

# SOLAR PANEL LEASE MINIMUM REQUIREMENTS



## Legal advice is recommended

Kensington recommends that the applicant seeks legal advice on the terms of the solar panel lease and the possible impact of the lease on the value of the property and the ability to sell and/or re-mortgage the property in the future. Where legal advice is sought, Kensington will require the applicant's solicitor to provide written confirmation that this advice has been provided. In circumstances where the applicant does not wish to obtain legal advice, Kensington requires the applicant to provide Kensington with written confirmation acknowledging:

- a. that Kensington has recommended the applicant seek legal advice on the terms of the proposed solar panel lease;
- b. that committing to a lease of the airspace above the property is a long term legal commitment which may cause difficulties should the applicant wish to re-mortgage or sell their property in the future; and
- c. confirming the applicant has chosen of their own free will to not obtain legal advice.

## Kensington requires, and its legal representative is to check, the following:

1. If the Property is Freehold, our solar panel lease minimum requirements must be satisfied. If Leasehold, a solar panel lease is only acceptable on new build leasehold flats within a block where solar panels are communal. If the solar panel lease affects the individual leasehold flat or there are requirements on the individual leaseholder, our minimum requirements must be satisfied. If the solar panel lease does not affect the individual leasehold flat and there are no requirements on the individual leaseholder, our minimum requirements do not need to be satisfied. Please contact us for further details if required.
2. Evidence of the installing solar panel company's accreditation under the MCS scheme.
3. Evidence that the solar panel company and installer are members of the REAL Assurance Scheme.
4. A copy of the proposed roof lease along with a **coloured** copy of all plans or exhibits referred to in the lease.
5. Evidence of the installing solar panel company's insurance policy/indemnity insurance policy to include cover in respect of public liability, the installation, and for any damage the solar panel company (and its successors in title and/or assigns) causes to the security property when it or any agent acting on its behalf installs, re-installs maintains or removes the solar panels and associated system ("the System").
6. The applicant to ensure their buildings and contents insurers are notified of the System.
7. That there are the following in place:
  - (i) all necessary statutory consents, including but not limited to planning permission, building regulation consent, listed buildings consent, restrictive covenant permission and any other relevant title permissions and third party consents have been obtained;
  - (ii) the borrowers are able to give any warranty/title warranty and have sufficient interest to grant the lease; and
  - (iii) it has been confirmed by a suitably qualified surveyor that the roof is capable of supporting the panels and that the installation of and/or presence of the solar panel system will not adversely affect the value of the property.

## In terms of the proposed solar panel lease:

8. Our legal representative is to review the lease to see if our minimum requirements are met.
9. If the lease does not meet our minimum requirements, in order for us to consent the lease will need to be amended and the deed of variation registered at the land registry on the appropriate title.
10. Our legal representative is to ensure that there has been a valid contracting out of the security of tenure provisions under the Landlord and Tenant Act 1954, where the lease applies to a property in England and Wales. In order to validly contract out, the landlord (borrower) must serve notice on the tenant (provider) in the prescribed form and the tenant must sign a declaration that he has received the notice and that they accept the consequences of contracting out. The lease must also contain reference to the exclusion agreement, notice and declaration. The signed contracting out notice and sworn declaration will need to be provided.

11. Our legal representative is to ensure that any definition of “mortgagee” and/or wording describing a lender/ mortgagee in possession under the terms of the lease is drafted to ensure that any charge holder and their assignees has the benefit of the definition and that this covers the lender in all default circumstances (not just limited to arrears). Kensington will require such definition to specify that a mortgagee means any financial institution/person or entity who has a registered legal charge on the freehold of the security property now and from time to time and should specify that the mortgagee is able to exercise its right to terminate the lease at any time after its power of sale under section 101 of the Law of Property Act 1925 has arisen. If any term of the lease is not currently in line with this requirement, we will require the lease term to be varied.
12. We require an **unconditional** right (once our power of sale under section 101 of the Law of Property Act 1925 has arisen) to terminate the solar panel lease upon serving written notice (with **no minimum** notice requirement) to the solar panel company. Following the notice to terminate being served, the solar panel company, must remove the solar panels and associated system (“solar panel system”), at its own cost, making good any damage, howsoever caused, within 14 days of receiving Kensington’s notice to terminate. Should the solar panel company fail to remove the solar panel system within the 14 days specified, then Kensington requires the ability to remove and dispose of the solar panel system, at the solar panel company’s cost, with no liability to the solar panel company whatsoever. If this requirement is inconsistent with the terms of the lease proposed, then the relevant lease terms will need to be varied.
13. Our legal representative is to ensure that the repair provisions of the lease are clear and favourable to Kensington in the event that the solar panels need to be removed if the roof needs repair work. It should clearly set out whether the Landlord or Tenant (i.e. PV provider) is responsible for the cost of removal of the panels in the context of repairing the roof.
14. Our legal representative is to ensure that the lease contains the requisite break clause including a provision that, where Kensington terminates the lease, the costs of removing the solar panels and making good any damage are expressly the responsibility of the PV provider (Tenant).
15. If the lease does not meet Kensington’s minimum requirements, we will require the lease to be varied. Any such variation of the lease is to be registered at the Land Registry.