

Standing Instructions to Solicitors

THE SCOTTISH MINISTERS (“SCOTTISH MINISTERS”) - STANDING INSTRUCTIONS TO SOLICITORS FOR USE IN First Home Fund TRANSACTIONS

INTRODUCTION

Please note that the following commentary gives an overview of how the First Home Fund is intended to work, for the benefit of solicitors acting for purchasers who are being provided with financial support from Scottish Government via the scheme. The commentary is without prejudice to, and is subject to, the remainder of these Standing Instructions, and the legal documentation referred to herein.

The First Home Fund is intended to provide first time buyers with up to £25,000 to contribute to the purchase of their first home. The scheme will support the purchase of new builds and existing homes. The aim will be to help first time buyers to be able to purchase their first home; to help tackle intergenerational inequity and to unlock access to the housing market for first time buyers currently unable to access it.

The Scottish Government operates the First Home Fund for the whole of Scotland.

Your receipt of these papers means that the applicant for whom you are being asked to act has been successful in his/her application for such assistance.

For the avoidance of doubt, a qualifying buyer (the "**Purchaser**") currently includes:-

- those that are intending to be owner/occupiers and be named on the title of the property (the properties cannot be bought for investment purposes);
- those that have satisfied the eligibility conditions as assessed by the administering agent appointed by Scottish Ministers to administer the First Home Fund (the "**Administering Agent**");
- those that are obtaining a first ranking mortgage (from a qualifying lending institution) which is for at least 25% of the purchase price of the property on a capital repayment basis on usual terms and is likely to be sustainable by them; and
- buyers who do not (or will not at the point of purchase of the First Home Fund property) possess any interest in any other dwelling.

By way of background, Scottish Government provides the assistance to the Purchaser by paying an agreed percentage of the lower of (a) the valuation for a property and (b) the purchase price which the Purchaser has agreed to pay. The Scottish Government financial contribution, added to the amount which the Purchaser can afford to contribute (and including any deposit provided by the Purchaser) enables the Purchaser to purchase their preferred property. The Scottish Government's contribution (the "**Contribution**") will represent no more than 49% of the total value or purchase price (whichever is lower) of the home that is being acquired (the percentage being defined as the "**Contribution Percentage**"). There is no maximum purchase price. The maximum amount of the Contribution is £25,000. There is no minimum Contribution.

The Administering Agent calculates the Contribution and the Contribution Percentage and notifies these to the Purchaser via the Award letter. The terms of the purchase missives will need to correspond with the information contained in the Award Letter unless any subsequent changes have been confirmed and agreed in writing by the Administering Agent.

Applicants must have identified their preferred property, and have either made an offer to purchase it which has been accepted (at least orally) or, in the case of a new-build property, made a reservation, before submitting their application to the Scheme. Applications cannot generally be submitted once missives have been concluded on a property purchase. Once an Award Letter is issued, the Purchaser must conclude missives for the purchase of the Property within three months of the date of the Award Letter, failing which the Award Letter will be cancelled. The purchase of the Property must be completed within a period of no more than six months from the date of conclusion of missives, otherwise the Award Letter will be cancelled.

In order to qualify for this scheme the Purchaser must be entering into a first ranking standard security in favour of a qualifying lending institution (such as a building society, bank or credit union) who will be providing the Purchaser with a conventional mortgage, prior to the Scottish Minister's second ranking standard security. For the avoidance of doubt, in calculating the amount of funding to be provided by the first qualifying lending institution together with any contribution from the Purchaser's own reserves, any mortgage fees that may be added by the qualifying lending institution which is providing the Purchaser with a home loan are to be **ignored**.

Buyers may have opened up a Help to Buy: ISA or Lifetime ISA in which to save a deposit towards the purchase of their home. While the Help to Buy: ISA scheme and Life Time ISA scheme cover Scotland, they are operated by the UK Government and not by Scottish Ministers, and involve the UK Government providing the ISA holder with a bonus at the point when the savings in the ISA are being withdrawn and applied towards the home purchase. You should note that if your client has a Help to Buy: ISA or Lifetime ISA, then (a) only you as the purchaser's solicitor are able to access and uplift the ISA funds, and (b) you must be registered with the UK Government in order to do so.

The obligation to make the repayment to the Scottish Ministers has to be secured on the property by a second ranking standard security (the "**Postponed Security**") which must rank immediately behind the secured loan from the qualifying lending institution. A ranking agreement is also required in Scottish Government's preferred form to regulate the ranking of the two standard securities.

The Purchaser will either repay the Contribution early voluntarily (the Purchaser can repay the whole or part of the amount provided at any time) or when they sell the property or on a compulsory basis on the happening of specified events which are detailed in the Shared Equity Agreement to be entered into between the Scottish Ministers and the Purchaser. The amount of the required repayment is equivalent to the value of the property (or the actual sale price if higher) at the date of repayment (whether that value has increased or decreased) multiplied by the Contribution Percentage.

