

10 Nov 2008

**EBS
BUILDING
SOCIETY**

**MORTGAGE
CONDITIONS**

EBS
BUILDING SOCIETY

LEN030X 06/05

10 NOV 2008

1. Interpretation of the conditions and definition of some of the terms used.

The index, headings and notes in the margin are inserted for convenience only and cannot be used to interpret these conditions.

Words in the singular include the plural and vice versa and reference to a person shall include a body corporate.

In the case of conflict between the Rules and the Mortgage, the Mortgage shall prevail.

Reference to any statute includes any acts extending, amending or replacing that statute and all statutory instruments, regulations, rules and orders made under that statute.

In these conditions and in the Mortgage Deed, unless it is clear that the intent is otherwise, the following expressions have the following meanings:

Act - The Building Societies Act, 1989.

Agreed Payments - The payment of capital and/or interest to be made by the Borrower which are described in the Offer Letter.

Borrower - Each person so described in the Mortgage Deed and those persons' successors and assigns. All parties to the Mortgage named as Borrower are jointly and severally liable to meet all payments due under, and to comply with the other conditions of, the Mortgage.

EBS - EBS Building Society, including successors and assigns.

EBS Mortgage Conditions - The terms and conditions set out in this document.

Loan - Each loan advanced to the Borrower from time to time by EBS in accordance with an Offer Letter. It includes housing loans and other loans, and loans in a currency other than the currency of the State.

Month - A calendar month.

Mortgage - The Mortgage Deed and those conditions combined.

Mortgage Deed - The Deed entitled "Mortgage" executed by the Borrower and (where applicable) the Spouse.

Property - The land described in the Schedule to the Mortgage Deed along with any buildings now erected or in the course of erection or in the future to be erected upon that land and all alterations and or additions to the land and buildings and every part thereof.

Offer Letter - The letter from EBS offering the Loan to the Borrower, including any amendment to that letter which has been agreed in writing by EBS.

Rules - The rules of EBS in force from time to time including any which may be adopted after the date of the Mortgage.

Spouse - The person so described in the Mortgage Deed, being the lawful spouse of the Borrower.

Total Debt - The amounts referred to in paragraph 4.2 of the Mortgage Deed.

Year - From 1 January to 31 December.

2. How interest on the Loan is calculated and charged.

- 2.1 The basis on which the interest rate on the Loan is calculated is stated in the Offer Letter.
- 2.2 The interest rate on the Loan may be increased or reduced by EBS from time to time, however no change in the interest rate will be applied to the Loan during any period when the interest rate is a fixed rate.

2.3 Notice of a change in the interest rate on the Loan will be given by way of a notice in writing sent to the Borrower, or by

(a) a notice exhibited at the chief office of EBS, and

(b) a notice in at least two national daily newspapers.

The change in the interest rate on the Loan will take effect on the day specified in the notice.

2.4 Where specified in the Offer Letter and where the Borrower has agreed in the form specified by the Central Bank, the interest rate may include one or more tiered interest rates. In these circumstances, references to "interest rate" in these conditions will, where appropriate, be applicable also to the tiered rate(s).

2.5 Where the interest rate is based in part of the fact that the Property is for the use and occupation of the Borrower and the Borrower's family, and subsequently EBS consents to the letting of some or all of the Property, a condition of this consent may be that the interest rate on the Loan be increased.

2.6 For the purposes of calculating interest, percentages will not be taken beyond six places of decimals.

2.7 Interest will continue to be charged under these conditions after (as well as before) any judgement which the EBS obtains against the Borrower for the recovery of all or any part of the Total Debt.

3. How the Mortgage is repaid.

3.1 The Borrower is required to make the Agreed Payments to EBS as specified in the Offer Letter.

3.2 EBS may vary the Agreed Payments from time to time, so as to take account of -

- (a) any variation in the interest rate applying to the Loan, including a variation arising out of a transfer from a fixed rate basis to a variable rate basis or vice versa, or
- (b) a partial redemption, additional amounts advanced to the Borrower or additional amounts becoming due by the Borrower to EBS which are secured by the Mortgage, or
- (c) any variation in the repayment period of the Loan which has been agreed between the Borrower and EBS, or
- (d) a suspension of payments by the Borrower, or
- (e) the capitalisation of any money due by the Borrower to EBS, the payment of which has fallen into arrears and remains unpaid, or
- (f) any other variation of the terms on which the Loan is advanced which has been agreed between the EBS and the Borrower.

