

Explanatory Notes re Building Society/Bank "Consent" Forms

(Please read carefully before you sign the consent form)

Consent forms are required by lenders when an adult is to be in occupation of the mortgaged property, but that occupier is not a legal owner of the property.

The reason for the requirement is that it is now established law that such an occupier can acquire a legal interest in the property, despite his or her name not being on the deeds. When a lender takes security over a property by way of a mortgage or charge, its ultimate sanction, if things go wrong, is to repossess the property and sell it on the open market with vacant possession. In 1981, in the case of Williams & Glyn's Bank -v- Boland, the Bank tried to repossess the property. Mrs Boland lived at the property, but her name was not on the deeds and she was not, therefore, a party to the Bank's mortgage. Mrs Boland applied to the Courts for relief against possession, on the basis that she had acquired an interest in the property and the Bank had no right to force her out. The Court decided in her favour, leaving the Bank with virtually no security. This sent the lending institutions into a panic and, in order to overcome the problem, the requirement for a non-owning occupier to sign a consent form came about.

All lending institutions have slightly different consent forms but the effect of them is the same. By signing the form, the occupier

- (a) acknowledges that the property is to be subject to the mortgage,
- (b) consents to the creation of the mortgage, and
- (c) agrees with the lender that any interest that the occupier might acquire in the property would come after, or rank behind, the interest of the lender.

If Mrs Boland had signed such a form, then she would not have been able, in 1981, to prevent the Bank either from obtaining possession of the property or from forcing her out of occupation.

An occupier asked to sign a consent form has the right to seek independent legal advice before signing and, if there are any concerns or uncertainties, an occupier is advised to seek such independent advice.