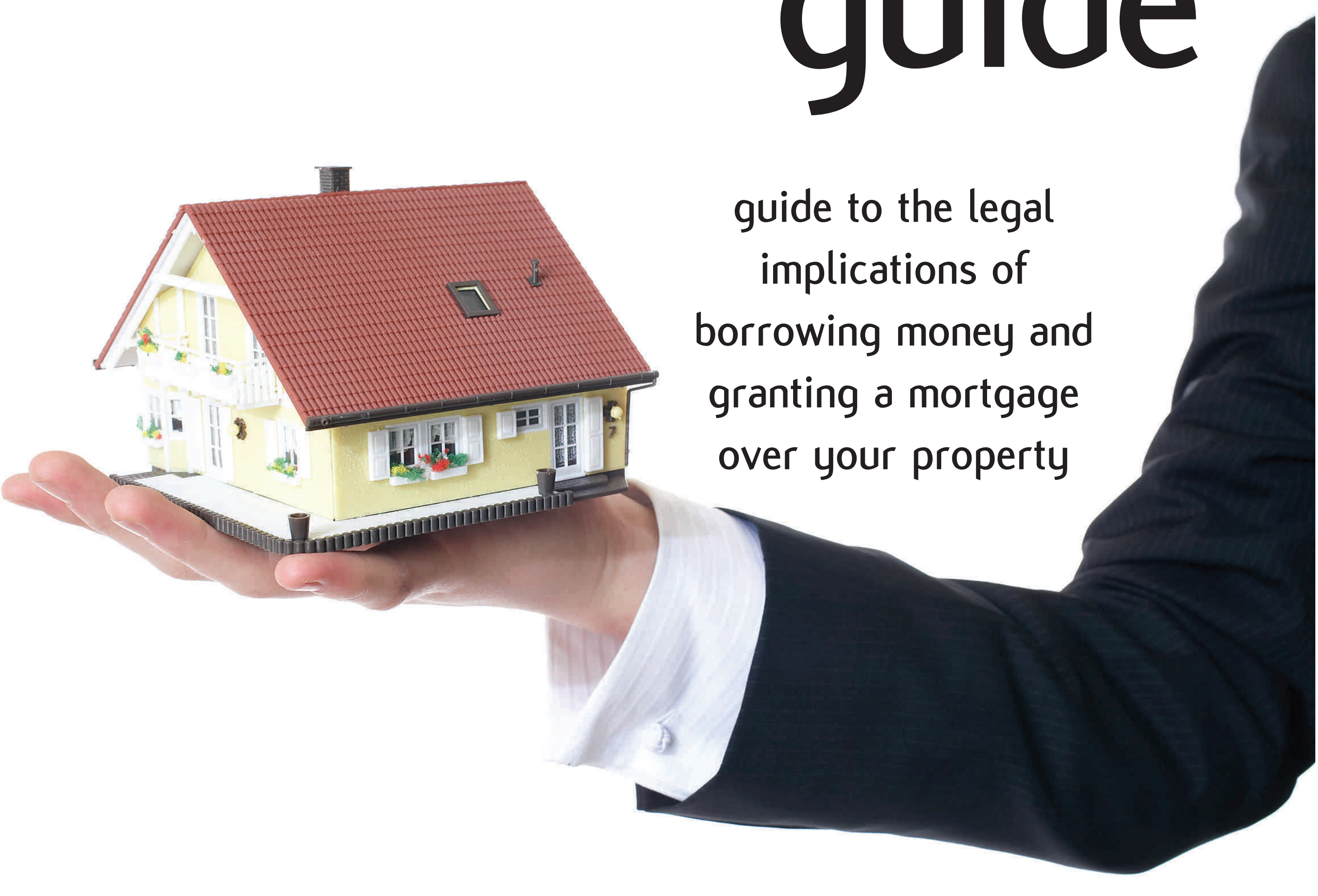
peterkins solicitors

mortgage obligations guide



guide to the legal implications of borrowing money and granting a mortgage over your property

mortgage documents • offer of loan • standard security (undertaking to pay)
standard security (mortgage) • your obligations • what your lender can do if you default
mortgage guarantee policies • joint borrowers • life assurance policies • mortgage valuation

mortgage documents

mortgage documents

There are two main documents:

- an Offer of Loan made by your lender; and
- a Standard Security granted by you to your lender.

Conditions will apply to your mortgage. Some of these will be set out in the Offer of Loan and some in the Standard Security. Others will be set out in other documents which are mentioned in the Offer and Standard Security.

Copies of the Offer and the Standard Security and the other documents which they mention will be sent to you.

The Standard Security has two distinct parts:

- an undertaking by you to pay all money due by you to your lender (Part 1); and
- a security (mortgage) over the house (Part 2).

offer of loan

The Offer tells you:

- how much the lender is willing to lend: and
- the conditions that will apply if you accept the Offer.

Sometimes some of the conditions will be set out in a separate booklet.

Please read the Offer and any separate booklet carefully.

Take note of the term of the loan (i.e. the period of time for which it is granted, frequently 20 or 25 years). Will any penalties apply if you repay any part of the loan early? Are these acceptable to you?

It will be a condition of the loan that a mortgage is granted over your house. Your house will therefore be at risk if you don't comply with the whole conditions of the mortgage. See the sections of this Guide headed "your obligations" and "what your lender can do if you default."

Make sure that you are satisfied with the conditions before you sign any acceptance of the Offer or any of the other mortgage documents.

If you don't understand any of the conditions or are unhappy about them please discuss with us.

standard security (undertaking to pay)

The Standard Security will contain an undertaking by you to pay:

- the loan that you are borrowing just now;
- any other loans that you may borrow in the future;
- interest on those loans at whatever rate applies from time to time; and
- all costs and expenses that are due to your lender under the conditions of the Offer of Loan and/or the Standard Security.

You will have to repay the loan at the end of the mortgage term. The mortgage term will be specified in the Offer of Loan. Your lender can demand earlier repayment if you don't comply with the conditions. See the section of this Guide headed "what your lender can do if you default."

If your lender is a bank then the undertaking will often include an undertaking to repay all sums that you owe to the bank whether borrowed directly by you or not.

For example:

- if you have borrowed or in the future borrow money from the bank for another purpose (e.g. overdraft, car loan, business borrowings), or

- if you have acted or in the future act as guarantor or cautioner for another person or firm or company then any sums due by you to the bank under these arrangements will be covered by the undertaking and mortgage which you are now granting. In other words, your house will be at risk if you don't comply with any of your other obligations to the bank.

standard security (mortgage)

The Standard Security creates the mortgage over the house. Usually it also contains the Undertaking explained earlier in this Guide.

The conditions that apply to the Standard Security are set out in the following separate documents which are mentioned in the Standard Security:

- Schedule 3 of the Conveyancing and Feudal Reform (Scotland) Act 1970 and 1971; and
- (usually) a separate Schedule of Variation or Deed of Conditions issued by your particular lender and that amends the conditions specified in Schedule 3.

Copies of these will be given to you before you sign the Standard Security.

It is important for you to know these conditions so that you can comply with them. Please read the documents and ask us about anything that you don't understand before you sign the Standard Security.

The conditions are lengthy and vary slightly from lender to lender. We cannot include a full summary here but we would point out that the following are always included.

You must have the written consent of your lender before:

- leasing the house;
- letting anyone else occupy the house; or
- carrying out any alterations to the house.

your obligations

You must:

- keep the house adequately insured at all times.
- make all payments due to your lender at the time they become due;
- comply with all the conditions of the Offer of Loan; and
- comply with all the conditions of the Standard Security.

If you don't fulfil any of these obligations then you will be in default. The next section of this Guide explains what can happen if you are in default.

what your lender can do if you default

If you don't fulfil these obligations, your lender can:

- demand immediate repayment of the whole loan and all other sums that you owe; and
- take possession of your house and sell it or dispose of it so as to recover as much as possible of the money that you owe.

In these circumstances the lender will follow the general principles of the Council of Mortgage Lenders' Statement of Practice on Handling Arrears and Possessions, including:

a) the Lender will consider cases of financial difficulty and mortgage arrears sympathetically.

b) with your co-operation, develop a plan with you for dealing with your financial difficulties and clearing the arrears, consistent with both your interests and those of the Lender.

c) possession of your property will be sought only as a last resort when attempts to reach alternative arrangements with you have been unsuccessful.

If selling your house, your lender should take steps to make sure that the best price is obtained. But if the sale price is less than the amount you owe, then your lender can recover the balance from you.

higher lending charges

A higher lending charge is an insurance policy that gives some protection to a lender in a situation where a lender sells a house and still recovers less than the amount owed. Most lenders will insist that a guarantee policy is obtained if they are lending more than around 70 to 80 percent of the value of the house. This is because house values fluctuate and they recognise that the house may not be adequate security for the full amount of the loan. Borrowers pay for these policies, usually in the form of a one-off payment.

If your lender sells your house for less than the amount that you owe, then your lender may try to recover some or all of the outstanding balance from the insurers. If the insurers pay your lender then they will normally reclaim from you the amount which they have paid. This happens even although it was you who paid the insurance premium.

joint borrowers

If you are borrowing money along with another person (or more than one person) then you must consider the following:

- The undertaking to repay will be binding on you both (or on you all) jointly and severally. This means that your lender can recover the **whole** amount due from **either** (or any) of you. If this happens to you then you will have to try to reclaim the proportion due by the other borrower (or borrowers) directly from him/her/them.
- This may be particularly significant if your lender is a bank. Remember what is stated in the last paragraph of the section of this Guide headed "Standard Security (undertaking to pay)."
- If your lender is a bank you normally undertake personal liability not only for the loan borrowed by you both (or all) together but also for all other sums that either (or any) of you may owe the lender. In other words, you may become liable for repaying money which is due by another borrower - e.g., overdrafts, car or other loans, business borrowings, sums guaranteed by another borrower.
- If you have a joint bank loan it is essential that you trust the other borrower (or borrowers) absolutely. You can become liable for their debts! Do they have any? Are they likely to have any in the future?
- If any of the joint borrowers have other loans from the bank or if any of them have acted as guarantor or cautioner for another person or firm or company, then please tell us about this before signing any of the documents required by the bank. We will then discuss the implications more fully with you.
- Your house will be at risk not only if you default on your house purchase loan but also if a joint borrower defaults on the conditions of any other loans or obligations to the bank.

life assurance policies

You will usually have life assurance cover for the amount of your mortgage.

Occasionally lenders will want your life assurance policies to be assigned to them. Where this is required, you assign to your lender your whole right to the money payable under the policies. This means that when the sums assured become payable, they will be paid to your lender rather than to you. If the amount paid to your lender is more than the amount needed to repay the loan, then your lender will account to you for the difference.

If you have chosen to repay your loan by means of an endowment or unit linked policy or by means of a pension plan then you will need the proceeds of these policies or plans to repay the mortgage at the end of the mortgage term.

It is very important that you maintain the payments on these policies or plans and do not allow them to lapse. You have full responsibility for this.

If they lapse:

- there will not be enough money to repay the loan; and
- you will be in default on your mortgage (because the Offer of Loan will make it a condition that the policies or plans are maintained).

mortgage valuation

Any valuation of your property that is instructed by, or on behalf of, your lender is a valuation for mortgage purposes only. It is not a survey and you should not rely on it. It is carried out only for your lender's benefit and your lender's interest is not exactly the same as your own.

The sole purpose of the report is to assess the value of the property as security for your lender. It does not disclose the detailed information that you would normally want to have for your own benefit. There may be defects in the property that are not disclosed in the report.

Both we and your lender recommend that you obtain a survey report for your own benefit before purchasing.