3.3 If the Property is sold and the net proceeds received by EBS are insufficient to pay off the Total Debt as at the date of payment, the Borrower is obliged immediately to pay EBS the amount of the shortfall, together with interest up to the date the amount outstanding is fully paid off.

3.4 When the Total Debt is repaid, EBS will release the security in accordance with Section 27 of the Act.

4. When costs and charges will become payable by the Borrower.

4.1 If the Borrower has complied with all the Borrower's obligations under the

Mortgage and has made all payments when due, there will be no additional costs or charges on the Loan, other than -

- (a) charges, of which EBS has advised the Borrower before they are incurred, which are made by EBS for specific services requested by the Borrower; and
 - (b) costs incurred in releasing security, which will be charged to the Borrower.
- 4.2 If EBS incurs any costs because a direct debit payment or other payment instruction by the Borrower is not made (or honoured) when due, those costs, plus an amount which reasonably covers the additional administrative expenses incurred by EBS in processing the unpaid item, will be payable by the Borrower. EBS may use a standard scale of costs (approximating the costs and expenses involved in processing unpaid items), and may amend this scale from time to time. EBS will send details of these costs to the Borrower if they arise.
- 4.3 If payments on the Loan go into arrears or other parts of the Total Debt are not repaid when they fall due EBS may incur costs and expenses in collecting these arrears and/or realising its security. All such costs and expenses will be payable by the Borrower. These costs and expenses will be payable by the Borrower. These costs and expenses will include -
- (a) outlay by EBS on legal or other professional fees, and
 - (b) administrative expenses incurred internally by EBS.

Estimates of such costs and expenses will, if possible, be sent to the Borrower before commencement of any action by EBS which would give rise to them.

- 4.4 Costs and expenses incurred by EBS in collecting arrears and/or realising its security will be payable by the Borrower even if -
- (a) it is not possible to estimate costs and expenses in advance, or

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- (b) the estimate proves to have been incorrect, or
 - (c) it is not practicable to communicate the estimate to the Borrower before the commencement of action.

4.5 Costs and expenses which are payable by the Borrower under this Section 4 will be dealt with as follows:

- (a) details will be sent to the Borrower from time to time; in the case of costs and expenses arising under paragraph 4.2, this will be done by including such details in the annual statement sent to the Borrower,
- (b) unless otherwise agreed by EBS, they are immediately due and payable by the Borrower,
- (c) irrespective of whether they are immediately due, they will be subject to interest from the date they are incurred at the rate of interest payable from time to time on the Loan, in the case of a Loan which has more than one interest rate, the costs and expenses will be subject to interest at the highest rate from time to time applicable to a Loan.

5. Keeping the Property insured.

5.1 The Property must be insured at the expense of the Borrower, in the joint names of EBS and the Borrower, or otherwise as EBS may agree in writing, against such risks, for such amount, and on such terms as EBS may specify from time to time. If the Borrower arranges insurance on the Property, or modifies an existing arrangement for insurance, prior to the advance of the Loan or at any time while any amount of the Total Debt is outstanding, EBS must be informed and all details requested by EBS must be supplied.

5.2 EBS is under no obligation to take care that the amount for which the

Property is insured from time to time is sufficient to repair or rebuild the Property fully if it is damaged or destroyed.

- 5.3 If the premiums for any insurance on the Property are paid by EBS, the Borrower must immediately, when demanded, refund the amount involved to EBS, in one lump sum or, if it has been agreed between the Borrower and EBS to spread the premiums over a period, over the period which has been agreed. If the premiums are not paid when due, the unpaid premiums will, until paid, be subject to interest at the highest rate of interest from time to time applicable to Loan.
- 5.4 If the insurance is arranged by EBS, all amounts allowed to EBS by the insurers for commission or otherwise belong to EBS.
- 5.5 In the event of an insurance claim on the Property, unless EBS has agreed otherwise in writing -
- (a) EBS has full power to settle and adjust the claim with the insurers,
 - (b) EBS is entitled to receive the full proceeds of the claim, to be used to reinstate the Property or to reduce the Total Debt at the reasonable discretion of EBS, and
 - (c) if the Borrower receives any proceeds, they must be held in trust for EBS and paid to EBS or otherwise dealt with as directed by EBS.

6. Covenants by the Borrower

The Borrower covenants with EBS, so long as any amount of the Total Debt is outstanding -

To obey Rules.

- (a) To abide by the Rules of EBS and the terms of the Offer Letter.

To complete Building.

- (b) To complete without delay, to the satisfaction of EBS, any building in the course of erection or subsequently erected on the Property.

To repair and maintain.

- (c) To put and keep the Property and any additions to it in good repair and condition to the satisfaction of EBS.

To observe covenants.

- (d) To observe and perform all covenants and stipulations, if any, affecting the Property including all covenants and conditions contained in any lease.

To pay outgoings.

- (e) To pay all rents, charges, taxes, rates and other outgoings in respect of the Property.

Not to alter or change use.

- (f) Not to carry out any structural alteration to the Property or engage in or continue a change of the use of the Property (where such change of use would normally require planning permission), without the prior written consent of EBS and, where necessary, the approval of the relevant planning authority.

To comply with statutes.

- (g) To observe and comply with the provisions of all statutes and the orders of competent authorities insofar as they affect the Property and generally to do everything concerning the Property which is required by law or regulation.

To inform EBS of notices.

- (h) To inform EBS immediately on receipt of any notice received in respect of the matters in paragraph 6(g).

To permit inspection.

- (i) To permit EBS, without it becoming liable as mortgagee in possession, to inspect the condition of the Property at any reasonable time.

Not to prejudice insurance cover.

- (j) Not to do anything with the Property which might prejudicially affect any insurance on such property or increase the premium payable.

Not to create a second mortgage.

- (k) Not to create a second or subsequent mortgage of or other security interest in the Property without the prior written consent of EBS.

Not to let the Property.

- (l) Notwithstanding the provisions of the Conveyancing Acts, 1881 to 1911, not to let the Property, or any part of it, without the prior written consent of EBS.

Not to vary existing leases.

- (m) If the Property is subject to any tenancy or tenancies, not to extend, vary or amend them without prior written consent from EBS.

7. Obligation of Spouse.

7.1 The Spouse guarantees to EBS that the Borrower will comply with all the Borrower's obligations and all the conditions binding on the Borrower which are contained in the Mortgage. Subject to the limits in paragraph 7.2, the Spouse must indemnify EBS fully against all damages, costs, losses or claims suffered by EBS arising from or in connection with any breach by the Borrower of those obligations and conditions. The mortgage by the Spouse of the Spouse's interest (if any) in the Property contained in the Mortgage Deed is security for all the Spouse's liabilities to EBS which arise from time to time under this paragraph.

7.2 EBS acknowledges, that the liability of the Spouse under paragraph 7.1 is limited to the portion (if any) of the proceeds of any sale of the Property attributable to the Spouse's interest (if any) in the Property.

8. EBS Powers.

- 8.1 If EBS believes that the Borrower is not maintaining the Property as required in these conditions, notice will be given to the Borrower of this. If the Borrower does not then rectify matters within 21 days, EBS may, without becoming liable as mortgagee in possession, arrange to have the necessary repairs or modifications done to the Property; in these circumstances, the representatives or agents of EBS appointed to undertake this work may enter the Property at all reasonable times. The cost to EBS of any work carried out will become a debt payable on demand by the Borrower to EBS and from the date the cost is incurred by EBS until it is paid by the Borrower, it will be subject to interest at the highest rate of interest from time to time applicable to a Loan.
- 8.2 EBS may, without notice to the Borrower, capitalise any money due by the Borrower to EBS which has fallen into arrears and remains unpaid, and in so doing extend the term of the Loan and/or vary the payments.

9. Powers of Assignment and Securitisation.

- 9.1 (a) EBS may at any time transfer or assign the benefit of all or any part of the Mortgage, the Total Debt and any security hereby created to any person on such terms as EBS may think fit, with or without notice to the Borrower or any other person. Where such a transfer or assignment happens -
- (i) all powers, rights and discretion of EBS shall be exercisable by the transferee or assignee to the extent that they are so assigned and/or transferred;
 - (ii) all powers and rights of EBS, insofar as they are applicable after the transfer will be exercisable by the transferee, and
 - (iii) the Rules will cease to apply.

This paragraph (a) does not apply to a transfer of the Mortgage on a merger with another building society or on an amalgamation/transfer of engagements under Part X of the Act or a conversion of the EBS under Part XI of the Act.

(b) EBS may deposit the Mortgage and the title documents to the Property or grant a sub mortgage or sub-charge of the Mortgage to any person as security for money borrowed or other obligations of EBS.

