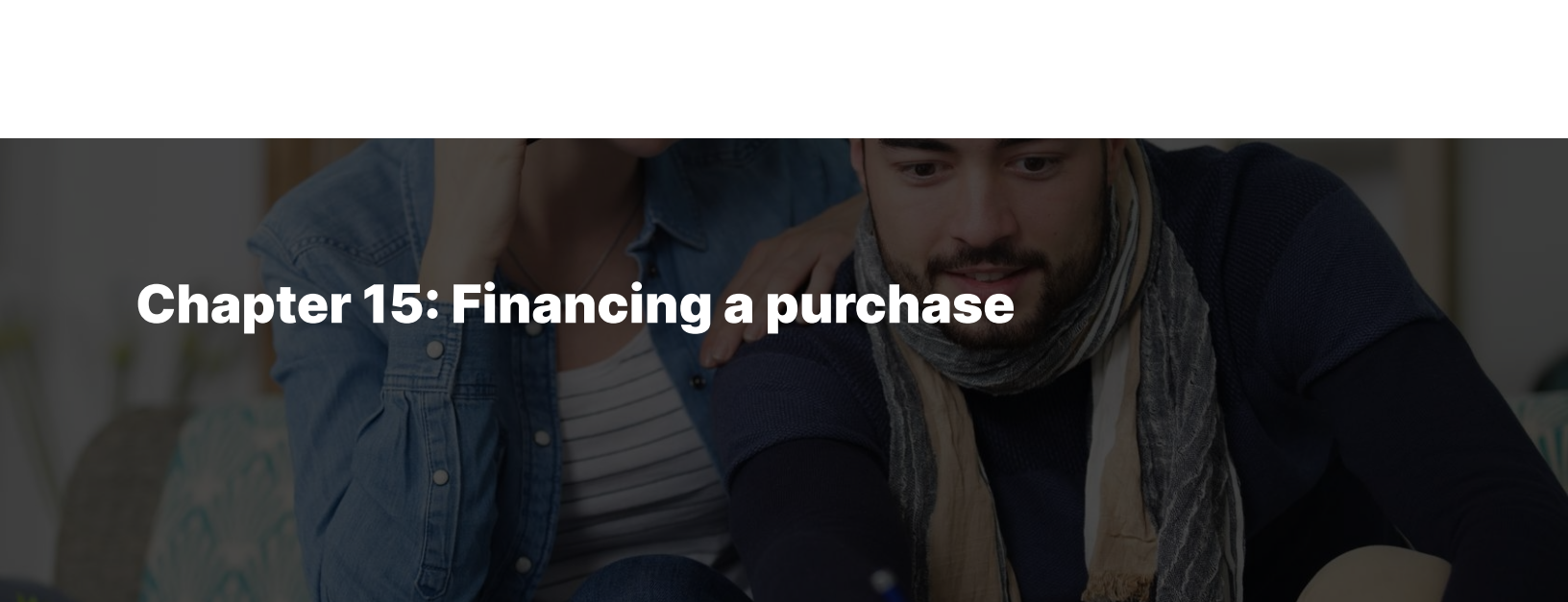


A photograph of a man and a woman looking at a laptop screen. The man is in the foreground, wearing a dark blue sweater and a light-colored scarf, looking intently at the screen. The woman is behind him, wearing a blue denim jacket over a striped shirt, also looking at the screen. The background is blurred, showing an indoor setting.

Chapter 15: Financing a purchase

- ≡ **Aims of this Chapter**
- ≡ **15.1 What is a mortgage?**
- ≡ **15.2 Duty of the buyer's conveyancers**
- ≡ **15.3 Cash**
- ≡ **15.4 Acting for the buyer and the mortgage lender**
- ≡ **15.5 Types of mortgage**
- ≡ **15.6 The mortgage offer**
- ≡ **15.7 Key mortgage terms**
- ≡ **15.8 Non-owning occupiers' consent form**
- ≡ **15.9 Reporting to the mortgage lender**
- ≡ **15.10 The certificate of title**

 **15.11 Pre-completion searches on behalf of the mortgage lender**

 **15.12 After completion**

 **15.13 Second and subsequent mortgages**

 **15.14 Remortgages**

 **15.15 Government backed assistance schemes**

 **Knowledge check**

 **15.16 Chapter summary**

 **15.17 Mortgage Deed**

 **15.18 Certificate of Title**

Aims of this Chapter

How a buyer client proposes funding their purchase of a property is of central importance to their conveyancer. If it transpires that the buyer cannot get their funding in place, the transaction will not proceed. It is very important therefore for the conveyancer to ensure prior to exchange of contracts that the buyer can produce the funds. Accordingly, we are still at the pre-exchange stage of the transaction.

If a buyer has a related sale, there is likely to be money “left over” once the fees and any mortgages have been paid on completion. These funds are often referred to as the “net sale proceeds”. In most cases the buyer will be putting at least some of their own money towards the purchase. If they are funding the purchase entirely from their own resources, they are referred to as a “cash buyer”. However, in the vast majority of residential conveyancing transactions, the buyer requires mortgage financing to fund their purchase.

This chapter brings together various points regarding the background to mortgages, types of mortgage and the differences to basic conveyancing procedures where mortgages are involved. Many of the points will, of course, be familiar from previous chapters.

This chapter will cover:

- definition of a mortgage
- acting for buyer and lender
- the mortgage offer and lenders handbook
- different types of mortgage

- the mortgage offer
- the mortgage deed
- the certificate of title, and
- steps to take after completion on behalf of a lender.



CONTINUE

15.1 What is a mortgage?

The purchase of property is usually the most important purchase anyone makes. One of the first matters buyers of property will consider is finance. The price of property means that most purchasers are unable to pay for a property outright. Financing of the purchase must then come from an outside source, so most buyers consider applying for a mortgage. Appropriate sources could be building societies or banks. Insurance companies and finance companies may also provide purchase finance.

A mortgage can be defined as a loan secured on property which provides security for the money lent and which, in the case of registered land, will be registered as a charge. Further, a mortgage gives the lender rights over the land which can be exercised where the borrower defaults (e.g. fails to pay the mortgage instalments), and these rights enable the mortgage lender to enforce payment of the loan.

Sometimes, it is possible for buyers to arrange a private mortgage, for instance, from a wealthy relative.

This chapter considers standard mortgages from institutions such as banks and building societies. The test for a “**standard mortgage**” is that:

- it must be within the lender's normal course of activities;
- lending must be a significant part of the activities; and
- the mortgage must be on standard terms.

Ordinary mortgages from lending institutions such as building societies or banks are likely to fall within this definition. If a mortgage does not meet all the requirements, it is not a standard mortgage.



CONTINUE

15.2 Duty of the buyer's conveyancers

A buyer's conveyancer will have duties regarding a potential mortgage for clients. Their main duties will be to ensure that the clients have an appropriate mortgage advance and to make sure that contracts are not exchanged until a satisfactory mortgage offer or advance has been received and accepted. They cannot commit clients to a purchase, as a contract would do, if they are not going to have the means to pay for it.



CONTINUE

15.3 Cash

Most buyers will have some money from their own resources to put towards the purchase of a property. They might have all of the money required to fund the purchase price and all fees, SDLT and HMLR fees without recourse to any borrowing. In this case, the buyer is known as a “**cash buyer**”. However, in most cases, a buyer will need to borrow money from a lender to fund the purchase of a residential property but they will still be contributing some of their own money, very often the 10 per cent deposit payable on exchange plus the fees and outgoings. However much money the buyer is contributing, the conveyancer has a duty to carry out the appropriate due diligence in relation to those funds.



15.3.1 Source of funds and source of wealth

We have seen the importance of the buyer's conveyancer being satisfied as to a buyer client's source of funds and source of wealth. Remember that, broadly, "**source of funds**" means that the client needs to provide evidence of where their money is currently being held and typically, they do this by producing a copy of their recent bank statements to their conveyancer. "**Source of wealth**" requires the conveyancer to establish where that money came from, for example, whether from an inheritance, work bonus or other source.

You will remember that someone else might help a buyer by providing funds towards the purchase, this will often be a first-time buyer whose parents are putting some money towards the deposit. This has become informally known as the "**bank of mum and dad**".

You will also remember that if funds are coming from a third party, the conveyancer must also carry out source of funds and wealth checks in relation to that money.



The requirement to carry out these checks is part of the due diligence which a conveyancer must carry out to comply with the firm's obligations under the money-laundering legislation.

We will now move on to look at the relationship between the conveyancer and the mortgage lender in more detail and some of the issues that arise when dealing with a mortgage and behalf of a buyer client.

CONTINUE

15.4 Acting for the buyer and the mortgage lender

Before contracts are exchanged, the buyer's conveyancer will need to ensure that the buyer has accepted their mortgage offer and that both conveyancer and client have received satisfactory mortgage instructions. Any conditions attached to the mortgage offer must be carefully checked by the conveyancer. For most mortgage lenders, the instructions to conveyancers will be based on the UK Finance Mortgage Lenders' Handbook, which sets out detailed instructions regarding the lender's requirements of the conveyancer (e.g. regarding title checks, identity checks to prevent mortgage fraud, procedures to be adopted, retention of file documents, etc.). It is vital that practitioners check, and ensure compliance with, the provisions in the handbook.

Sometimes, a mortgage lender (mortgagee) will instruct its own conveyancers to act on its behalf. This is known as “**separate representation**”; however, a buyer and the building society or bank do have the same interests in ensuring good title to the property, so there is no real reason why the same conveyancer should not act for both parties and this is what normally happens.

There are several reasons why a lender will have interests similar to those of a buyer including the following:

1

The buyers require a good sound home and they want to ensure that when they purchase the house, it will belong to them. They are also going to have to pay for it, so they want to be sure that if they ever have to sell, they are going to recover their money and be able to meet their debt to the lender.

The lender wants to make sure that the home is a sound home, that it is not risking its money by lending against it and that if it has to adopt one of its remedies of selling the property (because, perhaps, the buyers did not keep up their mortgage repayments), it will be able to sell the property quickly and recover the money that it lent against it.

Under the **CILEX Code of Conduct** and the **SRA Standards and Regulations**, including the **SRA Codes of Conduct**, a conveyancer cannot generally act for both sides of a conveyancing transaction.

The **CILEX Code of Conduct**, the **SRA Standards and Regulations** and the **SRA Codes of Conduct** do not contain any specific provisions about acting for lender and borrower; this issue is dealt with as part of the broader provisions on conflicts of interests within the Codes of Conduct.

The **SRA Code of Conduct 2011**, contained detailed provisions about acting for both lender and borrower. In general terms, these provisions allowed a conveyancer to act for both where there was:

- no conflict of interest;
- the mortgage was a standard mortgage;
- the property was being purchased as the buyer's own private residence;
- the conveyancer was satisfied it was reasonable, and in the clients' best interests, for them to act for both; and
- the certificate of title (the form used to request the mortgage funds and confirm the title is sound) was in the format approved by the Law Society and UK Finance.

These provisions allowed most conveyancers to act for lender and borrower, but if a mortgage did not meet these tests (e.g. because the approved certificate of title was not used or because it was a commercial mortgage), it was more likely that separate conveyancers would act for lender and borrower.

Although the 2011 Code has now been replaced, the above provisions provide a useful guideline as to what may be permissible under the new **CILEX Code of Conduct, SRA Standards and Regulations** and **SRA Codes of Conduct**. Conveyancers will continue to act for both lender and borrower where the circumstances are similar to those contained in the 2011 Code, in other words where there is no conflict of interest, where there is a standard mortgage with no negotiation of terms, where the property is being purchased as the buyers' private residence and where the certificate of title is in the approved format.

It must be emphasised that essentially a conveyancer should only act for lender and borrower where there is no conflict of interest and no significant risk of one occurring. If a conveyancer acts for lender and borrower and a conflict arises during the transaction, the conveyancer must stop acting for both parties unless they can keep one party with the consent of the other. An example would be where the borrower tells the conveyancer they intend to breach the mortgage terms (e.g. by letting the property where this is prohibited) but that the conveyancer must not tell the lender.

The issue of confidentiality may also be relevant in this context.



Link to Practice

Where the conveyancer is made aware that the borrower has lost their job, the conveyancer has a duty to keep this confidential, but it may be material information for the lender. In this situation, the duty of confidentiality would prevail, and the conveyancer would have to stop acting for the lender.

15.4.1 The mortgage offer and the lender's handbook

When the mortgage lending asks the buyer's conveyancer to act on its behalf, it provides the conveyancer with formal instructions to this effect. The instructions for most major mortgage lenders are set out in the UK Finance Mortgage Lenders' Handbook (see **Chapter 1**).

