

BUILDING SOCIETIES AMENDMENT ACT 1987

No. 92 of 1987

TABLE OF PROVISIONS

1. Short title.
2. Commencement.
3. Principal Act.
4. Amendment of section 13 of Principal Act (Objects and powers of a permanent building society).
5. Insertion in Principal Act of new section 13A.
13A—Certain societies not to be registered unless they have minimum funds.
6. Amendment of section 18 of Principal Act (Rules to be registered and copies supplied).
7. Substitution of sections 24 and 25 of Principal Act.
24—Fidelity insurance.
25—Officers to account.
8. Amendment of section 26 of Principal Act (Investments by societies).
9. Amendment of section 27 of Principal Act (Payment of sums not exceeding \$10 000 on intestacy).
10. Amendment of section 29 of Principal Act (Winding up, liquidation, and cancellation).
11. Substitution of section 34 of Principal Act.
34—Minors may be members.
12. Repeal of section 42 of Principal Act (Fees payable to Commissioner).
13. Amendment of section 43 of Principal Act (Regulations).
14. Repeal of Schedule 1 to Principal Act.
15. Transitional provision.



BUILDING SOCIETIES AMENDMENT ACT 1987

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AN ACT to amend the Building Societies Act 1876.

[Royal Assent 8 December 1987]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Building Societies* Short title.
Amendment Act 1987.

2—(1) This section and section 1 shall commence on the Commencement.
day on which this Act receives the Royal assent.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

3—In this Act, the *Building Societies Act 1876** is referred Principal Act.
to as the Principal Act.

*40 Vict. No. 5. For this Act as amended to 1st May 1986, see the continuing Reprint of Statutes.

Amendment of section 13 of Principal Act (Objects and powers of a permanent building society).

4—Section 13 of the Principal Act is amended as follows:—

(a) by inserting in subsection (3) the following paragraph after paragraph (e):—

(ea) discount or otherwise deal with mortgage-backed securities;

(b) by omitting subsection (7) and substituting the following subsection:—

(7) In this section—

“insurance corporation” means—

(a) the National Deposit Insurance Corporation Ltd, a company incorporated under the *Companies Act 1981* of the Commonwealth; or

(b) any body corporate approved by order of the Minister under this subsection as an insurance corporation;

“mortgage” means a mortgage of any estate or interest in land, including a leasehold estate or interest in land whether the land is situated in Tasmania or elsewhere;

“mortgage-backed security” means—

(a) an instrument which entitles the holder of or beneficial owner under the instrument to the whole or any part of—

(i) the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a mortgage or any money payable by the mortgagor under the mortgage (whether the money is payable to the holder of or beneficial owner under the instrument on the same terms and conditions as under the mortgage or not); or

(ii) the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a pool of mortgages or any money payable by mortgagors under those mortgages (whether the money is payable to the holder of or beneficial owner under the instrument on the same terms and conditions as under the mortgages or not),

and which may, in addition, entitle the holder or beneficial owner to a transfer or assignment of the mortgage or mortgages;

(b) a corporate debt security the payments under which by the corporation, company, or society which issues or makes the instrument are derived substantially from the income or receipts of a pool of mortgages;

(c) an instrument of a class or description of instruments or property of a class or description of property prescribed to be a mortgage-backed security for the purposes of this definition; or

(d) an instrument or property which creates an interest in or charge over an instrument or property to which paragraph (a), (b), or (c) applies,

but does not include an instrument or property comprising—

(e) a mortgage;

(f) the transfer of a mortgage;

(g) a declaration of trust; or

(h) an instrument of a class or description of instruments or property of a class or description of property prescribed not to be a mortgage-backed security for the purposes of this definition;

“pool of mortgages” means a pool or collection of assets—

(a) which is comprised solely of mortgages; or

(b) which is comprised substantially of mortgages or of money paid pursuant to mortgages (whether or not that money has been invested in the assets specified in subparagraph (ii), (iii), or (iv)), or both, but which may also contain any one or more of the following:—

- (i) cash;
- (ii) bonds, debentures, stock, or Treasury Bills of the Commonwealth or the Government of Tasmania or the Government or Administration of any other State or any Territory of the Commonwealth;
- (iii) debentures or stock of any public statutory body constituted under the law of the Commonwealth or of Tasmania or of any other State or any Territory of the Commonwealth;
- (iv) assets of a class or description of assets prescribed for the purposes of this subparagraph.

Insertion in
Principal Act of
new section 13A.

5—After section 13 of the Principal Act the following section is inserted:—

Certain societies
not to be
registered unless
they have
minimum funds.

