



Council of the ISLES OF SCILLY

Planning Department
Town Hall
The Parade
St Mary's
Isles of Scilly
TR21 0LW

T: 01720 424350 e: planning@scilly.gov.uk

Section 106 Planning Obligations

Explanation of the Mortgagee in Possession Clause

In summary, the way the deed is structured should now be acceptable to Mortgage lenders as it only applies to them should they come into possession (effectively become the Owners) of the land/dwelling. If that happens, the occupation restrictions of the dwelling are temporarily lifted allowing them to sell it to anyone (removes risk of not being able to sell the dwelling they have come into possession of) and the person who buys it would be deemed to be a qualifying person for the purposes of the deed allowing them to occupy it (it would still have to be their sole private residence). The terms of the deed would apply again to any subsequent sales.

In detail, the Section 106 planning obligation (deed) restricts the occupation of the dwelling on the land to which it relates to 'Qualifying Persons', for example to those with specific local need or key worker status as defined by the Council. The Council, the Land Owner and the Bank/Mortgagee (if applicable) must all agree and be party to it and the deed is worded so that it applies to anyone deriving title from the original parties.

In relation to the bank consent clauses specifically, (clause 7 in the sample) the recital means they are acknowledging the restrictions on the land they are lending on and agreeing that they would have no liability under the deed unless they derived ownership of the land by taking possession of it from the owner. It also removes liability from any pre-existing breaches that itself did not cause before taking possession.

The paragraphs in the second schedule defines:

- 1:** who the dwelling can be occupied by i.e. a Qualifying Person as defined by the deed (usually someone with a Specific Local Need) or in accordance with paragraphs 5 & 6 of this second schedule.
- 2:** how the dwelling can be occupied i.e. as the sole private residence of the occupier with or without their household.
- 3:** Allows a former joint spouse/civil partner/other member of the qualifying persons household to continue to reside at the dwelling should the qualifying person cease to reside there.
- 4&5:** Defines the procedure to be gone through prior to a new occupation of the dwelling should the dwelling become vacant
- 6:** Defines the way in which the dwelling can be occupied should it not be possible to find a qualifying person (basically allows occupation by anyone on a short hold tenancy until a qualifying person is found)
- 7:** means that paragraphs 4-6 do not apply to a Mortgagee
- 8:** then allows the Mortgagee (only if they come into possession of the property) to sell the dwelling to anyone. That person is then deemed to be a qualifying person for the purposes of the deed (even if they do not have a specific local need) allowing them to occupy the property as a sole private residence. However, any subsequent occupations by anyone else but themselves would have to be in accordance with the deed in other words by a member of their household or another Qualifying Person.

So basically, the new versions of the deeds are designed to put less risk on the Mortgage lender because if they needed to sell to recoup their money, they could sell to anyone.