By way of illustration, if the Contribution Percentage is 15%, the Purchaser must pay the Scottish Government 15% of the sale price when he or she sells the property. The actual amount to be repaid will therefore increase if the property increases in value but will decrease if the property decreases in value.

STANDING INSTRUCTIONS

Please note that Scottish Ministers reserve the right, at their discretion, to decide not to instruct a buyer's solicitor to act in accordance with these Standing Instructions. If Scottish Ministers have determined that they are unwilling to issue the Standing Instructions to you or your firm either permanently or for a period of time and you have been notified of this fact, you must not accept these instructions and must refer matters back to the Administering Agent for further action.

1. These standing instructions ('instructions') are designed for use when you are asked to act on our behalf in relation to a Standard Security. (In the instructions, any reference to "we", "us" or "our" means the Scottish Ministers). The key features of our approach are:
 - in all transactions where you receive an instruction to act for us these instructions (as amended from time to time) will form an integral part of our instructions;
 - while these instructions have been divided into a series of separate sections, in some instances it will be necessary for you to cross refer between sections; and
 - all matters which require to be reported or delivered to Scottish Ministers are to be reported or delivered to the Administering Agent.

We will be relying upon you to carry out our instructions in a professional manner. Although our instructions are intended to be comprehensive they are not exhaustive and it is likely that circumstances will arise where we will require to rely on your professional skill and guidance to deal with situations which are not specifically addressed.

This may include for example but without prejudice to the generality of the foregoing, any additional requirement in the UK Finance Lenders Handbook upon which these instructions have been based. If a situation arises where you identify a gap in the instructions, please let us know.

If you or a member of your immediate family (that is to say your spouse, civil partner or co-habitee, or a parent, sibling, child, step-parent, step-child, grandparent, grandchild, parent-in-law or child-in-law, or a spouse civil partner or co-habitee of any such person) is your client and you are a sole practitioner, you must not act for us.

Your firm must not act for us if the partner or fee earner dealing with the transaction or a member of his immediate family is your client unless we say your firm may act and a separate fee earner of no less standing or a partner within the firm acts for us.

If there is any conflict of interest you must not act for us and must return our instructions.

Unless we otherwise state you must not advise any guarantor or any non-entitled spouse who is to execute a consent to the taking of a standard security, or a renunciation of occupancy rights and you must arrange for them to take independent legal advice. If we do allow you to advise any of these people you must only do so after recommending in the absence of any other person interested in the transaction that such person obtains independent legal advice. Any advice you give any of these people must be given in the absence of any other person interested in the transaction.

Nothing in these instructions lessens your duties to your client.

In addition to these definitions, any reference to any regulation, legislation or legislative provision shall be construed as a reference to that regulation, legislation or legislative provision as amended, re-enacted or extended at the relevant time.

Searches and enquiries

2. In carrying out your investigation, you must make all usual and necessary searches and enquiries, taking into account the locality and other features of the particular property.
3. All requisite searches in the Personal/ Land Register, the Register of Charges, Company File, and any other relevant registers, should be carried out. In addition, local authority certificates, Property Enquiry Certificates (where you deem it necessary), Advance Notices, Legal Reports and Plans Reports as appropriate should be obtained. These reports should not be forwarded to us unless we specifically request in writing that you do so.
4. It is appreciated that for new build properties it may be unusual to obtain an up-to-date Property Enquiry Certificate for each individual property due to the new-build nature of the development. We will not therefore insist on there being obtained a Property Enquiry Certificate dated no more than three months prior to the date of settlement, provided you are satisfied that all relevant matters normally covered by a Property Enquiry Certificate have been addressed within the site title pack.
5. We accept searches and reports from private firms in the Land Register of Scotland, Register of Inhibitions and Adjudications, Register of Companies and Register of Insolvencies. We accept Property Enquiry Certificates from private firms. You must be satisfied that you will be able to certify that the title is good and marketable. You must take reasonable steps to check that private firms carry adequate indemnity cover.
6. You must address issues arising from any contaminated land entries revealed in the course of you undertaking your investigations. You must ensure that the questions relating to contaminated land have been addressed. In particular please list any entries relating to the property in the Register maintained under s. 78R(1) of the Environmental Protection Act 1990.

- Has the council served or resolved to serve any notice relating to the property under s. 78B(3)?
- Has the council consulted, or resolved to consult, with the owner or occupier of the property under s. 78G(3) in relation to anything to be done on the property as a result of adjoining or adjacent land being contaminated?
- Has any entry been made in the Register, or any notice served or resolved to be served, under s. 78B(3) in relation to any adjoining or adjacent land which has been identified as contaminated because it is in such a condition that harm or pollution of controlled waters might be caused on the property?