13A—A society shall not be registered under this Act, on or after the day fixed under section 2 (2) of the *Building Societies Amendment Act 1987*, unless the Commissioner is satisfied that it has funds of not less than \$2 000 000 of which—

- (a) not less than \$1 000 000 is members' paid-up share capital; and
- (b) not less than \$500 000 is available on terms that do not require repayment of that sum before the expiration of 10 years after the day on which it is received by the society.

6—Section 18 of the Principal Act is amended by omitting from subsection (3) “rules a sum not exceeding 10 cents” and substituting “the rules such sum as may be determined by the board of directors of the society”.

Amendment of section 18 of Principal Act (Rules to be registered and copies supplied).

7—Sections 24 and 25 of the Principal Act are repealed and the following sections are substituted:—

Substitution of sections 24 and 25 of Principal Act.

24—(1) A society shall obtain and maintain in respect of officers of the society having receipt or charge of any money, mortgage, bond, or other valuable security belonging to the society a fidelity insurance indemnity from an insurer, authorized under the *Insurance Act 1973* of the Commonwealth to carry on insurance business, within the meaning of that Act, to cover the society against misuse or misappropriation of the money, mortgage, bond, or other valuable security.

Fidelity insurance.

(2) A society which fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units and a daily penalty not exceeding 5 penalty units for each day during which the fidelity insurance indemnity is not obtained and maintained.

25—(1) Every officer of a society having the receipt or charge of any money on behalf of the society, or his executors or administrators, shall—

Officers to account.

(a) upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account, as may be required by the board of directors or committee of management of the society, to be examined by the board of directors or committee of management; and

(b) on the like demand or notice, pay over all the money remaining in his hands and deliver all property of the society in his hands or custody to such person as the board of directors or committee of management of the society appoints.

(2) If an officer of a society under this Act fails or refuses to deliver an account or to pay over money or to deliver property as required under subsection (1)—

(a) the officer is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units; and

(b) the society may apply to the Court which may proceed in a summary way and make such order as it considers just, which order is final and conclusive.

Amendment of section 26 of Principal Act (Investments by societies).

8—Section 26 of the Principal Act is amended by inserting after subsection (1) the following subsection:—

(1A) A society may, subject to its rules, invest any of its funds in mortgage-backed securities, within the meaning of section 13 (7).

Amendment of section 27 of Principal Act (Payment of sums not exceeding \$10 000 on intestacy).

9—Section 27 of the Principal Act is amended by omitting from subsection (1) “\$100” and substituting \$10 000”.

Amendment of section 29 of Principal Act (Winding up, liquidation, and cancellation).

10—Section 29 of the Principal Act is amended as follows:—

(a) by inserting before “that” in paragraph (d) of subsection (3) “in the case of a society registered under this Act before the day fixed under section 2 (2) of the *Building Societies Amendment Act 1987*,”;

(b) by inserting the following paragraph after that paragraph:—

(da) in the case of a society registered under this Act on or after the day fixed under section 2 (2) of the *Building Societies Amendment Act 1987*, that the society has ceased to hold paid-up share capital of less than \$1 000 000;

Substitution of section 34 of Principal Act.

11—Section 34 of the Principal Act is repealed and the following section is substituted:—

Minors may be members.

34—(1) A person under the age of 18 years may be a member of a society and may, to the extent required by reason of his membership, execute all instruments and give all necessary acquittances.

(2) A member of a society who is under the age of 18 years is not competent to hold any office in the society and is not entitled to vote at any meeting of the society.

(3) Any receipt or acknowledgement given to a society by a person under the age of 18 years in respect of—

(a) the payment to him of any amount deposited by him with the society;

(b) the payment to him of interest on any such amount; or

(c) the repayment to him of capital in the society, is not invalid on the ground that he is under that age.

12—Section 42 of the Principal Act is repealed.

Repeal of section 42 of Principal Act (Fees payable to Commissioner).

13—Section 43 of the Principal Act is amended by adding after subsection (2) the following subsection:—

Amendment of section 43 of Principal Act (Regulations).

(3) Without limiting the generality of subsection (1), the regulations may prescribe the fees to be paid to the Commissioner under this Act.

14—Schedule 1 to the Principal Act is repealed.

Repeal of Schedule 1 to Principal Act.

15—During the period of 3 months commencing on the day fixed by proclamation under section 2 (2) of this Act, section 24 of the Principal Act, as amended by this Act, does not apply to a society registered under this Act immediately before that day.

Transitional provision.

