

**To all practising solicitors:**

2nd April 2009



*Law Society of Ireland*

**THE LAW SOCIETY'S NEW CERTIFICATE OF TITLE SYSTEM (2009 EDITION)**

Dear Colleague

The Conveyancing Committee is pleased to launch its new 2009 edition of standard forms of Solicitor's Undertaking, Certificate of Title and Approved Guidelines and Agreement ("the agreed documents") for future use in residential property mortgage transactions. It has been agreed in consultation with the IBF that the new agreed documents will be used for all residential property mortgage loan transactions approved on or after **5th May 2009**. This booklet contains specimen copies of the agreed documents. **No alternative documentation should be used for loans approved after that date.**

You should note that there is no fundamental change to the principles underpinning the certificate of title system and the changes brought about by the agreed documents are for the purpose of streamlining the operation of the system.

The Society is happy to report that the profession has secured significant commitments from the lending institutions to provide certain services to solicitors and their clients within reasonable minimum time periods: this will improve turnaround times for obtaining deeds on ATR, obtaining redemption figures, and obtaining vacated mortgages following completion. The Society has also secured an agreement that lending institutions will provide comprehensive redemption figures and will not withhold a vacate following redemption if it is later discovered that the redemption figures provided were incorrect or incomplete. The Society believes the new timelines introduced, including the agreement that solicitors will if requested provide periodic updates to lenders on the progress of registration, will greatly assist solicitors in streamlining the management of work processes in their practices and the management of any risk associated with such outstanding undertakings. **Such streamlining will help to reduce solicitors' post-closing costs and ultimately the costs of PII cover, and it will also minimise the risk of complaints against solicitors.**

Practitioners are urged to carefully read the new documents and to fully familiarise themselves with the changes to the certificate of title system that will apply after 5th May 2009. Special attention should be given to the revised Undertaking and the Guidelines and Agreement. The main changes that have been agreed with the IBF include:-

**The Undertaking:**

1. The Undertaking now indicates whether title is registered (and if so the folio number) or unregistered.
2. Solicitors will deal with execution of assignments of life policies only if they are furnished to the solicitor by the lender before closing in the form in which they are required to be signed.
3. Borrowers' solicitors will not advise guarantors and will not witness the execution of the guarantee: they will merely ensure it is executed if it is provided by the lender before closing.
4. Solicitors will lodge a deed for stamping within the time prescribed by law.
5. There is a new 4-month time limit within which the solicitor will lodge the stamped purchase deed for registration and give the lender a PRA dealing number (if registered title) or confirm the date of lodgement in the Registry of Deeds (if unregistered title). This 4-month limit can be extended if agreed in writing with the lender, such agreement not to be unreasonably withheld.
6. If title is not lodged for registration within the 4-month period, the solicitor will supply to the lender a copy of the signed mortgage.
7. Pending registration, the solicitor will advise the lender in writing if requested (after the 4-month period) on progress concerning stamping and registration.
8. The solicitor will *inter alia* lodge an up to date copy folio with the lender following registration (in lieu of the old requirement to lodge a Land Certificate where issued).

**The agreed legal basis for giving the undertaking is unaltered - the undertaking solicitor does not act for the lender. There is no change in the requirement that any qualification to the Undertaking must be agreed in advance with the lender. Practitioners are reminded of the necessity to qualify title in stage payment cases and in the cases of houses in the course of construction/renovation.**

**The Guidelines and Agreement**

9. Para 4:- The lenders agree to furnish deeds on ATR within 10 working days of a written request, or, if deeds are out with another party, within 10 days of coming into possession of the deeds.

10. Para 5:- The lenders agree to give redemption figures within 10 working days of a written request that identifies the relevant property. The lenders will give redemption figures for all loans secured by the property. If after completion the redemption figure quoted is inadequate to redeem the loan(s) the lenders will not withhold the release/discharge/vacate but shall be free to pursue any other remedies against the borrower.
11. Para 6:- Undertakings should be signed by a principal or partner except in exceptional circumstances when an authorised solicitor may sign if a principal/partner is temporarily unavailable. The principal/partner should ensure that any authorised signatory is covered by the firm's PII policy, especially if the authorised signatory is a solicitor from outside the firm. The use of an authorised solicitor on a permanent or regular basis is not agreed. Signature by an authorised solicitor shall bind the partners or principal of the firm only.
12. Para 16:- Solicitors will place with the title deeds a confirmation by certain specified persons that independent legal advice has been taken in certain circumstances or that the right to independent legal advice has been waived by them.
13. Para 19:- Where electronic funds transfer is used, the lender will provide same day written confirmation to the solicitor's bank containing sufficient detail and information so as to identify the borrower to the solicitor.
14. Para 20:- If there are reasons for a delay in lodging a deed/mortgage for registration the solicitor should explain the cause of delay to the lender.
15. Para 21(d):- The lender will release the solicitor from the undertaking in writing within 10 days of lodgement of title with the lender.
16. Para 22:- There is a new procedure set up for resolving delays by the solicitor in complying with the undertaking. If a solicitor needs more time to comply, the solicitor should state why. The lender will not unreasonably disallow a reason given for a delay.
17. Para 23:- The lenders agree that on payment of the sum requested to redeem a mortgage a release/discharge/vacate will be furnished within one month of receipt of payment. If a vacate is not appropriate, or the mortgage covers other property not being released, the lender will execute a partial release/discharge provided it is furnished to the lender by the borrower's solicitor for execution.
18. Para 24:- There is a new procedure for resolving delays by the lenders in relation to any matter in respect of which they have agreed to certain time limits. This "Rule 2.46" procedure is appended to the Guidelines for information purposes.
19. Lenders will not send requests for information to solicitors at unreasonably close intervals – in normal cases not within 6 months after completion. If a solicitor provides a lender with a PRA dealing number, or confirms the date of lodgement in the Registry of Deeds, within 6 months of completion, he/she should not expect a request for an update in normal cases until after a further 6 months has expired. There may be a need for more frequent correspondence in exceptional cases.
20. A lender shall not refuse to accept an undertaking or give deeds on ATR without good objective reason. Lenders may have policies concerning the acceptance of undertakings from solicitors where there is a perceived conflict of interest.