Valuation of the property

7. **You must take reasonable steps to verify that there are no discrepancies between the description of the property as valued and the title and other documents including e.g. a plans report which a reasonably competent conveyancer should obtain and, if there are, you must tell us immediately.**
8. **You should take reasonable steps to verify that the assumptions stated by the valuer about the title in the valuation report are correct. If they are not, please let us know as soon as possible as it will be necessary for us to check with the valuer whether the valuation needs to be revised. We are not expecting you to assume the role of valuer. We are simply trying to ensure that the valuer has valued the property based on correct information.** Via the Administering Agent, we will require sight of either a copy of the property valuation or, if the mortgage provider does not supply a copy of the valuation report, a copy of the mortgage offer (but only provided it expressly confirms the valuation figure). We will require to be satisfied that the valuer owes a duty of care to us and that we can rely on the valuation report. This will normally be done through an over-arching arrangement between Scottish Government and RICS members pursuant to which valuers agree to extend a duty of care to Scottish Ministers in relation to all valuations prepared by them for properties which come within the First Home Fund.

Coal mining

9. You must obtain a Coal Authority search, which must not be more than six months old at settlement, where it is reasonable to believe that the property could be affected by underground workings. In the case of a coal mining search, you should follow the current edition of The Law Society of Scotland Guidance Notes. If the results of the search from the Coal Authority are such that the property is not affected by any of the matters mentioned in the report then we do not need to be notified of its contents. Subject to that, you should advise us if any entries are revealed. You should not simply send us a copy of the mining search.

Planning and building regulations

10. You must by making appropriate searches and enquiries take all reasonable steps (including any further enquiries to clarify any issues which may arise) to ensure that:
 - the property has the benefit of any necessary planning and building regulation consents;
 - there is no evidence of any breach of the conditions of those consents or any other consent or certificate affecting the property; and
 - no matter is revealed which would preclude the property from being used as a residential property or indicate that the property may be the subject of enforcement action.
11. If there is such evidence and the participating house builder who is selling the house is not providing a sufficient undertaking to satisfy those outstanding conditions by settlement, then this must be reported to us. Copies of planning permissions, building warrants and other consents or certificates should not be sent to us.
12. If the property will be subject to any enforceable restrictions, for example under an agreement (such as an agreement under section 75 of the Town and Country Planning (Scotland) Act 1997) or in a planning permission which, at the time of settlement, might reasonably be expected materially to affect its value or its future marketability, you should report this to us.

Good and marketable title

13. The title to the property must be good and marketable, and free of any burdens, restrictions, servitudes, charges or encumbrances which, at the time of settlement, might reasonably be expected to materially adversely affect the value of the property or its future marketability (other than any matters covered by indemnity insurance and which may be accepted by us). Our requirements in respect of indemnity insurance are set out below. You must ensure that, following settlement, the title to the property will be vested in your client.
14. Where the property comprises a flat, the cost of maintenance of the foundations and roof must be borne by the owners of the building of which the flat forms part in equitable proportions in terms of the title.

Restrictions on use and occupation

15. You must check whether there are any material restrictions on the occupation of the property as a private residence or as specified by us (for example, because of the occupier's employment, age or income), or any material restrictions on its use. If there are any such restrictions, you must report details to us.

Title conditions

16. You must enquire whether the property has been built, altered or is currently used in breach of a title condition. We rely on you to take reasonable steps to check that the condition is not enforceable. If in your professional opinion you believe that there is a risk of enforceability you must ensure (subject to below) that indemnity insurance is in place at settlement.
17. We will not insist on indemnity insurance:
 - if you are satisfied that there is no risk to our security;
 - the breach has continued for more than 20 years; and
 - there is nothing to suggest that any action is being taken or is threatened in respect of the breach.

Inhibitions and insolvency

18. You must obtain a clear personal search against each proprietor, each person selling to your client if other than the proprietor and your client as at a date not more than three days prior to the date of completion of the advance. You must fully investigate any entries revealed by your personal search against each proprietor or person selling to your client and your client to ensure that they do not relate to them.
19. Where an entry is revealed against the name of the proprietor, the person selling to your client or your client:
 - you must be satisfied that in your professional opinion the entry does not relate to the proprietor, the person selling to your client or your client if you are able to do so from your own knowledge or enquiries (for example in the Register of Insolvencies); or
 - if, after enquiry, you are unable to certify that the entry does not relate to the proprietor, the person selling to your client or your client you must report this to us even if, in the case of an inhibition, it pre-dates the person selling to your client's acquisition of the property. We may as a consequence need to withdraw our offer.
20. If you are aware that any transfer of the title to the property may be open to challenge as a gratuitous alienation or an unfair preference, then you must be satisfied that we will acquire our interest in good faith and will be protected under the relevant statutory provisions against our security being set aside. You must also obtain clear personal searches against all parties to any such transfer. If in your professional opinion you are not satisfied on any such matter you must arrange indemnity insurance for an amount sufficient to protect our interests under the security.

