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LENDERS

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Newly Built Homes: Lenders' New Requirements

From April 2003, buyers of newly built homes will have greater certainty that their home will be satisfactorily complete before they move in. Up until now this has not always been the case, leading to a catalogue of problems ranging from missing doors to uninstalled lifts. The end result can be months of misery for homebuyers, as they endeavour to negotiate with builders to correct the (sometimes dangerous) defects.

The CML, the House Builders' Federation (HBF), the new home warranty providers (NHBC, Zurich and Premier Guarantee) and the Law Society of England and Wales have worked together to find a solution to this problem. This factsheet sets out the agreed way forward and the reasons behind the change.

The Problem

When new properties are sold, they receive a “pre-handover” inspection to identify any outstanding works that need to be completed. After this, they are “finalled” – that is, classified as satisfactorily complete.

The main problem has been that, quite often, the sale of the property has already reached legal completion (and the new owners have already moved in) before the property is “finalled” and in some cases even before the pre-handover inspection.

Following a robust campaign by the *Evening Standard* (supported by the then Housing Minister, Lord Falconer), the CML was asked to review the position on behalf of mortgage lenders.

Developers and the new home warranty providers are keen to improve procedures to resolve this problem. Lenders are also supportive and see this approach as building on their long-standing support for the warranty schemes. Ultimately, lenders also want to ensure that their property is good security for the mortgage and not incomplete when the mortgage is granted.

The Solution

The solution is designed to avoid introducing extra bureaucracy and delays to the home buying process. From 1 April 2003, a lender will not release the mortgage funds for a new property until the buyer's conveyancer has received confirmation in the form of a cover note that the property has received a satisfactory final inspection and that a full new home warranty will be in place on or before legal completion. Examples of the new home warranty providers' cover notes are attached to this factsheet.

In practice, the new home warranty provider will give the cover note to the builder immediately after the property has passed the final inspection. The builder or the builder's conveyancer will then pass the cover note to the buyer's conveyancer (a faxed copy of the cover note would be acceptable). This revised approach will apply to all transactions involving new properties being built or converted in accordance with a new home warranty

scheme and which **exchange contracts on or after 1 April 2003**. It will not apply to self-build schemes or where the construction or conversion of a new property is being supervised by a professional consultant without a new home warranty scheme.

Amendments to the CML Lenders' Handbook for England and Wales

The CML Lenders' Handbook provides comprehensive instructions for solicitors and licensed conveyancers acting on behalf of both borrowers and lenders in residential conveyancing transactions. A copy of the Handbook appears on the CML website (www.cml.org.uk/handbook).

On 1 April 2003, the CML will amend 6.6.2 of the Lenders' Handbook to read:

"Before you send us the certificate of title, you must obtain a copy of a new home warranty provider's cover note from the developer. The cover note must confirm that the property has received a satisfactory final inspection and that the new home warranty will be in place on or before legal completion. This will only apply where exchange of contracts occurs on or after 1 April 2003. This does not apply to self-build schemes. Check Part 2 to see what new home warranty documentation should be sent to us after completion. "

The New Home Warranty Providers

The new home warranty providers are currently doing a great deal of work to ensure that the necessary procedures are in place in the run up to implementation. This includes guidance to builders on inspection standards, so that builders will only apply for a final inspection once all the standards have been met.

The Developers

The HBF is looking at what changes should be made to builders' contracts for sale to reflect the revised approach and address any concerns that conveyancers may have regarding time constraints and liability. Builders will need to:

- a) ensure that the property is completed to the required standard before applying for the final inspection by the new home warranty provider;
- b) supply the cover note immediately to the buyer's conveyancer;
- c) bear in mind when formulating the legal completion date in the contracts for sale that:
 - (i) the conveyancer will be unable to submit the Certificate of Title to the lender until the conveyancer has received the cover note.
 - (ii) the lender will have a minimum notice period of 5 working days (in some cases longer) for the release of mortgage funds after receipt of the Certificate of Title;
- d) request their lawyers to make the necessary amendments to the legal documentation for the sale of new properties as a result of the changes in approach and consequent timing referred to above.

It is clear that this is a significant change in approach to improve standards and all the parties are working together to achieve smooth implementation.