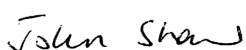
I would like to remind practitioners that these agreed documents are for use **only in residential mortgage lending** and they are not agreed for use in relation to commercial loans. The Society has not agreed any certificate of title documentation for commercial loans.

I would like to sincerely thank the members of the Conveyancing Committee's task force for the considerable work and time they invested in achieving these new agreed documents for the benefit of the profession as a whole. The Society genuinely believes that the revised documents represent a significant enhancement of its certificate of title system that will bring about improvements in solicitors' practices that will also ultimately be of benefit to their clients, and on this basis the Society is happy to commend the new system to all practitioners.

The Society acknowledges the input of the IBF representatives into the new documentation and thanks them for their part in the consultation process. The lending institutions represented by IBF in the consultations on the revised documents are listed at the end of the Guidelines and Agreement. Practitioners should be aware that the Society agrees from time to time that other lenders and other agencies may also use the agreed documents, and the identity of these additional parties can be checked with the Conveyancing Committee.

If you have any queries on the new documentation please feel free to contact the Conveyancing Committee.

Yours sincerely



**John D. Shaw**  
**President**

This is a true copy of the form of Undertaking agreed by the Law Society of Ireland with the Lending Institutions named in the Guidelines and Agreement (2009 Edition)



*Law Society of Ireland*

**RESIDENTIAL MORTGAGE LENDING  
SOLICITOR'S UNDERTAKING**

**LAW SOCIETY APPROVED FORM (2009 EDITION)**

To: \_\_\_\_\_  
(“the Lender” its transferees, successors and assigns)

**MY/OUR CLIENT(S)** \_\_\_\_\_  
(“the Borrower”)

**ADDRESS(ES)** \_\_\_\_\_  
\_\_\_\_\_

**PROPERTY (Note (i))** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(“the Property”)

**BEING**

**Registered Title**

- All of the lands in Folio \_\_\_\_\_ County
- Part of the lands in Folio \_\_\_\_\_ County

**Unregistered Title**

- All of the lands described in Deed dated \_\_\_\_\_ made in favour of \_\_\_\_\_  
(e.g. the current owner) registered in the Registry of Deeds on
- Part of the lands described in Deed dated \_\_\_\_\_ made in favour of \_\_\_\_\_  
(e.g. the current owner) registered in the Registry of Deeds on

**YOUR REF/ACCOUNT NO.** \_\_\_\_\_

In consideration of the Lender agreeing to the drawdown of a loan facility in respect of the Property before the Lender's mortgage security has been perfected and subject to the payment through me/us of the loan cheque(s) or the loan proceeds I/we, the undersigned solicitor(s) for the Borrower, **HEREBY UNDERTAKE** with the Lender as follows:

### **1. Good Title**

Save for any qualification on title as agreed in writing with the Lender as set out in the Schedule hereto, to ensure, where the Borrower is acquiring the Property, that the Borrower will acquire good marketable title to it, or, where the Borrower already owns the Property, to satisfy myself/ourselves that such Borrower has good marketable title to it. (Note (ii)).

### **2. Execution of Security Documents**

To ensure, prior to completion (Note (iii)) that:

- a) the Borrower has executed a mortgage deed/charge in the Lender's standard form as produced by the Lender (the "Mortgage") over the Property (and, if required by the Lender, that any non-owning Borrower has joined in the Mortgage),
- b) a deed of confirmation is executed by all necessary parties where the circumstances render such a deed appropriate, and
- c) all the provisions of the Family Home Protection Act, 1976 and any Act amending, extending or replacing that Act are complied with in respect of the Mortgage and any such deed of confirmation,

so that on completion the Mortgage ranks as a first legal mortgage/charge on the Property (Note (iv)) AND (if applicable)

- d) the Borrower has executed the Lender's standard form of life policy assignment, if specified in the facility letter/letter of offer (the "Letter of Offer") provided that the standard form is furnished to me/us by the Lender in the form in which it is to be signed prior to the drawdown of the loan
- e) a guarantee in the Lender's standard form is executed, if specified in the Letter of Offer and if furnished by the Lender to me/us prior to the drawdown of the loan.

### **3. In Funds**

To ensure, prior to negotiating the loan cheque(s) or the proceeds thereof that I am/we are in funds to discharge all stamp duty and registration fees.

### **4. Loan Proceeds in Trust**

Pending compliance with Clauses 1, 2 and 3 above, to hold the loan proceeds in trust for the Lender.

## **5. Stamping, Registration & Furnishing Deeds to the Lender**

### **A. Stamping**

Within the time prescribed by law to lodge the purchase deed/transfer for stamping and to deal expeditiously with all related queries and issues raised by the Revenue Commissioners.

### **B. Registration**

- (i) As soon as practicable, but in any event within four months (or such longer period as may be agreed in writing by the Lender, such agreement not to be unreasonably withheld) following receipt of the purchase deed/transfer duly stamped:
  - (a) To lodge the purchase deed/transfer and the Mortgage in the appropriate Registry so as to ensure that the Lender obtains a first legal mortgage/charge on the Property; and
  - (b) To furnish the Lender with the Land Registry dealing number (and consent to inspect the dealing if requested) and/or to confirm to the Lender in writing the date of lodgement in the Registry of Deeds.
- (ii) To ensure, where the Borrower already owns the property, that Clause 5 B(i) above is complied with in respect of the Mortgage within four months of completion.

### **C. Furnishing Deeds to the Lender**

As soon as practicable following registration to furnish to the Lender the following:

- (i) my/our Certificate of Title in the Law Society's standard form,
- (ii) all deeds and documents to the Property, stamped and registered as appropriate,
- (iii) the original Mortgage or, if Land Registry title, the counterpart Mortgage (if available) and an up-to-date copy folio of the Property showing the Mortgage registered as a burden thereon, and
- (iv) any deed of confirmation or life policy assignment which I/we have had executed and any guarantee which I/we have obtained pursuant to Clause 2 hereof.

To the extent to which the Lender has indicated that it will attend to stamping and registration or any work referred to above this part of the Undertaking shall be deemed to be amended accordingly.

## **6. Holding Documents in Trust and Other Requirements**

Pending compliance with Clause 5:

- a) to hold all title documents of the Property in trust for the Lender;
- b) to advise in writing, if requested by the Lender, on progress concerning the stamping and registration of the purchase deed/transfer and the Mortgage.

## **7. Certified Copy Mortgage**

If Clause 5 has not been complied with within the time therein specified, to furnish the Lender with a certified copy of the executed Mortgage within 5 working days of receipt of the Lender's written request.

### **Authority**

I/We confirm that I/we have the Borrower's irrevocable authority to give this Undertaking and, where applicable, the Borrower's spouse's prior consent to give this Undertaking.

### **Extent of Undertaking**

This Undertaking is given by me/us in my/our sole capacity as solicitor(s) for the Borrower and not as solicitor(s) for or as agent/quasi agent of the Lender. It relates to Matters of Title and represents the sum of my/our obligations to the Lender in relation to this loan transaction. I/We have no responsibility for any matter of a non-title nature except insofar as any of the matters set out in this Undertaking may be deemed to be matters of a non-title nature.

## **SCHEDULE**

### **Qualifications on Title (if any) agreed in writing with the Lender**

Dated this \_\_\_\_\_ day of \_\_\_\_\_

SIGNATURE \_\_\_\_\_

NAME OF SOLICITOR SIGNING \_\_\_\_\_  
(Note (v))

STATE WHETHER PRINCIPAL/PARTNER  
OR AUTHORISED SOLICITOR \_\_\_\_\_

NAME OF FIRM \_\_\_\_\_

ADDRESS OF FIRM \_\_\_\_\_

\* Where it has been specifically agreed with the Lender that the funds shall issue by way of electronic funds transfer direct to the client account of the Borrower's solicitor(s), please tick (and initial) the boxes and insert the details of that account

Tick
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Initial
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Name & Address of Bank \_\_\_\_\_

Bank Sort Code \_\_\_\_\_

Solicitor's Client Account Name \_\_\_\_\_

Solicitor's Client Account Number \_\_\_\_\_

My/Our agreement to electronic funds transfer is subject to the Lender providing to my/our Bank sufficient detail and information to allow me/us to identify the Borrower.

## NOTES :

- (i) The description of the Property should be taken from the Letter of Offer and must accurately identify the Property to enable the Lender to identify it by reference to the description in the Letter of Offer.
- (ii) In this Undertaking “**good marketable title**” means a title of a quality commensurate with prudent standards of current conveyancing practice in Ireland. The latter entails, where the Property is being acquired, that the purchase was effected on foot of the current Law Society’s Conditions of Sale and/or Building Agreement. It also entails that the investigation of the title to the Property was made in accordance with the current Law Society Requisitions on Title together with any additional Requisitions appropriate to the Property and that satisfactory replies have been received. When the Property is already owned by the Borrower, the title shall be so investigated that if the said Requisitions had been raised, satisfactory replies would have been obtained.

In this Undertaking “**Matters of Title**” means only such matters as relate to the title to the Property in the context of a conveyancing transaction and does not include any matters relating to the condition of the Property, the suitability or otherwise of the Borrower or any other matter (including the form or efficacy of the Mortgage).

Any dispute as to the quality of any title or as to whether or not any matter constitutes a Matter of Title (within the foregoing definitions) may be referred for a ruling to the Conveyancing Committee of the Law Society of Ireland, but without prejudice to the right of either party to seek a determination by the Court on the issue.

- (iii) In this Undertaking “**completion**” means the payment of the loan proceeds (including by way of negotiation of the loan cheque) in or towards the discharge of the purchase price of the Property or in or towards the discharge of any encumbrance on the Property.

For the avoidance of doubt, completion shall not be deemed to have occurred for the purposes of this Undertaking for so long as the loan cheque or loan proceeds are held in trust for the Lender.

- (iv) Where the Lender is a Building Society within the meaning of the Building Societies Act, 1989 and any Act amending, extending or replacing that Act, any prior mortgage or charge must be redeemed prior to or contemporaneously with the creation of the Mortgage.
- (v) The Undertaking must be signed by a **Partner** or, in the case of a sole practitioner, by the **Principal** or other solicitor duly authorised in writing on behalf of the firm by either of the foregoing.  
**(Note:** Where signed by the latter, the original of the written authority in question **MUST** be attached to this Undertaking or a copy certified by a solicitor other than the solicitor so authorised).



**CLIENT(S) RETAINER AND AUTHORITY**

To \_\_\_\_\_

Solicitor(s)

of \_\_\_\_\_

I/We irrevocably authorise and direct you to give an undertaking in the form and containing the information set out overleaf (including an undertaking to lodge with the Lender the title deeds of the Property) to

(Name of Lender) \_\_\_\_\_

and in consideration of your giving the foregoing undertaking, I/we hereby undertake that I/we will not discharge your retainer as my/our solicitor(s) in connection with the foregoing matter unless and until I/we have procured from the Lender your effective release from the obligations imposed by such undertaking and I/we hereby indemnify you and all your partners and your and their executors, administrators and assigns against any loss arising from my/our act or default. I/we irrevocably authorise the Lender to make my/our loan cheque payable to you or to transfer the proceeds of this loan to you by electronic funds transfer.

