

Instructions to Conveyancers (Scotland)

We confirm that **we** engage **you** to act for **us** in relation to a mortgage transaction involving **us** obtaining a first priority charge by way of standard security in respect of the **property** detailed in the mortgage offer cover letter as security for, among other things, a proposed **advance** to the **borrower(s)**.

Our “instructions” to **you** (our conveyancer) to act on **our** behalf in relation to this matter include:

- (a) The instructions (the **Additional Instructions**) set out in this document from and including the “General” below;
- (b) “**Our UK Finance Part 2**”, being **our** current Part 2 instructions in respect the current edition of the UK Finance Mortgage Lenders’ Handbook for Scotland;
- (c) “**UK Finance Part 1**”, being Part 1 of the current edition of the UK Finance Mortgage Lenders’ Handbook for Scotland except as qualified and supplemented by our **UK Finance Part 2** and in the **Additional Instructions** below: and
- (d) Any other instructions in the **mortgage offer**.

Please obtain a copy of **our UK Finance Part 2** from the **UK Finance** web site (<https://lendershandbook.ukfinance.org.uk/lenders-handbook/>)

Expressions defined in the edition of **our** Mortgage Conditions referred to in the form of **standard security** provided by **us** to **you** in relation to this matter shall (except where defined differently in the **instructions**) have the same meaning in the **instructions** but, for this purpose, treating references in those Mortgage Conditions to “you” and “your” as references to the **borrower**. A definition of an expression set out in this document shall prevail to the extent inconsistent with a definition of the same expression in **UK Finance Part 1**.

In the **instructions** (including the answers, but excluding the questions, set out in **our UK Finance part 2**):

- (1) **You** and **your** means the firm of solicitors or licensed conveyancers who act for us in connection with the **mortgage agreement** relating to the matter in which the **instructions** relate.
- (2) **We, us** and **our** means The Mortgage Lender Limited: Lutea House, Warley Hill Business Park, The Drive, Great Warley, Brentwood, Essex, CM13 3BE. (registered in England and Wales as company number 09280057) and anyone who at any time in the future is entitled (as legal, equitable or beneficial owner) to all or any of the lender’s and/or mortgagee’s rights under the **mortgage agreement** (including as a result of a **mortgage transfer**, a merger or consolidation with another person, a take-over and /or a group reorganisation).
- (3) **Borrower** means at any time each person, limited company or LLP indicated in the application form relating to this matter as an applicant or, following issue of an **offer**, each person indicated in the then most recent **offer** as being a mortgagor or borrower and, in each case, (if there is more than one) all of them together (and includes that person’s personal representatives and any person to whom title to the **property** passes).
- (4) **Mortgage transfer** includes a transfer, assignment or assignation (whether absolute or by way of security), mortgage, charge, agreement to sell, declaration of trust or other disposal (legally or beneficially) of all or any of **our** rights, title, interests, benefits and obligations in



respect of the **instructions**, any documents provided by you (including a certificate of title) in connection with the **instructions**, the **mortgage agreement** and/or the **property**.

General

Please read the **instructions** carefully and provide as much information and detail to **us** as possible to ensure that this transaction proceeds smoothly. Please remember to allow a minimum of 5 working days between any certificate of title from **you** and **completion** to allow **us** to consider any information provided. Delays are rarely as a result of us being provided with too much information but may arise if we are provided with too little and have to come back to **you** with further requests for information.

You must promptly report anything (including providing any relevant documents) which ought to be considered relevant to, or which might influence, **our** decision to lend.

Completion Funds and mortgage transfers

You must not request funds from **us** until **you** have satisfied **our** requirements. **You** have no authority to release funds unless **you** have complied with all **our** instructions.

We have arrangements pursuant to which **our** rights under the **mortgage agreement** are sold and assigned immediately upon **completion** although, unless notified otherwise, **we** will continue to be 'lender of record' and hold the legal title and deal with the **borrower** in relation to the **mortgage agreement**. **If completion does not occur with 1 business day of the scheduled date indicated in your certificate of title, you must immediately return all the funds directly to us.**

You acknowledge to **us** and agree with **us** that at any time and from time to time **we** may make a **mortgage transfer** to anyone without notice to **you**. **You** consent and agree to each such **mortgage transfer** and agree that no further consent or agreement is required from **you** and no further notice need be given to **you**, **your** firm, the **instructions** and/or rights against **you** in connection with the **mortgage agreement** to any interested or potentially interested person in connection with any **mortgage transfer**. Any person falling within the definition of "**us**" may rely on **your** obligations, liabilities and duties in relation to this matter to the same extent as though they were originally owed and incurred to, and the certificate of title was originally also made to, that person.

Security for our advance

The **advance** must be secured by a first ranking **standard security** over the **property**.

As the **advance** will be secured against the **property**, **you** must ensure that this complies with **our** Mortgage Conditions and the general and special conditions of the **mortgage offer** including, where applicable the Acceptable Tenancies document.

Should **you** become aware that the borrower intends to rent out the **property** and the mortgage offer is not for a Buy to Let Product, **You** must advise **us** immediately.

If the Mortgage offer is for a Buy to Let Product and you become aware that the Borrower or a member of their family (or in the case of a borrower who is a company or LLP, any of their

shareholders, directors or members or any member of their family) intends to reside in the property, **You** must also advise **us** immediately.

You must also inform **us** if it appears that the **property** is subject to any encumbrance or restriction (such as title conditions, tenancies or right of occupation or use of the **property**), whether legal or physical, which ought to be considered relevant to, or which might influence, **our** decision to lend or proceed. This includes, but is not limited to:

- Houses subject to any agricultural occupancy restrictions;
- Properties with occupancy restrictions, including retirement flats and sheltered accommodation;
- Uninsurable properties;
- Properties with overage clauses;
- Landlocked properties
- Shared ownership/equity;
- Local Authority properties;
- Ex Local Authority properties that are subject to a pre-emption period.

If **you** are in any doubt as to the position, please contact **us** immediately.

The Borrower(s)

It is also important that the **borrower(s)** fully understand the transaction and the term relevant to the **advance** (including the terms of the **offer**, the Mortgage Conditions and any special conditions, including where applicable, the Acceptable Tenancies Document).

In the case of Joint or multiple **borrower(s)** we expect each borrower to be separately advised about the terms of the **offer**. When we receive a certificate of title from **you**, **you** agree that this constitutes a representation and warranty by **you** to **us** as conformation that either:

- **You** have given such advice ; or
- If appropriate, that independent legal advice has been provided by another qualified practising solicitor and that **you** hold a completed certificate confirming that independent advice has been given.

Where the **Borrower** is a limited company or limited liability partnership you must provide us with the following. Failure to do so will result in us being unable to release funds for completion.

- A witnessed Personal Guarantee completed and signed by each individual noted in the Special Conditions. One Personal Guarantee can be completed and submitted for up to four individuals
- A completed and signed Board Minute.
- Confirmation from **You** that immediately following the date of completion of the **standard security**, the **standard** security is delivered to Registers of Scotland for registration together with a correctly prepared Land Registration Application Form and immediately (and in any event within 21 days) following **Your** receipt of an acknowledgment of such application a correctly prepared Form MR01 or LL MR01 along with all requisite supporting

documentation (as applicable) is delivered to Companies House and any required registration fee is paid in relation to the same.

- Where notification is received that the application to add the **property** to The Land Register of Scotland is 'pending' you must obtain a letter of undertaking from the solicitors who submitted the application for registration to Registers of Scotland, confirming that
 - They will submit any rejected application again after rectification as soon as possible and
 - They will cover any costs of doing so.
- Please notify us that you have requested/received this letter of undertaking and contact us immediately if you are unable to obtain this.

Your Firm

You must notify LMS as soon as possible if any details supplied as part of your panel application or annual renewal change.

You consent to audit visits should we reasonably require LMS to make further investigation of your suitability to remain on our panel.

You must ensure professional indemnity insurance by a provider who is an independently rated provider of insurance products.

In the event of any inconsistency between the terms of your panel appointment and these **instructions**, the instructions prevail.

You must keep the entire file(s) including the financial records and ledgers for a minimum period of six years from **completion**. The **borrower** has waived any right to confidentiality and/or privilege in respect of the entire file(s) by signing the declaration relating to the mortgage application form and the entire file must be sent to **us** promptly should we request it from **you** either before or after **completion**.

Communication with us

If **you** report anything to **us**, whether as a qualification of **your** certificate of title or offering any advice to **us**, **you** must make sure that **we** have received and acknowledged it. **You** should not assume that the transaction can proceed to complete unless **we** have confirmed that this is the case or we have confirmed what further steps **we** require **you** to take.