9.2 Without prejudice to the generality of paragraph 9.1, the Borrower irrevocably consents to any future legal or equitable transfer or assignment or sub-mortgage or sub-charge of all or any part of the benefit of the Mortgage, the Total Debt and the security hereby created and to any trust or administrative arrangement entered into by EBS as part of a loan transfer and securitisation scheme and any consequential assurance or re-assurance or release under such scheme and the Borrower acknowledges that EBS may include the Mortgage in the mortgage pool the subject of any such scheme without any further consent of or notice to the Borrower or any other person.

9.3 For the purpose of paragraphs 9.1 and 9.2 the Borrower irrevocably authorises EBS to disclose to the proposed transferee, assignee or any other person participating in any way in any such transfer or loan transfer and securitisation scheme, details of the Mortgage, the Total Debt and the security hereby created and such other information and documentation in EBS's possession in relation to the Borrower as may be reasonably required by any such person in connection with such transfer or scheme and, so far as such information constitutes personal data within the meaning of the Data Protection Act 1988, this authority shall be a consent for the purposes of section 8(h) of that Act

10. Circumstances in which the Total Debt becomes immediately payable.

The Total Debt becomes immediately payable to EBS if any of the

EBS Mortgage Conditions

following happens

Default in payment.

- (a) If the Borrower defaults for three consecutive months in the payment of some Agreed Payment or other money payable to EBS under the terms of the Mortgage.

Failure to perform.

- (b) If the Borrower is in breach or default in performing its other obligations in the Mortgage (and where the breach or default is capable of being remedied, such breach or default continues unremedied for one month after EBS has sent a written notice to the Borrower requiring its remedy).

Bankruptcy etc.

- (c) If the Borrower or a guarantor becomes bankrupt or enters into a statutory or other composition or arrangement with creditors, or (being a company) goes into receivership, liquidation or examinership.

Compulsory purchase.

- (d) If the Property or any part of it is compulsorily purchased or requisitioned so that its value as security to EBS is materially reduced.

Demolition.

- (e) If the Property or any part of it or any building on it is demolished or damaged so that its value as security to EBS is materially reduced.

Assignment.

- (i) If, without the prior written consent of EBS, the Borrower assigns, lets or parts with possession of the Property or any part of it.

Misrepresentation.

- (j) If any statement made or information furnished by or on behalf of the Borrower in connection with the Loan proves at any time to be incorrect in any material respect or the Borrower commits any act of fraud in connection with the Loan.

Possession.

- (h) If the Borrower yields up possession of the Property to EBS.

11. What can happen when the Total Debt becomes immediately payable.

If the Total Debt becomes immediately payable to EBS under any of the provisions of Section 10 then, without the consent of the Borrower or notice to the Borrower (except where otherwise stated below), EBS may -

Take Possession.

- (a) Take possession of the Property.

Appoint a receiver or sell.

- (b) Appoint a receiver over the Property, and/or sell the Property.

The provisions of the Conveyancing Acts, 1881 to 1911 (except for the restrictions imposed by Section 20 of the Conveyancing Act, 1881 and the limit imposed on a receiver's fees imposed by section 24 of that Act), the Registration of Title Act, 1964 and the Building Societies Act, 1989 will apply to these actions by EBS.

Give up possession.

- (c) On giving notice to the Borrower, remove the receiver or give up possession.

Carry on business.

- (d) If the Borrower carries on a business in the Property, continue the business of the Borrower and use any income from the business to reduce the Total Debt.

Let property.

- (e) Continue existing tenancies or grant new leases on the Property on such terms as it thinks fit and use the rents received, after expenses, to reduce the Total Debt. If the Property is let as a furnished property, EBS may use all of the rent received, after expenses, to reduce the Total Debt and will not be bound to share the rent with the Borrower in spite of the fact that

some of the rent may be in respect of the Borrower's furniture or other assets.

Sell furniture etc.

- (f) If the Borrower leaves furniture, vehicles, livestock, materials or other goods on the Property and, after notice, fails to remove these, EBS may sell them as agent of the Borrower and use the net proceeds to reduce the Total Debt. This sub-paragraph does not give EBS any right in equity to the goods in question or any charge on them.

12. Miscellaneous Provisions

12.1 *Debt Due.*

For the purposes of the Conveyancing Acts, 1881 to 1911, the Total Debt becomes due 30 days after the date of the Mortgage Deed.

12.2 *Debts covered by the Mortgage.*

The Mortgage is security for the Total Debt. It is additional to any other security held by EBS. No property held by EBS as security will be released until the Total Debt is paid and Section 17 of the Conveyancing Act, 1881 shall not apply to the Mortgage.

