

Queensland



# MORTGAGES (SECONDARY MARKET) ACT 1984

**Reprinted as in force on 31 March 1995  
(includes amendments up to Act No. 75 of 1994)**

**Reprint No. 1**

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the Office of the Queensland Parliamentary Counsel  
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# Information about this reprint

This Act is reprinted as at 31 March 1995. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (pt 4, div 2)
- update references (pt 4, div 3)
- express gender specific provisions in a way consistent with current drafting practice (s 24)
- correct spelling and use different spelling consistent with current drafting practice (s 26(1) and (2))
- use standard punctuation consistent with current drafting practice (s 27)
- use conjunctives and disjunctives consistent with current drafting practice (s 28)
- use expressions consistent with current drafting practice (s 29)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (ss 36, 37 and 39)
- number and renumber provisions and references (s 43).

**Also see Endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in the reprint, including—**
  - **Table of changed citations and remade laws**
  - **Table of obsolete and redundant provisions**
  - **Table of renumbered provisions.**

Queensland



**MORTGAGES (SECONDARY MARKET)  
ACT 1984**

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# MORTGAGES (SECONDARY MARKET) ACT 1984

[as amended by all amendments that commenced on or before 31 March 1995]

**An Act to facilitate the operation of a secondary mortgage market in  
Queensland and for related purposes**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Mortgages (Secondary Market) Act 1984*.

### Commencement

2.(1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as is provided by subsection (1) this Act shall commence on a date to be appointed by proclamation.

### Definitions

3. In this Act—

“**banking corporation**” means a bank.

“**commissioner**” means the chief executive of the department within which this Act is administered.

“**instrument**” means any writing whatever.

“**manager of mortgages**” means a person who carries on the business of collecting moneys payable by a mortgagor under a mortgage pursuant to arrangements with the mortgagee under the mortgage.

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**“marketable security”** means any promissory note, bill of exchange, certificate of entitlement or other security such that either—

- (a) the right to payment had by the holder thereof or by a person subrogated to the rights of the holder is secured by rights (whether actual or contingent upon default by a person liable upon the security) in respect of or enforceable against a mortgagee's entitlements under any mortgage or mortgages secured on land or on land and improvements thereon; or
- (b) the holder thereof is entitled to the whole or a share of a mortgagee's entitlements under any mortgage or mortgages secured on land or on land and improvements thereon.

**“mortgage”** means any instrument registered or registrable in respect of land or land and improvements thereon as securing a primary obligation of any person to pay any sum or sums.

**“registered issuer”** means a person registered under this Act as an issuer of marketable securities for the purposes of the secondary mortgage market.

**“registered trustee”** means a person registered under this Act as a trustee for the purposes of the secondary mortgage market.

**“secondary mortgage market”** means the market formed by the buying, selling, offering for sale and issuing of, and offering to issue, secondary mortgage market securities.

**“secondary mortgage market security”** means a marketable security that under this Act may be dealt with on the secondary mortgage market to which this Act applies.

**“value of a mortgage”** means the outstanding liability of the mortgagor under a mortgage in respect of the principal sum secured thereby.

## **PART 2—FUNCTIONS AND POWERS OF COMMISSIONER**

### **Functions of commissioner**

**4.** The functions of the commissioner are—

- (a) to recommend to the Minister whether a person registered under this Act is an appropriate person to continue to be registered;
- (b) to consider, and make recommendations to the Minister about, operations on the secondary mortgage market;
- (c) to monitor the activities of each registered trustee to find out whether the trustee is acting in accordance with the trust deed to which the trustee is a party;
- (d) to monitor the activities on the secondary mortgage market of persons registered under this Act and their compliance with this Act.

### **Powers of commissioner etc.**

**5.(1)** For the purpose of the discharge of the commissioner's functions or the carrying into effect of the provisions of this Act the commissioner or a person authorised by the commissioner—

- (a) may at all reasonable hours enter premises where a person registered under this Act is carrying on business for the purposes of which the person is so registered and therein inspect all books, documents and records pertaining to or significant for that business, make copies of and take extracts from those books, documents and records and require production by that registered person of records pertaining to or significant for that business in such form as the commissioner or, as the case may be, the authorised person thinks necessary or desirable in the proper administration of this Act;
- (b) may inspect books kept by a banker who acts or has acted as banker to a person registered under this Act in respect of the business carried on by that person and for the purposes of which the person is so registered and make copies of or take extracts

from those books and require production by the banker of such statements of account as the commissioner or, as the case may be, the authorised person thinks necessary or desirable in the proper administration of this Act;

- (c) may require a person registered under this Act to appear before him or her for examination on oath or affirmation and to answer questions put to the person, and upon such examination may administer an oath or affirmation to that person.

(2) A person registered under this Act and a banker referred to in subsection (1) shall provide such assistance to the commissioner or to a person authorised by the commissioner as the commissioner requires for the proper administration of this Act.

### **PART 3—REGISTRATION OF PERSONS TO OPERATE IN SECONDARY MORTGAGE MARKET**

#### **Certificate of registration not transferable**

**6.(1)** It is not competent to the holder of a certificate of registration granted under this Act to assign or convey the certificate to any other person.

(2) If the holder of a certificate of registration granted under this Act purports to assign or convey the certificate to any other person the registration shall thereupon cease to be of any force or effect and the holder shall thereupon cease to have the status conferred on him or her as holder of the certificate.

#### **Revocation and suspension of registration**

**7.(1)** Where—

- (a) the holder of a certificate of registration, being a natural person—
- (i) becomes bankrupt or takes advantage of the laws relating to bankruptcy; or



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- (ii) is convicted of an offence involving fraud or dishonesty punishable by imprisonment for a period of or exceeding 3 months; or
  - (iii) is a patient within the meaning of the *Mental Health Act 1974*;
- (b) the holder of a certificate of registration, being a body corporate—
- (i) is commenced to be wound up, is under official management or has ceased to carry on business; or
  - (ii) is a body corporate in respect of the property of which a receiver or manager has been appointed by a court or otherwise; or
  - (iii) has entered into a compromise or scheme of arrangement with its creditors; or
- (c) the holder of a certificate of registration requests the commissioner to revoke the registration;

the commissioner may, by signed writing, revoke the registration.