We require a minimum of 5 working days from the submission of the certificate of title before funds can be released.

If **we** receive an unqualified certificate of title from **you**, you agree that this constitutes a representation and warranty by **you** to **us** that **you** have complied in full with **our instructions** and **your** obligations.

Our standard documentation

We enclose a pack containing some of **Our** standard documents for use by **you** in complying with the **instructions** will be made available with these instructions.

You must use **our** pro forma documentation, and in particular, **you** are responsible for completing the documentation fully and accurately with the relevant details (including, but not limited to, obtaining and checking the information needed to do so).

If **you** need a form of document which has not been provided to you, please contact our Completion Department (address and telephone number at start of **our UK Finance Part 2**) to find out whether **we** have an appropriate pro forma.

Avoidance of fraud

You must be fully aware of and comply with all the relevant guidance and practice notes issued by the Law Society of Scotland and UK Finance.

You must carefully consider the entire transaction and report to **us** immediately anything which is unusual, does not appear to be in the interest of either **us** or the borrower or which ought otherwise to be considered relevant to, or which might influence, **our** decision to lend or proceed.

This includes, but is not limited to, reporting the following;

- Where the beneficial interest in the **property** is held by the **borrower** in trust or as nominee for someone else;
- Where there is any connection between the **borrower** and any other party to the transaction (including, where any of the parties is a limited company, as a director or shareholder of any of the parties) or where the transaction appears to be other than at arm's length;
- Where the **advance** is used for purposes other than the purchase or remortgage of the **property** in accordance with the **offer**;
- Where the purchase price of the **property** is not the same as that set out in the **offer** or where the sum actually paid for the **property** at **completion** is not the same as that set out in the **offer**;
- Where any discounts, incentives (including the inclusion of furniture or fixtures and fittings, contributions towards fees or stamp duty or similar) are received by the **borrower** or any other party to the transaction;
- Where the **borrower** is not providing the balance of the purchase price of the **property** from his own resources and/or is taking out any further borrowing in respect of the transaction;
- Any payment is said to have been made directly between any of the parties, where any amount of the purchase price is said to be gifted and/or where the full amount of any purchase price will not be passing through your client account;
- The name of the seller and of the registered proprietor if they are different;
- Details of any relationship between the parties or giving confirmation that there is no relationship between the parties;
- Where the seller, or **borrower** if the transaction is a remortgage, has not owned the **property** for at least six months at the date of your instructions;

- In the case of a remortgage of the **property**, if the property is currently unencumbered;
- Full details of the transaction, including all parties and the prices paid by each party at each stage of the transaction, if the transaction is proceeding by way of a sub-sale, a back to back sale, an assignation of a contract to purchase, the granting of a lease at the direction of a party other than the seller or any similar transaction;
- Where the seller, previous owner or any member of their family is to remain in occupation of the **property** after completion;
- Where instructions are given to in **you** relation to the transaction from someone other than the **borrower**; or
- In transactions involving a purchase, the full details of the solicitors or conveyancers who are acting for the seller.

New Build

In all New Build cases, where the property is 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** must send **us** a copy of the Missives between the vendor and our borrower, prior to your request for funds.

Leasehold Properties

Please note that we do not lend on leasehold properties in Scotland.

Insurance

You must confirm that buildings insurance has been arranged for the property, for a minimum of the reinstatement figure detailed in the valuation prior to completion. **Our** interest as a mortgage lender must be noted on the insurance policy.

You should remind the **borrower(s)** that they:

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

You must inform **us** prior to completion if **you** are unable to verify that buildings insurance is in place.

Completion will not take place unless suitable building insurance is in place.

Repayment of Debt Conditions

By requesting the funds, you are confirming that the debts will be paid following completion.

In the case of a remortgage, **You** must repay all debts listed on the offer at completion. **We** will provide **you** with the amount to be paid, the creditor and a partial account number. **You** will need to obtain full details of the account from the **borrower(s)**, to allow you to make payment directly with the loan or credit card company and hold documented proof that payment has been made.



Should **you** be unable to make payment then **you** must contact **us** within 5 days of completion for further instructions.

Under no circumstances will **we** agree to release the funds to the **borrower(s)** to repay the debt.

The above repayment of debt conditions do not apply to Buy to Let Mortgage transactions.

Summary

If you are unsure about any of our requirements, please contact our Completion team.
completions@themortgagelender.com

Tel: 0344 257 0428