

Guest blog with Allan McKendrick – Scottish cases.

Wilson McKendrick is a firm of solicitors providing legal services to lenders operating in Scotland. We asked Director Allan McKendrick to provide some insight into how Scottish transactions work, and how they support our partners with these less-familiar cases:

“Scottish Transactions can appear daunting when they first appear on your desk – the process and the terminology seems difficult, and you have to work with Scottish lawyers which you might not be familiar with.

“This is just a perception, but an understandable perception probably caused by a lack of familiarity. We act in only around 10% or less of a lender’s loans (Scotland’s population is less than 10% of that of the rest of the UK) so less than one in ten of the transactions you see will be Scottish.

“The fundamental principles of a Scottish secured loan transaction are exactly the same as those in the rest of the UK. In order to lend money to their customer, a lender needs security and they’ll take a charge over the borrower’s property; in England and Wales this is a Legal Charge, and in Scotland this is a Standard Security. Having this charge or security allows the lender to take possession of the property and sell it should the borrower fail to make their repayments in order to recover the monies lent.

“In many cases the first action you will undertake in a Scottish case will be requesting a Property and Personal Search from Wilson Mckendrick. This is fundamental to deciding whether the transaction can proceed. The Property Search will tell you whether your borrower owns the property (crucial for a secured loan!), when they

took title to the property, what they paid for it and what existing securities are registered over the property.

“The Personal Search will let you know whether the borrower has any ‘blips on the radar screen’ – for example, are they subject to an inhibition (a court action which prevents an individual dealing with their property assets), are they in a Trust Deed or are they sequestrated (bankrupt)?

“We also carry out a DAS Search which will let you know if the borrower is in a Debt Payment Plan (DPP) under the Scottish Debt Arrangement Scheme (a debt payment plan created and backed by legislation in Scotland). If they are, they are prohibited, in most cases, from borrowing any further money without the consent of the Accountant in Bankruptcy to a variation of their DPP.

“In certain cases Wilson McKendrick will also prepare the standard security in the particular lender’s template. This will be prepared from the information registered at the Registers of Scotland and will include all of the appropriate detail of the borrowers’ names and land registration numbers. Completing the security with the correct details will ensure that the document is registerable – which is essential for the security to be enforceable and therefore essential for any lender.

“Scottish transactions can appear to be more difficult or confusing, but if you have any queries on one of your Scottish cases, please don’t hesitate to contact our team who will be delighted to help.”