(2) If in a case referred to in subsection (1)(a) or (b), the commissioner considers it desirable to do so, the commissioner may, instead of revoking a registration, suspend the registration for a specified period and may at any time remove such a suspension.

(3) Subject to section 9, if—

- (a) the holder of a certificate of registration contravenes or fails to comply with a condition of the registration or a provision of this Act that regulates the holder's conduct as holder of the certificate; or
- (b) the holder of a certificate of registration refuses or fails to comply with a requisition of the commissioner or a person authorised by the commissioner directed to the holder pursuant to this Act; or
- (c) the commissioner is of opinion that—
  - (i) the holder of a certificate of registration is not a fit and proper person to be so registered; or
  - (ii) where the holder of a certificate of registration is a body corporate—a director or secretary of the body corporate or a

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person concerned in the management of the body corporate is not a fit and proper person to be a director or secretary of or a person concerned in the management of a body so registered;

the commissioner may recommend to the Minister that the Minister revoke the registration.

(4) If in a case referred to in subsection (3)(a) or (b) the commissioner may, instead of recommending revocation of a registration, recommend suspension of the registration for a specified period.

(5) The Minister may, having regard to the commissioner's recommendation in the matter, revoke a registration or suspend a registration for such period as the Minister thinks fit, in either case by signed writing.

(6) Notification of any revocation or suspension of any registration shall be given to the holder of the certificate of registration, personally or by post addressed to the holder's principal place of business or ordinary place of residence last known to the Minister.

(7) A registration that is suspended shall be deemed revoked for the period of suspension.

(8) Where a registration is revoked or while it is deemed to be revoked for a period of suspension the person who held the certificate of registration immediately before the revocation or suspension shall cease to possess the status conferred on the person as holder of the certificate.

**Notification of changes in control of registered persons**

**8.(1)** A body corporate that is a registered person under this Act shall notify the commissioner in writing of any change in the composition of its board of directors or other governing body or in the identity of its secretary within 14 days after the change occurs.

Maximum penalty—20 penalty units.

(2) Where a change occurs in the membership of a partnership to which registration has been granted under the Act each member of the partnership shall notify the commissioner in writing of the change within 14 days after the change occurs.

Maximum penalty—20 penalty units.

(3) Receipt by the commissioner of one notification of a change in the membership of a partnership shall be taken as sufficient compliance with subsection (2) by each of the members of the partnership in respect of that change.

### **Opportunity for hearing**

9.(1) The commissioner shall not recommend that the Minister revoke or suspend a registration under section 7(3) unless the commissioner has afforded the holder of the certificate of registration an opportunity to appear at a hearing before the commissioner and make submissions and give evidence to the commissioner in relation to the matter and to that end may give to the holder concerned notice of the time and place when and where the holder may appear before the commissioner for that purpose.

(2) At a hearing before the commissioner the holder may appear in person or by counsel or solicitor.

### **Term of registration**

10.(1) This section applies to a person who is the holder of a certificate of registration under this Act on 31 December 1994.

(2) The registration of a person prescribed by regulation continues in force until whichever of the following happens first—

- (a) this Act expires or is repealed;
- (b) the person's registration is revoked.

(3) The registration of a person to whom subsection (2) does not apply continues in force until whichever of the following happens first—

- (a) the person's registration expires;
- (b) the person's registration is revoked.

## **PART 4—SECONDARY MORTGAGE MARKET SECURITIES**

### **Interpretation**

**11.(1)** In this part—

**“commercial mortgage”** means any mortgage that is not a residential mortgage.

**“debt-based security”** means a marketable security to which section 3, definition “marketable security”, paragraph (a) is apposite.

**“pass-through security”** means a marketable security to which section 3, definition “marketable security”, paragraph (b) is apposite.

**“prescribed factor”** means—

- (a) in the case of a debt-based security—the liability upon maturity of the issuer thereof in respect of all marketable securities issued under the scheme under which the debt-based security is issued; and
- (b) in the case of a pass-through security—the value of the first legal mortgages in the control of the trustee under the trust deed that relates to the scheme under which the pass-through security is issued.

**“relevant mortgage”** means a mortgage pursuant to which are payable moneys against or in respect of which are enforceable the rights or entitlements conferred by a marketable security on the holder of the security, whether as a person entitled to the whole or a share of the mortgagee’s entitlements under the mortgage or otherwise.

**“repurchase requirement”** means a requirement in a trust deed that relates to a scheme under which a marketable security is issued that the trustee under the deed or the issuer of the marketable security shall acquire the security from the holder thereof whether upon the holder’s request or the occurrence of any event.

**“residential mortgage”** means a mortgage secured on land and improvements used by the mortgagor as the mortgagor’s residence, and for no other purpose.

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“**value**” means in relation to land or land and improvements thereon the value thereof as shown in the valuation delivered in accordance with section 12(5).

(2) Where any provision of this part requires the existence of insurance expressed as ‘40% top up’ it shall be taken to require a contract of indemnity against default by a mortgagor in payment of the mortgagor’s liabilities under a relevant mortgage in respect of that part of the moneys payable pursuant to the mortgage which exceeds an amount equal to 60% of the value of the land or land and improvements on which the mortgage is secured.

(3) Where 2 or more sets of requirements contained in a table that is relevant to any provision of this part apply in relation to a particular marketable security, the provision shall be taken to be complied with in respect of the marketable security if the security complies with any of the applicable sets of requirements.

**Requirements of secondary mortgage market securities**

**12.(1)** A marketable security is a secondary mortgage market security if—

- (a) the—
  - (i) provisions of this section are complied with in all respects; and
  - (ii) provisions of this Act (other than of this section) that prescribe in relation to matters relevant to—
    - (A) marketable securities generally or marketable securities of the class of the marketable security in question; and
    - (B) schemes such as that under which the marketable security in question is issued; and
    - (C) trust deeds such as the trust deed that relates to the scheme under which the marketable security in question is issued;are complied with in all respects; and
  - (iii) the covenants of the trust deed that relates to the scheme

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under which the marketable security is issued are complied with in all respects.

(2) The marketable security shall be issued under a scheme provided for by a trust deed executed by a registered issuer and by a registered trustee, who under the deed is the trustee, and duly approved by the commissioner.

(3) The marketable security shall confer on the holder thereof either—

- (a) a right to receive a payment or an indemnity secured by or enforceable against rights arising under the trust deed; or
- (b) an entitlement specified in the trust deed.

(4) The rights or entitlements conferred by the marketable security on the holder thereof are, upon its issue, or will be, within 60 days after its issue, or within such longer period not exceeding 90 days as the Minister may in a particular case allow by signed instrument, exercisable against or in respect of moneys payable pursuant to first legal mortgages secured on land or land and improvements thereon being mortgages—

- (a) of which the trustee under the trust deed referred to in subsection (2) is the registered mortgagee or is entitled pursuant to that trust deed to become the registered mortgagee upon demand by the trustee; and
- (b) that are provided for by instruments of mortgage in the control of the trustee under the trust deed referred to in subsection (2); and
- (c) in respect of which the mortgagee is indemnified to the extent prescribed by an approved insurer against default by the mortgagor in payment of the mortgagor's liability thereunder.

(5) Before the marketable security is issued there shall be delivered to the trustee under the trust deed referred to in subsection (2) a valuation of the land or land and improvements thereon on which are secured the first legal mortgages referred to in subsection (2) being a valuation—

- (a) made within 12 months or such other time as is acceptable to the trustee before the time of its delivery to the trustee.

(6) At the time the marketable security is issued, the amount that will become payable in respect of all marketable securities issued or to be issued under the scheme to which the trust deed referred to in subsection (2) relates shall not exceed the aggregate of the—

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- (a) amount outstanding in respect of principal sums secured by the first legal mortgages committed to the control of the trustee under that trust deed; and
- (b) the amount of all sums of money held by or payable to the registered trustee for the purposes of the trust deed; and
- (c) the face value of investments held by the registered trustee for the purposes of the trust deed.

(7) The value of each first legal mortgage committed to the control of the trustee under the trust deed that relates to the scheme under which the marketable security is issued shall not exceed—

- (a) in the case of a mortgage secured on land and improvements used by the mortgagor as the mortgagor's residence—90%; or
- (b) in the case of a mortgage secured on any other land or land and improvements thereon—80%;

of the value, as shown in the valuation delivered in accordance with subsection (5), of the land or land and improvements thereon on which the mortgage is secured.

**Requirements of trust deed**

**13.(1)** A trust deed referred to in section 12(2)—

- (a) shall have as a party thereto a registered trustee who in the commissioner's opinion has the appropriate degree of independence having regard to the functions, duties and powers of the trustee under the trust deed; and
- (b) shall make provision that in the commissioner's opinion is fair and reasonable for the retirement, removal and replacement of the trustee; and
- (c) shall provide for such other matters and things as are prescribed or as the commissioner requires.

**(2)** A trust deed referred to in section 12(2) shall contain—

- (a) a covenant that the proportion borne by the value of the first legal mortgages committed to the control of the trustee under the trust deed to the value of the land or land and improvements thereon on

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which the mortgages are secured, being the value shown in the valuations delivered in accordance with section 12(5), shall not exceed—

- (i) in the case of mortgages secured on land and improvements used by the mortgagor as the mortgagor's residence—90% of that value; or
  - (ii) in the case of mortgages secured on any other land or land and improvements thereon—80%;
- (b) a covenant that at all times the face value of the marketable securities issued under the scheme to which the trust deed relates shall not exceed—
- (i) in a case to which section 17(b)(iii) is relevant and while it remains relevant—the value of the cash or investments (or both) within the disposition of the trustee under the trust deed in accordance with that subparagraph; or
  - (ii) in any other case—the aggregate of—
    - (A) the principal sums secured by the first legal mortgages committed to the control of the trustee under the trust deed in accordance with section 12(4); and
    - (B) the amount of all sums held by or payable to the trustee for the purposes of the trust deed; and
    - (C) the face value of investments held by the trustee for the purposes of the trust deed;
- (c) a covenant that the registered issuer shall, upon the issue of any marketable security under the scheme to which the trust deed relates and at all times thereafter while any marketable securities issued under the scheme are outstanding—be assured of liquidity to the extent prescribed in relation to the class or classes of the outstanding marketable securities;
- (d) a covenant that the prescribed prudential requirements that are relevant to the class or classes of marketable securities issued or to be issued under the scheme to which the trust deed relates shall be complied with in all respects.



**Prudential requirements concerning marketable securities**

**14.(1)** A marketable security of a class referred to in the following table, column 1 is not a secondary mortgage market security unless, where a percentage within the range specified in the table, column 2 expresses the proportion borne by—

- (a) the value of each relevant mortgage to the value of the land or land and improvements on which it is secured; or
- (b) the amount that will be payable upon maturity of the marketable security and all other marketable securities issued under the scheme in question to the value of all relevant mortgages;

there exists in respect of each relevant mortgage an indemnity by an approved insurer to the mortgagee against default by each mortgagor in payment of the mortgagor's liability under the mortgage to the extent of the percentage specified in the following table, column 3 (opposite the range in question) of the mortgagor's liability under the mortgage.