Parts 1 and 2 of the UK Finance Mortgage Lenders' Handbook are relevant when the same conveyancer acts for both lender and borrower. Part 1 sets out general requirements which apply to all lenders. Part 2 contains matters which are specific to the lender in question (e.g. who to contact in case of queries, what documents the lender wishes to hold, how the mortgage money will be paid (e.g. electronically or by cheque), whether the lender wants to be informed about any Green Deal plan on the property and the discharge method utilised (form DS1 or electronic discharge)). The handbook will be supported by an instructions document, which is specific to the case, stating such details as the borrowers' names, the property address, the purchase price, the amount of the advance and any conditions that are individual to the case (e.g. the requirement to make certain repairs within a stated time period).



Link to Practice

The handbook is revised from time to time and practitioners should always consult the latest edition. It is now provided as an online document at [UK Finance mortgage lenders' handbook for conveyancers - UK Finance Mortgage Lenders' Handbook](#), rather than as a printed handbook. This is designed to make future amendments as easy as possible.

Lenders frequently change their Part 2 instructions. It is not therefore safe for conveyancers to assume they know a lender's rules without checking. One matter which is frequently updated is the documentation the lender wishes to hold following completion.

It is vital in practice that conveyancers are aware of all requirements in Part 1 and the relevant version of Part 2 of the handbook and that they comply with them throughout the transaction. Adherence to the terms in the handbook protects conveyancers against negligence claims.

15.4.1.1 Some key lender's handbook requirements

As we have seen, the lenders handbook sets out a wide range of requirements which conveyancers are required to comply with. Some of the most important of these are given in **Table 15.4**.

1.11.	Conveyancers should use the particular lender's standard documents (e.g. the mortgage deed) and must not amend them without consent
2.1.	All communications between the conveyancer and the lender should be in writing, quoting the mortgage account number, the surname and initials of the borrower and property address. Copies of all written communications should be retained on file
3.1.2.	Conveyancers must follow the rules of their professional body and comply with AML requirements

3.1.5.	Unless a conveyancer personally knows the borrower or signatory, the borrower must provide evidence of identity
4.4.	The conveyancer should advise the borrower that the borrower should not rely on the mortgage valuation report
5.1.	The conveyancer must report to the lender immediately if the registered proprietor of the property has owned the property for less than six months (there are exceptions such as a sale by personal representatives)
5.3.	Conflicts of interest must be avoided
5.4.1.	The conveyancer must carry out all usual and necessary searches and enquiries and must report any adverse entries to the lender
5.6.1.	The title to the property must be good and marketable
5.12.1.	On completion the lender requires a fully enforceable first legal charge over the property
5.13.1.	The conveyancer must ask the borrower how the balance of the purchase price is being provided; if the funds are not coming from the borrower's own resources (e.g. due to a gift from parents) this must be reported to the lender

6.5.1	The property must be vacant on completion (unless it is a buy to let mortgage product)
10.1.	The conveyancer must not submit the certificate of title (see below) unless it is unqualified or, if an issue has been raised with the lender, they have authorised the conveyancer in writing to proceed
10.4.	The conveyancer is only authorised to release the mortgage funds to the seller's conveyancer on completion when they hold sufficient funds to complete purchase of the property and pay all SDLT as well as having the HMLR fees to enable the conveyancer to register the legal charge
10.5	Before the mortgage advance is released on completion, the conveyancer must hold a completed SDLT form signed by the borrower or the borrower's authority to allow the conveyancer to make the necessary application on completion and the borrower's behalf
10.6.	The conveyancer must ensure that the SDLT and HMLR applications are made within the appropriate timeframes (see Chapter 18)
11.2.1.	The conveyancer must ensure that the mortgage deed is properly signed and witnessed by an independent person

14.1.1.

After completion, the conveyancer must register the lender's mortgage as a first legal charge over the property with HMLR

CONTINUE

15.5 Types of mortgage

You were introduced to the different types of mortgage products in **Chapter 3**; let's look at these in more detail.

This section outlines the main types of mortgage arrangements, which are repayment, endowment, pension and interest-only mortgages. There are now numerous variants of these main types, and clients should be advised to shop around for further information and the best deal. There are mortgage comparison websites which may be useful to prospective borrowers.



Some lending institutions offer flexible schemes (sometimes called lifestyle mortgages), enabling borrowers to make extra payments if they wish, to make underpayments if necessary and to take payment breaks should the need arise. Some offer cashback or other incentives attached to the mortgage. Other types of mortgage deals on offer include buy-to-let mortgages and first-time buyer mortgages.

One popular product which is on offer is the offset mortgage, an idea from Australia, where around 90 per cent of loans are taken out in this way. Essentially, this mortgage works by offsetting a customer's savings against the loan. For instance, someone with a 25-year £150,000 mortgage and £10,000 savings would pay interest on only £140,000 of the loan. The customer would not, however, get any interest on the £10,000 savings. Some offset mortgage deals combine the customer's current account, savings and mortgage into one, so all the credit balances offset the mortgage debt. Offset mortgages can have fixed or variable interest rates depending on the deal chosen.

15.5.1 Repayment mortgage

This is the traditional and perhaps best-known type of mortgage, which is generally the cheapest type in terms of monthly expenditure except for an interest-only loan. It is a loan made to the buyer on the basis of monthly repayments, which consist partly of the capital (the loan) that has been borrowed and partly of the interest on this loan. Depending upon the time span over which the borrower undertakes to pay it back, the loan is fully repaid over a period of (typically) 15, 20 or 25 years, although some lenders do allow for longer terms.

The advance is based on a percentage of the purchase price (e.g. 75 per cent) depending on the mortgage lender and the property. A borrower might be able to obtain a loan in excess of the percentage which would normally be approved in their case, by paying a higher lending charge (HLC) to the lender when taking out the mortgage.

15.5.1.1 The mortgage protection policy

A borrower who takes out a repayment mortgage will usually wish to protect the rest of their family should they die before the mortgage is paid off. Lenders generally do not insist on such policies being taken out as a condition of the mortgage. The policy protects against death of the borrower.



For a regular monthly premium, a sum is repayable on the death of the policy holder which should pay off the mortgage if the borrower dies during the term of the mortgage. Should the borrower survive the full term, nothing will be available under the insurance.

Lenders often recommend that, irrespective of the type of mortgage, borrowers also take out insurance to cover their repayments in the event of serious illness, accident or unemployment.

CONTINUE

15.5.2 Interest-only mortgages

This is usually the cheapest form of mortgage as the borrower makes only interest repayments each month. No capital repayment is made. Lenders are now only allowed to provide interest-only mortgages where the borrower can demonstrate there is a credible strategy for repaying the capital (e.g. from property they may own, other assets or financial resources).



CONTINUE

15.5.3 The endowment mortgage

This is a type of mortgage which is no longer available, but may still be encountered in practice, though rarely. It is reported that in mid-2000 some 23% of new mortgages were still endowment based. It is a type of mortgage where only interest is paid off by means of monthly instalments. The mortgagor will also take out an endowment policy (insurance policy) with an insurance company. There will be monthly payments of a premium to the insurance company. These premiums will be invested and will be used at the end of the policy to pay the capital loan. There is, however, no guarantee that the proceeds will be sufficient to repay the loan in full. It is this last point which led to a mis-selling scandal, and it is no longer possible to take out an endowment mortgage, but there may still be some in practice, which is why an awareness of this product is necessary.

CONTINUE

15.5.4 The pension mortgage



This type of mortgage is mainly for the self-employed. Under this scheme, the borrower pays interest only to the lender, as with the endowment policy mortgage, but at the same time they make contributions to a personal pension plan. On retirement, the borrower receives a pension from their pension plan and part of this is made into a lump sum to pay off the debt owing under the mortgage. These have declined in popularity.

CONTINUE

15.6 The mortgage offer

Most mortgage offers from lenders that subscribe to the lender's handbook or BSA mortgage instructions are issued in a standard format. A copy of the offer will be sent to the borrower and to the conveyancer. We have seen that when the mortgage offer is sent to the conveyancer, the mortgage lender also becomes a client of the firm to whom duties are owed.



Link to Practice

The conveyancer must check the information on the mortgage offer carefully to ensure that it accords with the information that they hold. This could include issues such as:

- the borrower's full name/s;
- the address of the property;
- the purchase price of the property; and
- whether the property is freehold or leasehold.

Any discrepancies must immediately be reported to the lender and the conveyancer must wait to hear from the lender before proceeding further. The lender may need to issue a new mortgage offer.

The mortgage offer will also contain the following information:

- the amount that the buyer is borrowing;
- the type of mortgage offer (see below);
- the interest rate which is applicable to the mortgage offer;
- whether there are any incentives or cashbacks;
- whether the borrower will have to pay any penalties if they pay off the mortgage early (known as “**early redemption penalties**”);
- any special conditions applicable to the mortgage offer, for example, the borrower being required to pay off a credit card before completion of the loan.

Most conveyancers will send a standard report to their buyer client outlining the consequences of taking the mortgage and pointing out the buyer's responsibilities. Remember that the conveyancer cannot give specific advice as to whether or not the mortgage product itself is a “good deal” or suitable for the buyer's circumstances.

15.6.1 The mortgage deed

The mortgage deed is usually a standard form provided by the lender and the conveyancer will add their client's details and those of the property. The buyers must execute it as a deed. This means that all borrowers must sign the mortgage deed and their signatures must be witnessed. At the end of this chapter is an example of a standard form mortgage deed (15.17).

The mortgage deed may also contain clauses which deal with occupiers or guarantors. These would only be used where applicable to the particular transaction.

It is possible for a person (a guarantor) to guarantee all or part of a loan to a borrower. For example, parents might act as guarantors in order for their adult child to obtain a mortgage loan. The guarantor will not have an interest in the property but will be liable for the borrower's obligations if the borrower fails to pay the mortgage. The guarantor should seek independent legal advice before signing.



CONTINUE

15.7 Key mortgage terms

There are various obligations and responsibilities which a borrower will take on when entering into a mortgage. Some of the key ones are as follows.

15.7.1 Redemption date

This is traditionally a period of six months after the date of the mortgage. The importance of this term is that at any time after this date, the client can redeem the mortgage and, conversely, the lender's power of sale arises. The power of sale of the lender is exercisable only when there has been a specified default by the borrower (e.g. a failure to pay the instalments).



CONTINUE

15.7.2 The covenant to repay

This is an important term and refers to the stated instalments of capital, interest or both that become due each month.

15.7.3 Further covenants

The buyer will also have agreed to undertake further covenants, such as not letting the property, because rights might accrue to a tenant by way of their occupation that could adversely affect the lender's rights should it wish to exercise its power of sale.

CONTINUE

15.7.4 Miscellaneous clauses

There may well be various other miscellaneous clauses, such as a provision for making further advances and, importantly, for the property to be insured at the borrower's expense.

15.7.5 Remedies

Finally, the mortgage terms will include the remedies available to the building society or bank should the client default. The meaning of “**default**” will be defined in the deed. Such rights include the rights to take possession, appoint a receiver, sell the property or foreclose. Foreclosure is a rarely used common law remedy. It means that the mortgagee

would take over all the mortgagor's rights so that the mortgagor would lose the property entirely.

The power of sale is usually the most important remedy and, as stated above, it can be exercised only where there is a specified default, such as the client's failure to pay mortgage instalments.

While lenders do have the right to exercise their power of sale, they are slow to use it, giving the borrower every chance to remedy the default. Should the lender have to sell the property, there is a statutory obligation to obtain the best possible price and, after repayment of the mortgage and other costs, to repay any balance to the borrower.

HMLR has developed a standard form that can be used for registered charges if wished. It is called CH1 (legal charge of a registered estate), but it is not compulsory and most lenders use their own forms of charge (usually pre-approved by HMLR to avoid any problems).

HMLR will give an approved form of charge a reference that allows HMLR staff to access the lender's details from a computerised database, potentially speeding up registration and reducing clerical errors. The lender's computer code also generates its name and address automatically in the register entry, again potentially avoiding errors. Where the charge has been pre-approved, it will have been given a unique reference by HMLR starting with MD (an **"MD reference"**). You can see an example of this reference in the mortgage deed at **15.17** of the course book, at the foot of page 1.

CONTINUE

15.8 Non-owning occupiers' consent form

Where an adult non-owner/borrower is to occupy the property with the borrowers, they will be required to complete an occupier's consent form. Lenders are generally very cautious about occupiers. This is because of the conflict between the interests of the occupier and the interests of the lender/borrower, and also the possibility of the borrower exerting undue influence on the occupier to sign the clause. To avoid a conflict of interest, and to counter any suggestion of undue influence (which might lead to problems with the validity of the mortgage), the lender must take reasonable steps to ensure that the occupier understands the nature and effect of the transaction. This normally means that the conveyancer for the lender should ensure that the occupier takes independent legal advice, and that this recommendation should be in writing.



Link to Practice

For example, the buyers/borrowers are Francesca and David Moore, but David's father, Edward, will also be living with them in the house. He will be required to sign an occupier's consent form.

This confirms the occupier's agreement that any right of occupation or interest in the property that they may have, now or in the future, is postponed and subject to the rights of the lender. This is done because the lender will be concerned that the occupier could have an interest in the property which might be binding on the lender and prevent the lender from selling with vacant possession should the borrower default. The occupier's name will be inserted in the form and the occupier must execute it. The borrower's conveyancer should recommend that the occupier takes independent legal advice before signing.

The UK Finance Mortgage Lenders' Handbook states in its standard instructions that the conveyancer must not advise the following people, and must arrange for them to seek independent legal advice:

- any borrower who does not personally benefit from the loan;
- any guarantor; and
- any person intending to occupy the property who is to execute a consent to the mortgage.

Individual lenders may vary this requirement, but there are often conditions attached. Even if the lender does allow the conveyancer to advise these people, it states that the conveyancer must only do so after recommending independent legal advice, to be given in the absence of any other person interested in the transaction. Further, any advice given to these people must also be given in the absence of any other person interested in the transaction.

CONTINUE

15.9 Reporting to the mortgage lender

You can see that there are a number of issues which might arise during the course of a conveyancing transaction which require the conveyancer to report an issue to the mortgage lender. This might be something relatively straightforward, such as the incorrect spelling of the borrower's name, or something more fundamental such as an adverse search result.

We have also seen that the conveyancer owes duties to the borrower and the lender and that one duty does not take priority over the other. Thus, a prudent conveyancer will always seek their buyer client's consent to contact a lender prior to doing so. If the buyer refuses such consent, the conveyancer will have to cease acting. It is important to manage the buyer client's expectation when contacting a mortgage lender. There may be a delay in the transaction until the lender responds.

Upon receipt of communication from a conveyancer, the lender might change the terms of the mortgage offer or, worse still, withdraw the mortgage offer completely if the issue which has been reported is particularly adverse. The lender might simply take the view that in the light of the new information, the property does not represent good security for the loan and they are not prepared to proceed. Whilst this is a relatively rare occurrence, you can see that it is vital for the conveyancer to wait to receive written confirmation from the mortgage lender that they can proceed. If the conveyancer proceeds to exchange of contracts without this assurance in place from the lender, the buyer may not be able to fund the purchase if the mortgage offer is subsequently withdrawn. This would invariably result in a negligence claim by the buyer against the conveyancer.



[CONTINUE](#)

15.10 The certificate of title

Once all enquiries have been answered and any issues arising from the mortgage offer have been resolved, the buyer's conveyancer will exchange contracts on the purchase (see **Chapter 16**) to commit the buyer to the transaction. You will see in **Chapter 17** that both conveyancers have work to do between exchange of contracts and completion to prepare for the completion date.

An important task for the buyer's conveyancer is to ensure that they have all of the funds required to complete the purchase in time for the completion date. This will involve preparing a completion statement and requesting any balance due from the buyer. It also involves obtaining the mortgage advance from the lender. The documentation contained with the mortgage offer will contain a "**certificate of title**". This is a standard document which must be completed and returned to the lender within the timeframe required by them to enable the conveyancer to request drawdown of the loan.

It is a short document but incorporates a long form of certificate of title by reference.

Understand that the certificate of title has two functions:

- 1 It acts as a request for the mortgage advance to be sent to the buyer's conveyancer's client account by the date specified in the certificate.
- 2 It acts as confirmation by the buyer's conveyancer to the mortgage lender that all matters of title are satisfactory and that the property represents good security for the loan.

Refer to the Certificate of Title at the end of this chapter (**15.18**).



Activity

Follow the link below and look at the long form of the certificate of title. You will see that the conveyancer is confirming a large number of points to the mortgage lender when submitting the certificate.

The key wording which appears at the bottom of a short form certificate of title is:

3

WE THE CONVEYANCERS NAMED ABOVE, give the Certificate of Title published by the Law Society as if the same were set out in full, subject to the limitations contained in it.

It is important for you to understand therefore that a certificate of title is not just a request for drawdown of the loan; it is much more than that and highlights the importance of ensuring that all issues of title and in relation to the mortgage offer are resolved prior to exchange of contracts.

 **LAWSOCIETY**

Approved certificate of title

The approved certificate of title is given to the lender by the conveyancing solicitor to confirm statements about the property.

READ MORE LAWSOCIETY

CONTINUE

15.11 Pre-completion searches on behalf of the mortgage lender

You will see in **Chapter 17** that part of the preparation for completion that the buyer's conveyancer must carry out is to do the pre-completion searches. These are done for the buyer and the lender where a mortgage is involved.

The buyer's conveyancer will have to carry out pre-completion searches, which in this case are being done for both the buyer and the lender.

In registered land transactions, the official search will be made at HMLR. The search, if made in the name of the buyer, does not protect the lender. The application for the search (e.g. form OS1) should therefore be completed to show that the search is being made in the name of the lender. This search then also protects the buyer, so only one search needs to be done.

The lender will also require a bankruptcy search against the buyer's full names from the Land Charges Department. This is to check that the buyer is not affected by any bankruptcy proceedings and is not in financial difficulties.



CONTINUE

15.12 After completion

As you will see in **Chapter 18**, following completion, the buyer's conveyancer must make the registration application to HMLR and must ensure that the mortgage lender's charge is registered. Following return of the Title Information Document, the buyer's conveyancer must check that the charge has been correctly registered. They must then establish what documentation the lender wishes to hold, since this varies between lenders, and send whatever is required (usually with an accompanying schedule of enclosures).

Set out below is a summary of the steps to be taken in relation to the mortgage work, when acting for the buyer and the lender, where the buyer is having a new mortgage to purchase the property. These steps are, of course, taken in addition to all the normal conveyancing work on the file.

Acting for the buyer and lender - new mortgage

BEFORE EXCHANGE	BETWEEN EXCHANGE AND COMPLETION	ON/AFTER COMPLETION
1. Take details of new mortgage funding from buyer as part of initial instructions. 2. Check there are no issues about acting for both lender and borrower (buyer) (e.g. any conflict of interest).		

3. Ensure that buyer has accepted the mortgage offer. Ensure that formal mortgage instructions have been received by the firm and that they present no problems (e.g. problematic conditions).

