



# LAND AGENTS, BROKERS AND VALUERS (MORTGAGE FINANCIERS) AMENDMENT ACT 1993

No. 8 of 1993

## SUMMARY OF PROVISIONS

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A.D. 1993

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No. 8 of 1993

An Act to amend the Land Agents, Brokers and Valuers Act 1973.

[Assented to 25 March 1993]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Land Agents, Brokers and Valuers (Mortgage Financiers) Amendment Act 1993*.

(2) The *Land Agents, Brokers and Valuers Act 1973* is referred to in this Act as "the principal Act".

## Commencement

2. (1) This Act will come into operation on a day (which must not be earlier than 1 July 1993) to be fixed by proclamation.

(2) A day fixed by proclamation as the day on which this Act will come into operation must be not less than two months after the day on which the proclamation is made.

## Amendment of s. 6 — Interpretation

3. Section 6 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of "mortgage financier";

(b) by inserting after subsection (2) the following subsection:

(2a) A person who carries on the business of negotiating or arranging loans secured by mortgage is not by reason of that fact an agent within the meaning of this Act.;

and

(c) by striking out subsection (6).

## Amendment of s. 62 — Interpretation

4. Section 62 of the principal Act is amended—

(a) by striking out paragraph (b) of the definition of “agent” in subsection (1);

and

(b) by striking out from subsection (1) the definition of “trust money” and substituting the following definition:

“trust money” in relation to an agent, means money received by the agent in the agent’s capacity as such to which the agent is not wholly entitled in law and in equity.

#### Repeal of s. 98b

5. Section 98b of the principal Act is repealed.

#### Amendment of s. 107 — Regulations

6. Section 107 of the principal Act is amended by striking out paragraph (qd) of subsection (1).

#### Amendment of the schedule — Transitional Provisions

7. The schedule of the principal Act is amended by inserting after clause 14 the following clause:

15. (1) In this clause—

“the 1993 amending Act” means the *Land Agents, Brokers and Valuers (Mortgage Financiers) Amendment Act 1993*;

“mortgage financier” means a person who—

(a) is—

(i) an agent or land broker;

or

(ii) an associate of an agent or land broker;

and

(b) receives money from another on the understanding that the money will be lent to a third person on the security of a mortgage;

“trust money” in relation to a mortgage financier, means money received by a mortgage financier in the mortgage financier’s capacity as such to which the mortgage financier is not wholly entitled at law and in equity.

(2) For the purposes of this clause, a person is an associate of another if—

(a) they are partners;

(b) one is a spouse, parent or child of the other;

(c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust;

(d) one is a body corporate and the other is a director of the body corporate;

(e) one is a body corporate and the other is a person who has a legal or equitable interest in five per cent or more of the share capital of the body corporate;

or

(f) a chain of relationships can be traced between them under any one or more of the above paragraphs.

(3) This clause applies—

(a) to trust money received by a mortgage financier before the commencement of the 1993 amending Act;

and

(b) where trust money received by a mortgage financier was lent to another on the security of a mortgage before the commencement of the 1993 amending Act—to trust money received by the mortgage financier (whether before or after that commencement) by way of payment of principal or interest, or both, under that loan.

(4) Part VIII applies to a mortgage financier as if—

(a) a reference in that Part to an agent were a reference to a mortgage financier;

and

(b) a reference in that Part to trust money were a reference to trust money to which this clause applies,

but does not otherwise apply to a mortgage financier.

(5) The power of the Governor to make regulations under this Act includes power to make regulations requiring mortgage financiers to provide specified information to prospective investors or regulating or making provision with respect to any other matter relating to mortgage financiers.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor