

# Mortgage Instructions: Bath Building Society for England and Wales

## Combined Instructions and Specific Requirements

### A - General

Lender instruction last modified **2017-10-05**

## DEFINITIONS

**A.1. "We", "Us", "Our"** - means the building society (or its subsidiary) from whom you receive instructions.

**A.2. "Borrower", "Guarantor"** - references to "borrower" (and, if applicable, "guarantor" or, expressly or impliedly, the 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 BSA Mortgage Instructions and in the certificate of title.

**A.3.** If the borrower and the mortgagor are different people, all references to "borrower" shall include the mortgagor. Check **specific requirements** to see if we lend in circumstances where the borrower and the mortgagor are not one and the same.

*Specific requirement(s):*

**A.3 Does the society lend in circumstances where the borrower and the mortgagor are not one and the same?**

Refer to:

Mortgage Department, Bath Building Society, 15 Queen Square, Bath, BA1 2HN.

Telephone: 01225 475719

Email: [mortgageadmin@bibs.co.uk](mailto:mortgageadmin@bibs.co.uk)

**A.4. "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.

**A.5. "Immediate family"** - means a spouse, civil partner, co-habitee, parent, sibling, child, step-parent, step-child, grandparent, grandchild, parent-in-law, or child-in-law.

**A.6. "Management company"** - means the company formed to carry out the maintenance and repair of the common parts;

**A.7. "Mortgage/Mortgage offer"** - references to "mortgage/mortgage offer" include any loan agreement, offer of mortgage or any other similar document. If you are instructed in connection with any additional loan/further advance then you should treat references to "mortgage" and "mortgage offer" as applying to such "additional loan/further advance" and "additional loan/further advance offer" respectively

**A.8. Regulation, legislation or legislative provision** - any reference to any regulation, legislation or legislative provision shall be interpreted as a reference to that regulation, legislation or legislative provision as amended, re-enacted or extended at the relevant time.

## OUR INSTRUCTIONS

**A.9.** These mortgage conveyancing instructions are produced by the Building Societies Association (BSA), having consulted with the Law Society of England & Wales and the Council for Licensed Conveyancers.

**A.10.** Your instructions from an individual building society will specify if the building society is instructing you in accordance with the BSA Mortgage Instructions. If you are, these provisions and any ***specific requirements*** must be followed. You must also comply with any additional instructions you receive for an individual loan.

*Specific requirement(s):*

**A.10 Who is the contact point for SRs? A.10 What 'non-standard' documents are used and where are these available from?**

Mortgage Department – see A3

**A.11.** The building societies using the BSA Mortgage Instructions certify that these instructions, and any additional instructions you may receive, have been prepared to comply with the requirements of the Solicitors' Code of Conduct 2011 and the CLC Code of Conduct 2011 and the limitations contained in it.

**A.12.** In order to act on our behalf your firm or company must be a member of our conveyancing panel provided we are a society that operates one – see ***specific requirements*** for details of our arrangements. You must also comply with the terms and conditions of your panel appointment.

*Specific requirement(s):*

**A.12 What are the society's conveyancing panel arrangements?**

Bath Building Society will only use qualified solicitors registered with the Law Society who have two or more principals. The Society does not instruct licensed conveyancers or sole practitioners

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

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

**A.15.** The standard of care that we expect of you is that of a reasonably competent solicitor or licensed conveyancer acting on behalf of a mortgagee.

## COMMUNICATIONS

**A.16.** 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 communications on your file as evidence of notification and authorisation. If you use fax, e-mail or any other electronic form of communication, you should retain a copy in readable form.

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

**A.18.** 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. Please note our contact point(s) at the start of the society's specific Instructions.

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

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

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

## B - Borrower

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Lender instruction last modified **2017-10-05**

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## FINANCE AND COSTS

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

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

**B.3.** You must tell us if the contract provides for, or you become aware of any, arrangement in which there is -

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

Any such arrangement might lead to the mortgage offer being amended or withdrawn – see **specific requirements**.

*Specific requirement(s):*

**B.3 In what circumstances might the society amend or withdraw the mortgage offer?**

Refer to Mortgage Department – see A3

**B.4.** You must report to us if you will not have control over the payment of all of the purchase money (for example, if it is proposed that the borrower pays money to the seller direct), other than –

- a deposit held by an estate agent, or
- a reservation fee of not more than £1000 paid to a builder or developer.

**B.5.** 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 payment of stamp duty land tax, the lodging of any stamp duty land tax return and the registration of our mortgage at the Land Registry. For solicitors, the Law Society recommends that your costs for acting on our behalf in connection with the mortgage should, in the interests of transparency, be separately identified to the borrower.

## CONFLICTS OF INTEREST

**B.6.** If you or a member of your immediate family is the borrower and you are a sole practitioner, you must not act for us.

**B.7.** Your firm or company must not act for us if the partner or fee earner dealing with the transaction, or a member of his or her immediate family, is the seller or is the borrower, unless we say your firm or company may act (*specific requirement*) and a separate fee earner of no less standing or a partner within the firm or company acts for us.

*Specific requirement(s):*

**B.7 (a) Is it possible for a firm to act for the society in a transaction if they are an immediate family member of the seller or borrower?**

(a) Please report details of the relationship to the Mortgage Department for instruction (see A3)

(b) Please report details of the relationship to the Mortgage Department for instruction (see A3)

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

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

## FINANCIAL CRIME PREVENTION

**B.10. *Solicitors:*** You must follow the guidance in the Law Society's Green Card (mortgage fraud) and Pink Card (undertakings).

**B.11. *Solicitors:*** You must follow the Law Society's guidance relating to money laundering and comply with the current money laundering regulations and the Proceeds of Crime Act 2002 to the extent that they apply.

***Licensed conveyancers:*** You must follow the professional guidance of the Council for Licensed Conveyancers relating to money laundering and comply with the current money laundering regulations and the Proceeds of Crime Act 2002 to the extent that they apply and you must follow all other relevant guidance issued by the Council for Licensed Conveyancers.

**B.12.** If you are not familiar with the seller's solicitors or licensed conveyancers, you must verify that they appear in a legal directory or that they are currently on record with the Law Society or Council for Licensed Conveyancers as practising at the address shown on their notepaper. If the seller does not have legal representation, you should check ***specific requirements*** 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.

*Specific requirement(s):*

**B.12 Does the society need to be notified to confirm whether it is prepared to proceed in the event that the seller has no legal representation? If so, who should be notified?**

Refer to Mortgage Department – see A.3

**B.13.** 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 Photo-card driving licence, or
- any other document listed in the additional list A in *specific requirements*.

- **List B**

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

*Specific requirement(s):*

**B.13 (a) List any other acceptable documents (List A) (b) List any other acceptable documents (List B)**

List A

- Full valid UK/EU passport
- A valid UK driving licence (old style)
- A valid photocard UK driving licence
- Disabled persons card with photo and reference, not more than 10 years old
- Shotgun Licence/Firearms certificate
- Latest Tax Notice of Coding or document with NI Number (no more than 1 year old)

List B

- Latest Bank Statement or Mortgage Statement
- Latest Council tax bill
- Driving licence if not used as evidence from list A
- Latest Tax Notice of Coding or document with NI Number (no more than 1 year old) if not used in list A
- Solicitors letter confirming house move (no more than 2 months old)
- Utility bill (no more than 3 months old)

**B.14.** You should check that any document you use to verify a signatory's identity appears to be authentic, current, and 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 that we require the signatory to sign, and that the address shown on any document used to verify identity is that of the signatory.

## POWERS OF ATTORNEY

**B.15.** 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, and
- 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.

**B.16.** Where there are joint borrowers, the power should comply with section 25 of the Trustee Act 1925, as amended by section 7 of the Trustee Delegation Act 1999, or with section 1 of the Trustee Delegation Act 1999 with the attorney making an appropriate statement under section 2 of the 1999 Act.

**B.17.** In the case of joint borrowers, neither borrower may appoint the other as their attorney.

**B.18.** A power of attorney must not be used in connection with a regulated loan under the Consumer Credit Act 1974.

**B.19.** Check *specific requirements* to see whether –

- the original or a certified copy of the power of attorney must be sent to us after completion, and
- 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.

*Specific requirement(s):*

**B.19 (a)** Does the society require the original or a certified copy of the power of attorney to be sent to the society after completion? **(b)** Where the power of attorney is a general power of attorney and was completed more than 12 months before the completion date, does the society require a statutory declaration confirming that it has not been revoked?

Refer to Mortgage Department – see A.3

## OTHER OCCUPIERS

**B.20.** 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.



**B.21.** 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, whether 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.

**B.22.** 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. Check *specific requirements* for the form to be used.

*Specific requirement(s):*

**B.22 Which forms and documents are required for any occupants aged 17 or over who are not party to the mortgage before completion of the mortgage?**

Agreement and undertaking available from the Society

**B.23.** 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, provided the borrower agrees. If the borrower does not agree, you should return our instructions.

## SEPARATE REPRESENTATION

**B.24.** Unless we otherwise state (see *specific requirements*), you must not advise -

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

*Specific requirement(s):*

**B.24 (a) Are there any circumstances where the solicitor or company acting in the mortgage can advise any borrower who does not personally benefit from the loan?**

**(b) Are there any circumstances where the solicitor or company acting in the mortgage can advise any guarantor? (c) Are there any circumstances where the solicitor or company acting in the mortgage can advise anyone intending to occupy the property executing a consent to the mortgage?**

Only where there is a firm of four or more principals and where any advice is given by a solicitor not directly involved in the mortgage

**B.25.** 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 or family home is being charged to secure a business debt. Any consent should be signed by the person concerned. A power of attorney is unacceptable.

## C - Security Property

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### VACANT POSSESSION

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

### VALUATION

**C.2.** Check *specific requirements* to see whether we send you a copy of the valuation report or if you must get it from the borrower

*Specific requirement(s):*

**C.2 What are your arrangements for sending out valuation Reports?**

The Society sends a copy of the valuation report with the applicant's offer and with the Solicitors' instructions

**C.3.** You must take reasonable steps to verify that there are no discrepancies between the description of the property as valued and the title and other documents that a reasonably competent conveyancer should obtain, and, if there are, you must tell us immediately. The requirements in this paragraph and paragraph C.4 apply to valuation reports and home condition reports. Where there is both a valuation report and a home condition report the requirements apply to both.

**C.4.** You should take reasonable steps to verify that the assumptions stated by the valuer (and where applicable a home inspector) about the title (for example, its tenure, easements, boundaries and restrictions on its use) in the valuation and any home condition report are correct. If they are not, please let us know as soon as possible, as it will be necessary for us to check with the valuer whether the valuation needs to be revised. We are not expecting you to assume the role of valuer. We are simply trying to ensure that the valuer has valued the property based on correct information.

**C.5.** When a home condition report is not provided 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 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 valuation 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.

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

## BOUNDARIES

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

## PROPERTIES LET AT COMPLETION

**C.8.** Unless it is clear from the mortgage offer that the property is let or is to be let at completion then you must check with us whether we lend on "buy-to-let" properties and that the mortgage is for that purpose.

**C.9.** In buy-to-let cases, 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 in any consent to let that we issue. If no such details are mentioned, you must report the position to us.

**C.10.** Check *specific requirements* for whether counterparts or certified copies of all tenancy agreements and leases must be sent to us after completion.

*Specific requirement(s):*

**C.10 Do you require counterparts or certified copies of all tenancy agreements and leases after completion?**

Yes – should be placed with the documents of title following completion

**C.11.** Where the property falls within the definition of a house in multiple occupation under the Housing Act 2004, see *specific requirements* as to whether we will accept this as security and, if so, what our requirements are.

*Specific requirement(s):*

**C.11 (a) What do you accept as security where the property falls within the definition of a house in multiple occupation under the Housing Act 2004. (b) What are your requirements in such situations?**

(a) Refer to underwriters – see A.3

(b) Refer to underwriters – see A.3

## NEW PROPERTIES

**C.12.** If the property has been built or converted for use as a dwelling within the past ten years, or is 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 *specific requirements* for the list of schemes acceptable to us and for our requirements).

*Specific requirement(s):*

**C.12 What new home warranty schemes are accepted by the society?**

NHBC

LABC

Castle 10/Checkmate

Premier Guarantee

Buildzone

ICW

**C.13.** Where the cover under a scheme referred to in C.12 is not yet in place before you send us 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 property has received a satisfactory final inspection and that the new home warranty will be in place on or before legal completion. This does not apply to self-build schemes. Check *specific requirements* to see what new home warranty documentation should be sent to us after completion.

*Specific requirement(s):*

**C.13 What new home warranty documentation does the society require?**

Relevant certificates and associated documents

**C.14.** 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 ***specific requirements*** to see if any assignments of building standards indemnity schemes which are available should be sent to us after completion.

*Specific requirement(s):*

**C.14 Does the society require any assignments of building standards indemnity schemes available to be sent after completion?**

Yes – should be placed with the documents of title following completion

**C.15.**

Where the property does not have the benefit of a scheme under C.12 and has been built or converted for use as a dwelling within the past 6 years check ***specific requirements*** to see if we will proceed and, if so, whether you must satisfy yourself that the building work is being monitored (or where the work is completed was monitored) by a professional consultant. If we do accept monitoring you should ensure that the professional consultant has provided the building society's **Professional Consultant's Certificate** which forms an appendix to these BSA Mortgage Instructions. 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 –

- (a) fellow or member of the Royal Institution of Chartered Surveyors (FRICS or MRICS)
- (b) fellow or member of the Institution of Structural Engineers (F.I.Struct.E or M.I.Struct.E)
- (c) fellow or member of the Chartered Institute of Building (FCIOB or MCIOB)
- (d) fellow or member of the Architecture and Surveying Institute (FASI or MASI)
- (e) fellow or member of the Chartered Association of Building Engineers (FCABE or MCABE)
- (f) member of the Chartered Institute of Architectural Technologists (formally British Institute of Architectural Technologists) (MCIAT)
- (g) 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
- (h) fellow or member of the Institution of Civil Engineers (FICE or MICE).

*Specific requirement(s):*

**C.15 Will the society proceed if the property does not have the benefit of a warranty scheme under C.12?**

Yes – but only where construction has been supervised by an RIBA qualified architect employed by the borrower.

**C.16.** 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.

**C.17.** If we require a collateral warranty from any professional adviser, this will be stated specifically in the mortgage instructions.

**C.18.** Check *specific requirements* to see if the consultant's certificate must be sent to us after completion.

*Specific requirement(s):*

**C.18 At what stage does the society require the consultant's certificate?**

Either on completion or before release of any final tranche on a stage advance loan

## ROADS AND SEWERS

**C.19.** If the roads or sewers immediately serving the property are not adopted or maintained at public expense check *specific requirements*.

*Specific requirement(s):*

**C.19 What are your specific requirements if the roads or sewers immediately serving the property are not adopted or maintained at public expense?**

Refer to Mortgage Department – see A.3

**C.20.** Where roads and sewers are not adopted or to be adopted, but are maintained by local residents or a management company, this is acceptable provided that (in your reasonable opinion) appropriate arrangements for maintenance repairs and costs are in place. Check *specific requirements* to see if we have any additional requirements eg for an agreement, bond etc.

*Specific requirement(s):*

**C.20 What additional requirements are there where roads and sewers are not adopted or to be adopted?**

Refer to Mortgage Department – see A.3

## EASEMENTS

**C.21.** You must check that the property has the benefit of all easements necessary for its full use and enjoyment. All such rights must be enforceable by the borrower and the borrower's successors in title. If they are not, check *specific requirements* for our requirements.

*Specific requirement(s):*

**C.21 If all such rights are not enforceable by the borrower and the borrower's successors in title what are the society's requirements?**

Refer to Mortgage Department – see A.3

**C.22.** 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.

## REDEVELOPMENT etc

**C.23.** The local search or the enquiries of the seller's conveyancer should not reveal that the property is in an area scheduled for redevelopment/regeneration or in any way affected by road proposals. If it is please report to us.

## RIGHTS OF PRE-EMPTION etc

**C.24.** 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.

## IMPROVEMENTS AND REPAIR GRANTS

**C.25.** Where the property is subject to an improvement or repair grant that will not be postponed, discharged or waived on completion, you must report the matter to us.

## INSURANCE

**C.26.** Where we do not arrange the insurance, you must -

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

**C.27.** You must check *specific requirements* in respect of all of the following -

- (a) whether the property must be insured in the joint names of us and the borrower, or whether our interest may be noted
- (b) if the property is part of a larger building and there is a common insurance policy, the total sum insured for the building must be not less than the total number of flats multiplied by the amount set out in the mortgage offer for the property
- (c) to ensure that the excess does not exceed the amount specified
- (d) to see whether 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
- (e) to see whether we require you to send us a copy of the buildings insurance policy and the last premium receipt to us.

*Specific requirement(s):*

**C.27 What are the society's specific requirements in respect of –**

- (a) No
- (b) You must ensure that the sum insured accurately reflects the full rebuilding cost
- (c) Maximum excess of £1,000 – if greater refer to Mortgage Department – see A.3
- (d) Yes
- (e) No but we require confirmation that insurance is in place



**C.28.** You must also check *specific requirements* to see whether we require you to confirm that all the following risks are covered in the insurance policy -

- (a) fire
- (b) lightning
- (c) aircraft
- (d) explosion
- (e) earthquake
- (f) storm
- (g) flood
- (h) escape of water or oil
- (i) riot
- (j) malicious damage
- (k) theft or attempted theft
- (l) falling trees and branches and aerials
- (m) subsidence
- (n) heave;
- (o) landslip
- (p) collision
- (q) accidental damage to underground services
- (r) professional fees, demolition and site clearance costs, and
- (s) public liability to anyone else.

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

*Specific requirement(s):*

**C.28 Does the society require confirmation that all of the risks above are covered in the insurance policy?**

Yes

D - Title

## GOOD AND MARKETABLE TITLE

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

**D.2.** The title to the property must be good and marketable free of any restrictions, 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). Our requirements in respect of indemnity insurance are set out in paragraphs D.56-7. You must also take reasonable steps to ensure that, on completion, the property will be vested in the borrower.

**D.3.** 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 – see paragraphs D 56-7.

**D.4.** A title based on adverse possession or possessory title will be acceptable if-

- the seller is, or on completion the borrower will be, registered at the Land Registry as registered proprietor of a possessory title, or
- there is satisfactory evidence by statutory declaration of adverse possession for a period of at least 12 years. In the case of lost title deeds, the statutory declaration must explain the loss satisfactorily.

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.

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.

## FIRST LEGAL CHARGE AND TITLE GUARANTEE

**D.5.** On completion of your retainer, 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.

**D.6.** We require the borrower to give us a full title guarantee in the mortgage deed.

## SEARCHES AND REPORTS

**D.7.** In carrying out your investigation, you must ensure that all usual and necessary searches and enquiries have been carried out. You must report any adverse entry to us, but we do not want to be sent the search itself. An adverse entry is one that would prevent, or restrict, the lender from obtaining 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

**D.8.** In addition, you must ensure that any other searches which may be appropriate to the particular property, taking into account its locality and other features, are carried out.

**D.9.** We must be named as the applicant in the Land Registry search.

**D.10.** All searches except where there is a priority period must not be more than six months old at completion.

**D.11.** You must advise us of any contaminated land entries revealed in the local authority search. Check *specific requirements* to see if we want to receive environmental or contaminated land reports (as opposed to contaminated land entries revealed in the local authority search). If we do not, you do not need to make these enquiries on our behalf.

*Specific requirement(s):*

**D.11 Does the society require environmental or contaminated land reports?**

Yes

**D.12.** Check *specific requirements* to see if we accept -

- personal searches, or
- search insurance.

*Specific requirement(s):*

**D.12 Does the society accept personal searches, or search insurance?**

Personal searches – Yes but at your own risk

Search Insurance - No

**D.13.** If we do accept personal searches or search insurance, check *specific requirements* to see our requirements as to such searches.

*Specific requirement(s):*

**D.13 What are the society's requirements if personal searches or search insurance are accepted?**

All personal searches without limitations

**D.14.** If no requirements are specified in *specific requirements* and we do not indicate that we do not accept personal searches or search insurance, you must ensure -

- a suitably qualified search agent carries out the personal search and has indemnity insurance that adequately protects us, or
- the search insurance policy adequately protects us.

You must be satisfied that you will be able to certify that the title is good and marketable.

*Specific requirement(s):*

**D.14 What are your requirements?**

A suitably qualified search agent carries out the personal search and has indemnity insurance that adequately protects us

## BANKRUPTCY SEARCH

**D.15.** You must obtain a clear bankruptcy search against each borrower (and each mortgagor or guarantor, if any) providing us with protection at the date of completion of the mortgage. 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.

**D.16.** Where an entry is revealed against the name of the borrower (or the mortgagor or guarantor) -

- 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
- if, after obtaining office copy entries or making other enquiries of the Official Receiver, 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. (Please note that it is not acceptable for the borrower to certify an entry). We may as a consequence need to withdraw our mortgage offer.

## OWNER AND REGISTERED PROPRIETOR

**D.17.** Please report to us 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) a personal representative of the registered proprietor, or
- (b) an institutional mortgagee exercising its power of sale, or
- (c) a receiver, trustee-in-bankruptcy or liquidator, or
- (d) a developer or builder selling a property acquired under a part-exchange scheme.

## RESTRICTIONS ON USE OR OCCUPATION

**D.18.** 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.

## RESTRICTIVE COVENANTS

**D.19.** 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 D.20) that indemnity insurance is in place at completion of our mortgage (see paragraphs 56-7).

**D.20.** 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.

## PLANNING AND BUILDING REGULATIONS

**D.21.** You must by making appropriate searches and enquiries take all reasonable steps (including any further enquiries to clarify any issues that may arise) to ensure the property has the benefit of all necessary planning consents (including listed building consent) and building regulations approvals for its construction and any subsequent change to the property and its current use, and -

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

**D.22.** If there is such evidence and all outstanding conditions will not be satisfied by completion, then this must be reported to us. Check *specific requirements* to see if copies of planning permissions, building regulations and other consents or certificates should be sent to us.

*Specific requirement(s):*

**D.22 Are copies of planning permissions, building regulations and other consents or certificates required to be sent to the society?**

Yes – should be placed with the documents of Title following completion

**D.23.** If the property will be subject to any enforceable restrictions, for example under an agreement (such as an agreement under section 106 of the Town and Country Planning Act 1990) 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.

## 'FLYING' FREEHOLDS

**D.24.** If any part of the property comprises or is affected by a flying freehold or the property is a freehold flat, check *specific requirements* to see if we will accept it as security.

*Specific requirement(s):*

**D.24 If any part of the property comprises or is affected by a flying freehold or the property is a freehold flat will the society accept it as security?**

Flying Freehold – Yes but contact Mortgage Department – see A.3

Freehold Flats - No

**D.25.** If we are prepared to accept a title falling within paragraph D.24 -

- (unless we tell you not to in ***specific requirements***) you must report to us that the property is a freehold flat or comprises, or is affected by, a flying freehold, and
- 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
- you must be able to certify that the title is good and marketable, and
- 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 the second bullet point above are not satisfied, indemnity insurance must be in place at completion (see paragraphs 56-7).

*Specific requirement(s):*

**D.25 Do you require the conveyancers to report to you that the property is a freehold flat or comprises, or is affected by, a flying freehold?**

Freehold Flats are unacceptable

Flying Freeholds must be referred to Mortgage Department – see A.3

## OTHER FREEHOLD ARRANGEMENTS

**D.26.** Unless we indicate to the contrary (see ***specific requirements***), 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.

*Specific requirement(s):*

**D.26 Does the society have any objections 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 any flat owner also owns the freehold of the building and the other flats are subject to long leases?**

Refer to Mortgage Department – see A.3

**D.27.** 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.

**D.28.** 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.

**D.29.** 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.

**D.30.** Where the security will comprise -

- 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
- 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 *specific requirements* to see if we will accept it as security and if so, what our requirements will be.



*Specific requirement(s):*

**D.30 Will the society accept it as a security and if so, what are your requirements?**

Freehold reversions are acceptable to the Society

Any other issue must be referred to the Mortgage Department – see A.3

## RENT CHARGES

**D.31.** If the security property is subject to a rentcharge you should obtain the last receipt for payment of the rentcharge from the seller's conveyancing solicitors. See *specific requirements* for any further requirements regarding rentcharges.

*Specific requirement(s):*

**D.31 Is anything further than the last receipt for payment required?**

No, but please advise the Mortgage Department of the name and address of a) the Landlord b) the Management Company and/or agent

## COMMONHOLD

**D.32.** If any part of the property comprises commonhold, check *specific requirements* to see if we will accept it as security

*Specific requirement(s):*

**D.32 If the property comprises commonhold will it be accepted as security?**

No

**D.33.** If we are prepared to accept a title falling within paragraph D.32, you must -

- (a) ensure that the commonhold association has obtained insurance for the common parts which complies with our requirements (see paragraphs C.28-9), and
- (b) obtain a commonhold unit information certificate and ensure that all of the commonhold assessment in respect of the property has been paid up to the date of completion, and
- (c) ensure that the commonhold community statement does not include any material restrictions on occupation or use (see D.2 and D.18), and
- (d) ensure that the commonhold community statement provides that, in the event of a voluntary termination of the commonhold, the termination statement provides that the unit holders will ensure that any mortgage secured on their unit is repaid on termination, and
- (e) make a company search to verify that the commonhold association exists and remains registered, and that there is no registered indication that it is to be wound up, and
- (f) within 14 days of completion, send the notice of transfer of a commonhold unit and notice of the mortgage to the commonhold association.

## LEASEHOLD PROPERTY

**D.34.** Our requirements on the unexpired term of a lease offered as security are set out in *specific requirements*.

*Specific requirement(s):*

**D.34 What are the requirements on the unexpired term of a lease offered as security?**

Mortgage term plus a minimum of 50 years if capital and interest.

If mortgage is interest only and there will be less than 80 years remaining at the end of the term, please refer to the Mortgage Department – see A.3

**D.35.** There must be no provision for forfeiture on the insolvency of the tenant or any superior tenant.

**D.36.** 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 (this is particularly important if the lease is a shared ownership lease). You must not complete without them.

**D.37.** You must take reasonable steps to check that -

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

**D.38.** 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 paragraphs D.49-52.

**D.39.** Where the responsibility for the insurance, maintenance and repair of the common services is that of one or more of the tenants, the lease must contain adequate provisions for the enforcement of these obligations by the landlord or management company at the request of the tenant.

**D.40.** 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 paragraphs 56-7). This is not essential if the landlord is responsible for the maintenance and repair of the main structure. We do not require enforceability covenants mutual or otherwise for other tenant covenants.

**D.41.** We have no objection to a lease that 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.

*Specific requirement(s):*

**D.41. What are the Society's requirements regarding ground rents?**

- The maximum acceptable starting ground rent on all new build leasehold properties will be limited to 0.1 per cent of the property's value.
- For all property the ground rent must remain reasonable at all times during the lease term, with unreasonable multipliers such as doubling every five, ten or fifteen years not allowed.
- Escalation should be linked to a verified index, such as the Retail Price Index.

**D.42.** 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.

**D.43.** 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 56-7). See *specific requirements* for our requirements.

*Specific requirement(s):*

**D.43 Does the society accept indemnity insurance if the terms of lease are unsatisfactory?**

Yes

**D.44.** 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 *specific requirements* 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.

*Specific requirement(s):*

**D.44 Does the society require a clear receipt or other appropriate written confirmation?**

Yes – should be placed with the documents of title following completion

**D.45.** 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 *specific requirements* to see if a receipted copy of the notice or evidence of service must be sent to us after completion.

*Specific requirement(s):*

**D.45 Does the society require a receipted copy of the notice or evidence of service after completion?**

Yes – should be placed with the documents of title following completion

**D.46.** 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.

**D.47.** You must report to us if it becomes apparent that the landlord is either absent or insolvent. If we are to lend, we may require indemnity insurance (see paragraphs D.56-7). See *specific requirements* for our requirements.

*Specific requirement(s):*

**D.47 What are the society's specific requirements if it becomes apparent that the landlord is either absent or insolvent?**

We will require indemnity insurance

**D.48.** If the leasehold title is registered but the lease has been lost, we are prepared to proceed provided you have checked a Land Registry produced copy of the registered lease. Whilst this will not be an official 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.

## MANAGEMENT COMPANY

**D.49.** 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.

**D.50.** 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.

**D.51.** For leases granted before 1 September 2000, if the lease does not satisfy the requirements of paragraph D.49, but you are nevertheless satisfied with the existing arrangements affecting the management company and the 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 judgment.

**D.52.** You should make a company search and verify that the company is in existence and registered at Companies House. 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. If the borrower is required to be a shareholder in the management company, check *specific requirements* 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. 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.

*Specific requirement(s):*

**D.52 Does the society require the share certificate, a blank stock transfer form executed by the borrower and a copy of the memorandum and articles of association after completion?**

Yes – should be placed with the documents of title following completion

## DEED OF GIFT

**D.53.** 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 five years of the proposed mortgage, then you must be satisfied that we will –

- acquire our interest in good faith, and
- will be protected under the provisions of the Insolvency (No 2) Act 1994 against our security being set aside.

If you are unable to give an unqualified certificate of title, you must arrange indemnity insurance (see paragraphs D.56-7).

**D.54.** You must also obtain clear bankruptcy searches against all parties to any deed of gift or transaction at an apparent undervalue.

## AFFORDABLE HOUSING - SHARED OWNERSHIP/SHARED EQUITY

**D.55.** 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 ('shared ownership') or will be taking a charge over the property ('shared equity'). 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 *specific requirements*).

*Specific requirement(s):*

**D.55 What are your specific requirements with regard to shared ownership/shared equity properties?**

- Shared ownership must be referred to the Mortgage Department – see A.3
- The Society will consider affordable housing
- The Society does not lend on shared equity properties

## INDEMNITY INSURANCE

**D.56.** You must effect an indemnity insurance policy whenever the BSA Mortgage Instructions identifies that this is an acceptable or required course in order to ensure that the property has a good and marketable title at completion. Check *specific requirements* to see if the policy must be sent to us either before or after completion .

*Specific requirement(s):*

**D.56 Does the society require the indemnity insurance policy to be sent to them before or after completion?**

Should be placed with the documents of title following completion

**D.57.**

Where indemnity insurance is effected -

- (a) you must approve the terms of the policy on our behalf (see *specific requirements* if any)
- (b) the limit of indemnity must meet our requirements (see *specific requirements*)
- (c) the policy must be effected without cost to us
- (d) you must disclose to the insurer all relevant information which you have obtained
- (e) the policy must not contain conditions which you know would make it void or prejudice our interests
- (f) you must provide a copy of the policy to the borrower and explain to the borrower why the policy was effected and that a further policy may be required if there is further lending against the security of the property
- (g) you must explain to the borrower that the borrower will need to comply with any conditions of the policy and that the borrower should notify us of any notice or potential claim in respect of the policy, and
- (h) the policy should always be for our benefit and, if possible, for the benefit of the borrower and any subsequent owner or mortgagee. If the borrower will not be covered by the policy, you must advise the borrower of this.

*Specific requirement(s):*

**D.57 What limit of indemnity does the society require?**

For no less than the amount of the Mortgage.

## E - Mortgage

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Lender instruction last modified **2017-10-05**

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## THE MORTGAGE DOCUMENTATION

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

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



**E.3.** 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 paragraph E.1 and any documents he is required to sign.

**E.4.** It is considered good practice that the signature of a document that needs to be witnessed is witnessed by a solicitor, legal executive or licensed conveyancer.

**E.5.** All documents required at completion must be dated with the date of completion of the loan.

## MORTGAGE INDEMNITY AND HIGHER LENDING CHARGE

**E.6.** 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 for which a higher lending charge is payable, and that the insurer will have a subrogated right to claim against the borrower if it pays us under the policy. Different building societies call the various schemes of this type by different names. They may not involve an insurance policy.

## THE MORTGAGE OFFER

**E.7.** 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 unqualified certificate of title. Mortgage offers are usually subject to a time limit (eg 3 or 6 months), therefore it may be necessary to refer back to the society in case of expiry.

**E.8.** You should tell us as soon as possible if you have been told that the borrower has decided not to take up the mortgage offer.

## RETENTIONS

**E.9.** 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 such retention to a third party.

**E.10.** Check *specific requirements* to see who we will release the retention to

*Specific requirement(s):*

**E.10 Who will you release the retention to?**

The borrower(s) unless we have written instructions to the contrary from the borrower(s)

## THE LOAN AND CERTIFICATE OF TITLE

**E.11.** You should not submit your certificate of title unless it is unqualified or we have authorised you in writing to proceed notwithstanding any issues you have raised with us.

**E.12.**

We shall treat the submission by you of the certificate of title as a request for us to release the mortgage advance to you and as confirmation that the borrower wishes to proceed and accept the Binding Mortgage Offer. Check ***specific requirements*** to see if the mortgage advance will be paid electronically or by cheque and the minimum number of days notice we require. See ***specific requirements*** for any standard deductions which may be made from the mortgage advance. Check ***specific requirements*** to see if any extra actions are required for the customer to accept the Binding Mortgage Offer and waive the reflection period.

*Specific requirement(s):*

**E.12 (a) How is the mortgage advance paid (including any details of any standard deductions)? (b) Does the society require any extra actions to be taken for the customer to accept the Binding Mortgage Offer and waive the reflection period?**

(a) The mortgage advance will be paid by TT and we require 4 working days notice

£25TT fee plus others as identified on the Offer

(b) No

**E.13.** You must hold the loan on trust for us until completion.

**E.14.** You are authorised to release the loan only when you hold –

1. sufficient funds to complete the purchase of the property and pay all stamp duty land tax and registration fees to perfect the security as a first legal mortgage or, if you do not have them, you accept responsibility to pay them yourself, and
2. a completed and signed mortgage deed and any other necessary document such as a deed of postponement.

**E.15.** Before releasing the loan when the borrower is purchasing the property you must hold a properly completed and executed stamp duty land tax return.

**E.16.** You must ensure that, where a stamp duty land tax return is required, it is completed and submitted to allow registration of the charge to take place in the priority period afforded by the search.

**E.17.** 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 .

**E.18.** If completion is delayed, you must return the loan to us when and how we tell you - see *specific requirements* 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 will assume that the mortgage has been completed. We reserve the right to charge the borrower interest under the mortgage and/or require you to pay interest on the amount of the mortgage advance (see *specific requirements*).

*Specific requirement(s):*

**E.18 How long does the society allow the mortgage advance to be held for if completion is delayed?**

**E.18 Does the society require interest to be paid on the amount of the mortgage advance once released prior to completion?**

- The Society must be advised of the delayed completion within 2 working days of release of the mortgage advance
- The mortgage advance must be returned within 7 days (by the method received)
- We will charge interest from the earlier of the date of completion or the expiration of the 7 days after dispatch

**E.19.** 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.

## INSTALMENT MORTGAGES AND MORTGAGE ADVANCES RELEASED IN INSTALMENTS

**E.20.** 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 builder as far as practicable.

**E.21.** 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.

**E.22.** The borrower is responsible for our valuer's fees for interim valuations as well as the first and final valuations.

**E.23.** In the case of applications for part of the advance, as in the case of a normal mortgage account, funds for instalment mortgages may be sent to you. However, instalments (apart from the first which will be sent to you to enable you to complete the mortgage) can be sent directly to the borrower on request. We may make further payments and advances without reference to you.

**E.24.** To allow time for a valuation to be carried out, any request for intermediate funds should be sent to us at least 10 days before the funds are required.

**E.25.** We will not lend on the security of a building contract unless we tell you to the contrary. As a result the mortgage must not be completed and no part of the advance released until the title to the legal estate in the property has been vested by the borrower.

**E.26.** Where the loan is to be made in instalments or there is any deferred interest retention or stage release, check *specific requirements* to see whether you must apply to Land Registry on form CH2 for entry of a notice on the register that we are under an obligation to make further advances. If the mortgage deed states that it secures further advances, and that the building society is under an obligation to make them, there is no need to submit a form CH2 provided the mortgage deed also states that application is made to the Registrar for a note to be entered on the register to that effect and the mortgage deed bears a Land Registry MD reference at its foot.

*Specific requirement(s):*

**E.26 Does the society require a form CH2 application to be made to the Land Registry?**

Yes

## REGISTRATION

**E.27.** You must register our mortgage as a first legal charge at the Land Registry. Before making your Land Registry application for registration, you must place a copy of the results of the Official Search on your file, together with certified copies of the transfer, mortgage deed and any discharges or releases from a previous mortgagee.

**E.28.** The application for registration must be received by the Land Registry during the priority period afforded by your original Land Registry search made before completion and, in any event, in the case of an application for first registration, within two months of completion.

**E.29.** Our mortgage conditions and mortgage deed have been deposited at the Land Registry and it is therefore unnecessary to submit a copy of the mortgage conditions on an application for registration.

**E.30.** If you cannot register our mortgage within the priority period afforded by your original Land Registry Search made before completion you must register a unilateral notice to protect our position. Simply renewing your original Land Registry Search is not acceptable.

**E.31.** If registration at the Land Registry has not been completed within three months from completion you must write to us explaining the reason for the delay and keep us regularly informed of the position until registration has been completed.

**E.32.** Where the borrower or mortgagor is a company an application to register the charge must be lodged at Companies House within the required time period.