Powers of attorney

21. If any document is being executed under power of attorney, you must see an extract registered power of attorney, the original or a certified copy, and ensure that it is, on its face, properly drawn up, that it is adequate for the transaction contemplated, that it appears to be properly executed by the granter and that the attorney knows of no reason why such power of attorney will not be subsisting at settlement. In the case of joint clients, neither client may appoint the other as attorney.

Payment and title documents

22. The payment ('Payment') of the Contribution by Scottish Ministers to you on behalf of your client will not be made until all relevant matters which need to be satisfied before settlement have been complied with and we have received and are satisfied with the Solicitor's Confirmation Letter and your Certificate of Title (both of which are referred to below and are to be submitted by you to the Administering Agent).
- 23.1 You must check your instructions and ensure that there are no discrepancies between them and the title documents and other matters revealed by your investigations.
- 23.2 You will require to explain to your client the terms and legal effect of the shared equity documentation which our solicitors will prepare and send to you for completion and signing by your client and (in the case of the Ranking Agreement) the primary lender. The shared equity documentation comprises a Shared Equity Agreement, a Standard Security in favour of Scottish Ministers and a Ranking Agreement, and is intended to regulate and secure the financial assistance given by Scottish Ministers to your client.
- 23.3 The Shared Equity Agreement will subsist for an indeterminate period of time and so the Standard Security to be granted by your client in favour of the Scottish Ministers is potentially capable of being redeemed by your client pursuant to section 11 of the Land Tenure Reform (Scotland) Act 1974 (often referred to as the "20-year security rule"). The Scottish Government intends to make an order pursuant to section 11 (3D) of the 1974 Act to remove the right to redeem securities after 20 years for those participating in the First Home Fund. You must therefore inform your client of this by sending to them a copy of the pro-forma notice which forms Appendix 3 to these Instructions, duly addressed to your client, and provide [*Insert name of Administering Agent*] with a copy of the notice to your client when submitting the certificate of title.
24. You should tell us as soon as possible if you have been told that your client has decided not to proceed with the purchase or to not take up the Payment for any reason. You should advise us as soon as possible after missives have been concluded for the purchase.

Boundaries

25. Wherever possible, these must be clearly defined by reference to a suitable plan or description. They must also accord with the information given in the valuation report. You should ensure that the plan or the description accords with your client's understanding of the extent of the property to be secured to us. You must report to us if there are any discrepancies and, where appropriate, a Plans Report should be obtained and any discrepancies reported to us.

Purchase price and Payment of Administration Fee

26. The purchase price for the property and the amount of loan being advanced by the primary lender must be the same as set out in the accompanying Award Letter from the Administering Agent. If it is not, you must tell us. This may lead to the Payment not being made or amended.
27. An administration fee is payable by the Purchaser to the Administering Agent, no later than three weeks before the date of completion of the purchase. You should liaise with the Purchaser to make sure that this is done in good time. You should note that the Contribution will not be released to you unless the Administration Fee has been paid to the Administering Agent.
28. You must report to us if you will not have control over the payment of all of the purchase money (for example if it is proposed that your client pays money to the seller direct) other than a deposit held by an estate agent or a reservation fee of not more than £500 paid to a builder or developer. If your client is using the proceeds of a Help to Buy: ISA towards the purchase price, you must be responsible for applying for the payment (and any bonus payment from the UK Government), which means you will require to be registered for the purposes of that scheme.

Vacant possession

29. Unless otherwise stated in your instructions, it is an essential condition of the Payment being made that vacant possession is obtained. The missives must provide for this. If you doubt that vacant possession will be given, you must not part with the Payment and should report the position to us.

New properties – building standards indemnity schemes

30. If the property is newly built and to be occupied for the first time, you must ensure that it was built under the following:
 - the National House Building Council (NHBC) Buildmark scheme;
 - the Zurich Municipal Newbuild scheme;
 - the Premier Guarantee for Private Housing and Completed Housing; or

- any other new home warranty or insurance schemes which we have confirmed in writing as being acceptable to us.

If a new home warranty or insurance scheme is acceptable to your client's primary lender in terms of the UK Finance Handbook, then that scheme will normally be acceptable to us.

If the property will not have the backing of a new home warranty or insurance scheme but the seller has indicated that a professional consultant's certificate will be provided as an alternative, we may be willing to accept such a certificate, but only if it is acceptable to the primary lender and/or we are satisfied with the details of the proposed certificate including the period of time it will subsist for and the professional indemnity insurance of the consultant, and that Scottish Ministers as the second-ranking secured creditor will be given the benefit of the certificate and will be able to place reliance upon it.