**Dated the** \_\_\_\_\_ **day of** \_\_\_\_\_

**Signed by the Borrower** \_\_\_\_\_

\_\_\_\_\_

**in the presence of** \_\_\_\_\_

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**FAMILY HOME PROTECTION ACT CONSENT**

I, \_\_\_\_\_ the lawful spouse of the above named Borrower

**DO HEREBY GIVE MY PRIOR IRREVOCABLE CONSENT** for the purposes of the Family Home Protection Act, 1976 (as amended) to the foregoing retainer and authority of my said spouse and to the within undertaking to be given by my spouse’s solicitor(s).

I acknowledge that it has been recommended to me that I should obtain independent legal advice with regard to the legal implications of giving this irrevocable consent. Where I have chosen not to take such advice, I declare that I did so voluntarily.

The Property is not adversely affected by section 5 of the Family Law Act, 1981, the provisions of the Judicial Separation and Family Law Reform Act, 1989, the Family Law Act, 1995 or the Family Law (Divorce) Act, 1996.

**Dated the** \_\_\_\_\_ **day of** \_\_\_\_\_

**Signature of Spouse** \_\_\_\_\_

**Spouse’s name in BLOCK CAPITALS** \_\_\_\_\_

**Witness** \_\_\_\_\_

**(Solicitor)**

**Address of Witness** \_\_\_\_\_

\_\_\_\_\_

This is a true copy of the form of the Certificate of Title agreed by the Law Society of Ireland with the Lending Institutions named in the Guidelines and Agreement (2009 Edition)



*Law Society of Ireland*

**RESIDENTIAL MORTGAGE LENDING  
CERTIFICATE OF TITLE**

**LAW SOCIETY APPROVED FORM (2009 Edition)**

To: \_\_\_\_\_  
("the Lender", its transferees, successors and assigns)

**NAME(S) OF BORROWER(S)** \_\_\_\_\_  
\_\_\_\_\_  
("the Borrower")

**ADDRESS OF PROPERTY** \_\_\_\_\_  
\_\_\_\_\_  
("the Property")

**YOUR REF/ACCOUNT NO.** \_\_\_\_\_

As Solicitor(s) for the Borrower, I/We have investigated the title to the Property and I/We hereby certify that the Borrower has good marketable title to the Property (save as set out in the **First Schedule** hereto), the description of which agrees with that stated in the Lender's Letter of Offer for the tenure specified in the **Second Schedule** hereto, free from any mortgage, charge, lien or incumbrance and any lease or tenancy, except for your Mortgage/Charge which is in the form prescribed by you (the "**Mortgage**").

We hereby certify that the Mortgage ranks as a first Legal Mortgage/Charge over the Property.

All the documents evidencing the Borrower's title to the Property including the Mortgage are properly listed in the **Third Schedule** hereto and are furnished herewith.

My/Our Firm currently holds Professional Indemnity Insurance Cover with a qualified insurer as defined under Statutory Instrument No. 312 of 1995 (as amended) for a sum which is in excess of the amount being advanced to the Borrower.

I/We as Solicitor(s) for the Borrower, am/are giving this Certificate for the benefit of the Lender, having regard to (1) the current Guidelines and Agreement published by the Law Society, to be followed when completing Certificates of Title for Lenders and (2) the current conveyancing recommendations of the Law Society.

This Certificate is being given by me/us in my/our sole capacity as Solicitor(s) for the Borrower and (other than as specifically set out herein) it relates only to Matters of Title.

This Certificate does not purport to certify anything in relation to the standard contents of the Mortgage executed by the Borrower. In particular, it does not certify that the Mortgage or any other document produced by the Lender in connection with the Loan complies with the requirements of the Consumer Credit Act 1995 or the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995.

**Signature:** \_\_\_\_\_

**Name of Solicitor signing:** \_\_\_\_\_

**State whether Principal/Partner:** \_\_\_\_\_

**Name of Firm:** \_\_\_\_\_

**Address of Firm:** \_\_\_\_\_  
\_\_\_\_\_

**Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_**

In this Certificate of Title “**good marketable title**” shall mean a title of a quality commensurate with prudent standards of current conveyancing practice in Ireland. The latter entails, where the Property is being acquired, that the purchase was effected on foot of the current Law Society’s Conditions of Sale and/or Building Agreement. It also entails that the investigation of the title to the Property was made in accordance with the current Law Society Requisitions on Title, together with any additional requisitions appropriate to the Property and that satisfactory replies have been received. When the Property is already owned by the Borrower, the title shall be so investigated that, if the said requisitions had been raised, satisfactory replies would have been obtained.

In this Certificate, “**Matters of Title**” means only such matters as relate to the title to the Property in the context of a conveyancing transaction and does not include any matters relating to the condition of the Property, the suitability or otherwise of the Borrower or any other matter (including the form or efficacy of the Mortgage).

Any dispute as to the quality of any title or as to whether or not any matter constitutes a Matter of Title (within the foregoing definition) may be referred for a ruling to the Conveyancing Committee of the Law Society of Ireland but without prejudice to the right of either party to seek a determination by the Court on the issue.

**FIRST SCHEDULE**  
**Qualifications on Title (if any)**  
**(as previously agreed in writing with the Lender)**

**SECOND SCHEDULE**  
**Tenure**

**THIRD SCHEDULE**

**See Schedule of Documents attached hereto.**

This is a true copy of the Guidelines & Agreement (2009 Edition) agreed by the Law Society of Ireland with the Lending Institutions named herein



**Law Society of Ireland RESIDENTIAL MORTGAGE LENDING**

## **LAW SOCIETY APPROVED GUIDELINES AND AGREEMENT (2009 EDITION)**

### **GUIDELINES AND AGREEMENT TO BE FOLLOWED BY SOLICITORS AND LENDERS WHEN COMPLYING WITH SOLICITOR'S UNDERTAKING, COMPLETING CERTIFICATE OF TITLE AND ADMINISTERING THE AGREED CERTIFICATE OF TITLE SYSTEM (LAW SOCIETY APPROVED FORMS (2009 EDITION))**

**The following matters are agreed between the Law Society of Ireland and the Lending Institutions listed herein.**

#### **Operative Date of new 2009 Edition of Agreed Documents**

1. The new 2009 edition of the agreed forms of Solicitor's Undertaking (the "Undertaking"), Certificate of Title (the "Certificate of Title") and these Guidelines and Agreement (the "Guidelines") shall be used for all residential property mortgage loan transactions approved on or after 5th May 2009 and the Guidelines shall apply in respect of such transactions. The 2009 edition of the Undertaking, Certificate of Title and the Guidelines are collectively referred to herein as the "Agreed Documents".

