

# How Straightforward is the Green Deal?

The Green Deal aims to improve energy efficiency in homes. However as Paul Butt explains, the scheme is complex and properties with a Green Deal loan could prove difficult to sell.

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The UK government launched the Green Deal on 28 January 2013. It will have implications for both buyers' and sellers' conveyancers i.e. more work. It has to be said that so far it would appear that take up of the 'Deal' has been slow – only a handful of schemes having been approved. However, with hundreds more 'in the pipeline' sooner or later conveyancers are going to be dealing with such a property, so we need to be ready.

## What is the Green Deal?

To quote from the Department for Energy & Climate Change issued Guidance for the Property Industry on the Green Deal (March 2013)<sup>1</sup>:

“The Green Deal is designed to help householders and businesses increase the energy efficiency of properties and therefore reduce greenhouse gas emissions across Great Britain.

The Green Deal will be offered by the private sector to enable owners and occupiers in the domestic and non-domestic sectors to implement energy efficiency improvements to their property.

The scheme lets customers pay for some or all of the improvements over time through their electricity bills. The Green Deal Plan will be a new type of unsecured loan, and interest will be charged on the loan. Repayments under a Plan will be added to the electricity bill for the property and the person with responsibility for paying the electricity bill will be liable to make the repayments whilst they are the electricity bill payer at that property. It is likely that savings will mainly be made on heating bills (e.g. gas, oil or electricity).”

The basic idea is that the annual cost of the loan will not exceed the savings in fuel bills (a 'Golden Rule' for Green Deals), so encouraging householders and businesses to invest in energy saving improvements. No longer will the high cost of some energy saving improvements compared to the savings that they will make be a reason for people not to undertake these works to their property. The loans will be long term over a period of 10 to 25 years to ensure that this Golden Rule is complied with. The loans will not be a charge on the property, but a charge on the electricity bill for the property.

So any new buyer or tenant will be liable to continue making the repayments on the loan – subject to various disclosure and acknowledgement provisions being complied with. It is in securing compliance with these provisions that conveyancers will become involved.

It should, perhaps, be noted however that there is no guarantee that the energy savings forecast (and on which the whole scheme is based) would actually be achieved. The initial calculations of savings might well hold true for the original owner, but might not for a subsequent owner whose energy consumption may be very different due to differing family size and lifestyle. So low energy users in particular may well find that in reality the cost of the loan does exceed the savings in fuel bills.

### **Disclosure and Acknowledgement**

A new owner or tenant will only be liable for the Green Deal loan repayments if there has been disclosure of it to him or her and he/she has signed an acknowledgement (in the prescribed form) of having received such disclosure.

The primary method of disclosure will be by way of the EPC. The first page of the EPC should be examined to check if a Green Deal exists on a property. If it does, there will be a banner across the bottom of the first page, which says:

*“A Green Deal has paid to install energy efficiency improvements at this property. A daily Green Deal Charge is payable via the electricity bill. Important details about the Green Deal on this property, including the amount of the charge, can be found in the ‘information about the Green Deal’ section at the end of this EPC.”*

The buyer/tenant should then, of course, check the details of the loan – the repayments and period outstanding etc; there seems no reason why the conveyancer should be concerned with these, but the buyer should be advised to consider them carefully.

The 3rd Edition of the Law Society Property Information Form also contains a question as to whether there is a Green Deal affecting the property. In situations where the seller is not using the 3rd Edition (mandatory for Law Society CQS accredited firms) it must be sensible for a buyer’s conveyancer to expressly ask whether there is a Green Deal in place.

Further, if the works carried out under the Green Deal required building regulations consent, whether by an inspector or under a self-certification scheme (e.g. FENSA), then the entry on the local search referring to the existence of consent will also state that there is a Green Deal affecting those works.

So, there are lots of ways in which a buyer will know about this. However, it is for the seller to obtain the acknowledgement from the buyer that disclosure has been made; if there is no acknowledgement then the seller remains liable to continue repaying the loan. So the seller’s conveyancer needs to be aware of the Green Deal i.e. by looking at the EPC and/or the answer to the question on the Property Information Form. Only then can the conveyancer ensure that the appropriate acknowledgement is included in the contract.

The form of the acknowledgement differs depending upon whether the loan agreement contains an early repayment provision where the Green Deal Provider can require the loan to be repaid early in certain circumstances..

However, this is only possible in the case where the loan agreement is not a regulated consumer credit agreement i.e. where the borrower is a company or other commercial concern.

The prescribed forms are as follows:

Where there is an early repayment provision

### **Acknowledgment of green deal plan**

[I/We], [Insert name and address of person[s] giving acknowledgment unless this information is clear from the document in which the acknowledgment is given] acknowledge that:

- (a) a green deal plan dated [Insert date] (reference number: [Insert reference number]) has been entered into for [Insert description of green deal property] (“the property”); and
- (b) for such time as [I am/we are] the bill payer[s] (see note 1) at the property, [I/we] will:
  - (i) be liable to make payments under the green deal plan; and
  - (ii) have to comply with the terms of the green deal plan which apply to [a] bill payer[s] at the property.

[I/We] further acknowledge that, when [I/we] have ceased to be the bill payer[s] at the property, [I/we] will continue to be bound by the term[s] in the green deal plan which enable[s] the green deal provider to require early repayment of the amount outstanding under the green deal plan (see note 2).

(Note 1: A person is a bill payer if that person is:

- (a) liable to pay the electricity bill at the property; or
- (b) made the bill payer under regulation 6 of the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012. That regulation applies where no electricity is supplied to the property and to certain tenants and those who are entitled to sell the property.

Note 2: See regulation 38 of the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 for the circumstances when a green deal plan may allow a green deal provider to require early repayment of credit, including from a person who used to be a bill payer at the property.)

[Signed.....[Insert signature of person[s] giving the acknowledgment unless the document in which the acknowledgment is given is signed]

[Dated.....[Insert date acknowledgment is given unless the document in which the acknowledgment is given is dated]

Where there is NO early repayment provision i.e. in residential transactions

### **Acknowledgment of green deal plan**

[I/We], *[Insert name and address of person[s] giving acknowledgment unless this information is clear from the document in which the acknowledgment is given]* acknowledge that:

(a) a green deal plan dated *[Insert date]* (reference number: *[Insert reference number]*) has been entered into for *[Insert description of green deal property]* (“the property”); and

(b) for such time as [I am/we are] the bill payer[s] (see note) at the property, [I/we] will:

(i) be liable to make payments under the green deal plan; and

(ii) have to comply with the terms of the green deal plan which apply to [a] bill payer[s] at the property.

(Note: A person is a bill payer if that person is:

(a) liable to pay the electricity bill at the property; or

(b) made the bill payer under regulation 6 of the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012. That regulation applies where no electricity is supplied to the property and to certain tenants and those who are entitled to sell the property).

[Signed.....*[Insert signature of person[s] giving the acknowledgment unless the document in which the acknowledgment is given is signed]*

[Dated.....*[Insert date acknowledgment is given unless the document in which the acknowledgment is given is dated]*

Note that where the acknowledgement is part of the sale contract, the full names and addresses of the parties need not be given, and the signature of the buyer to the contract is sufficient.

## No Acknowledgement Given

Where no disclosure has been given, or it has not been acknowledged, then where a Green Deal is in place when the buyer receives his/her first electricity bill the Green Deal repayments will still appear on it. The buyer then has 90 days within which to dispute the charge with the Green Deal provider. If it is not disputed within this period then the buyer will be liable to continue with the loan repayments.

Where failure to comply with the regulations is alleged, this will be investigated by the Green Deal Ombudsman on behalf of the Secretary of State. Where the Secretary of State is satisfied that there has been a breach of the disclosure and acknowledgement regulations, he/she may cancel the plan. The seller will then remain liable to compensate the Green Deal provider.

## Implications

The CML Handbook was amended on July 8th 2013 adding a new provision relating to whether Green Deals (and also Solar Panels whether or not installed under a Green Deal) must be reported. Each individual lender's Part 2 must be looked at. Many lenders do require the details of the Green Deal to be reported. Note the emphasis of the word 'details'. It is not sufficient to disclose to the lender that there is a Green Deal in place; it is the details i.e. amount of loan, period of loan, repayments etc that most will require.

The other issue on a property sale is what reaction the buyer will have to being told that there is a Green Deal on the property. Will he/she be delighted that the property is so energy efficient and be prepared to take on the repayments? Or will he/she want the benefits but not the burdens and so insist on the price being reduced or the seller repaying the loan?

The fact that lenders will require the details of the loan tends to suggest that they at least fear that the existence of a Green Deal loan may affect the saleability of the property. Only time will tell, but if the seller is required to repay the loan, they should bear in mind that there might well be an early repayment penalty attached to the loan!

One thing is certain, though, conveyancers do not want to be involved with any such negotiations; these should be handled between the parties directly, or via the estate agents. After all they get paid a lot more than conveyancers do!

*Property Industry on the Green Deal*  
(March 2013)<sup>1</sup>

[www.gov.uk/government/publications/the-green-deal-guidance-for-the-property-industry-in-great-britain](http://www.gov.uk/government/publications/the-green-deal-guidance-for-the-property-industry-in-great-britain)

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