

# ENGLAND AND WALES



Kensington

# CONSUMER SOLICITOR PACK

For use by professional(s) who hold a current Practising Certificate from the Law Society or a Fellow of the Institute of Legal Executives employed by such a solicitor.



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# CONSUMER MORTGAGE DEED

## (NOT FOR USE BY LIMITED COMPANY BORROWER)



This Mortgage Deed is made on the Date between the Borrower(s) and the Company. All capitalised terms in this Deed have the meaning given to them in the Kensington Mortgage Conditions 2020 Ref KMC20 (**the Mortgage Conditions**) unless otherwise defined.

<b>Date</b>	<b>Mortgage Conditions</b> Kensington Mortgage Company Limited Mortgage Conditions 2020 (the " <b>Mortgage Conditions</b> ")
<b>Lender</b>	Kensington Mortgage Company Limited (Company number: 03049877) whose registered office is at 2nd Floor, Marlow International, Parkway, Marlow, SL7 1YL and its successors and assigns including any legal and/or equitable assignee of this Mortgage Deed whether by way of security only and those deriving title under it or them (" <b>we</b> " or " <b>us</b> " or " <b>our</b> ")
<b>Property</b>	<b>Property:</b> Freehold/Leasehold land being:  Registered at the Land Registry with Title Number(s):  Administrative area:  (the " <b>Property</b> ")
<b>Mortgagor</b>	<b>Mortgagor:</b> Names of borrower(s):  of address:  (the " <b>you</b> " or " <b>your</b> ")

1. This Mortgage Deed incorporates the Mortgage Conditions. You agree to be bound by the Mortgage Conditions and the Mortgage Offer. You confirm that you have received a copy of the Mortgage Conditions.
2. You charge the Property with full title guarantee by way of a legal mortgage as continuing security for the payment of the loan (as defined in the Mortgage Conditions) and any other amount you owe us under any other agreement we have (or will have) with you while we still have security over the property (in accordance with condition 11.1 of the Mortgage Conditions).
3. This Mortgage Deed secures further loans (that is, other loans that we make to you at a later date) but does not oblige us to make further loans.

Form of charge filed at H M Land Registry under reference MD682M

4. You apply to the Land Registry for the following restriction to be registered in the Proprietorship Register of the title to the property:  
 "No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated in favour of Kensington Mortgage Company Limited referred to in the charges register."
5. This Mortgage Deed and our agreement with you are governed by the law of England and Wales.

**Warning:**

**Please note that if you sign this Mortgage Deed you will be legally bound by its terms. If this Mortgage Deed is signed by more than one borrower you will also be responsible for the others' debts and liabilities in addition to your own. If you do not pay us what you owe us when it is due or you do not comply with your obligations to us we may repossess and sell the Property.**

The witness must be over the age of 18 and cannot be a borrower, spouse, civil partner, cohabitee or an immediate family member of a borrower.

You should obtain legal advice before you sign this Mortgage Deed.

<p><b>Signed and delivered as a Deed by (borrower 1):</b></p>   <p><b>In the presence of:</b> (Please write full name of Witness)</p> <p><b>Witness signature:</b></p> <p><b>Witness address:</b></p>  <p><b>Witness occupation:</b></p>	<p><b>Signed and delivered as a Deed by (borrower 2):</b></p>   <p><b>In the presence of:</b> (Please write full name of Witness)</p> <p><b>Witness signature:</b></p> <p><b>Witness address:</b></p>  <p><b>Witness occupation:</b></p>
<p><b>Signed and delivered as a Deed by (borrower 3):</b></p>   <p><b>In the presence of:</b> (Please write full name of Witness)</p> <p><b>Witness signature:</b></p> <p><b>Witness address:</b></p>  <p><b>Witness occupation:</b></p>	<p><b>Signed and delivered as a Deed by (borrower 4):</b></p>   <p><b>In the presence of:</b> (Please write full name of Witness)</p> <p><b>Witness signature:</b></p> <p><b>Witness address:</b></p>  <p><b>Witness occupation:</b></p>

# DEEDS SCHEDULE



Three copies of this form have been provided. Please retain one copy and send two copies, together with the title deeds and documents, to Kensington Mortgage Company Limited, PO Box 831, Redhill, RH1 9NJ.

Dated	
Relating to Application/ Account Number	
Borrower(s)	
Property address as shown in the Mortgage Deed	
Title Number(s)	
Date of Mortgage Deed	

Please list separately overleaf ALL documents enclosed but please indicate with an X which of the following items are enclosed:

1		Title Information Document
2		Conveyance and Examined Abstract/Epitome in the case of unregistered land
3		Original Mortgage Deed
4		Lease (and assignment) (if applicable)
5		Certified copy Head lease (if applicable)
6		Certified copy of buildings insurance
7		Copy signed Certificate of Title
8		Original Occupier's Deed of Consent (if applicable)
9		Notice of Charge to Landlords (if applicable)
10		Ground rent and service charge receipts (if applicable)
11		NHBC or similar (if applicable)
12		Deed of Gift Indemnity Policy (if applicable)
13		Original Share Certificate (if applicable)
14		Original undated executed stock transfer form (if applicable)
15		Original Deed of Postponement

Please list overleaf all documents enclosed (including those indicated above).

In pursuance of the Law Society's recommendations, pre-registration deeds relating to properties now registered should be removed (with the Borrower's concurrence) and should not be included.

## Deeds Schedule(s)

Please list the documents in chronological order.

Date	Description of document	Parties

# OCCUPIER'S DEED OF CONSENT



**Warning: This is an important legal document and once you have signed it you will become legally bound by its terms. We strongly recommend that you obtain independent legal advice from a solicitor before you sign this document.**

Date	
Lender	Kensington Mortgage Company Limited (Company number: 03049877) whose registered office is at 2nd Floor, Marlow International, Parkway, Marlow, SL7 1YL and its successors and assigns including any legal and/or equitable assignee of the Mortgage Deed whether by way of security only and those deriving title under it or them (the " <b>Lender</b> " or " <b>we</b> " or " <b>us</b> " or " <b>our</b> ")
The Borrower(s)	of  (insert address) (the " <b>Borrower(s)</b> ")
Occupier(s)	of  (insert address) (" <b>I</b> " or " <b>me</b> " or " <b>you</b> ")
The loan	The initial advance made to the Borrower(s) (the " <b>Loan</b> ")
Property	registered at the Land Registry with Title Number(s) (the " <b>Property</b> ")
Borrower's obligations	The Loan and all interest and other sums now or in the future owed by the Borrower(s) to the Lender and secured by the Mortgage (the " <b>Borrower's Obligations</b> ")
The mortgage	The mortgage on the Property securing payment by the Borrower(s) to the Lender of the Borrower's Obligations (the " <b>Mortgage</b> ")

**This deed is to be signed by each person (other than the Borrower(s)) aged 17 years or over who will live in the property.**

By executing this Deed, the Occupier agrees as follows:

1. I understand that the Lender has been asked to provide the Loan on the security of the Mortgage and that the Mortgage will be a continuing security for all amounts (including additional borrowings) owed to the Lender. I consent to the creation and registration of the Mortgage;
2. I am, or will be, in occupation of the Property and agree to postpone any right or interest in the Property which I may have or acquire to that of the Lender under the Mortgage;
3. I agree that I will not claim against the Lender any interest in the Property (including overriding interests or otherwise) or any right to live in the Property (whether arising from agreement, statute, common law, or otherwise) and any such rights that I have now or later are postponed and subject to the rights of the Lender;
4. I realise that this means that if the Lender exercises its rights to possession of the Property because the Borrower(s) has/have not complied with the Borrower's Obligations I will have no right to stay in the Property and will have to leave;
5. I agree to the Lender making the Loan and any further loans to the Borrower(s) upon the security of the Mortgage;

6. I confirm that the Lender may assign, charge or otherwise dispose of its interests in the Loan and/or the Mortgage without obtaining any further consent from me or giving me notice;
7. I agree that the Lender shall be entitled to exercise any remedies under the Mortgage or otherwise available without reference to me in priority to the Lender and so as to override any right or interest which I may have in or over the Property;
8. I agree that none of the above will be affected by the giving of time or other indulgence to or any arrangement with the Borrower or any other matter whatsoever; and
9. I confirm that, before signing this document, I was strongly advised to take independent legal advice from a solicitor of my choice and I have had a reasonable opportunity to do so.

**Note: The witness to this deed must be over the age of 18 and cannot be a borrower, spouse, civil partner, cohabitee or an immediate family member of the borrower or occupier.**

**Occupier 1 (please tick one box to confirm)**

Independent legal advice has been obtained	<input type="checkbox"/>	I confirm that before signing this Deed, I obtained independent legal advice from a solicitor of my choosing and therefore understand the nature and implications of signing this Deed.
Independent legal advice has been waived	<input type="checkbox"/>	<p>I confirm that:</p> <p>a) before signing this Deed, I was strongly advised by the Lender to obtain independent legal advice from a solicitor;</p> <p>b) I have decided to waive my right to obtain independent legal advice; and</p> <p>c) I fully understand the nature and implications of signing this Deed and that choosing to waive my right to obtain independent legal advice will preclude me from claiming that I did not understand the nature and contents of this document.</p>

**Signed and delivered as a deed by Occupier 1**

Name (Print name)	
In the presence of	
Witness signature	
Witness name	
Witness address	
Witness occupation	

**Occupier 2 (please tick one box to confirm)**

Independent legal advice has been obtained	<input type="checkbox"/>	I confirm that before signing this Deed, I obtained independent legal advice from a solicitor of my choosing and therefore understand the nature and implications of signing this Deed.
Independent legal advice has been waived	<input type="checkbox"/>	<p>I confirm that:</p> <p>a) before signing this Deed, I was strongly advised by the Lender to obtain independent legal advice from a solicitor;</p> <p>b) I have decided to waive my right to obtain independent legal advice; and</p> <p>c) I fully understand the nature and implications of signing this Deed and that choosing to waive my right to obtain independent legal advice will preclude me from claiming that I did not understand the nature and contents of this document.</p>

**Signed and delivered as a deed by Occupier 2**

Name (Print name)

In the presence of

Witness signature

Witness name

Witness address

Witness occupation

**Occupier 3 (please tick one box to confirm)**

Independent legal advice has been obtained

I confirm that before signing this Deed, I obtained independent legal advice from a solicitor of my choosing and therefore understand the nature and implications of signing this Deed.

Independent legal advice has been waived

I confirm that:

- a) before signing this Deed, I was strongly advised by the Lender to obtain independent legal advice from a solicitor;
- b) I have decided to waive my right to obtain independent legal advice; and
- c) I fully understand the nature and implications of signing this Deed and that choosing to waive my right to obtain independent legal advice will preclude me from claiming that I did not understand the nature and contents of this document.

**Signed and delivered as a deed by Occupier 3**

Name (Print name)

In the presence of

Witness signature

Witness name

Witness address

Witness occupation

# DEED OF POSTPONEMENT



This Deed is made on the Date below between the Existing Lender and the Company and is supplemental to the Borrower's Mortgage. All capitalised terms in this Deed have the meaning given to them in the Kensington Mortgage Conditions 2020 Ref KMC20 (the **Conditions**) unless otherwise defined.

<b>Date</b>	
<b>The Existing Lender</b>	
<b>The Company</b>	<b>Kensington Mortgage Company Limited</b> trading as Kensington (incorporated in England and Wales with company number 03049877 and having its registered office at 2nd Floor, Marlow International, Parkway, Marlow, SL7 1YL) together with its Transferees, successors and assigns (including any legal or equitable assignee of the Mortgage, whether by way of absolute assignment or by way of security only and those deriving title under it or them)
<b>The Borrower</b>	
<b>Account Number</b>	
<b>The Property</b>	
<b>Title Number(s)</b>	
<b>The Existing Lender's Mortgage</b>	A mortgage dated _____ over the Property granted by the Borrower to the Existing Lender
<b>The Company's Mortgage</b>	A mortgage dated _____ over the Property granted by the Borrower to the Company
<b>Priority amount</b>	The amount detailed in Clause 3 of this Deed

**THIS DEED WITNESSES** as follows:

1. The Existing Lender agrees that the Company will register the Company's Mortgage over the Property.
2. The Existing Lender hereby agrees to postpone the Existing Lender's Mortgage (and any other rights of the Existing Lender over the Property or the proceeds of sale thereof) to rank in priority after and take effect subject to the Company's Mortgage as continuing security for the payment to the Company of the Priority Amount, calculated both before and from the date of any demand of payment.
3. The Priority Amount is the aggregate of the following amounts:
  - a. the Loan;
  - b. all interest thereon (including any interest pursuant to the Conditions) now and from time to time owing by the Borrower to the Company under the Company's Mortgage;
  - c. all costs, fees and Expenses from time to time incurred by the Company in accordance with the Conditions
4. The Company and the Existing Lender will hold on trust any money received pursuant to the Company's Mortgage or the Existing Lender's Mortgage respectively to give effect to the priorities declared by this deed.
5. The priority conferred by this Deed upon the Company's Mortgage and the rights and remedies of the Company thereunder shall not be prejudiced or affected by any intermediate payment or satisfaction of the whole or any part of the loan, interest thereon, or the costs, fees and Expenses for the time being secured thereby or by any further or other security (whether direct or collateral) held from time to time by the Company in respect of such loan, interest thereon, costs, fees and Expenses.
6. The Existing Lender hereby covenants with the Company that the Existing Lender will not exercise or purport to exercise its power of sale or power of appointment of a receiver or any other security enforcement power conferred on the Existing Lender under or pursuant to the Existing Lender's Mortgage without giving the Company not less than fourteen days' prior notice (except in the case of an emergency).
7. The Company and the Existing Lender will apply to the Chief Land Registrar to make a note of this Deed on the register of title of the Property.
8. This deed shall be governed and construed in accordance with the law of England and the parties to this deed irrevocably submit to the jurisdiction of the English Courts.

**IN WITNESS** of which this Deed has been:

Executed as a deed and delivered on the Date of this Deed by the Company acting by its authorised attorney in the presence of the Witness named below:

Signatory	
Signatory (print name)	
Witness	

\*Existing Lender delete as appropriate

<b>*Executed as a deed and delivered on the Date of this Deed on behalf of the Existing Lender acting by its authorised attorney:</b>	
Signatory	
Signatory (print name)	
Witness	

<b>*Executed as a deed and delivered on the Date of this deed by the Existing Lender acting by two directors or a director and its secretary:</b>	
Director	
Director/Secretary	

# DEED OF POSTPONEMENT IN RELATION TO EQUITY MORTGAGE (REMORTGAGE)



Date	
Homes and Communities Agency	

## HM LAND REGISTRY – LAND REGISTRATION ACT 2002

Administrative area	
Title Number	
Property	

THIS DEED OF POSTPONEMENT is made on	
<b>BETWEEN:</b>	
(1)	of (the <b>Mortgage Company</b> ); and
(2) <b>Homes and Communities Agency</b> , a body corporate established under Section 1 of the Housing and Regeneration Act 2008 of One Friargate, Coventry, CV1 2GN (which includes its statutory successors and assigns) (the <b>Lender</b> )	

<b>RECITALS</b>
(A) In this deed the following words and phrases shall have the following meanings:  the <b>Borrower</b> means  the <b>Equity Mortgage</b> means the [Help to Buy: Equity Loan]/[FirstBuy]/[HomeBuy Direct] equity mortgage in respect of the Property dated between the Borrower and the Lender;  the <b>Mortgage Company's Charge</b> means the legal charge of the Property dated and made between (1) the Borrower and (2) the Mortgage Company;  the <b>Property</b> means the property known as which is registered at HM Land Registry under the Title Number;  the <b>Title Number</b> means title number
(B) Pursuant to the requirements of the [Help to Buy: Equity Loan] / [FirstBuy] / [HomeBuy Direct] scheme, the Borrower entered into the Equity Mortgage which is to be postponed in the manner set out in this Deed
(C) Any reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees.

**NOW THIS DEED WITNESSETH** as follows:

1. The Lender hereby agrees with the Mortgage Company that the Equity Mortgage shall be postponed to the Mortgage Company's Charge and that the Mortgage Company's Charge shall have priority over the security constituted by the Equity Mortgage to the limit of £ \_\_\_\_\_ together with interest, costs, expenses and fees as provided in the Mortgage Company's Charge and any payments required by the Mortgage Company as a condition for early repayment of the Mortgage Company's Charge.
2. The parties hereto apply to HM Land Registry to enter a note of this deed against the registers of the Title Number.
3. It is agreed that the Mortgage Company's Charge and the Equity Mortgage shall be continuing securities for the repayment of all monies and liabilities thereby respectively secured notwithstanding any fluctuations in the amount of monies secured thereby from time to time or any credit balance on any account.
4. This deed may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered to any party shall be an original, but all the counterparts shall constitute one and the same instrument.
5. A person who is not a party to this deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.
6. This deed is governed by, and is to be construed in accordance with, English law. Each party agrees to irrevocably submit to the non-exclusive jurisdiction of the English courts.
7. This deed has been entered into on the date stated at the beginning of it.
8. **RESTRICTION CONSENT**  
 For the purposes of the restriction in the Lender's favour registered on \_\_\_\_\_ [Enter date restriction showing OCE's as registered] at entry number \_\_\_\_\_ of the proprietorship register of the Title Number (such restriction requiring the Lender's written consent to any disposition of the Property) the Lender hereby consents to the registration of the Mortgage Company's Charge.

**EXECUTED AS A DEED** by the parties to this document on the date which first appears in this deed.

The <b>COMMON SEAL</b> of	
<b>HOMES AND COMMUNITIES AGENCY</b>	
was hereunto affixed in the presence of:	Authorised signatory

# NOTICE OF CHARGE TO LANDLORDS



To:	
Date:	
Mortgagor/Tenant:	of  ("you" or "your")
Lender:	Kensington Mortgage Company Limited (Company number: 03049877) whose registered office is at 2nd Floor, Marlow International, Parkway, Marlow, SL7 1YL ("we" or "us" or "our")
Mortgage Account Number:	
Date of Assignment and Charge	
Property:	registered at the Land Registry with Title Number(s) (the "Property")

We, **HEREBY GIVE YOU NOTICE** that by a Mortgage Deed dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ the property comprised in the Lease, particulars of which are set out in the schedule below was charged to Kensington Mortgage Company Limited by way of mortgage to secure monies advances, any further advances Kensington Mortgage Company Limited make, and any related liabilities (including interest, costs and expenses) to us, your Tenant.

## Schedule – Particulars of the Lease

Date:	
Parties	1. 2. 3.
Property	

Signed:	
---------	--

For and on behalf of

To:	
-----	--

We hereby acknowledge receipt of your notice of which the above is a duplicate and undertake to:

1. notify the Lender of any proceedings commenced by us in respect of the Property or of our intention to exercise our rights of peaceable re-entry; and
2. endorse on our buildings insurance policy the interests of the Borrower(s) and to forward a certified copy of the policy and endorsement to the solicitors named above.

Signed:	
---------	--

For and on behalf of

Date:	
-------	--

# INDEPENDENT LEGAL ADVICE - SOLICITOR'S CERTIFICATE (ENGLAND & WALES)



Solicitor Name	
Company Name	
Company Address (A company stamped address is preferable but a written address is acceptable).	
Legal Qualification (Advice will only be accepted by a Solicitor authorised to practice in England & Wales and not by a Licensed Conveyancer).	

I am a solicitor qualified to practice in England & Wales with a current practicing certificate and professional indemnity cover and am acting for [insert name of individual/applicant] \_\_\_\_\_

I have given [Insert name of individual/applicant] \_\_\_\_\_ independent legal advice in respect of this proposed transaction:

Insert brief details of the proposed transaction identifying others involved and the subject property:

[Insert name of individual/applicant] \_\_\_\_\_ produced the following evidence of identity to me:

- I. original photographic evidence of personal identity; and
- II. original recent utility bill or other proof of address.

I explained to [Insert name of individual/applicant] \_\_\_\_\_ that it is a requirement of Kensington Mortgages that the nature and implications of the proposed transaction be explained to him/her and I am satisfied that he/she understands the nature and consequences of the transaction and is freely entering into it.

I have explained to [Insert name of individual/applicant] \_\_\_\_\_ any risks if the transaction proceeds and he/she has confirmed he/she is content for transaction to proceed.

My advice was given at a face-to-face meeting with no other party in attendance.

**Once completed, please submit this certificate on the firms letter headed paper**

Solicitor's signature (Please provide a wet ink signature)	
Date	

# SOLICITORS' SUPPLEMENTAL INSTRUCTIONS (1)



**Please note that we create and trade mortgage assets and it is imperative that our mortgage is secured by a promptly registered fully enforceable first ranking legal charge over the property. Should we incur any costs to ensure our charge is correctly registered we will seek to recover these from yourselves.**

**In order to act on our behalf you must hold a current practising certificate and your firm must be managed by a minimum of three SRA approved managers and be a registered member of the Law Society's Conveyancing Quality Scheme (CQS). If your firm is managed by two or fewer SRA Approved Managers and/or is not a registered CQS member, you should return these instructions immediately stating this fact.**

## **Please also note that:**

1. These solicitor's supplemental instructions are supplemental to and do not detract from the generality of the instructions contained in the UK Finance Mortgage Lenders' Handbook. Please therefore ensure that you comply with the Handbook and in particular our specific requirements in Part 2.
2. In the event that you are acting for any party other than the borrower and Kensington Mortgage Company Limited (trading as Kensington or Kensington Mortgages (the "Lender") in this transaction you should immediately notify the Lender.
3. Any references to the Lender include Kensington Mortgage Company Limited trading as Kensington or Kensington Mortgages its subsidiaries, its transferees, successors and assigns (including any legal or equitable assignee of the mortgage, whether by way of absolute assignment or by way of security only) and those deriving title under it or them.
4. Any references to the 'borrower' mean all of the borrowers if there is more than one of them.
5. All terms in bold shall have the meaning given to them in the Kensington Mortgage Conditions 2020.
6. Paragraph 1.12 of the Handbook does not apply.
7. Unless the offer says otherwise, the requirements of the Handbook and these instructions must be satisfied before we release any loan. If any of the requirements cannot be satisfied, you should report this to us so that we can consider whether to lend. If you need to notify us of or take our instructions on any matter in order to comply with our instructions, please ensure you do so before submitting your certificate of title and well in advance of the anticipated date of completion.

## **Explanation to the Borrower**

8. You should explain to each borrower (and any other person signing a document, such as a guarantor) the conditions of the mortgage and their responsibilities and liabilities. In particular please ensure that they are informed that:
  - a. the fees and charges which may be charged throughout the life of the mortgage and the fact that these fees and charges may be varied over time;
  - b. any fees or charges which will be imposed on an early redemption of the mortgage;
  - c. that although the Lender does not require life cover as a condition of the mortgage, the consequences for the borrower if they choose not to take out such cover;
  - d. that if the mortgage is an interest only mortgage or any element of the mortgage is to be made on an interest only basis, that it is the borrower's responsibility to arrange for the capital repayment of the loan or that element of the debt at the end of the term and to take out life cover for the term of the loan if considered appropriate (in particular please explain that where an endowment or pension policy or other savings instrument is put in place by the borrower, the borrower must seek advice from a broker that the proceeds will be sufficient to repay the capital at the end of the mortgage term – the Lender does not provide or sell, nor hold itself out as having any expertise to advise in relation to the value, suitability or benefits on maturity of such policies or savings instruments);
  - e. that the declarations which they have made in the mortgage application are incorporated in the mortgage, and must not in any way be misleading or false;
  - f. that the valuation report has been prepared by the valuer (who is not the Lender's agent) for the Lender's use for mortgage purposes only and that neither the Lender nor the valuer are under any liability for negligence or on any basis whatsoever to the borrower in respect of the value or the state or condition of the property; and
  - g. that in accordance with clause 11.1 of the Mortgage Conditions the mortgage is security for the loan and for any other amount the borrower owes us under another agreement we have (or will have) with the borrower whilst we still have security over the property.
  - h. where the loan term goes beyond the borrower's state retirement age, that the borrower's retirement income must be sufficient to allow the borrower to afford the loan repayments for the full term of the loan.

## Buildings Insurance

9. You are required on our behalf to ensure that the buildings insurance complies with the requirements of the mortgage conditions and meets the following specific requirements:
- We require that all the following risks are covered in the insurance policy:  
fire; lightning; aircraft; explosion; earthquake; storm; flood; escape of water or oil; riot; malicious damage; theft or attempted theft; falling trees and branches and aerials; subsidence; heave; landslip; collision; accidental damage to underground services; professional fees, demolition and site clearance costs; and public liability to anyone else.
  - If the listed risks are not covered, please report to us.
  - The policy must include:
    - o the insurance policy number
    - o the sum insured
    - o the address of the insured property
    - o the start and end date of the policy (or the start date and duration of the policy)and be on the insurers headed paper
  - The sum insured must be greater than or equal to the reinstatement value as set out in the valuation and be index linked.

If the property is not insured in accordance with our requirements you must report this to the Lender.

10. The insurance must be in place from exchange of contracts.
11. You should explain to each borrower their responsibilities and liabilities in relation to buildings insurance. In particular please ensure they understand that the insurance must be maintained throughout the mortgage term and that we have the right to request evidence of insurance and where this is not provided or is not adequate, we may (but are not obliged to) insure the property or our financial interest in the property. Where we do arrange such insurance we may charge the borrower for this.

## Additional Requirements in relation to Title

12. The borrower's title to the property must be absolute freehold or absolute or good leasehold title (in the case of registered land) or a fee simple absolute in possession or a term of years absolute (in the case of unregistered land). Possessory title is not acceptable unless appropriate arrangements acceptable to us are made. Please contact us if the borrower's title is possessory. The requirements of the Handbook are amended accordingly.
13. You should ensure that, where applicable, the property is acquired by the borrower(s) with a full title guarantee. In the event that a limited title guarantee only is to be given, you should report this to us. The requirements of the Handbook are amended accordingly.
14. The borrower must be the absolute beneficial owner of the property and must not be purchasing it as nominee for another nor hold any part of it on trust for anyone else, nor must anyone else be given any option or other right to buy it from the borrower. The solicitor must report to the Lender at once if the borrower is not to be the absolute beneficial owner or if such an arrangement exists.
15. If the property address on the title deeds and your certificate of title is not identical to the address we have quoted on the offer please confirm that the properties are one and the same.
16. Please also confirm that (a) the property to be mortgaged to us is as described in the valuation report; and (b) that the whole of the property as valued will be mortgaged to us
17. Please note that where the property is newly built, in addition to the requirements in the Handbook, the property must be completed to the satisfaction of our valuer.
18. You should report to us immediately if the seller is a relative of the borrower.

## Other Occupiers

19. Unless the offer is for a buy to let mortgage or second home mortgage, it is a condition that the property be used by the borrower for their own domestic residence and occupation. If you have any information which suggests that this might not be the intention of the borrower, you must report this to the Lender at once.
20. You must advise the borrower that unless the mortgage is a buy to let mortgage any letting of the property is prohibited unless the Lender consents and draw the borrower's attention to the Lender's right to increase the interest rate payable if there is any letting.
21. You must advise the borrower that the property can only be let in accordance with our letting criteria in force at that time. Our current letting criteria are set out below:
- The letting may only be to an individual or individuals who occupy the whole of the property under one agreement unless we have agreed in writing that the Property can be used as an HMO.
  - Where the letting is to an individual or individuals in England the agreement must be an Assured Periodic Tenancy ("APT").
  - Where the letting is to an individual or individuals in Wales:
    - a) If the tenancy started before 1 December 2022, the tenancy must be an Assured Shorthold Tenancy Agreement of not more than 24 months with a break clause at the midpoint. On or after 1 December 2022, such a tenancy agreement will by virtue of the relevant legislation automatically change into an occupation contract. The tenants will become contract-holders. The Borrower must ensure that a written statement of the occupation contract that meets the terms of the Renting Homes (Wales) Act 2016 ('RHWA') is given to the contract-holders within six months of 1 December 2022. Where the current tenancy agreement includes the right to recover possession under ground 2 of Schedule Two of the Housing Act 1988, then the written statement must explain that paragraph 28 of Schedule 12 of the RHWA applies to the occupation contract.

b) If the tenancy started on or after 1 December 2022, the contract must be a standard occupation contract for residential purposes within the meaning of the RHWA for a fixed term of up to 36 months, or a periodic term. Where the RHWA permits, it must contain a break clause which lets the landlord end the contract on the minimum notice period provided in the RHWA.

- Where the letting is to an individual or individuals in Wales the borrower must be a registered landlord or give an undertaking prior to completion to apply within 30 days of completion to become a registered landlord with Rent Smart Wales, and either holds a current valid licence for letting and property management activities or lets the property through a licensed agent who undertakes these activities on their behalf.
- The property must not be let to local authorities or Housing Associations / Corporations, nor may the property be rented to family members or the vendor in the case of purchases; and
- The Borrower must comply with all relevant legislation that is applicable to the letting of the property.

Our letting criteria may change from time to time and a copy is available on request.

22. You must check the relevant statutory pre-letting requirements and deposit protection rules have been adhered to where there is a current tenancy agreement in place. Where the property is to be let following completion you must obtain an undertaking from the borrower that they will comply with the statutory pre-letting requirements and deposit protection rules.
23. If the offer is for a second home mortgage you must advise the borrower that it can only be occupied on the following basis:
  - as a holiday home or weekend residence for the use of the borrower or their family and friends;
  - as a secondary residence for the borrower or their family during the working week; or
  - by parent(s) or child(ren) of the borrower as their permanent residence
24. You must ensure either a valid HMO licence is in place on completion or that the borrower has confirmed they will apply for a satisfactory HMO licence in relation to the Property within 30 days of completion and undertakes to provide Kensington with a copy of the application form prior to completion. You must ensure either a valid HMO licence is in place on completion or that the borrower has confirmed they will apply for a satisfactory HMO licence in relation to the Property within 30 days of completion and undertakes to provide Kensington with a copy of the application form prior to completion.
25. You must notify us if the property is in a designated area under the Selective Licensing Scheme laid down by Part 3 of the Housing Act 2004 and await our instructions. If we agree to proceed you must ensure either a valid licence is in place on completion or that the borrower has applied for the license in relation to the property within 30 days following completion.
26. Where required by the mortgage offer you are required to double-check with the borrower who is or is to be in occupation of the property, and must not release the loan unless any persons aged 17 or over who are or are to be in occupation have executed an Occupier's Deed of Consent (in our prescribed form). The Occupier's Deed of Consent must be duly witnessed. You must also confirm that the occupier does not have any form of tenancy of the property. If you have any reason to doubt whether all occupants have been disclosed, then you must not complete without referring to the Lender.

### **Right to Buy / Right to Acquire**

27. Where the borrower is seeking to remortgage/purchase the property under the applicable right to buy or right to acquire legislation you must notify us that this is the case so that we can confirm whether or not this is acceptable. All persons named on the right to buy/right to acquire notice must be party to the mortgage. Persons not named on the right to buy/right to acquire notice may be party to the mortgage with our agreement, provided they receive independent legal advice.
28. You must also ensure that the borrower is using the mortgage solely for the purpose of exercising the right to buy/right to acquire or another 'approved purpose' under the legislation and that you have all the evidence necessary to ensure that the mortgage will have priority over any statutory charge.
29. Where the borrower is seeking to make an early disposal of the property and/or remortgage the property during the pre-emption period and/or whilst the local authority/housing association still has a right of first refusal, you must confirm that the disposal is an exempt disposal under section 160 of the Housing Act 1985.
30. You must notify us immediately where there are restrictions on the resale of the property and await our instructions.

### **Help to Buy**

31. Where the borrower is seeking to purchase under the Help to Buy scheme you must inform us this is the case so we can confirm whether or not this is acceptable.
32. You must ensure that our mortgage has priority and any legal charge securing the Help to Buy equity loan ranks behind our mortgage in priority.
33. You should draw the borrower's attention to the terms of the Help to Buy equity loan and in particular that if this is not repaid within 5 years an additional interest fee will become payable.

### **Re-Mortgages**

34. The provisions of paragraphs 5.13 and 6.3 of the Handbook relating to purchase price are equally applicable where the loan from the Lender is by way of a re-mortgage, save that "purchase price" should be read as if it referred to the cost of redemption of existing charges on the property.
35. You must confirm that any party being added or removed from the title has received independent legal advice with regards to their part in the transaction or provided a signed disclaimer confirming they have declined to take independent legal advice in the form required by the Lender.

### **Leaseholds**

36. In the case of leasehold properties, in addition to the instructions in the Handbook:
  - a. the right of a mortgagee to assign the lease must not be fettered, and where a clause in the lease provides that consent to an assignment is required, the Lender must be outside the scope of the clause;

- b. a lease which is by reason of the frequency of rent reviews or otherwise capable of being a protected tenancy at any time during its term is not acceptable security;
- c. the lessor must covenant in the lease both that all the residential leases of the building are in common form and that the covenants of all the lessees will be enforced;
- d. the lease must not contain any provision which might result in a substantial increase in ground rent or any provision inhibiting the payment of a premium on the assignment of the lease; and
- e. where the property is a leasehold house a charge must be taken over the head lease.

### **Priority of Mortgages and Postponement**

37. There must be no arrangement for any existing charge to be postponed to the borrower's mortgage, or to be discharged and then, following completion of the borrower's mortgage, a new charge created in favour of the existing lender. Please inform us if there is any such arrangement.
38. In case, exceptionally, we agree that an existing charge may be postponed to rank after the mortgage, you must confirm that the form of the deed of postponement is acceptable and protects our interest and obtain the Lender's agreement to the postponement prior to completion. You must use the Lender's standard form deed of postponement.

### **Witnessing of Documents**

39. All documents must be witnessed by an independent person who is over 18.

### **Purchase from a Limited Company**

40. Borrowers may purchase a property at full market value from a Limited Company of which they are a shareholder subject to the following conditions being satisfied:
- You must ensure that the relevant requirements and procedures set out in the Companies Act 2006 (particularly section 1900) are complied with prior to completion of the mortgage.
  - You must comply with Chapter 3 of Solicitors Regulation Authority Handbook and Code of Conduct 2011.
  - You must obtain a certificate of solvency from the vendor company and obtain a clear company search against the vendor company.
  - Prior to completion you must supply written confirmation that special conditions 1-3 above have been fully complied with and provide copies of relevant board minutes and board resolutions for the vendor company.

### **Sale and Rent Back**

41. The Lender will not lend in any situation where sale and rent back is involved, or deal with those companies that are dealing in purchases at under value. All quasi sale and rent back schemes including but not limited to licence to occupy, sale & lease back, sell to let, exchange & delayed completion and lease options are unacceptable and must be reported to us.

### **Documentation**

42. Certified copies which are NOT acceptable are: Mortgage Deed, Occupier's Deed of Consent, Share Certificate, undated executed stock transfer form, and Deed of Postponement.

### **Gifted Deposit**

43. Where the deposit is provided via gifted deposit, solicitors to verify that the giftor providing such a gift is solvent and know of no reason by which the giftor may become insolvent.
44. Where the deposit is provided by an individual who is an appointed Director for the Applicant/Limited Company as a gift or as a loan (a "Director's Loan"), solicitors to verify that the Director providing such loan / gift is solvent and know of no reason by which the Director may become insolvent.

Where the deposit is provided by another limited company, where the company structures (ownership and directorship) are identical, making it an intercompany loan, solicitors are to verify that the director providing such loan / gift is solvent and knows of no reason by which the company and/or director may become insolvent.

### **Release of Funds**

45. We will need at least five working days' notice of the date of completion (or eight working days if a re-inspection is required). We will endeavour to meet the completion date provided that the required notice period is given. The Lender will not be responsible for any costs or other liability incurred as a result of delayed completion. The Lender reserves the right to charge a reasonable administration fee to cover the costs incurred if the Lender does not receive the certificate of title within the required time.
46. You may only release the funds received by you to complete the mortgage if the terms of the offer (so far as they concern any legal matters relating to the property), the administrative arrangements as to insurances and these instructions have been complied with and the matters referred to in the certificate of title are correct on completion. You must return the loan or its equivalent amount to the Lender if this is not the case.
47. You have no authority to release the funds received to complete the mortgage otherwise than to or at the direction of the borrower or the Lender. In the case of a purchase, unless the offer otherwise provides, the whole of the loan must be paid directly to the Solicitor of the vendor named in the contract of sale. Where there is more than one borrower, you must have specific instructions from each borrower as to where and to whom the loan is to be remitted.

# SOLICITORS' SUPPLEMENTAL INSTRUCTIONS (2) – SHARED OWNERSHIP MORTGAGE ONLY



## 1 INTRODUCTION

- 1.1 These are our instructions in relation to shared ownership schemes in England and Wales.
- 1.2 They are to be read in conjunction with Part 1 and Part 2 of Kensington's Instructions to Solicitors and Licensed Conveyancers in UK Finance Mortgage Lenders' Handbook. They do not affect any responsibilities that you have under the general law or Solicitors Code of Conduct.
- 1.3 These instructions should also be read alongside a copy of our mortgage offer, which may include other specific instructions.
- 1.4 References to "we", "us" and "our" means Kensington Mortgage Company Limited ("**Kensington**").
- 1.5 We only accept shared ownership scheme providers registered in England and Wales with the Homes and Communities Agency (Homes England) and the Welsh Assembly (Shared Ownership-Wales), so these instructions only cover shared ownership schemes registered in England and Wales.

## 2 REVIEWING THE SCHEME DOCUMENTATION

- 2.1 It is **your responsibility** to ensure that any property mortgaged to Kensington pursuant to these instructions meets all of our requirements. **If you identify that a property does not meet these requirements we will not lend and you must inform us immediately in writing confirming these requirements are not met.**
- 2.2 **We do not require that you provide the scheme documentation to us for approval. So you should not send us any documentation unless we specifically request it from you.**
- 2.3 You are required to review the scheme documentation in line with our instructions below. Providing you are satisfied that the scheme documentation meets the required criteria, or that where it does not meet this criteria there is no risk to Kensington, we will be happy to proceed on this basis.

## 3 REQUIREMENTS FOR THE SCHEME DOCUMENTATION

- 3.1 Where you act for Kensington in a shared ownership transaction we require that the shared ownership lease is in the standard form provided by the Homes and Communities Agency (Homes England). This standard form document is available at: <https://www.gov.uk/guidance/capital-funding-guide/1-help-to-buy-shared-ownership>
- 3.2 In addition to this we require you to be satisfied that there is nothing in the shared ownership lease that would:
  - 3.2.1 prevent Kensington from exercising its powers under the terms and conditions of the mortgage; or
  - 3.2.2 diminish the resale value of the property or impact on its marketability.
- 3.3 You must check the shared ownership lease and ensure that:
  - 3.3.1 The lease is in the same form as the current model shared ownership lease provided by the Homes and Communities Agency (Homes England) (see paragraph 3.1 above).
  - 3.3.2 The Landlord is either a Registered Housing Association or Registered Social Landlord.
  - 3.3.3 The lease is granted to the borrower(s) alone. All borrowers named on the mortgage must also be parties to the lease.
  - 3.3.4 The remaining term of the lease is at least 85 years at the outset of the mortgage. If the lease does not meet this requirement, you must obtain a deed of variation from the landlord to grant and extension to the lease and ensure that the landlord obtained any requisite consent which may be required from the Homes and Communities Agency (Homes England).
  - 3.3.5 The purchase price is a defined percentage of the full open market value of the property and does not include any additional costs connected with the purchase. You must check this by comparing the purchase price against the valuation amount.
  - 3.3.6 The initial share to be purchased by the borrower(s) is not less than 10% (in England) 25% (in Wales) of the market value of the property and is the same percentage as shown in the mortgage offer.
  - 3.3.7 The lease provides that the landlord will give us at least 28 days' written notice of the landlord's intention to forfeit the lease.
  - 3.3.8 The lease contains a mortgage protection clause in the form set out in the current model shared ownership lease provided by the Homes and Communities Agency (Homes England).
  - 3.3.9 The lease allows the borrower(s) to acquire further shares in the property up to 100% of its total market value. Where the lease does not allow staircasing up to 100% of the value of the property, Kensington will not lend. The lease must provide that if a mortgagee in possession wishes to sell the property it has the choice of:
    - assigning the lease to the buyer as it is; or
    - staircasing to 100% and selling the increased percentage.

- 3.3.10 If the lease allows for downward/reverse staircasing (i.e. where the landlord is permitted to buy back a share in the property) the landlord's offer must be subject to written approval by Kensington and the landlord's mortgagee (if any) and the entire sale proceeds must be paid to Kensington.
- 3.3.11 There is no requirement to make payment on assignment/surrender other than a reasonable amount (maximum of 2% of sale price) in respect of valuation, legal and administrative costs. There must be no payment on surrender or assignment to a sinking fund. If such a clause will also apply to a mortgagee in possession, this charge/deduction will only be acceptable if it ranks after Kensington's first charge security and will only be payable by Kensington if there are sufficient proceeds remaining after repayment of the mortgage debt.
- 3.3.12 Any pre-emption rights (which provide the Landlord with a right of first refusal upon sale of the property) do not survive purchase of a 100% share of the property via staircasing.
- 3.3.13 Where a valuation is required under the terms of the lease, the lease should allow for the valuation of the property to be undertaken by an independent expert in the event of any disagreement between the landlord and the borrower. The independent expert should be one agreed by the landlord and the borrower or one appointed by the President for the time being of the Royal Institution of Chartered Surveyors or, where the landlord is the Local Authority, the District Valuer. There should be no onerous restrictions in respect of the market value in the event of the interest of the borrower being assigned or surrendered.

#### **4 WHERE THE SHARED OWNERSHIP PROVIDER IS NOT REGISTERED AS THE SELLER PRIOR TO COMPLETION OF THE PURCHASE**

##### **4.1 Prior to exchange** of contracts you must:

- 4.1.1 Obtain from the seller's solicitors' evidence that the seller's application has been submitted to Land Registry and provide this to us
- 4.1.2 Obtain from the seller's solicitors' written confirmation that they have asked Land Registry to expedite their application
- 4.1.3 Obtain from the seller's solicitors' an undertaking to use their best endeavours to deal promptly and effectively with any requisitions received from Land Registry regarding their client's registration application

##### **Immediately upon completion** you must:

- 4.2 Lodge with Land Registry (and within the period under their priority search) an application to register a Unilateral Notice against the developer's title to protect our position as lender pending registration of the customer's purchase and our charge.

#### **5 STEPS YOU MUST TAKE PRIOR TO EXCHANGE**

##### **5.1 Prior to exchange** of contracts you must:

- 5.1.1 Ensure the landlord has seen a copy of our mortgage offer/terms of the mortgage (and all other documents issued to the borrower with the mortgage offer) and obtain the written consent of the landlord to the mortgage. Failure to do so will render the mortgage protection clause invalid. The Consent document is available at Appendix 1.
- 5.1.2 Have to hand a Deed of Assignment executed by the borrower assigning to Kensington the right to staircase. This document is available at Appendix 2.

##### **5.2 You must obtain the consent and executed Deed of Assignment prior to exchange. These documents must be returned to Kensington with the Deeds.**

**Appendix 1 – Consent**

**CONSENT FOR MORTGAGEE PROTECTION CLAUSE**

Kensington Mortgage Company Limited

Shared Ownership: Landlord’s Approval of Mortgage – Mortgagee Protection Clause

Date	
Account Number	
The Lender	Kensington Mortgage Company Limited trading as Kensington (incorporated in England and Wales with company number 03049877 and having its registered office at 2nd Floor, Marlow International, Parkway, Marlow, SL7 1YL.
The Borrower	
The Property	
Mortgage	A mortgage dated _____ over the Property granted by the Borrower to the Lender.
Landlord	
The Shared Ownership Lease	The lease dated _____ and made between the Landlord and _____

In the Shared Ownership Lease there is a mortgagee protection clause. For the purposes of that clause the Landlord acknowledges that the terms of the Mortgage have been disclosed.

The Landlord confirms that:

- 1 The Landlord approves of the Lender as mortgagee of the Property.
- 2 The Landlord approves of the terms of the Mortgage.

Signed	
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for and on behalf of the Landlord

**Appendix 2 – Deed of Assignment**

**DEED OF ASSIGNMENT – SHARED OWNERSHIP MORTGAGE**

Date	
The Lender	Kensington Mortgage Company Limited trading as Kensington (incorporated in England and Wales with company number 03049877 and having its registered office at 2nd Floor, Marlow International, Parkway, Marlow, SL7 1YL.
The Borrower	
Account number	
The Property	
Title number	
Mortgage	A mortgage dated _____ over the Property granted by the Borrower to the Lender.

1. This Deed is supplemental to the Mortgage.
2. The Lender has lent money to the Borrower on the security of the Mortgage.
3. The Borrower owns the Property under a shared ownership lease (the "Lease").
4. The Lease includes a right for the Borrower to buy further percentages of the market value of the Property. The Borrower assigns this right to the Lender as further security under the Mortgage. The Borrower gives the Lender full title guarantee.

Signed and delivered as a Deed by (borrower 1)		Signed and delivered as a Deed by (borrower 2)	
In the presence of:		In the presence of:	
Witness signature		Witness signature	
Witness address		Witness address	
Witness occupation		Witness occupation	

You can call us on **0800 111 020** to request a copy of these mortgage conditions in larger print or audio.