12.3 *Other rights relating to the Property.*

So far as the Borrower has power to do so, the Borrower as beneficial owner hereby assigns to EBS the benefit of -

- (a) all covenants, agreements, undertakings, charges, rights, remedies or indemnities in respect of or in relation to the Property or any rent payable from it or charge on it, and
- (b) all covenants, agreements and undertakings in relation to the construction of roads, footpaths, utilities or services abutting and serving the Property or charges or levies in respect hereof or the taking in charge thereof by the local authority and any indemnity in

respect of matters aforesaid, and

- (c) all rights of the Borrower to be paid or to receive compensation or other sums under any contract or statute, including any compulsory purchase, requisition or other exercise of compulsory powers in relation to the Property or any refusal, withdrawal or modification of planning permission or approval relative thereto or any control or limitation imposed upon or affecting the use of the Property and so that the production of the Mortgage to the authority or person liable to pay such compensation shall be a sufficient authority to it or him to pay all such moneys to EBS.

12.4 *Shares and Management Companies.*

If, in connection with the Property, the Borrower holds any share in a management company, then the share certificate (if any) must be deposited with EBS, but not so as to charge the share to EBS.

12.5 *Life assurance policies.*

EBS will have an equitable charge on all life assurance policies deposited with it in connection with the Loan. Any policy monies collected or received by EBS may, at the discretion of EBS, be immediately applied towards the repayment of the Total Debt.

12.6 *Compensation and other Payments.*

Any money paid to the Borrower in respect of the Property, whether as of right or on an ex gratia basis, for any damage, injury or depreciation to it must be held by the Borrower in trust for EBS. If such money is received by the Borrower, EBS must immediately be informed and, if required by EBS, the money must be used towards the repayment of the Total Debt and/or towards repairing or otherwise improving the Property.

12.7 *Power of Attorney.*

Subject to paragraph 3.4, the Borrower hereby irrevocably appoints EBS and any person nominated for the purpose by EBS in writing under hand by an officer of EBS as attorney of the Borrower and in the Borrower's name and on the Borrower's behalf to do any act or thing which may be required in the exercise of any of the rights, powers or remedies of EBS

hereunder or otherwise for any of the purposes of the Mortgage and in particular -

- (a) to execute, seal and deliver and otherwise effect, do or make any deed, assurance, agreement, instrument or act which the Borrower

ought to execute or do under the covenants and provisions contained in the Mortgage.

- (b) to claim, assess, agree, enforce, recover and receive any rights referred to in paragraph 12.3,

- (c) to assign, transfer, surrender or otherwise deal with any life policy to collect the policy monies.

12.8 Notices.

Where EBS is required to give a written notice to the Borrower, this notice will be sent as follows:

- (a) where the notice is to one person, by sending notice to that person at the address last known to EBS,
- (b) where the notice is to two or more persons, by sending notice to the first named person at the address last known to EBS, and
- (c) in the case of a company, by meeting the requirements of the Companies Acts with regard to the service of notices on companies.

Notices will be considered to have been received 24 hours after being posted or otherwise dispatched by EBS.

The Borrower should notify EBS in writing of any changes of address that might affect the service of notices. While EBS will make reasonable efforts to contact the Borrower or other person to whom notice should be given if it is required to give written notice, the legal rights of EBS will not be affected if, through no fault of EBS, notice cannot properly be given

12.9 *Mistakes and Miscalculations.*

- (a) EBS will not be prejudiced by any error or omission in any information about the Mortgage supplied by it to the Borrower before or after discharge of the Mortgage.
- (b) A receipt or discharge of the Mortgage does not discharge the Borrower from personal liability if it is later found that the amount of the Total Debt was understated by mistake.
- (c) EBS will not rely on this condition to make a claim against the Borrower unless the claim is made in writing within six months of the receipt or discharge, but no time limit will apply if the Borrower knew or should reasonably have known of the mistake.

12.10 *Actions by EBS.*

A failure or delay by EBS to exercise any right or remedy under the Mortgage does not operate as a waiver of its rights and remedies. A waiver by EBS of any breach of these conditions does not prevent the subsequent enforcement of these conditions.

12.11 *Severability.*

If any provision of the Mortgage is found by any Court or as a result of any Statute or Regulation or otherwise to be invalid or unenforceable, this will not affect the validity and enforceability of the other provisions of the Mortgage.