

## Commentary

This is a straightforward question provided you read it carefully and answer it methodically. You will notice that the mortgage is a repayment one, so you will need to discuss the matters that are relevant to this type of mortgage. Do not be drawn into a discussion of other types of mortgage, such as endowment or pension mortgages.

You must also understand what is meant by 'perfect the mortgage'. Completing the mortgage is only part of the mortgagee's solicitor's job; the perfection of the security lies in the post completion work, in particular the registration of it. In this respect, notice how the question tells you that the property has a registered title.

There is no magic in acting for a mortgagee as well as a buyer. After all, the interests of the mortgagee will nearly always coincide with those of the purchaser (although be aware that conflicts of interest can arise). The purchaser will want to buy and the mortgagee will want security upon a property which is free from unusual encumbrances and which has a good and marketable title. The question tells you that the UK Finance Mortgage Lenders' Handbook is being used so you should make reference to this in your answer.

If you have a sound knowledge of the conveyancing process and you adopt a systematic approach to your answer you are almost guaranteed to achieve high marks. Explain clearly, precisely, and in chronological order each stage of the process, highlighting areas of particular importance. Do not be afraid to spell out, for instance, that the buyers must execute the mortgage deed before the funds are released on completion.

## Suggested answer

The steps we would take to complete and perfect the mortgage on Pembridge House can be summarised as set out below. At all times we would have regard to the detailed provisions of the UK Finance Mortgage Lenders' Handbook, both generally (part 1) and more specifically for this lender (part 2).

1. We would conduct all the usual pre-contract searches and enquiries for a registered property of this nature. For example, local search, commons search (as the property is in a small village), and standard enquiries of the seller's solicitors.
2. We would investigate title to the property in the normal way by examining official copies of the registered title.
3. We would approve the draft contract and, provided we and our clients are satisfied on all points (including the terms and conditions of the mortgage offer), we would then exchange contracts.
4. Following exchange we would check the mortgage offer/instructions again, in particular the special conditions, and make sure there are no outstanding matters which need to be covered.

- 
5. We would check the precise amount available from the lender on completion. Will there be any retention in respect of works to the property? Will a mortgage guarantee indemnity premium be deducted from the gross advance?
  6. By reference to our mortgage instructions, we would fill in the blanks in the mortgage deed in readiness for execution by our clients. For example, in the mortgage deed we would insert the property description (including the title number), names of borrowers, and the initial rate of interest.
  7. We would ask the clients to come into the office to sign the mortgage deed in the presence of a solicitor (the UK Finance Mortgage Lenders' Handbook considers this to be good practice). All requisite documentation would have to be executed **before** completion.
  8. Before obtaining the borrowers'/buyers' signatures to the mortgage deed we would explain to them its contents and effect. For example, it will probably contain covenants by the borrower to keep the property in good repair, not to sublet without the mortgagee's consent, and not to carry out structural alterations. We would check for any interest penalty on early redemption and advise our clients accordingly (we should already have checked and advised on this when we received the mortgage offer before exchange). Most importantly, the buyers must realise that their home is at risk if they default on the terms and conditions of the mortgage.
  9. We would obtain the buyers' execution to all other necessary mortgage documents (for example a bank mandate form). A solicitor should normally witness signatures. It is good practice to let the buyers have copies of the documents they have signed. At the same time, if we are submitting a hard copy rather than electronic, we would arrange for our clients to complete and sign Form SDLT1 in respect of Stamp Duty Land Tax (SDLT) payable immediately after completion.
  10. We would undertake all necessary pre-completion searches including a bankruptcy search against the full names of the buyers/borrowers. The bankruptcy search is an essential requirement of all mortgagees.
  11. Once we were satisfied on the title and the results of our searches, we would send our report on title and advance cheque request to the lender in good time for the advance monies to reach our office by the day of completion. If the results of any searches are outstanding, our report would be qualified to say that the report is 'subject to satisfactory results of searches'.
  12. We would ask our clients to put us in funds for any balance due as set out in a financial statement that we would have prepared for them.
  13. On the day of completion we would complete the purchase in the normal way and date the mortgage deed.
  14. Following completion, we would perfect the mortgagee's security by attending to the crucial post completion formalities. These would be:
    - submitting Form SDLT1 to HMRC and paying the SDLT of £20,000,
-

- obtaining prior to registration at Land Registry the SDLT Certificate of Payment from HMRC, and
  - applying to register the transfer and mortgage at Land Registry on Form AP1 accompanied by all necessary documentation.
15. Upon completion of the registration at Land Registry, we would check the Title Information Document to ensure that the entries are correct and then check the lender's requirements concerning the custody of documents relating to the subject property.