#### **Agreement not to Alter**

2. (a) It is agreed that the Lenders will use the Agreed Documents only as a suite of documents and will not change the content or format of the documents so that solicitors will not be obliged to check if any change has been made. To emphasise this aspect it has been agreed that each of the Agreed Documents will be headed with the statement that "This is a true copy of the form of Undertaking/Certificate of Title/Guidelines and Agreement (as appropriate) (2009 Edition) agreed by the Law Society of Ireland with the Lending Institutions named in the Guidelines and Agreement (2009 Edition)".
- (b) It is agreed that any alterations to or revisions of the Agreed Documents necessitated either by future legislation or changes in conveyancing practice shall be introduced only by the Conveyancing Committee of the Law Society in consultation with the Lenders.
- (c) No solicitor shall modify the Undertaking or the Certificate of Title without the prior written approval of the Lender to the modification.

#### **Roles and Responsibilities**

3. (a) The responsibility of the certifying solicitor is limited to Matters of Title only. The solicitor should ensure that there will be compliance with any requirements specified in the conditions in the Lender's Letter of Offer (the "Letter of Offer") insofar as they relate to Matters of Title.
- (b) Borrowers' solicitors do not act for Lenders.
- (c) All matters which are not related to title shall be the responsibility of the Lenders. These matters include but are not limited to:
  - credit worthiness of Borrowers,
  - loan repayment arrangements,
  - property valuations, and
  - all insurance matters.
- (d) It is a matter for the Borrower to comply with all conditions in the Letter of Offer before the loan cheque is requisitioned. The Borrower will be instructed by the Lender to contact the Lender directly regarding insurance, valuation and any other matter not of a title nature.
- (e) While the Guidelines acknowledge that the Borrower's solicitor has no responsibility to the Lender to explain the conditions of the Letter of Offer to the Borrower this does not affect the solicitor's duty to his/her client in that regard. In those cases where it is a Lender's practice to furnish the Letter of Offer directly to the solicitor or to the client with a

recommendation that it be completed in the solicitor's presence, it is acknowledged by the Lender that the solicitor shall have no responsibility to the Lender to explain the conditions to his/her client. This however does not affect the solicitor's duty to his/her client to explain the said conditions.

- (f) In general terms, the Agreed Documents require that the certifying solicitor will, *inter alia*,
  - carry out proper investigation of title to the Borrower's property,
  - attend to the execution of the relevant purchase and mortgage documentation including, where applicable, deeds of confirmation and assignments of Life Policies,
  - stamp and register the Borrower's purchase deed(s) and register the Mortgage,and
  - furnish to the Lender a duly completed Certificate of Title together with all relevant documents fully scheduled as soon as practicable.
- (g) Practitioners should read the Agreed Documents carefully as they set out requirements, *inter alia*, in relation to non-owning spouses, deeds of confirmation and rights of residence. Practitioners particularly should note that because of the nature of an exclusive right of residence, a deed of release will be required prior to execution of the Mortgage (but the exclusive right of residence may be reconstituted thereafter).

#### **Deeds on Accountable Trust Receipt**

- 4. Where a Borrower's title deeds are required on accountable trust receipt for a purpose (to be stated by the requesting solicitor):
  - (a) If a Lender is in possession of the title deeds, the Lender agrees to make the deeds available to the requesting solicitor within 10 working days of the receipt of the request.
  - (b) If a Lender is in control but not in possession of a Borrower's title deeds, e.g. because the title deeds are held by another solicitor on accountable trust receipt, the Lender shall call for the immediate return of the title deeds to the Lender and the Lender agrees to make the deeds available to the requesting solicitor within 10 working days of the title deeds coming into its possession.
  - (c) The solicitor's request for the title deeds on accountable trust receipt shall be in writing and contain sufficient detail to enable the Lender identify the Property.
  - (d) It is the responsibility of the solicitor to obtain the Borrower's irrevocable retainer and authority to take up the title deeds on accountable trust. Lenders may require evidence of the retainer and authority and the solicitor should produce a copy if requested. Where this is a requirement of the Lender (and provided that the request is made within the time period specified in sub-paragraph 4(a) above), time under sub-paragraph 4(a) above will not run against the Lender until evidence of the retainer and authority has been produced.

#### **Redemption Figures**

- 5. Where a Borrower is selling or re-mortgaging his/her property and the Borrower's solicitor requests redemption figures, it is agreed that:
  - (a) the request shall be in writing and shall contain sufficient detail to enable the Lender identify the relevant property and to furnish the redemption figures;
  - (b) the redemption figures shall be furnished to the requesting solicitor as soon as practicable and in any event no later than 10 working days of the request being made;
  - (c) in answering a request for such redemption figures the Lenders shall furnish redemption figures for all loans that are secured by the relevant property;
  - (d) if, after completion, the redemption sum quoted by the Lender is found to be inadequate to redeem the loan(s) the Lender shall not withhold the release/discharge/vacate (see paragraph 23 below) but shall be free to pursue any other remedies against the Borrower that are available to the Lender.

#### **Signature of Undertaking**

- 6. (a) The Undertaking must be signed either by a partner or principal. In exceptional circumstances and without prejudice to paragraph 26 hereof, if a partner or principal is temporarily unavailable it may be signed by a solicitor duly authorised in writing by a partner or principal to sign such Undertakings.

