

PENGILLYS

SOLICITORS ● MEDIATORS

Mortgage and Remortgage

The legal side of mortgages,
made simple



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Your guide to Mortgages

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. However the arrangement means that you must comply with a number of obligations specified by your lender.

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.

Your mortgage offer - Please be aware that your lender has the right to withdraw your mortgage offer at any time **prior to completion** and we may not be advised. As such you need to check with your lender prior to exchange to ensure that the offer has not been withdrawn. It is vital that you fully disclose to your lender any information which may impact upon their decision to lend so the risk of them withdrawing an offer is kept to a minimum.

Identification

We are required by your lender to certify that we have checked your identity. Accordingly on your next visit please bring with you a current passport and driving licence if you have one. If you do not have a current passport or driving licence please bring a receipted utility bill and council tax bill less than three months old and a mortgage statement from your lender for the year just ended. Please also advise us of your National Insurance numbers as we require this information in order to complete the Stamp Duty Land Tax return.

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.

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 (refer to **Your obligations as borrower** section above).

Vacant possession or 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.

Title indemnity insurance

Sometimes investigation of title to the property reveals that there is a defect, for instance the property may have been extended in breach of a restrictive covenant imposed on it. In these circumstances your lender requires that we obtain insurance against any risk. The cost of this insurance is met by a single premium which may have to be paid by you. We will not have allowed for this in any quotation or estimate previously given to you.

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. 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.

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 years of age 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.

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. We will request the mortgage advance to be received by us one day before completion if your lender sends it to us by telegraphic transfer and four days before completion if the lender sends it by cheque in order to ensure we have cleared funds by the completion day and to avoid any delay on the completion day. This will however involve you in being charged interest by your lender from the date monies are sent.

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.

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.

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.

Your guide to the remortgage of your property

Introduction

You have asked us to act for you in connection with the remortgage of your home and we will be pleased to do so.

The purpose of this guide is to advise you of the legal aspects of a remortgage of which you need to be aware and the obligations specified by your lender.

Your deeds

If you presently have a mortgage with a Bank or Building Society please let us have the name and address of the lender and your Mortgage Account Number and we will seek release of any Deeds to us. In addition you should arrange for any which are held by you or any third party to be sent to us in they are not already held by us. We will also request a redemption statement. You should check with your existing lender to all see whether a penalty will be payable on the redemption.

Searches

Your new lender will require us to carry out the same searches that would have been carried out at the time of your purchase. That is because the results of those searches may now be different. Since searches cost a significant amount we will ask you for a cheque to cover this cost before submitting the searches.

Identification

Once we receive the result of the searches we will ask you to call into the office to go through the mortgage documents with you and to witness your signature to the mortgage. Please bring to the office some form of identity which contains your name, address, signature and a photograph of you as we are required to check this information by the lender.

Your mortgage offer

Once you receive your mortgage offer you should study it very carefully and ask us to clarify any points which are not clear to you. You should read and retain the Mortgage Conditions. As we expect you are aware, if you do not make the appropriate repayment or observe the other mortgage terms the lender may take Court proceedings against you and obtain an Order giving it the right to take possession of your home and to sell it to recover any money owed to it or any other remedy which may be appropriate.

If your mortgage is an Endowment, Pension or PEP/ISA mortgage it is essential that you maintain your payments to the company with whom you have the investment and that you ensure that the investment provides adequate cover to redeem the mortgage during the term of the mortgage. Such investments rarely guarantee that there will be sufficient funds to pay off the mortgage when they mature and you should therefore monitor the performance of the investment product regularly.

Insurance

If your present lender insures the property but you are not insuring with the new lender you must ensure that the insurance is effected in accordance with the new lenders requirements before the completion of the remortgage.

Occupiers

Please let us know if there are any adults who will occupy the property other than yourself/selves in which case your lender will require them to sign a document confirming that they agree to postpone whatever rights they may have to stay in the property to those of the lender to sell the property in the event that you fail to comply with the mortgage terms. The occupier will have to obtain independent advice before signing the document from a solicitor at practice other than this firm.

Title indemnity insurance

Sometimes investigation of title to the property reveals that there is a defect, for instance the property may have been extended in breach of a restrictive covenant imposed on it. In these circumstances your lender requires that we obtain insurance against any risk. The cost of this insurance is met by a single premium which may have to be paid by you. We will not have allowed for this in any quotation or estimate previously given to you.

Completion date

When arranging a date to pay off your existing mortgage please bear in mind that the majority of lenders charge interest to the end of the month in which the redemption takes place irrespective of the actual date of redemption. It may therefore be in your interest to complete the remortgage at the end of a month. We advise you to check on that point with your existing lender and to advise us if you wish to complete at the end of the month as suggested. Whatever the actual date of completion you should not cancel your standing order/direct debit payments until after completion has taken place.

Following completion of the remortgage we will send the Mortgage Deed to the Land Registry and upon its return forward the Deeds to your new lender where they will be retained until your mortgage is redeemed.

Information required from you

Would you please let us know whether:-

- You have carried out any work to the property which would have required Planning Permission, Listed Building/Conservation Area Consent or Building Regulations Consent or if you have received an Improvement Grant, in which case please provide us with copies of the documents to be placed with the Deeds.
- The property has had any work done to it since you bought it which has changed the use of the property e.g. to a business or which resulted in your obtaining a guarantee, such as cavity wall insulation, double glazing, woodworm treatment etc. If so please provide us with copies of the reports, invoice and guarantees for placing with the Deeds.
- You have granted anyone any rights over your property.
- You have purchased additional land near to the property e.g. for use as a parking space, garage or garden.
- There is any material change in your financial circumstances, in which case you must also notify your lender immediately.

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.

We hope that this short guide has helped you in understanding more about what steps are involved when purchasing your home. We would be pleased to meet with you to discuss any questions that you may have.

Please call us on 01305 768888

We will then put you in touch with a member of our experienced Property team.

Please visit www.pengillys.co.uk where full details of our Property team are available.

For further details about Pengillys and how we work, please refer to our Terms of Business and Privacy Policy which are available on our website or on request as printed documents.

PENGILLYS

SOLICITORS • MEDIATORS

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Dorchester

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We can also advise on:

Personal matters
Family and relationships
Legal disputes
Business matters

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