**(2)** A marketable security of a class referred to in the following table, column 1 is not a secondary mortgage market security unless, where a percentage within the range specified in the table, column 2 expresses the proportion borne by—

- (a) the value of all relevant mortgages to the value of the land or land and improvements on which they are secured; or
- (b) the amount that will be payable upon maturity of the marketable security and all other marketable securities issued under the scheme in question to the value of all relevant mortgages;

the registered issuer of the marketable security shall, at the time the registered issuer issues the security and at all times thereafter until maturity thereof be assured of liquidity to the extent of the percentage specified in the following table, column 4 (opposite the range in question) of the prescribed factor.

*Mortgages (Secondary Market) Act 1984***TABLE RELEVANT TO SUBSECTIONS (1) AND (2)**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
Class of security	Proportion of mortgage value to property value or of securities value to mortgages value	Indemnity insurance requirement	Liquidity requirement
debt-based security	over 80% to 90%	100%	nil
ditto	over 60% to 80%	100% if relevant mortgage is a residential mortgage  40% top up if relevant mortgage is a commercial mortgage	nil
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
Class of security	Proportion of mortgage value to property value or of securities value to mortgages value	Indemnity insurance requirement	Liquidity requirement
ditto	over 60% to 90%	nil	100%
ditto	to 60%	nil	nil
pass-through security	over 80% to 90%	100%	10% if there is a repurchase requirement; otherwise nil
ditto	over 50% to 80%	100% if relevant mortgage is a residential mortgage	10% if there is a repurchase requirement; otherwise nil

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		40% top up if relevant mortgage is a commercial mortgage	
ditto	to 50%	nil	10% if there is a repurchase requirement; otherwise nil

**(3)** Notwithstanding the provisions of subsection (1) and the table relevant thereto, where a relevant mortgage is secured on an estate of leasehold in land or land and improvements thereon the indemnity required against default in payment of a mortgagor's liability under the mortgage shall be to the extent of 100% of that liability.

### **Form of liquidity**

**15.(1)** The liquidity of which a registered issuer is required by section 14(2) to be assured shall be in the form of—

- (a) lines of credit with or a guarantee given by a banking corporation; or
- (b) investments of a description specified in section 21(1)(e) or (f) of the *Trusts Act 1973*;

or partly in one and partly in another or others of those forms.

**(2)** Where the liquidity is in the form of lines of credit or a guarantee—

- (a) the lines of credit or guarantee shall be irrevocable during the life of any security issued under the scheme in connection with which the liquidity is assured except to the extent that revocation thereof would not limit or restrict the registered issuer's capacity to meet the registered issuer's liabilities in respect of marketable securities then issued by the registered issuer under the scheme; and
- (b) the documentation in respect thereof shall be such that the banking corporation providing the liquidity is under a duty enforceable at law to honour its obligations in respect of the provision of the liquidity.

**Availability of prescribed liquidity**

**16.** A registered issuer shall keep the liquidity of which the registered issuer is required by section 14(2) to be assured available for the purpose only of honouring the registered issuer's liabilities in respect of marketable securities issued by the registered issuer under the scheme in connection with which the liquidity is assured.

**Authorised trustee investment**

**17.** A secondary mortgage market security is a security in which a trustee may invest trust funds—

- (a) the rights or entitlements conferred by it are or will be (as provided by section 12(4) exercisable against or in respect of moneys payable pursuant to first legal mortgages secured on land or land and improvements thereon in respect of which the mortgagee registered on the relevant instrument of title is or will be the trustee under the trust deed that relates to the scheme under which the secondary mortgage market security is issued; and
- (b) the provisions of section 14 are complied with in respect of it, with the following table substituted for the table provided for by that section; and
- (c) during the period until the trustee has in the trustee's control first legal mortgages as required by paragraph (c) of section 12(4) the trustee under the trust deed referred to in paragraph (a)—
  - (i) shall have within the trustee's disposition cash or investments, such as are referred to in section 21(1)(e) or (f) of the *Trusts Act 1973*, to an amount at least equal to the face value of the marketable securities issued; or
  - (ii) shall be satisfied that there exists a guarantee or line of credit with a banking corporation or a contract of indemnity with an approved insurer or a legally enforceable arrangement between the trustee and the person who is to issue marketable securities pursuant to the trust deed whereby (in any such case) the trustee will be able to realise a sum at least equal to the face value of the marketable securities from time to time issued pursuant to the trust deed.

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**TABLE**

Column 1	Column 2	Column 3	Column 4
Class of security	Proportion of mortgage value to property value or of securities value to mortgages value	Indemnity insurance requirement	Liquidity requirement
debt-based security	over 80% to 90%	100%	25%
ditto	over 75% to 80%	100% if relevant mortgage is a residential mortgage  40% top up if relevant mortgage is a commercial mortgage	15%
ditto	over 66 <sup>2</sup> / <sub>3</sub> % to 75%	100% if relevant mortgage is a residential mortgage  40% top up if relevant mortgage is a commercial mortgage	12.5%
ditto	over 50% to 66 <sup>2</sup> / <sub>3</sub> %	100% if relevant mortgage is a residential mortgage  40% top up if relevant mortgage is a commercial mortgage	10%
ditto	to 50%	nil	10%
ditto	to 90%	nil	100%

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pass-through security	over 80% to 90%	100%	25% if there is a repurchase requirement; otherwise nil
ditto	over 75% to 80%	100% if relevant mortgage is a residential mortgage 40% top up if relevant mortgage is a commercial mortgage	15% if there is a repurchase requirement; otherwise nil
ditto	over 66 <sup>2</sup> / <sub>3</sub> % to 75%	100% if relevant mortgage is a residential mortgage 40% top up if relevant mortgage is a commercial mortgage	12.5% if there is a repurchase requirement; otherwise nil
ditto	over 50% to 66 <sup>2</sup> / <sub>3</sub> %	100% if relevant mortgage is a residential mortgage 40% top up if relevant mortgage is a commercial mortgage	10% if there is a repurchase requirement; otherwise nil
ditto	to 50%	nil	10% if there is a repurchase requirement; otherwise nil

**Certain exclusions from prudential requirements**

**18.** A marketable security issued by a banking corporation or by a corporation with net tangible assets of a value in excess of \$500 million may become and be a secondary mortgage market security notwithstanding that the issuer is not at any time assured of liquidity to the extent required by section 14(2) or 17 and the tables relevant thereto or at all.

**Certification of securities by trustees**

**19.** The issuer of a secondary mortgage market security shall not—

- (a) deliver the security to a purchaser of it from the issuer; or
- (b) hold as purchaser the security;

unless the security is duly certified as prescribed by the regulations by the trustee under the trust deed relating to the scheme under which the security is issued.

**PART 5—PROVISIONS AFFECTING SECONDARY MORTGAGE MARKET****Restriction on variation of controlled interest rates**

**20.** Where—

- (a) the rate of interest payable to or chargeable by a mortgagee under a mortgage that has been assigned to a trustee for the purposes of a trust deed duly approved by the commissioner and that constitutes (wholly or in part) security for secondary mortgage market securities issued under a scheme to which the trust deed relates is a rate that is variable; and
- (b) in relation to the mortgagee to whom the mortgage was originally given—the rate of interest was limited or controlled by law;

neither the trustee nor any mortgagee under the mortgage subsequent to the trustee shall make a variation in the rate of interest such that, had the variation been made by the mortgagee to whom the mortgage was originally given, the resultant rate of interest would not have been a permissible rate having regard to the limitation or control imposed by law in relation to the mortgagee to whom the mortgage was originally given.

**Matters to be reported by trustee**

**21.** A registered trustee must tell the commissioner in writing if—

- (a) a registered issuer contravenes this Act or a condition of registration about the trust deed or arrangements made under the deed; or
- (b) someone else does not comply with a provision of the trust deed.

### **Certain instruments exempt from stamp duty**

**22.(1)** If upon production of an instrument referred to in this subsection the Commissioner of Stamp Duties is satisfied that—

- (a) the instrument is a conveyance or transfer of a mortgage to a trustee in accordance with the terms of a trust deed duly approved by the commissioner pursuant to which secondary mortgage market securities are or are to be issued and that the trust deed is for no other purpose; or
- (b) the instrument is a conveyance or transfer from a trustee under a trust deed such as is referred to in paragraph (a) of a mortgage held by the trustee in accordance with the terms of the trust deed to a person who in relation to the mortgage is the manager of mortgages and that the trust deed is for no other purpose than that referred to in paragraph (a); or
- (c) the instrument is a conveyance or transfer to a trustee under a trust deed such as is referred to in paragraph (a) of a security ancillary or incidental to a mortgage that is the subject of a conveyance or transfer such as is referred to in paragraph (a) the firstmentioned conveyance or transfer being one in accordance with the terms of the trust deed and that the trust deed is for no other purpose than that referred to in paragraph (a); or
- (d) the instrument is a conveyance or transfer from a trustee under a trust deed such as is referred to in paragraph (a) of a security ancillary or incidental to a mortgage that is the subject of a conveyance or transfer such as is referred to in paragraph (b) to a person who in relation to the mortgage is the manager of mortgages, the firstmentioned conveyance or transfer being one in accordance with the terms of the trust deed and that the trust deed is for no other purpose than that referred to in paragraph (a); or
- (e) the instrument is a guarantee, letter of credit or other instrument



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given or made solely to satisfy liquidity requirements of this Act in relation to secondary mortgage market securities and the covenant concerning liquidity in a trust deed such as is referred to in paragraph (a) and that the trust deed is for no other purpose than that referred to in paragraph (a); or

- (f) the instrument is a trust deed such as is referred to in paragraph (a) and is for no other purpose than that referred to in paragraph (a);

the instrument is exempt from stamp duty under the *Stamp Act 1894*.

(2) If an instrument is—

- (a) a secondary mortgage market security; or  
 (b) a conveyance or transfer of a secondary mortgage market security;

it is exempt from stamp duty under the *Stamp Act 1894*.

### **Exclusion of certain provisions of Stamp Act 1894**

**23.(1)** The provisions of sections 31C and 31D of the *Stamp Act 1894* do not apply in respect of sales or purchases of secondary mortgage market securities.

(2) The sale, purchase, discounting or acquisition of—

- (a) a mortgage that, in consequence, is conveyed or transferred to a trustee under a trust deed duly approved by the commissioner pursuant to which secondary mortgage market securities are or are to be issued where the trust deed is for no other purpose; or  
 (b) a secondary mortgage market security;

shall not be construed to be a transaction that constitutes a loan or discount transaction to which sections 35 to 35H of the *Stamp Act 1894* apply.

(3) The provisions of section 68A of the *Stamp Act 1894* do not apply to a trustee under a trust deed duly approved by the commissioner pursuant to which secondary mortgage market securities are or are to be issued, in respect of debentures being such securities issued pursuant to the trust deed where the trust deed is for no other purpose.

(4) A scheme, provided for by a trust deed duly approved by the

commissioner, for the issue of secondary mortgage market securities is not a unit trust scheme within the meaning of section 56B of the *Stamp Act 1894*.

### **Certain instruments exempt from registration fees**

**24.** If upon production for registration of an instrument referred to in this section the Registrar of Titles is satisfied that—

- (a) the instrument, being a conveyance or transfer of a mortgage, is a conveyance or transfer of a mortgage to a registered trustee for the purposes of a trust deed duly approved by the commissioner; or
- (b) the instrument, being a conveyance or transfer of a mortgage held by a registered trustee for the purposes of a trust deed duly approved by the commissioner, is a conveyance or transfer of the mortgage from the registered trustee to a person who in relation to that mortgage is the manager of mortgages;

no fees shall be payable under the *Land Title Act 1994* in respect of the instrument.

### **Person may not manage certain mortgages unless registered**

**25.** A person—

- (a) shall not be a manager of mortgages; or
- (b) shall not advertise or announce himself or herself or hold himself or herself out as being a manager of mortgages;

pursuant to arrangements with a registered trustee for the purposes of a trust deed pursuant to which secondary mortgage market securities are or are to be issued unless the person is a registered issuer.

Maximum penalty—20 penalty units.

### **Protection of trustee etc. against incorrect certification**

**26.** A person who invests in the purchase of a secondary mortgage market security certified as required by section 19 to be a security in which a trustee may invest trust funds (whatever terms may be therein used)

moneys held by the person under a fiduciary relationship borne by the person (as a trustee or otherwise) to any other person or persons shall not incur any liability as for a breach of that relationship or for loss incurred on the investment, by reason that the marketable security is not what it is so certified to be.

### **Offence of falsely representing marketable securities**

**27.** A person shall not—

- (a) issue an instrument that purports to be a secondary mortgage market security; or
- (b) hold out an instrument, issued by the person or any other person, to be a secondary mortgage market security;

unless the provisions of this Act that are to be complied with in respect of a marketable security, if it is to be a secondary mortgage market security, have been complied with in all respects in respect of that instrument.

Maximum penalty—1 000 penalty units or imprisonment for 2 years.

## **PART 6—GENERAL PROVISIONS**

### **Evidentiary provision**

**28.** A description in a complaint of a defendant as a registered person of any description under this Act is evidence of that fact.

### **Regulations**

**29.(1)** The Governor in Council may make regulations under this Act.

**(2)** Without limiting subsection (1), a regulation may—

- (a) prescribe a person to be an approved insurer under this Act; or
- (b) prescribe particulars and covenants to be contained in trust deeds lodged with the commissioner; or

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- (c) prescribe the requirements of a certification by a registered trustee of marketable securities issued under a trust deed; or
- (d) prescribe matters to be complied with by a person registered under this Act in operating on the secondary mortgage market.

**Expiry of Act**

**31.** This Act expires on 1 January 1998 or, if an earlier day is prescribed by regulation, the earlier day.

**ENDNOTES****1 Index to Endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 31 March 1995. Future amendments of the *Mortgages (Secondary Market) Act 1984* may be made in accordance with this reprint under the Reprints Act 1992, section 49.

**3 List of legislation****Mortgages (Secondary Market) Act 1984 No. 67**

date of assent 20 September 1984

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 1984 (proc pubd Gaz 4 December 1984 p 1763)

**Note**—This Act expires 1 January 1998 or on an earlier date prescribed by regulation (see s 57)

as amended by—

**Mortgages (Secondary Market) Act Amendment Act 1984 No. 106**

date of assent 12 December 1984

commenced on date of assent

**Mortgages (Secondary Market) Act Amendment Act 1985 No. 46**

date of assent 24 April 1985

ss 1–2 commenced on date of assent

remaining provisions commenced 13 May 1985 (proc pubd Gaz 11 May 1985 pp 680–1)

**Mortgages (Secondary Market) Act Amendment Act 1985 (No. 2) No. 107 (as  
amd 1994 No. 87 s 4(1) sch 3 pt 2 (from 1 December 1994))**

date of assent 18 December 1985

ss 1–3 commenced on date of assent

such part of s 15 as inserts ss 29(1)(b) and 29(2)(d)(ii) into Principal Act never  
proclaimed into force and omitted 1994 No. 87 s 4(1) sch 3 pt 2

remaining provisions commenced 22 March 1986 (proc pubd Gaz 22 March  
1986 p 1177)

**Statute Laws Miscellaneous Provisions Act 1989 No. 103 s 3 sch**

date of assent 25 October 1989

commenced on date of assent

**Statute Laws Miscellaneous Provisions Act 1990 No. 88 s 3 sch**

date of assent 6 December 1990

commenced on date of assent

**Corporations (Consequential Amendments) Act 1990 No. 99 s 3.1 sch**

date of assent 6 December 1990

ss 1.1–1.2 commenced on date of assent

s 3.1 sch commenced 1 January 1991 (proc pubd Gaz 22 December 1990  
p 2270)

**Building Units and Group Titles Act 1994 No. 69 s 229 sch 2**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force

**Treasury Legislation Amendment Act (No. 2) 1994 No. 75 pts 1–2**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

ss 4(3), 20(1) commenced 18 March 1995 (see s 2(3))

remaining provisions commenced 1 January 1995 (see s 2(2))

## 4 List of annotations

### Key to abbreviations in list of annotations

amd	=	amended
ch	=	chapter
def	=	definition
div	=	division
exp	=	expires/expired
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
pt	=	part
R1	=	Reprint No. 1
RA	=	Reprints Act 1992
renum	=	renumbered
sdiv	=	subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

### Commencement

s 2 amd 1989 No. 103 s 3 sch

### Arrangement of Act

s 3 amd 1985 No. 107 s 4  
om R1 (see RA s 36)

### Definitions

prov hdg sub 1994 No. 75 s 4(1)  
s 3 amd 1984 No. 106 s 2(e); 1985 No. 107 s 5(g); 1994 No. 75 s 4(5)  
def **“approved insurer”** om 1994 No. 75 s 4(2)  
def **“banking corporation”** sub 1984 No. 106 s 2(a); 1994 No. 75 s 4  
def **“Board”** ins 1985 No. 107 s 5(a)  
om 1994 No. 75 s 4(2)  
def **“Commission”** om 1994 No. 75 s 4(2)  
def **“commissioner”** sub 1990 No. 99 s 3.1 sch  
def **“instrument”** ins 1985 No. 107 s 5(b)  
def **“land”** ins 1985 No. 107 s 5(b)  
amd 1994 No. 69 s 229 sch 2  
om 1994 No. 75 s 4(2)  
def **“marketable security”** ins 1984 No. 106 s 2(b)  
sub 1985 No. 107 s 5(c)  
def **“Minister”** sub 1990 No. 88 s 3 sch  
om 1994 No. 75 s 4(2)  
def **“mortgage”** ins 1985 No. 107 s 5(d)  
def **“registered finance-mortgage broker”** om 1994 No. 75 s 4(3)  
def **“registered packer”** om 1994 No. 75 s 4(3)

def “**secondary mortgage market**” amd 1984 No. 106 s 2(c)  
 sub 1985 No. 107 s 5(e)  
 def “**secondary mortgage market security**” ins 1985 No. 107 s 5(f)  
 def “**value of a mortgage**” amd 1984 No. 106 s 2(d)

## **PART 2—MORTGAGE SECONDARY MARKET BOARD**

**pt hdg** sub 1985 No. 107 s 6; 1994 No. 75 s 5

### **The Board**

**s 5** amd 1984 No. 106 s 3; 1985 No. 107 s 7  
 om 1994 No. 75 s 6

### **Term of appointment**

**s 6** amd 1984 No. 106 s 4  
 om 1994 No. 75 s 6

### **Disqualification for appointment**

**s 7** om 1994 No. 75 s 6

### **Casual vacancy in Board’s membership**

**s 8** amd 1984 No. 106 s 5; 1989 No. 103 s 3 sch  
 om 1994 No. 75 s 6

### **Fees and allowances**

**s 9** om 1994 No. 75 s 6

### **Proceedings of Board**

**s 10** om 1994 No. 75 s 6

### **Deputy members**

**s 11** amd 1984 No. 106 s 6  
 om 1994 No. 75 s 6

### **Secrecy**

**s 11A** ins 1984 No. 106 s 7  
 om 1994 No. 75 s 6

### **Validity of Board’s determinations**

**s 12** om 1994 No. 75 s 6

### **Functions of commissioner**

**s 4** sub 1994 No. 75 s 7

### **Powers of commissioner etc.**

**s 5** amd 1994 No. 75 s 8

### **Secretary of Board and assistance**

**s 15** om 1994 No. 75 s 9

### **Annual report**

**s 16** om 1994 No. 75 s 9

## **PART 3—REGISTRATION OF PERSONS TO OPERATE IN SECONDARY MORTGAGE MARKET**

**pt hdg** ins 1985 No. 107 s 8



**Registration to allow operation on secondary mortgage market**

**s 17** amd 1984 No. 106 s 8; 1985 No. 107 s 9  
om 1994 No. 74 s 10

**Registration procedures in prescribed cases**

**s 18** ins 1985 No. 107 s 10  
renum as s 19 1985 No. 107 s 31  
om 1994 No. 75 s 10

**Determination by Governor in Council**

**s 19** renum as s 20 1985 No. 107 s 31  
om 1994 No. 75 s 10

**Issue of certificate of registration**

**s 20** renum as s 21 1985 No. 107 s 31  
om 1994 No. 75 s 10

**Board may hold hearing**

**s 21** amd 1985 No. 107 s 11  
renum as s 22 1985 No. 107 s 31  
om 1994 No. 75 s 10

**Certificate of registration not transferable**

**s 6** (prev s 7) renum 1985 No. 107 s 31

**Revocation and suspension of registration**

**s 7** (prev s 8) renum 1985 No. 107 s 31  
amd 1985 No. 107 s 32; 1994 No. 75 s 11

**Notification of changes in control of registered persons**

**prov hdg** sub 1985 No. 107 s 12(a)  
**s 8** (prev s 9) amd 1984 No. 106 s 9; 1985 No. 107 s 12(b)–(c); 1994 No. 75  
s 12  
renum 1985 No. 107 s 31

**Opportunity for hearing**

**s 9** (prev s 10) renum 1985 No. 107 s 31  
amd 1985 No. 107 ss 13, 32; 1994 No. 75 s 13

**Term of registration**

**s 10** pres s 10 renum as 27 1985 No. 107 s 31  
sub 1994 No. 75 s 14

**Register of registered persons**

**s 27** prev s 27 amd 1984 No. 106 s 11; 1985 No. 46 s 3  
om 1985 No. 107 s 15  
pres s 27 (prev s 26) renum 1985 No. 107 s 31  
om 1994 No. 75 s 14

**Interpretation**

**s 11** om 1985 No. 107 s 18  
new s 11 (prev s 26A) ins 1984 No. 106 s 10  
renum 1985 No. 107 s 31  
om 1994 No. 75 s 14

pres s 11 (prev s 36) ins 1985 No. 107 s 19  
renum 1994 No. 75 s 15

#### **PART 4—SECONDARY MORTGAGE MARKET SECURITIES**

**pt hdg** sub 1985 No. 107 s 14

#### **Restriction on variation of controlled interest rates**

**s 27A** ins 1984 No. 106 s 12  
om 1985 No. 107 s 17

#### **Registered trustee to report default**

**s 27B** ins 1985 No. 46 s 4  
om 1985 No. 107 s 17

#### **Requirements of secondary mortgage market securities**

**s 12** prev s 29 om 1985 No. 107 s 20  
pres s 29 ins 1985 No. 107 s 15  
amd 1989 No. 103 s 3 sch

#### **Requirements of trust deed**

**s 13** prev s 30 sub 1984 No. 106 s 13  
om 1985 No. 107 s 22  
pres s 30 ins 1985 No. 107 s 16

#### **Prudential requirements concerning marketable securities**

**s 14** prev s 31 sub 1984 No. 106 s 13  
om 1985 No. 107 s 22  
pres s 31 ins 1985 No. 107 s 16

#### **Form of liquidity**

**s 15** prev s 32 sub 1984 No. 106 s 13  
om 1985 No. 107 s 21  
pres s 32 ins 1985 No. 107 s 16

#### **Availability of prescribed liquidity**

**s 16** prev s 16 renum as s 44 1985 No. 107 s 31  
pres s 16 ins 1985 No. 107 s 18

#### **Authorised trustee investment**

**s 17** prev s 17 renum as s 45 1985 No. 107 s 31  
pres s 17 ins 1985 No. 107 s 23  
amd 1989 No. 103 s 3 sch; 1990 No. 88 s 3 sch; 1994 No. 87 s (4)(1) sch 3  
pt 2

#### **Certain exclusions from prudential requirements**

**s 18** prev s 18 amd 1984 No. 106 s 14  
om 1985 No. 107 s 25  
pres s 18 ins 1985 No. 107 s 19

#### **Interpretation**

**s 36** prev s 36 renum as s 49 1985 No. 107 s 31  
pres s 36 ins 1985 No. 107 s 19  
renum as s 28 1994 No. 75 s 15

**Certification of securities by trustees**

- s 19**      prev s 19 renum as s 50 1985 No. 107 s 31  
               pres s 19 ins 1985 No. 107 s 20

**PART 5—PROVISIONS AFFECTING SECONDARY MORTGAGE MARKET**

- pt hdg**    ins 1985 No. 107 s 21

**Approval for standard trust deeds**

- s 38**      prev s 38 renum as 51 1985 No. 107 s 31  
               pres s 38 ins 1985 No. 107 s 21  
               om 1994 No. 75 s 16

**Restriction on variation of controlled interest rates**

- s 20**      prev s 20 renum as s 52 1985 No. 107 s 31  
               pres s 20 ins 1985 No. 107 s 21

**Matters to be reported by trustee**

- s 21**      prev s 21 renum as s 53 1985 No. 107 s 31  
               pres s 21 ins 1985 No. 107 s 21  
               sub 1994 No. 75 s 17

**Exclusion of Money Lenders Act**

- s 41**      prev s 41 renum as s 54 1985 No. 47 s 31  
               pres s 42 ins 1985 No. 107 s 21  
               om 1994 No. 75 s 17

**Certain instruments exempt from stamp duty**

- s 22**      prev s 22 renum as s 55 1985 No. 107 s 31  
               pres s 22 ins 1985 No. 107 s 22  
               amd 1990 No. 99 s 3.1 sch; 1994 No. 75 s 18

**Exclusion of certain provisions of Stamp Act**

- s 23**      prev s 23 renum as s 56 1985 No. 107 s 31  
               pres s 23 ins 1985 No. 107 s 22  
               amd 1989 No. 103 s 3 sch; 1990 No. 99 s 3.1 sch; 1994 No. 75 s 19

**Certain instruments exempt from registration fees**

- s 24**      (prev s 33) om 1984 No. 106 s 13  
               pres ins as s 33 1985 No. 46 s 5  
               renum 1985 No. 107 s 31

**Person may not manage certain mortgages unless registered**

- s 25**      (prev s 34) ins 1985 No. 107 s 19  
               renum 1985 No. 107 s 31  
               amd 1985 No. 107 s 23; 1994 No. 75 s 20

**Protection of trustee etc. against incorrect certification**

- s 26**      ins 1985 No. 107 s 24

**Offence of falsely representing marketable securities**

- s 27**      ins 1985 No. 107 s 24  
               amd 1994 No. 75 s 21

**PART IV—PROCURATION FEES**

- pt hdg**    om 1985 No. 107 s 25

**PART VI—PROCURATION FEES**

**pt hdg** ins 1985 No. 107 s 25  
om 1994 No. 75 s 22

**Payment of procuration fees**

**s 48** ins 1985 No. 107 s 25  
om 1994 No. 75 s 22

**Restriction on right to procuration fee**

**s 49** (prev s 36) ins 1985 No. 107 s 19  
amd 1985 No. 107 s 26  
renum 1985 No. 107 s 31  
om 1994 No. 75 s 22

**Expenses recoverable by broker**

**s 50** (prev s 37) ins 1985 No. 107 s 20  
amd 1985 No. 107 s 27  
renum 1985 No. 107 s 31  
om 1994 No. 75 s 22

**Fees etc. paid in advance into trust accounts**

**s 51** (prev s 38) ins 1985 No. 107 s 21  
amd 1985 No. 107 s 28  
renum 1985 No. 107 s 31  
om 1994 No. 75 s 22

**Retention of fee dependent on loan or credit for which broker engaged**

**s 52** (prev s 39) ins 1985 No. 107 s 21  
amd 1985 No. 46 s 6; 1985 No. 107 s 29  
renum 1985 No. 107 s 31  
om 1994 No. 75 s 22

**Refund order where fees unlawfully obtained**

**s 53** (prev s 40) ins 1985 No. 107 s 21  
amd 1985 No. 107 s 30  
renum 1985 No. 107 s 31  
om 1994 No. 75 s 22

**PART 6—GENERAL PROVISIONS**

**pt hdg** amd 1985 No. 107 s 32

**Evidentiary provisions**

**s 28** (prev s 41) ins 1985 No. 107 s 21  
renum 1985 No. 107 s 31  
sub 1994 No. 75 s 23

**Regulations**

**s 29** (prev s 42) ins 1985 No. 107 s 22  
renum 1985 No. 107 s 31  
sub 1994 No. 75 s 23

**Numbering and renumbering of Act**

**s 30** (prev s 43) ins 1985 No. 107 s 22  
renum 1985 No. 107 s 31

sub 1994 No. 75 s 23  
om R1 (see RA s 37)

**Expiry of Act**

**s 31** ins 1994 No. 75 s 23

**5 Table of changed citations and remade laws**

TABLE OF CHANGED CITATIONS AND REMADE LAWS  
under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Mental Health Services Act 1974	Mental Health Act 1974	Health Services Act 1991 s 9.1(2)
Real Property Act 1861	Land Title Act 1994	Land Title Act 1994 s 191

**6 Table of obsolete and redundant provisions**

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS  
under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
definitions to be read in context	Acts Interpretation Act 1954 s 32A
reference to provisions of law is inclusive	Acts Interpretation Act 1954 s 35D

**7 Table of renumbered provisions**

TABLE OF RENUMBERED PROVISIONS  
under the Reprints Act 1992 s 43 as required by Mortgages (Secondary Market) Act  
1984 s 56

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29(1)(e), 1st unnum para	12(1)(e)(i)
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