

## Remortgage Guide

This information guide is intended to provide you with a brief outline of the work involved in a remortgage transaction and to offer a brief insight into the mechanics and terminology behind it. It is by no means a comprehensive guide to the law, nor to all matters involved in remortgaging transactions. However, it contains useful information which we hope will assist you to understand the process more clearly. If you have any questions about the contents of this information guide, please do not hesitate to contact us and we will be happy to assist.

### The Mortgage Offer

The legal process involved in remortgaging a property begins with the Mortgage Offer. Your Lender will send the Mortgage Offer to you directly and will also send a copy to us with their separate instructions to act on their behalf in respect of the legal formalities. Please remember, we will be acting not only for you but also for your Lender and will owe a separate and distinct duty to them.

It is important that you read through the Mortgage Offer carefully and fully understand your obligations under it and the risks involved. Particular attention should be paid to any early redemption penalties or rates of interest quoted.

The offer will contain various conditions which must be met before release of funds and we will be required to confirm to the Lender that all conditions have been complied with. Mortgage conditions can be wide-ranging and vary from mortgage to mortgage, but may include:

- providing written confirmation that adequate insurance cover is in place;
- confirmation that we hold sufficient evidence of your identity;
- a requirement to repay an overdraft or credit card on Completion; or
- a stipulation that certain remedial works are to be undertaken at the property within a specified period of time.

Please note, we are not qualified to comment on the suitability of any mortgage you arrange, or to give financial advice (although we will be happy to recommend an independent financial adviser should it be required), and you should continue to refer to your Mortgage Lender or Broker in this regard.

### Checking the Title

As part of our obligations to the Lender, we will be required to examine the title documents to the property to ensure everything is in order and to confirm that there are no defects in the legal title. These are either the original Title Deeds or Official Copies of the Registered Title and Title Plan (depending upon whether the property is unregistered or registered) and, if the property is leasehold, a copy of the Lease. We will also need to confirm the accuracy and extent of property and land being remortgaged, and to ensure that you own the property and have the legal right to remortgage it. In law, we call this 'investigating title'.

If you have had your property altered or extended in any way (for example a conservatory or

loft extension), the Lender will want to ensure that the building works were completed in accordance with all relevant Planning Permissions and Building Regulations. Copies of these will need to be obtained and checked to ensure that the modifications are both sound and not in contravention of planning laws.

If a defect in the Title to the property becomes apparent, you may be required to rectify this prior to mortgage funds being released. This is sometimes done by way of obtaining retrospective consent, as in the case of a breach of planning regulations, or by obtaining an insurance policy (called an 'Indemnity Policy'), which we can arrange on your behalf. If a defect in title is not rectified, your Lender may refuse to lend money on the property unless, and until, the defect is corrected as it will undoubtedly affect both its value and marketability.

## Searches

As part of the remortgage process, the Lender will require that certain property searches are obtained in respect of the property. The term 'property searches' covers a number of different searches offered by Local Councils, Government Agencies, utilities and commercial organisations, the aim of which is to provide you with information about any potential restriction, benefits and conditions which affect the property and, ultimately, your use and enjoyment of it. The main searches required are:

### *Local Authority Search (approximately £100 - £150)*

Local Councils maintain a large amount of data relating to properties in their area and searches of these records will reveal whether the property is:

- affected by nearby road schemes or parking restrictions;
- the subject of a Compulsory Purchase Order;
- in a conservation area;
- abutting a road adopted by the Council and maintainable at public expense;
- subject to breaches of planning laws;
- in a smokeless zone;
- subject to a Tree Preservation Order; or
- a listed building.

### *Drainage and Water Search (approximately £45)*

The water utility companies offer a specialist search which will confirm whether:

- surface water and foul water at the property is connected to the public sewer;
- the property is connected to mains water; and
- there are any known sewers or mains drains running through the boundaries of the property.

### *Environmental Search (approximately £45)*

The Contaminated Land Regime was brought into effect in April 2000 and applies to all land, residential or commercial. The legislation states that all the Local Authorities in England and Wales must inspect and identify seriously contaminated sites and compile a register of contaminated land. Once a piece of land has been identified as contaminated, the Local Authority has the right to issue Remediation Notices, requiring homeowners to remedy the

contamination. This liability is unlimited and any delay in remedying the contamination can lead to penalties being imposed, on a periodic basis, until the contamination is removed.

Due to this potentially unlimited financial liability, it is necessary to commission an Environmental Report which will reveal whether there is any contamination (currently known), in respect of the property. It will also reveal a number of other issues, such as:

- flooding;
- radon gas emissions; and
- whether there was a past use which may have left unstable land, pollution or contamination behind.

#### *Mining Search (approximately £30)*

The Coal Authority holds and maintains the national coal-mining database and its search report will confirm if the property has been subject to a mining related subsidence claim and/or is situated on land suffering from ground instability. We will only commission this search if the property is located within a coal-mining area.

#### *Search Fees*

Because we have to pay the relevant authorities for the cost of these searches, we cannot order them until such time as we have received a payment on account from you (we usually request around £250 at the commencement of a transaction). It can take the relevant authorities up to three weeks to process the information provided in the search results, so it is important, if you wish to expedite matters, to let us have the money requested as soon as possible.

#### *Search Indemnity Insurance*

Sometimes, a Lender will accept a Search Indemnity Insurance Policy in place of a full Local Authority and Drainage and Water search on the property, which covers the Lender in the event of anything adverse arising and affecting the value of their security, which would have been revealed had full searches been undertaken.