## THE TITLE DEEDS

**E.33.** All title deeds, official copies of the register (where these are issued by the Land Registry after registration), 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. Check *specific requirements* for our requirements on what you should do with these documents following registration. Please check *specific requirements* to see if we require the original mortgage deed to be returned to us. You must only send us documents we tell you to.

*Specific requirement(s):*

**E.33 What documents does the society need, and what should be done with the other documents?**

We require the Title Information document to be returned to us once registration at HM Land Registry is completed.

In addition to the Title Information Document the following documents (as applicable in each case) must be sent to us:

- Mortgage deed(s)
- Letter of Waiver/ Consent by Occupiers
- Personal Guarantees
- Deed of Priority
- Any applicable Indemnity Policy
- Copy receipted notice to landlord for leasehold properties
- Specific items listed in the Mortgage offer

**E.34.** You should obtain the borrower's instructions concerning the retention of documents we tell you not to send us.

## YOUR MORTGAGE FILE

**E.35.** 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.

**E.36.** Where you are processing personal data (as defined in the Data Protection Act 1998) on our behalf, you must -

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

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

**E.37.** Subject to any right of lien or any overriding duty of confidentiality, you should treat documents comprising your file as if they are jointly owned by the borrower and us, and you should not part with them without the consent of both parties. You should on request supply certified copies of all documents on the file or a certified copy of the microfiche to either the borrower or us, and may make a reasonable charge for copying and certification.

## F - Later Transactions

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Lender instruction last modified **2017-10-05**

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## DOCUMENTS

**F.1.** In any transaction during the lifetime of the mortgage when we instruct you, you must use our current standard documents in all cases and must not amend or generate them without our written consent. We will send you all the standard documents necessary or tell you where to obtain all the standard documentation to enable you to comply with our instructions (see *specific requirements*), but please let us know if you need any other documents and we will send these to you. Check 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 with full details and any suggested amendments.

*Specific requirement(s):*

**F.1 The society's standard documents are available from:**

Refer to Mortgage Department – see A.3

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

## FURTHER ADVANCES

**F.3.** 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 but, if you are instructed, the appropriate provisions of these BSA Mortgage Instructions will apply.

## TRANSFERS OF EQUITY

**F.4.** You must approve the transfer (which should be in the Land Registry's standard form) and, if we require, the deed of covenant on our behalf. Check *specific requirements* to see if we have standard forms of transfer and deed of covenant. When drafting or approving a transfer, you should bear in mind that -

- although the transfer should state that it is subject to the mortgage (identified by date and parties), it need give no details of the terms of the mortgage, and
- the transfer should not state the amount of the mortgage debt, and
- there should be no statement that all interest has been paid to date.

*Specific requirement(s):*

**F.4 Do you have standard forms of transfer and deed of covenant?**

No – we require you to draft the document in the Society's interest

**F.5.** You must ensure that every person who will be a borrower after the transfer covenants with us to pay the money secured by the mortgage, except in the case of-

- an original party to the mortgage (unless the mortgage conditions or loan conditions are being varied), or
- a person who has previously covenanted to that effect.

**F.6.** Any such covenant will either be in the transfer or in a separate deed of covenant. In a transfer, the wording of the covenant should be as follows, or as close as circumstances permit - "The new borrower agrees to pay the building society all the money due under the mortgage and will keep to all the terms of the mortgage". If it is in the transfer, you must place a certified copy of the transfer with the deeds (unless we tell you not to in *specific requirements*).

*Specific requirement(s):*

**F.6 Does the society require a certified copy of the transfer to be placed with the deeds?**

Yes

**F.7.** If we have agreed to release a borrower or a guarantor and our standard transfer form (if any) includes no appropriate clause, you must add a simple form of release. The release clause should be as follows, or as close as circumstances permit: "*The building society releases ... from [his/her/their] obligations under the mortgage.*" You should check whether a guarantor who is to be released was a party to the mortgage or to a separate guarantee.

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

**F.9.** You must only submit the transfer to us for execution if it releases a party. All other parties must execute the transfer before it is sent to us. See *specific requirements* for where the transfer should be sent for sealing. *Specific requirements* give our approved form of attestation clause.

*Specific requirement(s):*

**F.9 Where should the transfer be sent for sealing?**

Mortgage Department – see A.3

The common seal of Bath Investment and Building Society was affixed (by order of the board of directors) in the presence of .....

## APPLICATIONS TO LET THE SECURITY PROPERTY

**F.10.** If, before completion of the retainer, the Borrower informs you of an intention to let the property, 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 by the borrower. Check *specific requirements* to see whether it is necessary to send to us a copy of the proposed tenancy agreement when making the application.

*Specific requirement(s):*

**F.10 Does the society require a copy of the proposed tenancy agreement when an application to let the security property is made?**

Yes



**F.11.** If we consent to the application and we instruct you to act for us, you must approve the form of tenancy agreement on our behalf in accordance with our instructions.

**F.12.** 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
- you should draw the borrower's attention to the fact that, under the terms of the mortgage, we may charge a higher rate of interest to the borrower.

## DEEDS OF VARIATION

**F.13.** 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.

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

**F.15.** 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 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.

## DEEDS OF POSTPONEMENT OR PRIORITY

**F.16.** 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 our standard form. In no cases will we postpone our first charge over the property.

## REDEMPTION AND DISCHARGE

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

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

**F.19.** On the day of completion, you should send the discharge and your remittance for the repayment to us. Check *specific requirements* to see if we discharge via a DS1 form or direct notification to the Land Registry.

*Specific requirement(s):*

**F.19 How does the society discharge their interest in the property on completion?**

Via e-DS1