- (b) Such signature by an authorised solicitor shall bind the partners or principal only.
- (c) The foregoing has been agreed with the Lenders to facilitate instances where the partner or principal is temporarily unavailable. Neither partners nor a principal should appoint an authorised solicitor to sign Undertakings other than to facilitate temporary unavailability of partners or a principal.
- (d) Before signing the Undertaking, the solicitor should ensure that the Borrower(s) sign(s) the form of Retainer and Authority endorsed on such Undertaking and obtain a spouse's prior consent to the giving of the Retainer and Authority when applicable.

#### **Title**

- 7. (a) The title must be Freehold, or Leasehold with an unexpired term of at least 70 years, unless the solicitor is satisfied that the lessee has a statutory right to purchase the fee simple under the Ground Rents legislation. If Land Registry title, it must be either absolute or good leasehold.
- (b) The Property must be free from encumbrances to ensure that the Lender shall have a first legal Mortgage/Charge.
- (c) The solicitor must insert a description of the Property on page 1 of the Undertaking. The description of the Property must accurately identify the Property to enable the Lender to identify the Property by reference to the description in the Letter of Offer. The solicitor should also indicate whether title to the Property is registered or unregistered. Where registered, the folio number should be included.

#### **Stage Payment Loans**

- 8. The Law Society has already advised solicitors that stage payment transactions are undesirable in view of the potential difficulties they create for both purchasers and their solicitors. Practitioners are reminded of the terms of the various practice notes issued by the Conveyancing Committee expressing its disapproval of such form of house purchases. If, however, despite this advice, the Borrower is willing to make such payments to a builder/developer who is registered with HomeBond, Premier or such alternative or additional scheme as may be approved by a Lender as appropriate in advance of title vesting in the Borrower, and the Lender has specifically agreed to advance funds for the purpose of making such stage payments, the following qualification should be inserted in the Schedule to the Undertaking:

**“The Property is being purchased by stage payments. Stage payments up to the limits covered by HomeBond, Premier [or specify an alternative Lender-approved scheme as appropriate] are to be released in advance of title vesting in the Borrower and the Supplemental Stage Payments Undertaking set out in the LAW SOCIETY APPROVED GUIDELINES AND AGREEMENT (2009 EDITION) shall be deemed to be incorporated in this Undertaking”.**

The Supplemental Stage Payments Undertaking reads as follows:

#### **“Property being Acquired - Stage Payments to Builder/Developer**

Where stage payments are being paid to the builder/developer, to ensure:

- (a) that a valid and enforceable fixed price contract has been exchanged to obtain good marketable title to the Property upon completion of the construction thereof and the completion of the purchase formalities
- (b) that the Property is registered with HomeBond, Premier or such alternative or additional scheme as may be approved by a Lender as appropriate and
- (c) that prior to payment of any stage payment which the Lender may agree to lend in excess of the amount covered by HomeBond, Premier or such alternative or additional scheme as may be approved by a Lender as appropriate, title to the Property (including the right to immediate possession) is unconditionally vested in the Borrower and that there is compliance with all the requirements of clause 2 of the SOLICITOR'S UNDERTAKING LAW SOCIETY APPROVED FORM (2009 EDITION)”

**N.B. Not all Lenders will advance stage payments on the basis of the foregoing. Solicitors are cautioned to check with the individual Lender.**

#### **Consideration**

- 9. Where the consideration is expressed in the Letter of Offer, the same consideration should be expressed in the purchase deed/building agreement. If there is any discrepancy, this must be brought to the attention of the Lender prior to drawing down the loan cheque. The amount of the loan may be reduced in the event of such a discrepancy.



## **Mortgage**

10. (a) There must be no restrictions on mortgaging the Property. Any necessary consent from a housing authority, for example, must be obtained and compliance with any condition procured.
- (b) The Borrower's signature on the Mortgage (including any non-owning spouse or other person who may be required to join in the Mortgage) and (subject to paragraph 15 hereof) any other security documents must be made in the presence of and witnessed by a solicitor.

## **Declaration of Identity**

11. For "once off" properties or those not forming part of a housing estate, there must be with the title a declaration of identity declaring that the Property and its essential services (e.g. septic tank and well etc.) are entirely within the boundaries of the lands the subject matter of the Lender's security. If any such services are not within the boundaries of such lands, then a grant of easement must be furnished unless a prescriptive right thereto is established and this is verified by an appropriate statutory declaration.

## **Qualifications on Title**

12. Any intended qualification of the Certificate of Title must be specifically agreed in writing with the Lender prior to furnishing the Undertaking and should be set out in the Schedule to the Undertaking. It may or may not be acceptable to the Lender. Where the Lender agrees to accept any qualification it shall be understood that the responsibility for explaining the nature of the subject matter of the qualification to the Borrower rests with the solicitor and the acceptance of the qualification shall not be taken to imply any responsibility or liability to the Borrower on the part of the Lender.

## **Family Home**

13. If title to the Property vests in the sole name of one spouse, and if the Family Home Protection Act, 1976 applies, a prior consent to the Mortgage must be completed, signed and dated by the Borrower's spouse.

(Note: Even if the Property will not become a Family Home vesting in sole name until immediately after completion it is, nonetheless, recommended that the prior consent is signed by the relevant spouse as possession may have been taken informally or partially beforehand. To avoid doubt, it is prudent to get the consent completed in any such case).

## **Other Interests / Deed of Confirmation**

14. (a) There must be no person other than the Borrower with any estate or interest, beneficial or otherwise, in the Property and this must be confirmed by a statutory declaration of the Borrower. (Some Lenders may require such a declaration prior to drawdown).
- (b) If there is any such person with any such estate or interest by reason of making a contribution to the purchase price or otherwise howsoever, that person should, after the Borrower signs the Mortgage, execute a Deed of Confirmation so as to supplementally mortgage any such estate or interest to the Lender. (The confirmation is non recourse i.e. it does not of itself impose a liability on the beneficiary to repay). Where appropriate the beneficiary's spouse should sign his/her prior consent to the Deed of Confirmation.
- (c) If there is a right of residence the person entitled thereto must sign a Deed of Confirmation except in the event of such right being an exclusive right - in which event the right of residence must be released prior to the execution of the Mortgage (but such right may be reconstituted thereafter).
- (d) It should be noted that a sole Borrower's spouse, although signing the prior Family Home Protection Act Consent, may be a beneficiary nonetheless because of e.g. direct or indirect financial contribution(s). If there is any doubt in this respect, the beneficiary should, after the Mortgagor signs the Mortgage, execute a Deed of Confirmation so as to supplementally mortgage any such estate or interest to the Lender. (The confirmation is non recourse i.e. it does not of itself impose personal liability on a beneficiary to repay).
- (e) Without prejudice to the foregoing paragraph 14(d), if the Lender requires that the non-owning spouse joins in the Mortgage there should be compliance with this requirement provided that the Lender notifies this requirement in advance of drawdown of the loan.

## **Assignments of Life Policy and Guarantees**

15. (a) Some Lenders may furnish Borrower's solicitors with deeds of assignment of life policy for execution at completion. Where this is done, the solicitor should ensure each relevant document is executed, witnessed and dated in order to comply with clause 2(d) of the Undertaking.
- (b) It is the responsibility of the Lender to furnish the Borrower's solicitor prior to completion with the assignment of life policy in the form in which they wish to have it executed and with the relevant policy details inserted. Borrowers' solicitors

tors are not obliged to insert the details of the life policy in the schedule to the life policy assignment.

- (c) If a guarantee is furnished to the Borrower's solicitor, the solicitor should ensure the relevant document is executed on its face in order to comply with clause 2(e) of the Undertaking but shall not advise the guarantor on the effect of the guarantee and shall not witness it.

#### **Independent Legal Advice**

16. Any
- (i) spouse signing the Family Home Protection Act Consent; or
  - (ii) non-owning spouse joining in the Mortgage; or
  - (iii) person signing the Deed of Confirmation or consent thereto;

must (a) receive independent legal advice and furnish written confirmation that such independent legal advice has been given or (b) after receiving legal advice from the Borrower's solicitor of the serious implication of not taking such advice and subject to the requirements of the Lender if specified in the Letter of Offer sign an explicit waiver of the right to be so advised in the form produced by the Lender. A copy of such confirmation or waiver should be placed with the title deeds.

#### **Searches**

17. Searches must include those against the Borrower and, when a purchase is completed in advance of the Mortgage, searches must be updated to the date of the Mortgage.

#### **Before Releasing Loan Proceeds**

18. Before releasing the loan proceeds the solicitor shall
- ensure that all security documents have been executed; and
  - be in funds to discharge all stamp duty and registration outlays in connection with the purchase and mortgage transaction; and
  - be satisfied that he or she will be in a position to issue the Certificate of Title to the Lender without qualification (save for any qualification agreed by the Lender in writing prior to completion); and
  - be satisfied that his or her Professional Indemnity insurance cover exceeds the amount of the loan and, if a solicitor intends to have the Undertaking signed by an authorised signatory, he or she should ensure that the Professional Indemnity insurance cover provides for this.

#### **Electronic Funds Transfer**

19. It should be noted that some Lenders may offer an Electronic Funds Transfer facility for payment of the loan funds. In such cases the Lender will include the approved wording in its pre-printed form of Undertaking requiring the insertion of the relevant solicitor's client account details. Where an Electronic Funds Transfer is agreed the Lender shall provide same day written confirmation to the solicitor's bank containing sufficient detail and information so as to identify the Borrower to the solicitor.

#### **Lodging the Purchase Deed/Transfer and the Mortgage with the Property Registration Authority**

20. The purchase deed/transfer (when stamped) and the Mortgage/Charge must be lodged for registration in the Land Registry or Registry of Deeds (as appropriate) within the time frame set out in the Undertaking. It is recognised that there may be legitimate reasons for delays in lodging such deeds for registration. If these arise, the solicitor should explain the cause of delay to the Lender.

#### **Furnishing of Title Deeds and Certificate of Title to the Lender**

21. (a) When the stamping and registration of the purchase deed/transfer and the Mortgage/Charge has been completed, the solicitor should furnish to the Lender the documents set out in clause 5(c) of the Undertaking within the time frame set out in the Undertaking.
- (b) All Certificates of Title shall be signed by a partner or principal.
- (c) All documents accompanying the Certificate of Title should be fully scheduled in the interest of efficiency and a quick response from the Lender.
- (d) Upon compliance by the solicitor with clause 5 of the Undertaking, the Lender shall release the solicitor from the Undertaking in writing within 10 working days.

#### **Resolving Delays in Complying with the Undertaking**

22. (a) If a solicitor needs an extension of time for the completion of any action he or she had undertaken to carry out in the Undertaking, he or she should write to the Lender setting out the reason for the delay. The Lender shall not unreasonably disallow a reason given for delay.

- (b) A Lender concerned that the solicitor has not met the time limits set out in the Undertaking for the completion of certain actions by the solicitor should, in the first instance, write to the solicitor drawing his/her attention to the overdue actions. The solicitor should respond within 10 working days to such letter in writing either by confirming that the outstanding actions are completed or by specifying a good reason or reasons preventing the completion of the action. The Lender shall not unreasonably disallow a reason given for delay.
- (c) Where a solicitor does not resolve such delays to the satisfaction of the Lender and arising from that the Lender intends to complain to the Law Society, the Lender will notify the solicitor of its intention to do so and shall, before making such a complaint, afford the solicitor at least 10 working days to complete the outstanding actions or to furnish an explanation as to why he/she cannot complete them.
- (d) Complaints by Lenders to the Law Society will be made on the authority of a manager of the Lender not below the rank of Senior Manager or equivalent.
- (e) Nothing in the Guidelines shall be interpreted as restricting or postponing any remedy the Lender may have against a solicitor where the Lender reasonably believes that a breach by a solicitor of the Undertaking may result in financial loss to the Lender or to the security it relies on or the priority of such security being adversely affected.