If you were mortgaging the property for the first time, this would not be permissible. However, as the property is already mortgaged, the Lender is assuming that full searches were carried out by your current Lender and that the property has a 'clean bill of health' in relation to search results.

This is good news in terms of costs, as an insurance policy is considerably less expensive than obtaining full searches. It also means the transaction can proceed much faster as we do not have to wait for search results to be returned. However, not all mortgage lenders accept search indemnity insurance and we will not be able to advise you of the full position until we have seen a copy of the Mortgage Offer.

If a Search Indemnity Insurance Policy is permissible, there are one or two points of which you should be aware:

- The policy would only cover your Lender, not you, in the event of a defect arising, and insures against the property against the difference in market value of the property without the defect as against the market value of the property with the defect; the cost of correcting the defect, and for any loss suffered by the Lender as a result.

- The policy covers all relevant searches except Environmental searches, which means you would remain liable for the cost of correcting any contamination or other issues in the event of problems arising, which would have been revealed had an Environmental search been carried out.

## Valuations & Surveys

Prior to the Mortgage Offer being issued, your Lender will arrange for a surveyor to attend the property and carry out a valuation. The purpose of the valuation is to ensure that there are no apparent defects in the state and condition of the property, and that it is worth the sum your Lender is lending on it. The Lender will usually provide you with a copy of the valuation and it is important that you forward a copy to us as soon as possible.

If the valuation reveals severe problems with the property, it is possible that your Lender will make a retention (withhold monies), equal to the sum the Lender estimates the repairs will cost. You will then have to carry out the repairs at your own cost to the satisfaction of the Lender's Surveyor and then the balance of the remortgage monies will be released. Alternatively, the Lender may reduce the amount of the loan on account of the defects and re-issue an amended Mortgage Offer.

## Pre-Completion

Once our investigations in relation to the property have been completed to the satisfaction of your Lender and we have confirmed that all mortgage conditions have been complied with, we will make an appointment for you to come in and sign the Mortgage Deed. If this is not convenient, we can go over any outstanding points via the telephone and post the Mortgage Deed out to you for signature.

At this point, we will ask you to decide upon a Completion date, which will then be notified to your new Lender. 'Completion' simply means the date on which the transaction is finalised. Please remember that the new Lender will require, on average, 5 working days notice before they will transfer the mortgage monies to our bank account, which needs to be taken into consideration when deciding upon a Completion date. Completion can also only take place on a weekday.

### *Redemption Statement*

Prior to Completion, we will obtain a redemption figure in respect of the current mortgage and confirm the figure with you. Please do not cancel direct debits or standing orders relating to mortgage payments until such time as Completion has taken place, as redemption figures are based on the fact that payment is maintained up to the date of Completion. If there is a shortfall, the mortgage will not be discharged which may result in serious financial penalties. It is particularly important that you inform us if your current mortgage is linked to any business or personal overdraft facility or any other borrowing relating to a business, as this will also affect the redemption figure.

### *Final Searches*

Immediately before Completion, some last-minute searches are made, which include:

- A Land Registry Search – this will reveal whether any further undisclosed mortgages or charges have been registered against the property between our initial title document check and Completion.
- A Land Charges Search - this search is required by the new Lender and reveals whether there are any entries against your name on the Bankruptcy Register.

## Completion

On the morning of the appointed day of Completion, the new Lender will transfer funds to our bank account. It will then be necessary for your current mortgage (and any other secured loans on the property) to be repaid in full and we will attend to repayment of these on your behalf.

If there are any surplus funds after payment of our fees and any other professional fees (such as Mortgage Broker's fees), these will either be wired to your nominated bank account or a cheque posted out to you.

### *Life Policies*

It will be your responsibility to ensure that any life policy, endowment policy or other such investment or security is put on risk on Completion. We may require you to send us a copy of the confirmation or cover schedule so that we can report to your new Lender that this condition of the mortgage offer has been satisfied.

## Post Completion

Once we are in receipt of the receipted discharge form from your previous Lender confirming the old mortgage has been repaid in full, we will proceed to register the new mortgage at HM Land Registry. Once this process has been completed, which can take up to 3 weeks, we will forward you the up-to-date Office Copy Entries of your Registered Title showing that the previous Lender's name has been removed and replaced with the new Lender's name. During this period, your new Lender will write to you to inform you of the amount of your first repayment and when it is due

Following Completion, we will send you a completion statement giving a complete breakdown of the financial side of the remortgage, together with our receipted account. The legal formalities are then complete.

## Timescales

The time it takes to remortgage a property varies from transaction to transaction depending on a number of factors, for example, how quickly the Mortgage Offer is issued, how quickly the searches are returned from the Local Authority, and how quickly it takes to investigate the title to the property. Leasehold properties tend to take slightly longer because of the additional time spent examining the Lease on behalf of the Lender (often up to 80 pages long), and in waiting for information from the Landlord and the Management Company. If there is more than one mortgage secured against the property, this can also slow things down considerably.

If the property is freehold, and the new Lender will accept search indemnity insurance, and no unforeseen complications arise, the whole process can be completed within 2 weeks. However, much rests on factors outside of our control although we will keep you advised of progress throughout and keep you informed of the likely timescale for completion.

If you require any further information or have any queries please contact Rebecca Soar, Head of Residential Property on 01159 471 501 or email her at [rsoar@fraserbrown.com](mailto:rsoar@fraserbrown.com)



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