31. You must obtain by settlement a copy of a new home warranty provider's cover note from the developer. The cover note must confirm that the warranty provider has carried out a final/pre-handover inspection and that the new home warranty will be provided. The warranty documentation should not be sent to us after settlement. You do not need to see the cover note before submitting to us the certificate referred to in paragraph 53 below, provided that you do obtain it prior to settlement.

Roads and sewers

32. If the roads serving the property are not adopted or maintained at public expense, but it is intended that they should be so, there must be a road bond in existence where required by statutory regulation, or you must make an appropriate retention from the purchase price, or you must report to us.
33. The property must be served by a public sewer or by private sewerage arrangements which have the necessary approvals from the sewerage authority or you must report to us.

Servitudes

34. You must take all reasonable steps to check that the property has the benefit of all servitudes necessary for its full use and enjoyment. This would include, for example, rights of way (both vehicular and pedestrian), the use of services and any necessary rights of entry for repair. All such rights must be enforceable by your client and your client's successors in title. If they are not, you must report to us.
35. If your client owns adjoining land over which your client requires access to the property or in respect of which services are provided to the property, the land over which such access is to be taken or over or through which such services are to be provided must also be included in our security.

Rights of pre-emption and restrictions on resale

36. You must ensure that there are no rights of pre-emption, restrictions on resale, options or similar arrangements in existence at settlement which will affect our security. If there are, please report this to us.

Improvement and repair grants

37. Where the property is subject to an improvement or repair grant which will not be discharged or waived on settlement, you must report the matter to us.

Insurance

38. You must:
 - report to us if the property is not insured in accordance with our requirements as set out in the standard security;
 - ensure that the insurance cover starts from no later than the date of settlement;

Prior securities

41. Confirmation must be obtained from the prior security holders that they have no objection to the standard security being granted in our favour before proceeding with the constitution of our security. At the same time confirmation of the total amount to be secured by the prior security must be obtained and the prior security holders should be asked for confirmation that they are not obliged to make any further advances under the contract to which their security relates.
42. If the amount secured by the prior security differs materially from the figure quoted in our instruction letter we must be advised immediately as this may affect our decision to proceed further.
43. If it is found that there are existing securities affecting the subjects or any other encumbrances to which reference has not been made in our instruction letter, we should be advised immediately.

Other occupiers

44. You must ensure that there are no occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended or the Civil Partnership Act 2004 or any similar such legislation which will have priority over our security. Any deed required for this purpose must be executed prior to settlement.

45. You must ensure that no liferent has been created which could result in our not obtaining vacant possession in the event of enforcing our security against your client.

Indemnity insurance

46. If you identify that the taking out of an indemnity insurance policy is a course required to ensure that the property has a good and marketable title at settlement, you must first tell us and only if we agree should you then take steps to take out suitable insurance. For the avoidance of doubt, this paragraph does not relate to mortgage indemnity insurance. Where indemnity insurance is effected you must approve the terms of the policy on our behalf:
- the limit of indemnity must meet our requirements;
 - the policy must be effected without cost to us;
 - you must disclose to the insurer all relevant information which you have obtained;
 - you must make sure that the policy does not contain conditions which you know would make it void or prejudice our interests;
 - you must provide a copy of the policy to your client and explain to your client why the policy was effected and that a further policy may be required if there is further lending against the security of the property;
 - you must explain to your client that your client will need to comply with any conditions of the policy and that your client should notify us of any notice or potential claim in respect of the policy; and
 - the policy should always be for our benefit and that of the primary lender and, if possible, for the benefit of your client and any subsequent proprietor or heritable creditor. If your client will not be covered by the policy, you should advise your client of this.

Safeguards

- 47.1 You must ensure that you comply with all legislation, regulations and guidance from the Law Society of Scotland in connection with money laundering (“money laundering checks”) including without prejudice, the Proceeds of Crime Act 2002 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
- 47.2 If you are not familiar with the seller’s solicitors you must verify that they appear in a legal directory or that they are currently on record with the Law Society of Scotland or other supervisory body as practicing at the address shown on their notepaper.

Reporting back to us

48. Although legal advisers have been instructed to act in respect of our interest in the preparation of the Shared Equity Agreement, Ranking Agreement and provision of the template Standard Security, we are placing full reliance upon you to act for us in a proper and professional manner in accordance with these instructions. This is in order to avoid unnecessary costs arising from duplication of work.
49. Where you are required to report matters to us in terms of these instructions you should at first instance address your correspondence to *[insert Administering Agent's point of contact details]* or such other person as we may notify to you in writing making reference to the subject heading under which the matter to be reported upon falls and setting out clearly why it is necessary to report back to us under the instructions. You should also confirm whether you have reported the matter in similar terms to the primary lender. Whilst we may, on occasion, decide to discuss the matter with the legal advisers acting in other aspects of the transaction all correspondence on matters which you are required under these instructions to report to us should be drafted on the basis that we will not do so and that we will rely purely on your firm's advice and recommendation.
50. The main documentation which requires to be completed by you and submitted to us, via the Administering Agent, comprises the Solicitor's Confirmation Letter and your certificate of title, both of which are discussed in detail below. You should also note, however, to notify the Administering Agent as soon as practicable upon missives being concluded for the purchase of the Property. You should notify the Administering Agent of the date of conclusion of missives and the anticipated date of entry. Please notify the Administering Agent if you become aware of a delay in the anticipated date of entry.

The documentation

Solicitor's Confirmation Letter

51. You must accurately complete and return to us the Solicitor's Confirmation Letter in the form set out in Appendix 1 to these Standing Instructions as soon as you are in a position to do so after missives have been concluded, and once you have received instructions to act for the primary lender in the granting of a first ranking standard security over the Property. You should note that the Solicitor's Confirmation Letter must be completed and returned before submitting the Certificate referred to in paragraph 53 below.
52. You should accurately complete the title description in the Standard Security and Ranking Agreement (if applicable) forwarded to you by our solicitors and ensure that the Standard Security, Ranking Agreement and Shared Equity Agreement are properly executed by your client and (in the case of the Ranking Agreement) by the primary lender prior to settlement and that the names and designations of your client are identical to what is shown in the money laundering checks. You should be alert to the possibility that the property may initially be described by reference to a plot number, and then

during the transaction a postal address is allocated to it. It is your responsibility to ensure that the property is properly described and that there is no confusion as to which property/title is the subject of the shared equity documentation including the Standard Security. If the Ranking Agreement is unlikely to be signed by the primary lender as well as by your client before settlement, our solicitors will normally be willing to recommend to us that we release the Payment so that the purchase of the Property can be completed, provided that you give our solicitors a written undertaking in acceptable terms in relation to the Ranking Agreement being fully signed and registered within an agreed period of time, but if this situation is likely to occur you should liaise with our solicitors as soon as possible to discuss the matter.

Payment and certificate

53. **When you are ready to settle, you should forward to us a certificate of title ('Certificate') in the form set out in Appendix 2 to these Standing Instructions. Upon our being satisfied with the terms of the Certificate we will arrange for the Payment to be released directly to you by BACS transfer. You should be aware that this may still take 3 days to be identified in your records and you should take that into account when planning for Completion.**

Please note that if any disclosures are to be made these must be of matters which have been promptly notified to and accepted on our behalf in terms of the instructions. You should also confirm that they have been notified to and fully accepted by the primary lender.

54. You are only authorised to release the Payment when you hold sufficient funds to complete the purchase of the property and pay all tax on the transaction (including land and buildings transaction tax) and registration fees to perfect the security forthwith (including the registration of the Ranking Agreement) as well as make payment to our solicitors in respect of the cost of registration of the Shared Equity Agreement in the Books of Council and Session and the obtaining of one extract or, if you do not have the funds, you accept responsibility to pay them yourself. You must hold the Payment on trust for us until settlement. If settlement is delayed, you must return it to us when and how we tell you.
55. You should note that although the Certificate will be addressed to us, we may at some time transfer our interest in the security. In those circumstances, our successors in title to the security and persons deriving title under or through the security will also rely on your Certificate.
56. If, after you have requested the Payment, settlement is delayed you must telephone, fax or e-mail us immediately after you are aware of the delay and you must inform us of the new date for settlement.
57. You can hold the Payment for **five working days** before returning it to us. If settlement is delayed for longer than that period, you **must** return the Payment to us. By applying the Payment towards settlement you shall be deemed to

have confirmed that the terms of the Certificate continue to apply as at settlement.

58. You must advise the Administering Agent and Scottish Ministers' solicitors of the fact that the transaction has settled within five working days of settlement having been effected.

After settlement

59. You must forthwith after settlement register our standard security and the Ranking Agreement in the Land Register within the period covered by an appropriate Advance Notice. You should check that all deeds have been correctly executed or signed by all relevant parties before submitting them for registration. Before making your application for registration, you must place on your file certified copies of the Land Certificate (if any) or copy title sheet, the disposition or other conveyance in favour of your client, our standard security and any discharge from a previous heritable creditor. Following registration, you must check the copy title sheet for accuracy, and ensure there is no exclusion of indemnity or warranty or other adverse entry.
60. Copies of all title deeds, searches, enquiries, consents, requisitions and documents relating to the property must be held to our order and you must not create or exercise any lien over them.
61. You must only send us documents we tell you to.

