



The Law Society

Model letter to wife where charging home to secure loan to husband or his business¹

To be amended as necessary. While every effort is made to ensure the accuracy of the information given, it does not constitute legal advice and cannot be relied upon as such. The Law Society does not accept any responsibility for liabilities arising as a result of reliance upon the information given.

Dear [□]

This letter confirms the advice that [I] [we] gave you at our meeting [today] in respect of the proposal that your [freehold][leasehold] property known as [□] (the Property) is to be mortgaged to [□] (the Lender) to secure a loan from the Lender to [□] (the Borrower).

The Lender requires that you are given this advice so that, if you sign [the mortgage] [and related documents] [a consent to mortgage] you will not be able to claim afterwards that you are not legally bound by [it] [them].

(1) The Property is owned [in your sole name] [in the Borrower's sole name] [in the joint names of yourself and [□]] and you [both] will be required to sign [the mortgage] [and related documents][the consent to mortgage] in favour of the Lender.

(2) Enclosed is a copy of the form of mortgage [and the mortgage conditions that are incorporated into it] [and related documents], which please read carefully and ask [me] [us] if you have any questions. The following is a summary of the main provisions and implications, but does not cover everything.

(3) The mortgage is [initially] required to give the Lender security for a loan [of £□] [a loan facility of up to £□] to be provided to the Borrower.

[However, the mortgage will be on 'all monies' terms and will also give the Lender security over the Property for:

- (1) any further loan or increased facility that the Borrower (individually or jointly with you or anyone else) may in future obtain from the Lender while the mortgage remains in existence, even if this is done without your knowledge or consent;
 - (2) any existing loans from the Lender to the Borrower (individually or jointly with you or anyone else), even if you do not know about them;
 - (3) any existing or future loans that you yourself may obtain (individually or jointly with anyone else) from the Lender while the mortgage remains in existence;
 - (4) any sums owing to the Lender, at any time while the mortgage remains in existence, by any other person or company if you or the Borrower has already given, or shall in future
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- give, a guarantee for those sums to the Lender, and even if the Borrower has given or shall give such a guarantee without your knowledge and consent;
- (5) interest on all such sums as charged by the Lender;
 - (6) [*anything else*.]

According to the terms of the loan the Lender can demand repayment at [any time,] [on fixed dates,] [by instalments,] [*set out repayment requirements*].

(4) During the subsistence of the mortgage, [you] [the Borrower] must:

- (1) keep the Property insured in accordance with the Lender's requirements;
- (2) keep the Property in good repair;
- (3) not make any structural alterations or changes of use without the Lender's consent;
- (4) not let the Property or take in lodgers without the Lender's consent;
- (5) comply with all covenants and restrictions affecting the Property ;
- (6) [*anything else*].

(5) The mortgage will give the Lender a [first] charge over the Property as security for all the sums mentioned in paragraph (3) above. You could lose the Property if the Borrower's business does not prosper, or if the borrowing is increased unwisely. This is because, if any loan repayment or interest charge is not paid on time, the Lender would be entitled to enforce the mortgage by taking court proceedings to evict you and any other occupiers from the Property and sell the Property in order to obtain repayment. Alternatively the Lender could appoint a receiver to take possession of the Property from you and any other occupiers.

(6) [The Lender reserves the right to transfer the benefit of the mortgage to another lender.]

(7) [In addition, the mortgage will contain a covenant by you to pay all sums falling within paragraph (3) above if the Borrower fails to pay them [up to a maximum of £[] plus interest charged by the Lender]. This means that [up to that level] you will be a guarantor for the liabilities of the Borrower to the Lender, you will be personally liable for those sums, you could be sued by the Lender for them and, if the value of the Property and your other assets is insufficient to meet those sums, you could be made bankrupt as well as losing the Property.]

(8) [*Any other features of the mortgage needing comment?*]

The above legal advice relates to the effect of the proposed mortgage documents and the types of risks that arise. [However, [I am] [we are] not qualified to assess the likelihood of those risks actually materialising. That depends largely on the financial standing and prospects of the Borrower [and his business], although you should also consider whether the sums secured could be repaid from the sale value of the Property and your other assets. Therefore, before you decide whether to agree to sign [the mortgage] [the consent to mortgage], you should get help on assessing the risks by taking advice on those important financial aspects from a chartered accountant or other qualified professional financial adviser who should be independent of the Borrower.]

You do not have to agree to these arrangements at all if you consider that the risks are too great or if you think that these arrangements are of no advantage to you. If you are generally willing but find particular terms unacceptable, it may be possible to negotiate variations of those terms with the Lender in order to make them acceptable to you. These decisions are yours and yours alone.

[As you know, [I am] [my firm is] also acting for the Borrower in this matter [and also for the Lender in an administrative capacity] but I have given you this advice independently. Nevertheless you should consider whether you want further legal advice from a completely separate solicitor before you make a final decision in connection with the mortgage.]

Please sign paragraph (A) at the end of the enclosed copy of this letter to acknowledge that you have been given, and have understood, this advice.

If and when you decide that you will enter into the mortgage and will not require the Lender to vary any of the terms, please also sign paragraph (B) to confirm that decision and to allow the Lender to be told that you have received this advice.

Yours []

ACKNOWLEDGEMENTS

(A) I confirm that I have read this letter and have received and understood the advice given in it.
Signed: Date:

(B) I confirm that that I have decided, of my own free will, to enter into the mortgage, I do not require the Lender to vary any of the terms, [I do not require any further legal advice,] and I agree that the Lender may be told that I have received the advice in this letter.