

Scotland

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Part 1: Scotland

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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 **lender specific requirements in part 2** must be followed.

1.2 References to "**we**" "**us**" and "**our**" means 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 independent qualified conveyancer acting on behalf of a heritable creditor.

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

1.6 We require that the borrower and the registered owner of the property are one and the same person following the release of the mortgage advance, settlement taking place, and the standard security being registered. Check **part 2** to see if we lend in circumstances where this is not the case.

1.7 References to "**borrower**" (and, if applicable, "**guarantor**" are to each borrower (and guarantor) 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.

1.8 References to 'conveyance' include a disposition and any other deed of transmission of heritable property, and in relation to leasehold property, an assignation.

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, your spouse, civil partner or co-habitee, or a parent, sibling, child, step-parent, step-child, grandparent, grandchild, parent-in-law, or child-in-law, or a spouse, civil partner or co-habitee of any such person) 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 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 seller, 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.

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

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

1.18 In addition to these definitions, any reference to any regulation, legislation or legislative provision shall be construed as a reference to that regulation, legislation or legislative provision as amended, re-enacted or extended at the relevant time.

2. Communicating with the Lender

2.1 All communications between you and us should be in writing (which, for the avoidance of doubt, includes facsimile) 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 e-mail, where the lender accepts email as a method of communication you should keep a paper copy or in another durable medium.

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 matter 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 conclusion of missives because we may have to withdraw or change the mortgage offer.

3. Safeguards

3.1 Solicitors must follow the current Solicitors (Scotland) Accounts Rules and, to the extent that they apply, comply with the Money Laundering Regulations 2007 (see the Law Society of Scotland's guidance available on its website) and the Proceeds of Crime Act 2002.

3.2 If you are not familiar with the seller's solicitors, 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 they have provided to you. Check **part 2** to see whether we require you to notify us of the name and address of the solicitors firm acting for the seller.

3.3 If the seller does not have legal representation you should check **part 2** to see whether or not we need to be notified so that a decision can be made as to whether or not we are prepared to proceed.

3.4 All your duties to us under the Lenders' Handbook in relation to identifying signatories of documents will be satisfied by your complying with sub-sections 3.1 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 get a copy of the valuation report from the borrower, (the valuation report may be one flowing from a Home Report on the property if the Home Report is being relied upon by the borrower when purchasing the property), we do not expect you to check the content of that report matches the information we hold. For the avoidance of doubt, regardless of where the report is obtained from, you must carry out the checks detailed in sections 4.1.2 and 4.1.3.

4.1.2 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.

4.1.3 You should take reasonable steps to verify that the assumptions stated by the valuer about the title in the valuation report 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.

4.1.4 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 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.

4.2 Re-inspection

4.2.1 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 (see **part 2**).

5. Title

5.1 Surrounding circumstances

5.1.1 We require that the seller has been the owner of the property for at least six months, the commencement date of the seller's ownership of the property being the date of entry specified in their title to the property. Please report to us (see **part 2**) if the seller has been the owner of the property for less than six months, or the person selling to the borrower is not the owner, unless the seller is:

- a personal representative of the owner; or
- an institutional heritable creditor exercising its power of sale; or
- a receiver, trustee in sequestration, administrator or liquidator; or
- a developer or builder selling a property acquired under a part exchange scheme.

5.2 Conflicts of interest

5.2.1 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.

5.3 Searches and enquiries

5.3.1 You must obtain a property enquiry certificate in respect of the property (see also paragraph 5.3.5 and 5.3.6).

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

5.3.3 In addition, you must ensure that any other usual and necessary searches which may be appropriate to the particular property, taking into account its locality and other features, are carried out. You must report any adverse entry to us but we do not want to be sent the search itself.

5.3.4 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. Check **part 2** to see if we accept property enquiry

certificates from private firms. Also check **part 2** to see if we accept search insurance - if we do, you must take reasonable steps 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. Where we accept the use of private firms you must take reasonable steps to check that they carry adequate indemnity cover.

5.3.5 You must advise us of any contaminated land entries revealed in the property enquiry certificate (see paragraph 5.3.6). Check **part 2** to see if we want to receive environmental or contaminated land reports (as opposed to contaminated land entries revealed in the property enquiry certificate). If we do not, you do not need to obtain such reports on our behalf.

5.3.6 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:

- Please list any entries relating to the property in the Register maintained under s. 78R(1) of the Environmental Protection Act 1990.
- Has the council served or resolved to serve any notice relating to the property under s. 78B(3)?
- 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?
- 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?

5.4 Planning and building regulations

5.4.1 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 that:

- the property has the benefit of any necessary planning permission, listed building consent and building approvals for its construction and/or any material or significant subsequent alterations to, or change of use of the property; and there is no evidence of any breach of the conditions of those consents or any other consent or certificate affecting the property; and
- no matter is revealed which would preclude the property from being used as a residential property or indicate that the property may be the subject of enforcement action.

5.4.2 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 settlement, then this must be reported to us (see **part 2**). Check **part 2** to see if copies of planning permissions etc, building warrants and other consents or certificates should be sent to us.

5.4.3 If the property will be subject to any enforceable restrictions or planning obligations, for example under an agreement (such as an agreement under section 75 of the Town and Country Planning (Scotland) Act 1997) or in a condition imposed by grant of 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 (see **part 2**).

5.5 Good and marketable title

5.5.1 The title to the property must be good and marketable, and free of any burdens, restrictions, 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) and which may be accepted by us for mortgage purposes. Our requirements in respect of indemnity insurance are set out in section 9. If, based on your professional judgment, you are able to provide an unqualified certificate of title, we will not require indemnity insurance. You must also take reasonable steps to ensure that, on settlement, the property will be vested in the borrower.

5.5.2 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 of the roof must be borne by the owners of the building of which the flat forms part in equitable proportions in terms of the title.

5.6 Restrictions on use and occupation

5.6.1 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 such 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 Title conditions

5.7.1 You must enquire whether the property has been built, altered or is currently used in breach of a title condition. We rely on you to take reasonable steps to check that the title condition 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 settlement (see section 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 title condition 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.

5.8 First ranking standard security

5.8.1 On settlement, we require a fully enforceable first ranking standard security over the property executed by all owners 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.

5.9 Other loans

5.9.1 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 (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. For the avoidance of doubt, if the balance of the purchase price is being provided by way of a gift or loan to the borrower, then this should be disclosed to the lender.

5.10 Leasehold property Subject to checking **part 2** to see 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:

5.10.1 check the terms of the lease on, for example, the period left to run, options to break, rent, casualties, right to assign, limitations on use, onerous conditions, irritancy and any requirement for landlord's consent;

5.10.2 advise us as soon as possible of any adverse conditions which might make the lease inappropriate as a form of security;

5.10.3 take all necessary steps to ensure that we are given a valid security over the lease.

5.11 Inhibitions and insolvency

5.11.1 You must obtain a clear personal search against each borrower (and each owner or guarantor, if any) as 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 owner or guarantor) to ensure that they do not relate to them.

5.11.2 Where an entry is revealed against the name of the borrower (or the owner or guarantor):

- you must certify that the entry does not relate to the borrower (or the owner 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 owner or guarantor) you must report this to us (see part 2) even if, in the case of an inhibition, it pre-dates the borrower's acquisition of the property. We may as a consequence need to withdraw our mortgage offer.

5.11.3 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 section 9).

5.12 Powers of attorney

5.12.1 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.

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

5.12.3 Check **part 2** to see if the original, an extract or a certified copy of the power of attorney must be sent to us after settlement;

5.13 Affordable Housing: Shared Ownership and Shared Equity

5.13.1 Housing associations, other social landlords and developers sometimes provide schemes under which the borrower will not have 100% ownership of the property and a third party will also own a share or will be taking a charge over the title. In these cases you must check with us to see if we will lend and what our requirements are unless we have already provided these (see **part 2**).

5.14 Energy Technologies Installed on Residential Properties

5.14.1 Check part 2 to see whether we require you to disclose the details of any existing Green Deal Plan(s) on a property.

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 settlement 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

6.2.1 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 (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**).

6.4 Incentives

6.4.1 You must obtain a completed copy of the [UK Finance Disclosure of Incentives Form](#) from the Solicitor 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 below.

6.4.2 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 Solicitor which complies with your

instructions.

6.4.3 This does not override your duty to the lender via the instructions provided elsewhere in the Lenders' Handbook.

6.4.4 You must tell us (unless we say differently in **part 2**) if the missives provide for or you become aware of any arrangement in which there is:

- a cashback to the buyer; or
- part of the price is being satisfied by a non-cash incentive to the buyer; or
- any indirect incentive (cash or non cash) or rental guarantee.

Any such arrangement may lead to the mortgage offer being withdrawn or amended.

6.4.5 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 £1,000 paid to a builder or developer.

6.5 Vacant possession

6.5.1 Unless otherwise stated in your instructions, it is a term of the loan that vacant possession is obtained. The missives 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**).

6.6 Properties let at settlement

6.6.1 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 us (see **part 2**).

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

6.6.3 Where we have consented to the letting, and subject to any conditions that apply to the letting in **part 2** and/or the details set out in the mortgage offer and/or any consent to let we issue, then:

- the letting must comply with the requirements of a private residential tenancy as set out in the Private Housing (Tenancies) (Scotland) Act 2016 or 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. If the property is already let, and the existing letting does not comply with these requirements, you must report the position to us (see **part 2**); and
- 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 register to us (see **part 2**); and
- where the property falls within the definition of a house in multiple occupation under the Housing (Scotland) Act 2006, you must confirm with the borrower that the property meets the requirements of the Act and that the borrower has obtained any licence required in respect of the property under the Act. You must report any failure to us (see **part 2**).

6.7 New Properties - Building Standards Indemnity Schemes

6.7.1 If the property has been built or converted within the past ten years, 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 (see **part 2**):

6.7.2 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. Check **part 2** to see what new

home warranty documentation should be sent to us after settlement.

6.7.3 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 settlement.

6.7.4 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);
- 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) (only if in conjunction with a FCIOB or MCIQB qualification);
- fellow or member of the Chartered Association of Building Engineers (C. Build E MCABE or C. Build E FCABE);
- member of the Chartered Institute of Architectural Technologists (formerly 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).

6.7.5 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.

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

6.7.7 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 in terms of the building 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.

6.8 Roads and sewers

6.8.1 If the roads 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 (see **part 2**).

6.8.2 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 (see **part 2**).

6.9 Servitudes

6.9.1 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 (see **part 2**).

6.9.2 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, the land 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.

6.10 Release of retentions

6.10.1 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 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 the retention to a third party.

6.10.2 Check **part 2** to see to whom we will release the retention.

6.11 Neighbourhood changes

6.11.1 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 (see **part 2**).

6.12 Rights of pre-emption and restrictions on resale

6.12.1 You must ensure that there are no rights of pre-emption, restrictions on resale, options or similar arrangements in existence at settlement which will affect our security. If there are, please report this to us (see **part 2**).

6.13 Improvement and repair grants

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

6.14 Insurance

6.14.1 You must make reasonable enquiries to satisfy yourself that buildings insurance cover has been arranged for the property from no later than settlement. You should remind the borrower that they:

- Must have buildings insurance in accordance with the requirements of the mortgage contract no later than settlement, and
- Must maintain such buildings insurance cover throughout the mortgage term.

7. Other Occupiers

7.1 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.

7.2 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.

8. Separate representation

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

- any borrower who does not personally benefit from the loan; or
- any guarantor; or
- 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, and you must arrange for them to obtain independent legal advice. 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 within the meaning of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended, or the family home within the meaning of the Civil Partnership Act 2004 as amended is being charged to secure a business debt.

9. Indemnity insurance

9.1 You must effect an indemnity insurance policy whenever the Lenders' Handbook identifies that this is a course required by or acceptable to us to ensure that the property has a good and marketable title at settlement. 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 settlement.

9.2 Where indemnity insurance is effected:

- you must approve the terms of the policy on our behalf; and
- the limit of indemnity must meet our requirements (see **part 2**); and
- the policy must be effected without cost to us; and
- you must disclose to the insurer all relevant information which you have obtained; and
- the policy must not contain conditions which you know would make it void or prejudice our interests; and
- 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
- 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
- the policy should always be for our benefit and, if possible, for the benefit of the borrower and any subsequent owner or heritable creditor. 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 confirmation that the borrower has chosen to proceed with our mortgage offer and 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

10.3 See **part 2** for any standard deductions which may be made from the mortgage advance.

10.4 You are only authorised to release the loan when you hold sufficient funds to complete the purchase of the property and pay all land and buildings transaction tax and registration fees to perfect the security forthwith as a first charge or, if you do not have them, you accept responsibility to pay them yourself. You must hold the loan on trust for us until settlement. If settlement is delayed, you must return it to us when and how we tell you (see **part 2**). You must ensure that all land and buildings transaction tax returns are timely completed and submitted to allow registration of the security to take place forthwith.

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

10.6 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 (see **part 2**).

10.7 See **part 2** for details of how long you can hold the mortgage advance before returning it to us. If settlement 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**).

10.8 If the mortgage advance is not returned within the period set out in **part 2**, we will assume that the advance 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 standard security

11.1.1 The standard security incorporates our current mortgage conditions and, where applicable, loan conditions. Where these are supplied to you with your instructions you must give them to the borrower before settlement.

11.2 Explanation

11.2.1 You should explain to each borrower (and any other person signing or executing a document) the legal implications of entering into the standard security and any documents they are required to sign.

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. No instalment can be released unless our security has been, or will forthwith be, registered in the Land Register of Scotland.