BEFORE EXCHANGE	BETWEEN EXCHANGE AND COMPLETION	ON/AFTER COMPLETION
1. Send certificate of title to lender and request mortgage funds to be released in time for completion date. 2. Complete mortgage deed and ensure buyer has executed this as a deed (and that any occupiers have signed consent clauses where appropriate). 3. Carry out pre-completion searches for both buyer and lender (e.g. OS1 in the name of the lender and K16 bankruptcy search against buyer/ borrower). 4. Check that mortgage funds have arrived before completion.		
BEFORE EXCHANGE	BETWEEN EXCHANGE AND COMPLETION	ON/AFTER COMPLETION
1. Notify lender of completion. 2. Include certified copy of new charge with registration application (AP1) and list registration of new charge as one of the applications on the form. 3. Check updated register entries when title information document issued to ensure new charge correctly registered. 4. Check what documentation (if any) lender wishes to be sent following completion.		

5. Deal with documentation as lender requires.

CONTINUE

15.13 Second and subsequent mortgages

Borrowers may wish to obtain a further advance or to take out a second mortgage.

Further advance

A **further advance** is made when a borrower wants to borrow more money from their existing lender. The advance will simply be added to the existing mortgage, and there will be revised repayment arrangements.

Second mortgage

A **second mortgage** is a separate and further mortgage. A buyer does not have to obtain this from the lender which gave the first mortgage.

Whoever gave the first mortgage, whether it be bank or building society, will be protected by way of a register entry, the second lender will have to protect itself as well. In registered land, protection is by an entry on the register. The second and subsequent mortgages are entered below the first registered charge in the charges register of the borrower's title and rank in the order in which they are registered.

For example, imagine that Henry has taken out three mortgages on his property. The first mortgage was to fund his initial purchase in 2000. The second mortgage was to build an extension in 2005 and the third mortgage was to build a garage in 2016. Each mortgage was protected on the register at the time it was granted.

Table 15.13

Lender	Date when charge entered on the register
(1) National Building Society	15 November 2000

(2) Blue Horse Home Loans	17 August 2005
(3) Sontondar Finance	23 October 2016

In this case, there are three registered mortgages. They would appear in the charges register in the order set out above. They would rank in the priority order shown, so if the lender repossessed and sold the house, National Building Society would be paid off first, then Blue Horse and then Sontondar.

CONTINUE

15.14 Remortgages

Some borrowers may wish to remortgage their property. This normally means changing from one lender to another (e.g. from Blue Horse Home Loans to National Building Society). This is usually done to obtain more favourable mortgage terms, such as a lower rate of interest, improved mortgage conditions or a higher loan amount.

If this is the case, the legal work involved is similar to that undertaken to redeem an existing mortgage and to take out a new mortgage (as described in this chapter). The existing charge will be redeemed using the new mortgage advance.



CONTINUE

15.15 Government backed assistance schemes

15.15.1 Help to Buy ISA

Some borrowers may take advantage of the government's Help to Buy scheme. This can potentially help buyers in several ways. One part of the scheme consists of loans to enable buyers to purchase property with a lower deposit than usual. There is also a Help to Buy shared ownership scheme, offering buyers the chance to purchase a share of a home and to pay rent on the remaining share. There are also Help to Buy ISAs, whereby savings are boosted by a government bonus. It has not been possible to open a new Help to Buy ISA since November 2019, but account holders can pay into existing accounts until 2029. The details of Help to Buy are beyond the scope of this course book but, where the scheme is being used by buyer clients, conveyancers must be prepared to handle the paperwork involved in the scheme as part of the conveyancing work.

A summary of the various government schemes can be found at:





Affordable home ownership schemes

Help to Buy and affordable home ownership schemes to help first-time buyers and home movers - equity loan, ISA, shared ownership

[READ MORE GOV.UK](#)

CONTINUE

Knowledge check

This knowledge check is a self-assessment to see how well you understood the content of this chapter and it does not count towards your course mark.

There are 2 questions in this knowledge check.

1. A conveyancer will have a conflict of interest if they act for both the buyer and the mortgage lender. True or false?

-
- ☐ a. False
 - ☐ b. True

SUBMIT



Complete the content above before moving on.

2. What is the most commonly used remedy by a building society or bank where the borrower under a mortgage defaults?



a. Power of sale



b. Foreclosure

SUBMIT



Complete the content above before moving on.

15.16 Chapter summary

(1) Many people purchase property with the assistance of a mortgage. A mortgage is a loan secured on property. The lender is termed the mortgagee and the borrower the mortgagor. A typical institutional lender is a bank or a building society.

(2) Buyers will usually take out a standard mortgage from institutions such as banks and building societies. The test for a “standard mortgage” is that:

- (a) it must be within the lender’s normal course of activities;
- (b) lending must be a significant part of the activities; and
- (c) the mortgage must be on standard terms.
-

(3) If the buyer is putting some of their own money towards the purchase, the conveyancer must check source of funds and source of wealth on behalf of the lender.

(4) Generally, the buyer's conveyancer will act for the mortgage lender (mortgagee) in which case, both the buyer and the lender will be clients of the firm to whom duties are owed. The conveyancer must be wary to avoid conflict-of-interest and breaches of the duty of confidentiality.

(5) The lenders' handbook sets out the requirements of the lenders in relation to the mortgage.

(6) There are different types of mortgage, the most common are:

- (a) repayment mortgage;
- (b) interest only mortgage;
- (c) endowment mortgage; and
- (d) pension mortgage.

(7) The terms and requirements of the lender are set out in the mortgage offer.

(8) All borrowers will sign the mortgage deed which creates the legal charge which is then registered on the charges register after completion.

(9) The mortgage deed will usually be a standard form issued by the lender, from which no departure is normally possible. Standard clauses relate to:

- (a) redemption date;
- (b) covenant to repay;
- (c) further covenants (e.g. against letting);
- (d) miscellaneous additional clauses (e.g. regarding insurance obligations); and
- (e) remedies of the mortgagee (e.g. possession, sale, foreclosure).

(10) If there will be occupiers over the age of 18 living at the property on completion, the lender will require them to sign an occupiers consent form to confirm that they will vacate the property and move out in the event that the lender repossesses the property following default by the borrower.

(11) Before completion, the buyer's conveyancer will submit the certificate of title to the lender which confirms that the title is good and marketable and acts as a request for the drawdown of the mortgage funds.

(12) Pre-completion searches:

- (a) the buyer's conveyancer will carry out the official search with priority in the name of the lender; and
- (b) the buyer's conveyancer will carry out a bankruptcy search on behalf of the lender against the full name of all borrowers.