Your transaction file

62. For evidential purposes you must keep your file in respect of this transaction for at least six years from the date of the Payment before destroying it. Microfiche or data imaging is suitable compliance with this requirement. It is the practice of some fraudsters to demand the conveyancing file on completion in order to destroy evidence that may later be used against them. It is important to retain these documents to protect our interests.
63. Where you are processing personal data (as defined in the Data Protection Act 2018) on our behalf you must do so in accordance with the data processing agreement you have entered into with the Scottish Ministers. Where you are processing personal data on our behalf you must: take such security measures as are required to enable you to comply with obligations equivalent to those imposed on us under Article 32 of the General Data Protection Regulation (EU) 2016/679; and process such personal data only in accordance with our instructions. In addition, you must allow us to conduct such reasonable audit of your information security measures as we require to ensure your compliance with your obligations in this paragraph. You will duly observe your obligations under the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679, which arise in connection with this transaction and will provide us with any personal data relating to this transaction as we may reasonably require. You undertake to us that you will ensure that at all times each relevant individual has been provided with

sufficient information (in an appropriate form) so as to enable fair, transparent and lawful processing of the personal data shared with us in accordance with the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679.

64. Subject to any right of lien or any overriding duty of confidentiality, you should treat documents comprising your file as if they are owned by us and you should not part with them without our consent. You should on request supply certified copies of documents on the file or a certified copy of the microfiche to us.

Payment of fees

65. You must not allow non-payment of fees or outlays to delay the completion and submission of a land and buildings transaction return (with payment of tax if applicable) and registration of all documents including the Ranking Agreement. We will be responsible for registration of the Shared Equity Agreement in the Books of Council and Session but you must place the solicitors acting on our behalf in funds at settlement in order to enable registration to take place and one extract to be obtained. The extract will be forwarded to you after registration for retention by your client.

Transmission of funds

66. Where appropriate we will provide you, at the outset of a transaction, with details of a contact name with whom you should liaise in order to obtain funds in time for settlement of the transaction.
67. Please note that the Payment we send you must only be used for the purchase of the property. Therefore you should not release the Payment unless you are sure that it will be used solely for that purpose.
68. Furthermore the Standard Security should be registered in the Land Register as soon as possible after settlement.

APPENDIX 1

SOLICITOR'S CONFIRMATION LETTER

To: [Details of Administering Agent]

From: Solicitor's reference: [●]
[Insert details of solicitor]

SCHEME: First Home Fund

Dear Sirs

PURCHASER: [INSERT DETAILS]

BUILDER[if a new build]: Builder and Development Name [INSERT DETAILS]

PROPERTY: Property being purchased [INSERT DETAILS]

We confirm that we have been instructed to act on behalf of the Purchaser named above in connection with the purchase of the Property. The Purchaser's offer has been accepted. We also confirm that we have been instructed to act on behalf of the Purchaser's lender (*delete, if not applicable*).

We confirm that we are in receipt of your Award Letter dated [●] and your Standing Instructions to Solicitors and the accompanying documentation. We confirm that we have not been notified that Scottish Ministers are unwilling to instruct us on the basis of the said Standing Instructions.

We confirm that:-

- 1 we will comply with the instructions that have been supplied to us;
- 2 we will ensure that the financial terms of the proposed purchase accord with those set out in the Award Letter;
- 3 [where the Award Letter makes reference to the Purchaser providing some of [his][her] own investment to the purchase, the Purchaser has confirmed that that investment will be available upon completion];
4. [the Purchaser has received a mortgage offer from a Qualifying Lender. We further confirm that the identity of the Qualifying Lender and the amount of the primary loan are as set out below:-

Qualifying Lender: [●]

Primary loan (net of fees): [£[●]];

Mortgage fees: [£[●]];

Scottish Ministers' Contribution [£ []

and that the balance of £[●] is to be provided by the Buyer (which includes any deposit from the Buyer);]

IF APPLICABLE

[Where there are joint Purchasers and all or part of the Purchaser's contribution is made up of the free proceeds from the sale of an existing property at [Insert address of existing property], where we were instructed in the sale of that property or are instructed in its sale, we confirm that the free proceeds (after repayment of any existing secured loan) were, or are expected to be [£[]]. Where we were not, or are not, instructed by the Purchaser in the sale of that property, the Purchaser has confirmed to us for the purposes of this Confirmation Letter that the free proceeds (after repayment of any existing secured loan) were, or are expected to be [£[]].]

