

## CML 'DISCLOSURE OF INCENTIVES' FORM

The Council of Mortgage Lenders (CML) will today announce a new Disclosure of Incentives Form for new homes which will take effect from 1 September 2008. The RICS, and the HBF jointly with Homes for Scotland (HfS), will simultaneously issue press comments on the new form.

The form is an important step in rebuilding lender confidence in new homes and, as such, should be seen by home builders as a positive initiative that will benefit the industry.

### BACKGROUND

Lenders have lost confidence in the new build sector, having incurred significant losses on new homes. In today's extraordinarily difficult market conditions, this damages the interests of house builders because the lenders have become increasingly cautious about lending on new homes.

The form has been initiated by the CML to help further restore lenders' confidence, following on from HBF's voluntary Code of Conduct on disclosure of incentives launched on 16 April 2008. It is not a total solution, and will not bring an instant flood of new money for new home buyer mortgages. But without it, there can be little doubt the situation would worsen for house builders as more and more lenders restrict lending on new homes, or withdraw altogether.

The facts are very stark. According to the CML, net mortgage lending this year (forecast £55bn) is expected to be about half last year's total (£108bn). Therefore lenders are rationing their scarce funds. This rationing is largely based on risk: restricting lending, or charging more, to riskier borrower types or home types. Unfortunately new homes are viewed as being at the riskier end of the spectrum.

There are a number of reasons why lenders have lost confidence in the new home sector, and why they therefore view new homes as relatively risky. All are based on lenders' hard direct experience:

- Sales incentives offered to buyers are not always made fully known to the lender or valuer, a practice that continues today, so that the true price may be far adrift from the apparent price, and the lender ends up lending at a much higher percentage advance than

intended. In some cases full information is not made available, in some cases we are told home builders have provided false information;

- There has been a concentration of outright mortgage fraud in the new build apartment sector;
- New apartments in some locations have suffered significant price falls, a further worry to lenders and exacerbating lenders' losses.
- Repossessions are disproportionately concentrated in the new build sector, particularly new build apartments, leading to substantial losses for some lenders;

Today's priority for the home building industry must be to see a restoration of more normal lending volumes and terms. The CML's disclosure form has to be seen as an essential step – necessary, though clearly not sufficient - in trying to restore lenders' confidence in the new build sector.

### **THE DISCLOSURE FORM**

The form will be introduced from 1 September 2008. It will be required for all new home sales in the UK involving a mortgage, new homes being defined as a property not previously occupied (including conversions). Over the next three months, the law societies will be notifying solicitors about the form. In September, the RICS will be amending its guidance to members to reinforce the requirement to disclose incentives to lenders.

The form is a CML and lender initiative, but the CML did consult HBF and HfS about the wording of the questions. We were able to seek the views of HBF legal staff and persuaded the CML to make important changes to the wording of the form.

To avoid making the form too long, with long explanatory notes, the CML, in consultation with HBF and HfS, will prepare a Q&A to accompany the form to be ready for the formal introduction in September.

Further, more detailed guidance will be issued in due course. However HBF members may find it helpful if we explain how it is envisaged the form will be used by house builders and lenders:

- A house builder selling to a buyer who is taking out a mortgage will download a copy of the form from the CML web site (the form is not on the web site yet, but will be available a few weeks in advance of 1<sup>st</sup> September), along with the Q&A. Note that the onus will be on the house builder to obtain the form. For information only, a copy of the form is available on

the HBF web site, but we must stress house builders are not required to use the form until 1 September;

- The house builder will be required to complete the form and, at an appropriate point (to be decided by the house builder), sign it to confirm its accuracy and send it (possibly with usual plot contract documentation) to the purchaser's conveyancer. Because we understand that in 99% of cases the purchaser's conveyancer is the same as the lender's conveyancer, the conveyancer will be responsible for passing on the completed and signed form to the lender;
- Because new information may become available after the form has been signed by the house builder and sent to the buyer's/lender's solicitor, the house builder will be required to pass on any later information relating to the questions on the form to the buyer's/lender's solicitor;
- The house builder will also be required to make a copy of the form available to the lender's valuer, on request. It will be up to each house building company to decide whether a separate form is held by the sales office and completed with the information known at the time the valuer visits, or whether there is only one version of the form within the company and a copy of this is sent to the sales office to be given to the valuer. Note that the sales office will not be required to sign the form (and thus not required to warrant as to the accuracy of the information given to the valuer), but simply to give a contact name, company name and date (Question 12 on the form). The house builder will not be required to provide any further information to the valuer after the valuer has been given the form.
- It will be up to the lender to decide whether they want to compare the information given to the valuer with the information provided to the lender's conveyancer. If they do, and if there is a significant discrepancy, the lender may decide to ask the valuer to revalue the property taking account of this new or different information. This could potentially lead to a delay, or at worst withdrawal of a mortgage offer, at a very late stage in the sale process. Therefore it will clearly be important for house builders to give as accurate and full information as possible to the lender and valuer.

HBF will continue to keep members informed about the introduction of the new form and will in due course provide a copy of the Q&A to all HBF members.

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