power of attorney is a general power of attorney and was completed more than 12 months before the completion of our mortgage, you must send us a statutory declaration confirming that it has not been revoked.

6. The property

6.1 Mortgage offer and title documents

6.1.1 The loan to the borrower will not be made until all relevant conditions of the mortgage offer which need to be satisfied before completion have been complied with and we have received your certificate of title.

6.1.2 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.

6.1.3 You should tell us (see **part 2**) as soon as possible if you have been told that the borrower has decided not to take up the mortgage offer.

6.2 Boundaries 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 (see **part 2**), if there are any discrepancies.

6.3 Purchase price

6.3.1 The purchase price for the property must be the same as set out in our instructions. If it is not, you must tell us (unless we say differently in **part 2**). You must tell us (unless we say differently in **part 2**) if the contract provides for:

- a cashback to the buyer; or
- part of the price is being satisfied by a non-cash incentive to the buyer. This may lead to the mortgage offer being withdrawn or amended.

You must obtain a completed copy of the [UK Finance Disclosure of Incentives Form](#) from the conveyancer acting on

behalf of the seller of any property that is yet to be occupied for the first time, or for the first time in its current form, for example, because of a renovation or conversion. You should only report incentives to the lender as instructed in **Part 2**. You will not be able to send a completed Certificate of Title to the lender unless you have received the UK Finance Disclosure of Incentives Form. When you send a completed Certificate of Title you are confirming you are in receipt of a completed UK Finance Disclosure of Incentives Form from the developer/seller's conveyancer which complies with your instructions. This does not override your duty to the lender via the instructions provided elsewhere in the Lenders' Handbook.

6.3.2 You must report to us (see **part 2**) 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 direct) other than a deposit held by an estate agent or a reservation fee of not more than £500 paid to a builder or developer.

6.4 Vacant possession 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 (see **part 2**).

6.5 Properties let at completion

6.5.1 Where the property, or part of it, is already let, or is to be let at completion, then the letting must comply with the details set out in the mortgage offer or any consent to let we issue. If no such details are mentioned, you must report the position to us (see **part 2**).

6.5.2 Check **part 2** for whether counterparts or certified copies of all tenancy agreements and leases in respect of existing tenancies must be sent to us after completion.

6.6 New properties - building standards indemnity schemes

6.6.1 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 whichever of the following is acceptable to us (see **part 2**):

- the National House-Building Council (NHBC) Buildmark scheme; or
- any other new home warranty schemes.

6.6.2 Check **part 2** to see what new home warranty documentation should be sent to us after completion.

6.6.3 We do not insist that notice of assignment 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. Check **part 2** to see if any assignments of building standards indemnity schemes which are available should be sent to us after completion.

6.6.4 Check **part 2** to see if we will accept the monitoring of a newly built or newly converted property to be occupied for the first time by a professional consultant. You should ensure that the professional consultant properly completes the lender's Professional Consultant's Certificate or such other form as the instructing lender may provide. 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); or
- fellow or member of the Institution of Structural Engineers (F.I.Struct.E or M.I.Struct.E); or
- fellow or member of the Chartered Institute of Building (FCIOB or MCIQB); or
- fellow or member of the Architecture and Surveying Institute (FASI or MASI) (only if in conjunction with a FCIOB or MCIQB qualification); or
- fellow or member of the Association of Building Engineers (FB.Eng or MB.Eng); or
- member of the Chartered 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
- fellow or member of the Institution of Civil Engineers (FICE or MICE).

6.6.5 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.

6.6.6 Check **part 2** to see if the consultant's certificate must be sent to us after completion.

## 6.7 Roads and sewers

6.7.1 If the roads or sewers immediately serving the property are not adopted or maintained at public expense, there must be a suitable agreement and bond in existence or you must report to us (see **part 2** for who you should report to).

6.7.2 If there is any such agreement, it should be secured by bond or deposit as required by the appropriate authority to cover the cost of making up the roads and sewers to adoptable standards, maintaining them thereafter and procuring adoption.