(13) After completion, the buyer's conveyancer will make the application for registration at HMLR and must ensure that the mortgage lender's legal charge is registered.

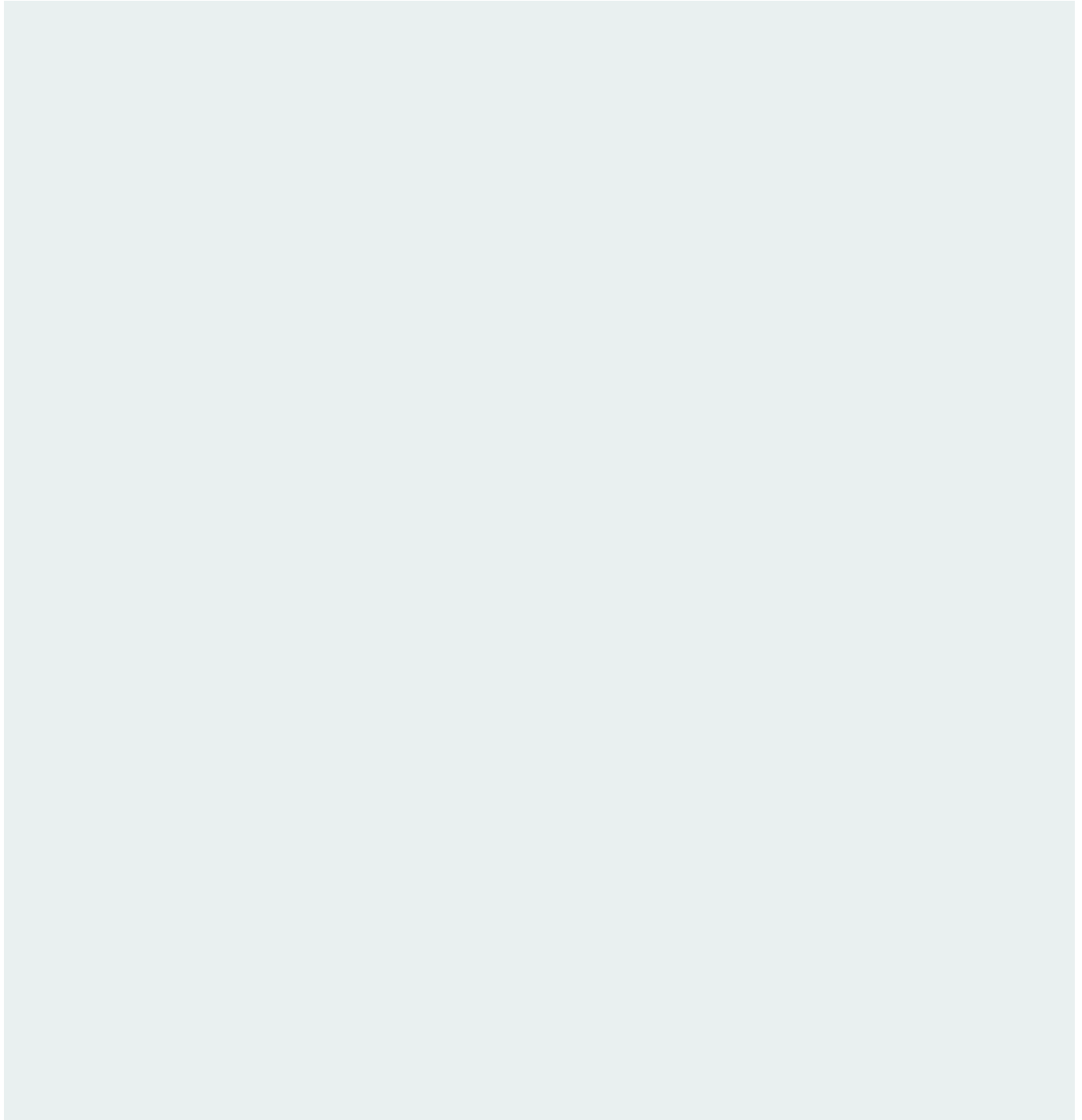
(14) It is common for buyers to take out:

- (a) second mortgages (with different lenders); and
- (b) further advances (with the same lender as part of the original loan).



Complete the content above before moving on.

15.17 Mortgage Deed



Mortgage Deed



Date:

We (us) are: Nationwide Building Society, Nationwide House, Pipers Way, Swindon, SN38 1NW

You, the Borrower are:

The Mortgage Conditions are Nationwide Building Society General Mortgage Conditions 2019

The Property is:

Postcode:

Title No:

1. The Mortgage Conditions form part of this mortgage. You confirm receipt of a copy of the Mortgage Conditions.
2. You charge the Property by way of legal mortgage with payment of all the money payable to us under the Mortgage Conditions. This mortgage is made with full title guarantee.
3. This mortgage secures further advances.

SIGNED AS A DEED by:

(Signature of the borrower)
(Each signature to be separately witnessed)

(Signature, name (in BLOCK CAPITALS)
and addresses of each witness)

In the presence of _____

(Signature, name (in BLOCK CAPITALS)
and addresses of each witness)

In the presence of _____

(Signature, name (in BLOCK CAPITALS)
and addresses of each witness)

In the presence of _____

(Signature, name (in BLOCK CAPITALS)
and addresses of each witness)

In the presence of _____

Document 10: Mortgage Deed

Occupier(s) Consent to Mortgage

I/We _____

will be in occupation of the Property at the time the mortgage is made. I/We agree with Nationwide that any right of occupation or share or interest in the Property which I/We may have now or later are postponed and subject to the rights of Nationwide as first mortgagee

Signed and delivered as a deed by the Occupier(s)

Witness Signature _____

Name _____

Address _____

Witness Signature _____

Name _____

Address _____

Signed on behalf of Nationwide _____

Guarantor's Covenant

(To be completed last)

I/We _____
of _____

agree to act as Guarantor of this mortgage and I accept the Mortgage Conditions. I understand that this means I will carry out all the obligations of the Borrower named on the front of this deed if Nationwide requires me to until I am released from this guarantee in writing by Nationwide. My liability will be limited to (a) the amount of the original advance (b) any further loans made to the Borrower for which I have given consent, and (c) interest and costs referred to in the Mortgage Conditions.

I understand I should get independent legal advice before signing this document.