#### **Releases, Discharges and Vacates**

23. It is acknowledged that delays in lodging completed Certificates of Title with title deeds on behalf of a Borrower may occur due to delays in obtaining a vacate of the Borrower's previous mortgage or a vacate of a mortgage on title belonging to a previous owner of the relevant property. In order to eliminate this possible source of delay, the Lenders agree that:

- (a) on payment of the sum requested to redeem a Borrower's outstanding mortgage and a written request to release the Mortgage, a release/discharge/vacate (as appropriate) will be furnished to the requesting solicitor within one month of receipt of payment or the request whichever is later;
- (b) if the Mortgage to be released or discharged covers other property not being released or if the Lender does not wish to release the Borrower's covenant to repay the loan, the Lender will execute a deed of partial release or a partial discharge, provided a draft of such partial release or partial discharge (with map as appropriate) satisfactory to the Lender is provided by the Borrower's solicitor.

#### **Resolving Delays on the Part of Lenders**

24. (a) A solicitor concerned that a Lender has not met the time limits set out in paragraphs 4, 5, 21(d) or 23 of the Guidelines for the provision to him or her of any of the items described therein should, in the first instance, write to the Lender drawing its attention to the fact that the items are overdue. The Lender shall respond within 10 working days to such letter either by furnishing the outstanding item or by specifying in writing a good reason or reasons for the delay in the provision by the Lender of the item. The solicitor shall not unreasonably reject a reason given by a Lender for such delay.
- (b) Where a Lender does not furnish the outstanding item or provide an explanation for delay to the satisfaction of the solicitor and, arising from that, the solicitor intends to make a complaint to the Lender, the solicitor will notify the Lender of his/her intention to do so and shall, before making such a complaint, afford the Lender at least 10 working days to furnish the outstanding item or such explanation.
- (c) A complaint made by a solicitor to a Lender under this paragraph 24 will be treated by the Lender as a customer complaint to which, at a minimum, the procedure set out in Rule 2.46 of the Consumer Protection Code issued by the Financial Regulator [http://www.financialregulator.ie/data/pub\\_files/Code\\_Doc\\_rollover-4-2.pdf](http://www.financialregulator.ie/data/pub_files/Code_Doc_rollover-4-2.pdf) in August 2006 ("Rule 2.46") will apply.
- (d) A solicitor shall not refer the matter giving rise to complaint to the Financial Services Ombudsman unless the complaint has not been resolved as provided for in paragraph (d) of Rule 2.46.
- (e) Nothing in the Guidelines shall be interpreted as restricting or postponing any remedy a solicitor or a client of a solicitor may have against a Lender where the solicitor or the client reasonably believes that the failure of the Lender to furnish an item described in paragraphs 4, 5, 21(d) or 23 of the Guidelines may result in financial loss to the solicitor or the client or which may affect the ability of either of them to fulfil their contractual obligations to any third party in respect of the property to which the outstanding item relates.

#### **Frequency of Reminders**

25. (a) Lenders should not send solicitors requests for reports on progress as to stamping, registration of title and security at unreasonably close intervals.

- (b) For normal cases, the solicitor should not expect a reminder from the Lender to provide confirmation of lodgement for registration in the appropriate registry(ies) of the purchase deed/transfer and Mortgage until a date occurring 6 months after completion or thereabouts.
- (c) If the solicitor lodges the purchase deed/transfer and Mortgage for registration and provides the dealing number or confirmation of lodgement in the Registry of Deeds (as appropriate) to the Lender within 6 months of completion, the solicitor should not (for normal cases) expect a reminder from the Lender to furnish an up-date on the progress of registration until a date occurring 6 months or thereabouts after such confirmation of lodgement.
- (d) The Lender may need to correspond with the Borrower's solicitor more frequently in exceptional cases. Such exceptional cases include (i) where the Borrower is in default of its obligations to the Lender under the loan; (ii) where the Lender anticipates it may incur a financial loss in connection with the loan; (iii) where the Lender considers the security or its priority in respect of the security to be adversely affected or likely to be so; (iv) where the solicitor has been in serious breach of any Undertaking given by him or her to the Lender; or (v) where the solicitor has not responded to requests for information from the Lender or has furnished unsatisfactory responses to the Lender. The Guidelines should not be interpreted as limiting the Lender's rights and remedies in these and other exceptional cases.
- (e) Solicitors should respond promptly and fully to such requests from Lenders for reports on stamping and registration of title and security provided they are made in accordance with this paragraph 25.

#### **Accepting Undertakings**

26. (a) A Lender shall not refuse to accept an Undertaking or accountable trust receipt for title deeds from a solicitor without good objective reason.
- (b) It is the solicitor's responsibility to obtain the Borrower's irrevocable retainer and authority in respect of any undertaking.
- (c) Lenders may have policies concerning the acceptance of Undertakings from solicitors where there is a perceived conflict of interest.

#### **Participating Lenders**

The following Lending Institutions (referred to throughout the Guidelines as "the Lenders" and each a "Lender" which expression shall include any other financial institution which uses the Agreed Documents) have agreed to the matters contained herein in respect of utilising the 2009 edition of the Agreed Documents in relation to residential mortgage lending:

- |                                    |                                      |
|------------------------------------|--------------------------------------|
| 1. ACC Bank                        | 7. ICS Building Society              |
| 2. A.I.B. Bank                     | 8. KBC Bank                          |
| 3. Bank of Ireland                 | 9. Irish Nationwide Building Society |
| 4. Bank of Scotland (Ireland) Ltd. | 10. Permanent TSB                    |
| 5. EBS Building Society            | 11. Ulster Bank Ltd.                 |
| 6. First Active plc                | 12. National Irish Bank              |

**Dated the 5th day of May, 2009**