6.7.3 If there is an arrangement between the developer and the lender whereby the lender will not require a retention, you must obtain confirmation from the developer that the arrangement is still in force.

## 6.8 Easements

6.8.1 You must take all reasonable steps to check that the property has the benefit of all easements 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 (see **part 2**).

6.8.2 If the borrower owns adjoining land over which the borrower requires access to the property or in respect of which services are provided to the property, this land must also be mortgaged to us.

## 6.9 Release of retentions

6.9.1 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 mortgage, 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 the retention to a third party.

6.9.2 Check **part 2** to see who we will release the retention to.

6.10 Neighbourhood changes The local search 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 affected by road proposals. If it is, please report this to us (see **part 2**).

6.11 Rights of pre-emption and restrictions on resale 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 (see **part 2**).

6.12 Improvements and repair grants Where the property is subject to an improvement or repair grant which will not be discharged or waived on completion, check **part 2** to see whether you must report the matter to us.

6.13 Insurance Where we do not arrange the insurance, you must:

6.13.1 report to us (see **part 2**) if the property is not insured in accordance with our requirements (one of our requirements, see part 2, will relate to whether the property is insured in the joint names of us and the borrower or whether our interest may be noted);

6.13.2 arrange that the insurance cover starts from no later than completion;

6.13.3 check that the amount of buildings insurance cover is at least the amount referred to in the mortgage offer (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);

6.13.4 ensure that the buildings insurance cover is index linked;

6.13.5 ensure that the excess does not exceed the amount set out in **part 2**;

6.13.6 Check **part 2** to see if we require you to confirm that all the following risks are covered in the insurance policy:

- fire;
- lightning;
- aircraft;
- explosion;
- earthquake;
- storm;
- flood;
- escape of water or oil;
- riot;
- malicious damage;
- theft or attempted theft;
- falling trees and branches and aerials;
- subsidence;
- heave;
- landslip;
- collision;
- accidental damage to underground services;
- professional fees, demolition and site clearance costs; and
- public liability to anyone else.

6.13.7 Check **part 2** to see if we require you to obtain before completion the insurer's confirmation that the insurer will notify us if the policy is not renewed or is cancelled or if you do not obtain this, report to us (see **part 2**).

6.13.8 Check **part 2** to see if we require you to send us a copy of the buildings insurance policy and the last premium receipt to us.

## 7. Other occupiers

7.1 Rights or interests of persons who are not a party to the mortgage and who are or will be in occupation of the property may affect our rights under the mortgage, for example as overriding interests.

7.2 If your instructions state the name of a person who is to live at the property, you should ask the borrower before completing the mortgage that the information given by us in our mortgage instructions or mortgage offer about occupants is correct and nobody else is to live at the property.

7.3 Unless we state otherwise (see **part 2**), you must obtain a signed deed or form of consent from all occupants aged 17 or over of whom you are aware who are not a party to the mortgage before completion of the mortgage.

7.4 We recognise that in some cases the information given to us or you by a borrower may be incorrect or misleading. If you have any reason to doubt the accuracy of any information disclosed, you should report it to us (see **part 2**) provided the borrower agrees; if the borrower does not agree, you should return our instructions.

## 8. Separate representation

Unless we otherwise state (see **part 2**), you must not advise:

8.1 any borrower who does not personally benefit from the loan; or

8.2 any guarantor; or

8.3 anyone intending to occupy the property who is to execute a consent to the mortgage, and you must arrange for them to see an independent conveyancer. If we do allow you to advise any of these people, you must only do so after recommending in the absence of any other person interested in the transaction that such person obtains independent legal advice. Any advice that you give any of these people must also be given in the absence of any other person interested in the transaction. You should be particularly careful if the matrimonial home is being charged to secure a business debt.

## 9. Indemnity insurance

You must effect an indemnity insurance policy whenever the Lenders' Handbook identifies that this is an acceptable or required course to us to ensure that the property has a good and marketable title at completion. This paragraph does not relate to mortgage indemnity insurance. The draft policy should not be sent to us unless we ask for it. Check **part 2** to see

if the policy must be sent to us after completion. Where indemnity insurance is effected:

- 9.1 you must approve the terms of the policy on our behalf; and
- 9.2 the limit of indemnity must meet our requirements (see **part 2**); and
- 9.3 the policy must be effected without cost to us; and
- 9.4 you must disclose to the insurer all relevant information which you have obtained; and
- 9.5 the policy must not contain conditions which you know would make it void or prejudice our interests; and
- 9.6 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; and
- 9.7 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
- 9.8 the policy should always be for our benefit and, if possible, for the benefit of the borrower and any subsequent owner or mortgagee. If the borrower will not be covered by the policy, you must advise the borrower of this.

#### 10. The loan and certificate of title

10.1 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.

10.2 We shall treat the submission by you of the certificate of title as a request for us to release the mortgage advance to you. Check **part 2** to see if the mortgage advance will be paid electronically or by cheque and the minimum number of days notice we require. See **part 2** for any standard deductions which may be made from the mortgage advance.

10.3 You are only authorised to release the loan when you hold sufficient funds to complete the purchase of the property and pay all recordal and registration fees to perfect the security as a first legal mortgage or, if you do not have them, you accept responsibility to pay them yourself. You must hold the loan on trust for us until completion. If completion is delayed, you must return it to us when and how we tell you (see **part 2**).

10.4 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. In those circumstances, our successors in title to the mortgage and persons deriving title under or through the mortgage will also rely on your certificate.

10.5 If, after you have requested the mortgage advance, completion 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 completion (see **part 2**).

10.6 See **part 2** for details of how long you can hold the mortgage advance before returning it to us. If completion is delayed for longer than that period, you must return the mortgage advance to us. If you do not, we reserve the right to require you to pay interest on the amount of the mortgage advance (see **part 2**).

10.7 If the mortgage advance is not returned within the period set out in **part 2**, we will assume that the mortgage has been completed, and we will charge the borrower interest under the mortgage. We may make further payments and advances without reference to you.

#### 11. The documentation

11.1 The mortgage The mortgage incorporates our current mortgage conditions and, where applicable, loan conditions. If the mortgage conditions booklet is supplied to you with your instructions you must give it to the borrower before completion of the mortgage.

11.2 Explanation You should explain to each borrower (and any other person signing or executing a document) his responsibilities and liabilities under the documents referred to in 11.1 and any documents he is required to sign.

11.3 Signing and witnessing of documents It is considered good practice that the signature of a document needs to be witnessed by an advocate, solicitor, legal executive or licensed conveyancer. All documents required at completion must be dated with the date of completion of the loan.

#### 12. Instalment mortgages and mortgage advances released in instalments

##### 12.1 Introduction

12.1.1 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 meet the reasonable requirements of the borrower and the builder as far as possible.

12.1.2 The borrower is expected to pay for as much work as possible from his own resources before applying to us for the first instalment. However, we may, if required, consider advancing a nominal sum on receipt of the certificate of title to enable the mortgage to be completed so long as the legal estate in the property is vested in the borrower.

12.1.3 The borrower is responsible for our valuer's fees for interim valuations as well as the first and final valuations.

12.2 Applications for part of the advance As in the case of a normal mortgage account, cheques for instalment mortgages will be made payable and 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 direct to the borrower on request.

12.3 Requests for intermediate cheques To allow time for a valuation to be carried out, your request should be sent to us (see **part 2**) at least 10 days before the cheque is required.

12.4 Building contract as security We will not lend on the security of a building contract unless our instructions to you specifically state 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 in the borrower.

13. Mortgage indemnity insurance or high LTV fee

You are reminded to tell the borrower that we (and not the borrower) are the insured under any mortgage indemnity or similar form of insurance policy and that the insurer will have a subrogated right to claim against the borrower if it pays us under the policy. Different lenders call the various schemes of this type by different names. They may not involve an insurance policy.

14. After completion

14.1 Application to HM Land Registry You must register our mortgage at the Deeds Registry (and the Companies Registry if appropriate) within the Isle of Man General Registry. Before making your application for registration, you must place certified copies of the transfer, mortgage deed and any receipt from a previous mortgagee on your file.