Signed and delivered as a deed by the Guarantor

Witness Signature _____

Name _____

Address _____

Signed and delivered as a deed by the Guarantor

Witness Signature _____

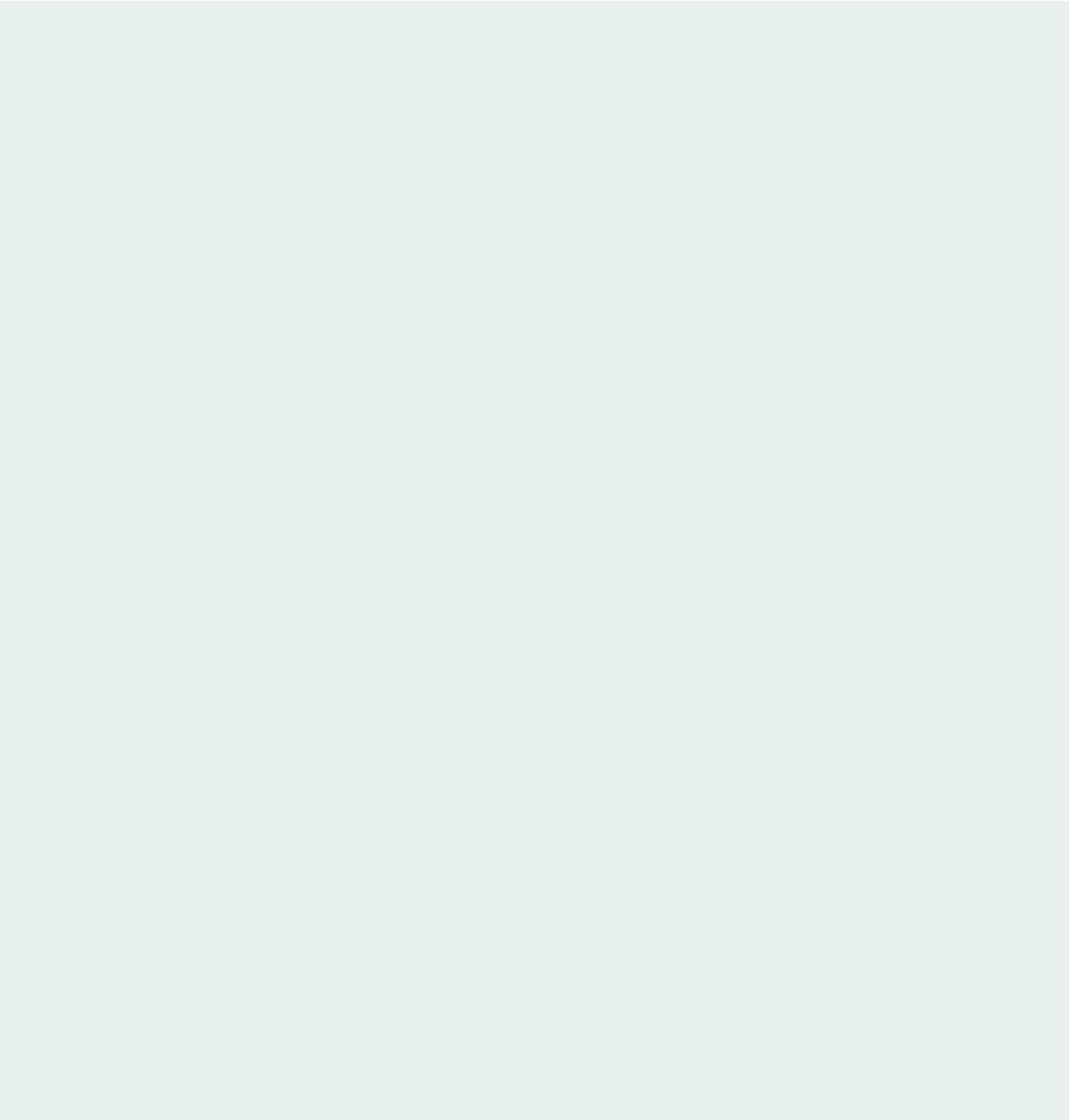
Name _____

Address _____

This deed will be sent to H M Land Registry for registration of the charge between Nationwide and the Borrowers. No information relating to any Occupier or Guarantor will be registered by H M Land Registry.

CONTINUE

15.18 Certificate of Title



Document 11: Certificate of Title (Standard Form)

Certificate of Title (England & Wales)			
To (Lender)	Nationwide Building Society Mortgage Administration NW 6047 Swindon SN38 1NW 0800 464 3000	Please fax without a covering letter or header sheet to: 01604 852809	
Lender's Reference or Account Number(s): [Account number] XXXXXXXX			
The Borrower(s): Simon James Porter and Daniel John White			
Property: 9 Millside Crescent Hightown Hartshire HG3 6JX			
Title Number: LM675233			
Mortgage Advance: £ 95,000		Remortgage Only Shortfall Amount Required: £	
Price stated in transfer: £ 145,000		Tick if Funds Are Required One Working Day Prior to Completion Date: Yes ☒	
Completion Date: DD 08 MM 05 YYYY 2020			
Conveyancer: Davies and Smith LLP 14 Bridge Square, Hightown, Hartshire, HG1 3BJ			
Conveyancer's Reference: PA/P/16741/APW			
Conveyancer's Bank: Floyds Bank plc			
Sort Code: 77 - 60 - 01		Account Number: 07292171	
Date of instructions: 6/03/20			
If applicable: N/A			
Number of Indemnity Policy: _____			
Insurance company name and address: _____			
WE THE CONVEYANCERS NAMED ABOVE, give the Certificate of Title referred to in IB (3.7) of the SRA Code of Conduct 2011, published by the Law Society, as if the same were set out in full, subject to the limitations contained in it. We have received clear instructions from the Borrower, or where the borrower is represented by a different conveyancer from that conveyancer acting on your behalf, that the Borrower has chosen to proceed with your mortgage offer and to request you to release the mortgage advance to us			
Signed on behalf of the Conveyancers:		Davies and Smith LLP	
Name of Authorised Signatory:		ANGHARAD PRICE-WILLIAMS	
Date of Signature DD 28 MM 04 YYYY 2020			
Administration Details - Please note that it is the Society's normal practice to release the advance monies electronically via BACS transfer to your bank account. Please ensure your bank details are fully completed. - We require at least five working days notice of the completion date to enable payment via BACS – should funds be required quicker, please see the Offer special condition 'Charge for transferring the loan to the conveyancer'. - Where a faxed COT has been sent, do not send the original.			

You have completed Chapter 15.

EXIT