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

12.2.1 As in the case of a normal mortgage amount, 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 ensure compliance with paragraph 12.1.2) can be made payable to and sent direct to the borrower on request.

12.3 Requests for intermediate cheques

12.3.1 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.

13. Mortgage indemnity insurance or high LTV fee

13.1 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 settlement

14.1 Application to Registers

14.1.1 You must forthwith after settlement register our standard security in the Land Register of Scotland, taking the necessary steps if applicable, to complete a voluntary first registration in the Land Register if title to the property is held in the Register of Sasines. 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.

14.1.2 We require you, where in your professional judgement it is appropriate:

- to apply for an advance notice under the Land Registration etc. (Scotland) Act 2012 in respect of our standard security;
- to have seen a Legal Report which discloses such advance notice and no other competing advance notice; and
- to submit the application for registration within the protected period afforded by that advance notice.

For the avoidance of doubt these requirements and expectations in no way detract from our requirement to have a fully enforceable first ranking standard security over the property (see paragraph 5.8.1).

14.1.3 Where our standard security is registered in the Land Register of Scotland before 8 December 2014, following registration you must check the Land and Charge Certificates for accuracy where we require paper Certificates to be issued (see **part 2**). For such of those pre-8 December 2014 cases where we do not require paper Certificates, and for all cases where the application for registration is accepted by the Land Register of Scotland on or after 8 December 2014, you must check that the Title Sheet has been updated accurately. In the latter case we may require **either** that you instruct the Registers of Scotland on your application form to send us direct notification to our designated email address that registration of our standard security has been completed, **or** that you send us a paper or electronic copy of the updated Title Sheet which shows the registration of our standard security (see **part 2**).

14.2 Title deeds

14.2.1 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, they must be sent to us (see **part 2**) with the schedule supplied by us as soon as possible after return of the relevant documents from Registers of Scotland after registration. In particular you must only send us paper Land and Charge Certificates or, for all cases where the application for registration is accepted by the Land Register of Scotland on or after 8 December 2014, a paper copy of the Title Sheet and cadastral map and associated documentation relating to the property where we tell you to (see **part 2** and sub-section 14.1). 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.

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.

14.3 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. Microfiche 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 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.

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.

15. Legal costs

15.1 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 land and buildings transaction tax certificate and registration of documents.

16. Transactions during the life of the mortgage

16.1 Requests for Deeds

16.1.1 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 standard security 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 secured or the further advance is required for some other purpose (for example, to purchase a co-owner's interest in the property), you may receive instructions to act for us in connection with that transaction.

16.3 Transfers of equity

16.3.1 You must approve the conveyance and the deed of variation on our behalf. Check **part 2** to see if we have standard forms of deed of variation.

16.3.2 When drafting or approving the deeds, you should bear in mind:

- although the conveyance should state that it is subject to the standard security, it need give no details of the terms of the mortgage;
- 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 check (see **part 2** for where to obtain this);
- there should be no statement that all interest has been paid to date.

16.3.3 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."

16.3.4 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.

16.3.5 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.

16.3.6 We must be a party to any deed of variation. All other parties must execute the deed before it is sent to us. See **part 2** for where the deed should be sent for execution.

16.4 Properties to be let after settlement

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 settlement then an application for consent should be made to us by the borrower (see **part 2**).

16.4.2 Check **part 2** to see whether it is necessary to send to us a copy of the proposed tenancy agreement when making the application.

16.4.3 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 conditions that apply to the letting in **part 2** or any consent to let we issue, then you should advise the borrower of the requirements that:

- 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
- 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 the property meets the requirements of the Order; and
- 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.

16.4.4 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 of rectification or servitude

16.5.1 If we consent to any proposal for a deed of restriction or a deed of servitude, 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 The deed should be sent to us (see **part 2**) for execution 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 Ranking agreements

16.6.1 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.

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 sub-section 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 stating the name of the borrower. Where space allows, the cheque should also state the mortgage account or roll number.

17.2 Discharge

17.2.1 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 (see **part 2** for where to send it), and we have returned it to you prior to redemption, you must hold it as undelivered until you have sent the redemption money to us, unless you have made a discharge request via the Registers of Scotland digital discharge service.

18. Automated Registration of Title to Land ("ARTL")

The following additional clauses apply in relation to dealings under the ARTL System operated by the Registers of Scotland. They are supplemental to the foregoing clauses in this part 1:

18.1 General

18.1.1 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.

18.2 The Standard Security

18.2.1 You must check your instructions and/or our **part 2** 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.

18.3 Discharge

18.3.1 You should check our **part 2** to see whether we will digitally execute the discharge.

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