14.2 Title deeds

14.2.1 All title deeds, searches, enquiries, consents, requisitions and documents relating to the property in your possession must be held to our order and you must not create or exercise any lien over them. Unless otherwise instructed (see **part 2**) you must send to us as soon as possible after completion a certified copy of the mortgage over the property and the original certificate of its recordal or registration in the general Deeds Registry or the Land Registry. Where the borrower is a company, you must also file the mortgage at the Companies Registry within 28 days of its date and, unless otherwise instructed, you must send to us as soon as possible after completion the original certificate of such filing.

14.2.2 You must only send us documents we tell you to (see **part 2**). You should obtain the borrower's instructions concerning the retention of documents we tell you not to send us.

14.2.3 You must only send us documents we tell you to (see **part 2**). You should obtain the borrower's instructions concerning the retention of documents we tell you not to send us.

14.3 Your mortgage file

14.3.1 For evidential purposes you must keep your file for at least six 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. Where you are processing personal data (as defined in the Data Protection Act 2002 of the Isle of Man) 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 2002 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.

14.3.2 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 the lender and you should not part with them without the consent of both parties. You should on request supply certified copies of documents on the file or a certified copy of the microfiche to either the borrower or the lender, and may make a reasonable charge for copying and certification.

14.4 For evidential purposes you must keep your file for at least six 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. Where you are processing personal data (as defined in the Data Protection Act 2002 of the Isle of Man) on our behalf, you must;

## 15. Legal costs

Your charges and disbursements are payable by the borrower and should be collected from the borrower on or before completion. You must not allow non-payment of fees or disbursements to delay the stamping and registration of documents.

## 16. Transactions during the life of the mortgage

16.1 Requests for deeds All requests for deeds should be made in writing and sent to us (see **part 2**). In making such a request you must have the consent of all of the borrowers to apply for the deeds.

### 16.2 Further advances

16.2.1 Our mortgage secures further advances. Consequently, when a further advance is required for alterations or improvements to the property we will not normally instruct a member of our conveyancing panel.

16.2.2 If additional land is to be mortgaged or the further advance is required for some other purpose (for example, to purchase a spouse's equitable or other interest in the property), you may receive instructions to act for us in connection with that transaction.

16.3 Transfers of equity Please refer to the lender for the lender's individual requirements.

### 16.4 Properties to be let after completion

16.4.1 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 completion then an application for consent should be made to us (see **part 2**). Check **part 2** to see whether it is necessary to send to us a copy of the proposed tenancy when making the application.

16.4.2 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.

16.4.3 Please also note that:

- an administration fee will be payable for our consideration of the application whether or not consent is granted; and
- the proposed rent should cover the borrower's gross mortgage payments at the time; and
- we reserve the right to charge a higher rate of interest to the borrower in certain circumstances or change the terms of the mortgage.

### 16.5 Deeds for variation, rectification, easement or option agreements

16.5.1 If we consent to any proposal for a deed of variation, rectification, easement or option agreement, we will rely on you to approve the documents on our behalf.

16.5.2 Our consent will usually be forthcoming provided that you first of all confirm in writing to us (see **part 2**) 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.

16.5.3 Whether we are a party to the deed or give a separate deed or form of consent is a matter for your discretion. It should be sent to us (see **part 2**) 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.

16.6 Deeds of postponement or substitution If we agree to enter into an arrangement with other lenders concerning the order of priority of their mortgages, you will be supplied with our standard form of deed or form of postponement or substitution. We will normally not agree to any amendments to the form. In no cases will we postpone our first charge over the property.

## 17. Redemption

### 17.1 Redemption statement

17.1.1 When requesting a redemption statement (see **part 2**) 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 2.1. You should request this at least five working days before the expected redemption date. You must quote all the borrower's mortgage account or roll numbers of which you are aware when

requesting the repayment figure. You must only request a redemption statement if you are acting for the borrower or have the borrower's written authority to request a redemption statement.

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

17.2 Discharge On the day of completion you should send the discharge and your remittance for the repayment to us (see **part 2**).

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