

PENGILLYS GUIDE TO MORTGAGES

1. Introduction

Your lender has instructed us to act on its behalf in connection with the mortgage. This is to your advantage because it will be cheaper than paying fees for another Solicitor to act on behalf of the lender. We would however advise that we are required to advise the Lender of anything we consider may impact on their ability to lend even if this may jeopardise your purchase.

2. Your Obligations as Borrower

Your lender will provide you with their mortgage conditions which you should read and retain as they are very important. Should you not have received a copy please notify your lender and us immediately to request a copy. By signing the mortgage deed you agree with the lender to undertake certain obligations. The most important of these is to repay the loan in accordance with the terms agreed between you and the lender. The loan is secured against the property so that, if you do not pay, the lender has various rights which include the right to compel you to leave the property and then sell it. Sales by lenders often realise less than the borrower believes to be full value. If the debt owed to the lender (including interest and costs) is more than the proceeds of sale you will be liable for the shortfall. If there is more than one borrower the lender can claim against you all or any one of you. Your mortgage is a serious commitment which you should not take on without careful consideration.

3. Valuation

Your lender will arrange for a valuation of your property. Even if you have paid a fee for this valuation and/or have received a copy of it you should not rely upon it in deciding whether to proceed with your purchase of the property. There may be defects in the property which are not revealed by the inspection (if any), carried out by the lender's valuer, and there may be omissions or inaccuracies in the valuer's report which do not matter to the lender but might matter to you. We recommend you obtain your own more detailed survey of the condition of the property and a separate valuation of it, based on a full inspection by a qualified surveyor, before deciding whether to proceed with your purchase. If you have received from the lender a copy of the lender's valuer's report please send it, or a copy of it, to us at once.

4. High Percentage Borrowing

If you are borrowing a high percentage of the value of the property the lender may require additional security to protect the lender if it has to sell the property at a price which does not cover the debt owed to the lender. Some lenders obtain an insurance guarantee against high percentage borrowing, for which a single premium is paid on completion of the mortgage. Other lenders carry the risk themselves but charge you an additional fee for doing so. An insurer who pays up under an insurance guarantee of this kind is entitled to recover the payment from you. Even if there is no insurance you will be liable for the shortfall if the proceeds of realisation of a property are not sufficient to repay the lender (see paragraph 2 above).

5. Vacant Possession/Letting

If you are buying for your own occupation it is a requirement of your lender that vacant possession is obtained on completion of the property purchased. If you subsequently wish to let the property you must not do so without the lender's consent. Lenders are often willing to agree to lettings being made subject to conditions being met which protect their security. If you are buying the property for the express purpose of letting it, or subject to an existing letting please let both the lender and us know as not only must the letting have been approved in principle by the lender but also we must examine the terms of the tenancy to check that they are not against the lender's interests. You will also need to enter into a specific type of mortgage.

6. Property Insurance

It is a requirement of your mortgage that you keep the property adequately insured against the risks required by the lender. If you have arranged that the lender will organise this insurance for you no further action is needed on your part although you will need to ensure that the Lenders insurance comes into effect from exchange of contract rather than completion. However if the lender has agreed that you may arrange the insurance there are certain requirements to be met. Furthermore, of course, you must keep this insurance in force for so long as anything is owed to the lender and such insurance must either be index linked or adjusted annually to reflect the rebuilding cost of the property.

7. Independent Legal Advice

If your mortgage is being guaranteed by someone else and in certain other circumstances the lender will require that the third party concerned be given independent legal advice. The solicitors giving the independent legal advice will charge a separate fee for this purpose which has not been provided for in any quotation or estimate given by us. The person seeking the independent advice must pay the solicitor giving that advice directly. If, following completion of the mortgage, someone other than you who is over 17 will be occupying the property (eg a child of yours) your lender may require that this person sign a consent form and obtain independent advice on it. In such circumstances the same arrangements as described above will apply.

8. Payment of Purchase Price

Your lender has instructed us to check how the balance of the purchase price is to be paid. Obviously, if the balance of the purchase money is being provided from a related sale with which we are dealing on your behalf, we will be able to satisfy this requirement without difficulty. In other circumstances we have to ask you where the money is coming from and in particular to satisfy ourselves that you do not intend to provide the balance of the money by any form of second mortgage or charge against the property. Your lender requires that all payments by you should be through us, and not directly to the seller. Please note that we are expressly forbidden by your lender to use the loan for your purchase unless we have in our possession sufficient funds to pay Stamp Duty Land Tax and registration fees. We shall also require that any fees invoiced by us to you relating to the purchase or the mortgage are paid to us before completion of the transaction.

9. Retentions

Sometimes a lender holds back money from the loan because works remain to be carried out to the property, to be released once the works have been satisfactorily completed. You must bear in mind that the lender will only release money held back if, at the time when payment of it is required, you

have fully complied with your obligations under the mortgage and in particular are up to date with all payments.

10. Paying off the Mortgage

The amount to be paid to the lender in order to pay off your mortgage is basically the mortgage debt plus accumulated interest and/or a penalty for early redemption. However the terms of your loan may entitle your lender to charge extra interest. In addition your lender may charge you an administrative fee for dealing with the formalities of redemption of your mortgage. A number of lenders charge interest to the end of the month in which completion of a sale takes place irrespective of the actual date of completion; and you should bear this in mind when agreeing a completion date.

11. Conflicts of Interest

Although in many respects the interest of the buyer and the lender are the same there are circumstances in which a conflict of interest may arise because information comes into our hands which you would prefer us not to tell the lender, such as:

- a) the price is lower than you told the lender (because this means that the property is worth less than the lender thought)
- b) you are receiving a Cash Back or other inducement from the seller (again this suggests that the property is worth less than the purchase price)
- c) you have decided to let the property rather than occupy it personally
- d) your financial circumstances have changed - for instance you may have lost your job (because you may not be able to keep up the repayments on a reduced income)

Because we owe you a duty of complete confidentiality, if a conflict of interest arises we will ask for your permission to disclose the circumstances to the lender. If you withhold permission we must cease to act any further in the transaction either for you or for the lender and return the lender's papers advising the lender that a conflict of interest has arisen. This signifies that something unusual has occurred and the lender will probably withdraw the Mortgage Offer.

12. Access to your file

Both during the transaction and after it has been completed the lender is entitled to demand access to our file relating to your transaction. This right is restricted to documents relating to your Loan but if you have signed a Waiver Form (as most lenders demand) the lender may be entitled to the whole file including letters written by you to us and notes we have taken of meetings or telephone discussions.

13. Confirmation Form

With this Guide we have sent you a form for you to complete to give certain confirmations and assurances which your lender requires us to obtain from you. Please note that we are not able to ask the lender for the loan nor to complete the transaction unless we have this confirmation form signed and fully completed. It is therefore essential that you should complete, sign and return the form to us as quickly as you can.

Please sign date and return the duplicate copy of this guide to confirm that you have read and understood the contents and that we may act on your instructions (or either one of you if applicable).

Signed

Please Print Name

Dated



67 St Thomas Street
Weymouth, Dorset, DT4 8HB

Challacombe House, Beechwood Square
Poundbury, Dorchester, DT1 3SS

Tel: 01305 768888
Fax: 01305 768777

www.pengillys.co.uk

Ref: