

SAVE FOR LATER

Example Standard Mortgagee Protection Clause

Finance

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(Updated April 2023)

The Property Finance Working Group (PFWG) made up of various sector stakeholders has formulated an example mortgagee protection clause which should allow housing associations to obtain Market Value Subject to Tenancy (MVS-TT) when using s106 assets as loan security.

The PFWG is made up of 12 representatives (including lawyers (acting for both funders and borrowers), borrowers and valuers) was set up in August 2014. The PFWG is chaired by Helena Chau, Corporate Counsel at A2Dominion Housing Group, and includes representatives from Addleshaw Goddard, Allen & Overy, Clifford Chance, Trowers and Hamblins, Devonshires, Wright Hassall, Winckworth Sherwood, JLL and Savills.

The Group have been working to agree a consistent approach to the mortgagee protection clause (“MPC”) within Section 106 Agreements to ensure that housing associations can achieve best possible funding value when securing loans against the assets.

The intention behind an MPC is to protect the funder and anyone acting on behalf or for the funder and to be able to carry out its duty as a mortgagee, should a borrower default on its loan. Where the MPC does not provide sufficient protection for the funder and they would be bound by the affordable housing restrictions in the S106 Agreement, the value would be limited to Existing Use Value for Social Housing (“EUV-SH”). The best possible funding value is Market Value Subject To Tenancies (“MV-STT”), where the funder would be able to sell on the open market, to either a housing association or a non-regulated purchaser; and neither the lender nor successors in title would be bound by the affordable housing restrictions in the S106 Agreement.

The Group agreed a “sector approach” to MPC in 2015 with a view to agreeing an example of how associations could obtain MV-STT on assets being used for private finance. This was further amended in 2017, following the deregulatory measures and the Housing and Planning Act 2016 . This [example clause](#) is available to download (Word, opens new window) and is already in use by many local authorities.

Please note that there will be other MPC which will afford sufficient protection for funders and allow housing associations to achieve MV-STT. Housing associations are encouraged to consider the wording of the MPC within the Section 106 Agreements and understand what asset funding value could be achieved at the earliest possibility, i.e. at the point of negotiation using in house expertise or external advice.

The PFWG also agreed a [revised updated clause](#) with the Greater London Authority in 2019.

The PFWG will continue to engage with other relevant stakeholders to achieve buy-in to agree a standardised approach to MPC.

The endeavours of the PFWG are fundamental to enabling housing associations to secure the funds needed to build the homes to end the housing crisis. We will continue to provide updates from the PFWG as matters progress.

Who to speak to

Barker, Finance Policy Leader

020 4558 6188

matthias.barker@housing.org.uk

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