- 5 the Full Purchase Price of the Property is [£[●]];
- 6 the calculation of the Contribution and the Contribution Percentage does not include the mortgage fees referred to in paragraph 4;
- 7 missives for the purchase of the Property were concluded on [specify date];
- 8 the anticipated completion date or agreed date of entry is [specify date].
- 9 we have received written confirmation from the Purchaser (and from each Purchaser where there is more than one person) [that they have no interest in any other dwelling] OR [that where there are joint Purchasers, and one of the Purchaser's has an interest in a dwelling , known as the "Property Owning Purchaser", that they intend to sell or complete the sale of any dwelling(s) that they have an interest in, on or before the date of completion. The Property Owning Purchaser has confirmed that they anticipate that conclusion of the sale of such dwelling shall take place on or before the anticipated completion date/date of entry specified in paragraph 8]**. We further confirm that we have received no notice or indication that contradicts such written confirmation(s) from the Purchaser;
- 10 the Purchaser has received copies of the First Home Fund Buyer's Guide, and the Award Letter and we have advised [him][her][them] of their contents, and also on the main terms of, and legal effect of, the shared equity documentation in accordance with the Standing Instructions to Solicitors.
- 11 Subject to paragraph 9, to the best of our knowledge and belief, the Purchaser meets the definition of "first-time buyer" for the purposes of the First Home Fund Scheme.
- 12 The Valuation within the Home Report or Mortgage Offer is [£X].
- 13 The Scottish Ministers' Percentage Contribution is calculated to two decimal places, as follows: the Scottish Ministers' Contribution value stated at paragraph 4 divided by: (either the Valuation stated at paragraph 12 OR the

Purchase Price stated at paragraph 5, whichever is the lower) times one hundred.

- 14 The Purchaser's percentage equity stake is 100 minus the percentage at paragraph 13, to two decimal places.
- 15 The Purchaser has been advised that the **Buyer's Administration Fee** detailed with the Award Letter must be paid to the Administering Agent no later than three weeks before the anticipated completion date, if they have not already paid it. Cheques will not be accepted.
- 16 The Purchaser has been advised that they should complete the confidential online **Sales Log** questionnaire issued with the Award Letter, before the anticipated completion date. This is for statistical monitoring purposes and the answers will not affect their application.

Yours faithfully

[Date and insert details of solicitor signing report]

*Amend as appropriate

** Delete as appropriate

The Solicitor's Form 1 paragraphs 1 – 11 must be returned unamended to the Administering Agent. Amended forms will not be accepted by the Administering Agent.

APPENDIX 2

FORM OF CERTIFICATE OF TITLE

**To The Scottish Ministers
c/o [insert name and address of Administering Agent]**

Dear Sirs

Name of Purchaser: [] (the "Purchaser")
Address of Property: [] (the "Property")
Date of settlement: []
Scottish Ministers' Contribution: £ () (the "Payment")

We refer to the instruction letter by [insert name of Administering Agent] dated [insert date] on your behalf together with your Standing Instructions to Solicitors, (both together referred to as the "Instructions"). We confirm that we have fully complied with its terms.

We confirm that the financial terms of the proposed transaction accord with those set out in the Solicitors Confirmation Letter produced by us [dated] and that at the date of completion those details will not have changed OR if they have changed we have alerted you to that change and it has been accepted by you.

Without prejudice to your rights in respect of the foregoing we also confirm that the title to the Property may be safely accepted by you as security and is good and marketable.

We hereby request the Payment in time for settlement and confirm that we will (a) deal with the same and (b) attend to settlement and all post settlement matters including without prejudice registration and preservation of all documents, titles, records and others in accordance with the Instructions.

Yours faithfully

[Date and insert details of solicitor signing report]

APPENDIX 3

NOTICE RELATING TO SECTION 11 OF THE LAND TENURE REFORM (SCOTLAND) ACT 1974

To be addressed to the Purchaser

Dear [Insert name(s) of Purchaser]

Scottish Government First Home Fund Scheme Purchase of [Insert address of the Property] Section 11 of the Land Tenure Reform (Scotland) Act 1974

It is a condition of the Purchaser receiving financial support from Scottish Ministers under the First Home Fund for the purchase of the Property that the Purchaser must grant in favour of Scottish Ministers a Standard Security over the Property. Because the financial support given by Scottish Ministers will subsist for an indeterminate period of time, the Standard Security to be granted by the Purchaser in favour of the Scottish Ministers is potentially capable of being redeemed by the Purchaser pursuant to section 11 of the Land Tenure Reform (Scotland) Act 1974 (often referred to as the “20-year security rule”).

The Scottish Government intends to make an order pursuant to section 11 (3D) of the 1974 Act to remove the right to redeem securities after 20 years for those participating in the First Home Fund scheme. Accordingly, the purpose of this letter is to make the Purchaser aware of this and to make clear that the Purchaser should not enter into the shared equity documentation on the assumption that, after 20 years, the Purchaser will be able to rely on section 11 of the 1974 Act as that section currently applies.