



TASMANIA

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**HOMES (SALE OF MORTGAGES) ACT 1993**

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**No. 104 of 1993**

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SCHEDULE 1

AMENDMENT OF REFERENCES IN HOMES ACT 1935 TO AUTHORITY

SCHEDULE 2

AMENDMENT OF REFERENCES IN HOMES ACT 1935 TO APPROPRIATE AUTHORITY





## HOMES (SALE OF MORTGAGES) ACT 1993

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No. 104 of 1993

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**AN ACT to provide for the sale of home mortgages vested in the Tasmanian Development Authority, to amend the *Homes Act 1935* and to remove doubts as to the validity of mortgages and acts done under that Act**

[Royal Assent 23 December 1993]

**B**E 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:—

### PART 1

#### PRELIMINARY

#### Short title

**1**—This Act may be cited as the *Homes (Sale of Mortgages) Act 1993*.

### Commencement

2—(1) Parts 1, 2 and 3 and sections 33, 36 and 37 commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on a day to be proclaimed.

### Interpretation

3—In this Act, unless the contrary intention appears—

“**Authority**” means the Tasmanian Development Authority;

“**instrument**” includes—

(a) an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law); and

(b) a judgment, order and process of a court;

“**legal proceedings**” includes an arbitration;

“**liabilities**” includes all liabilities, duties and obligations, whether actual, contingent or prospective;

“**property**” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property and includes money, documents, securities, choses in action and other rights;

“**purchaser**” means any person, other than the Minister, who is a party to a sale under section 6 and who, by virtue of that sale is the transferee or assignee of, or takes a beneficial interest in, any property and includes the successor or assignee of any such person;

“**rights**” includes all rights, powers, privileges and immunities, whether actual, contingent or prospective;

“**sale**” includes a transfer, assignment and any other disposition of property, whether for consideration or not;

“**security**” means a mortgage or charge, whether legal or equitable, or a debenture, bill of exchange, promissory note, guarantee, lien or pledge or any other property or transaction representing security for the payment of money or for the discharge of an actual or contingent liability;

“**TDA home mortgage**” means a mortgage vested in the Authority to secure a loan for housing but does not include any such mortgage that under any regulations made and in force under this Act is excluded from the operation of this Act.

### **Objects of Act**

4—The objects of this Act are to provide for the sale of all or some of the TDA home mortgages without affecting the rights of mortgagors.

### **Act to bind Crown**

5—This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

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## **PART 2**

### **SALE OF TDA HOME MORTGAGES**

#### **Power of Minister to sell TDA home mortgages**

6—(1) The Minister may, with the approval of the Treasurer and without such notice or consent as may be required by any other law, sell any TDA home mortgage to any person on such terms and conditions as the Minister thinks fit.

(2) On a sale under subsection (1) the purchaser succeeds to the rights and liabilities of the Authority under the mortgage.

(3) On a sale under subsection (1), the Minister must cause to be laid before each House of Parliament a report in accordance with subsection (4).

(4) The report is to be laid before the House within 15 sitting days of the House after the expiration of 60 days after the sale takes effect and is to include—

- (a) a statement of the date on which the sale was completed; and
- (b) a description of the mortgages which are the subject of the sale; and
- (c) full particulars of the consideration for the sale and of any other money payable in respect of the sale; and
- (d) a summary of the effect of any guarantees or indemnities provided in connection with the sale; and
- (e) a statement of the manner of application of the proceeds of the sale; and
- (f) a statement of any other terms or conditions of the sale which in the opinion of the Minister are material.

### **Proceeds of sale**

7—(1) The proceeds of a sale under this Part are to be paid into an account established in the Special Deposits and Trust Fund and, after discharge of the liabilities of the State in respect of those proceeds, are to be applied in retirement of State debt.

(2) There may be deducted from the proceeds of sale before payment as required by subsection (1) such amount as the Treasurer approves to meet the expenses reasonably incurred in connection with the sale.

### **Construction of instruments**

8—(1) Where—

- (a) a TDA home mortgage is sold under section 6; and
- (b) in an instrument that was in force immediately before the date on which the sale takes effect there is a reference to the Authority relating to that mortgage—

that instrument has effect on and from that date, except in so far as the context or subject-matter otherwise indicates or requires, as if the reference were, or included as the case may require, a reference to the purchaser.



(2) Where a TDA home mortgage that is sold under section 6 confers any power by reference to a provision of the *Homes Act 1935*, the powers exercisable under that provision are, for the purposes of that mortgage, taken to be conferred on the purchaser.

**Supplementary provisions with respect to legal proceedings, documents, &c.**

9—Where a TDA home mortgage is sold under section 6—

- (a) legal proceedings instituted by or against the Authority relating to that mortgage before and pending on the date on which the sale takes effect may be continued by or, as the case may be, against the purchaser; and
- (b) a judgment or order of a court obtained in those proceedings by or against the Authority relating to that mortgage may on and after that date be enforced by or, as the case may be, against the purchaser; and
- (c) a document addressed to and purporting to be served on the Authority relating to that mortgage and to those proceedings is taken to be served on the purchaser.

**Mortgages under the *Land Titles Act 1980* or the *Registration of Deeds Act 1935***

10—(1) On a sale of a TDA home mortgage under section 6, the Minister must provide the Recorder of Titles with a certificate specifying the purchaser and the land subject to the mortgage.

(2) Where a mortgage in land under the *Land Titles Act 1980* is, by virtue of a sale under section 6 of this Act, vested in the purchaser, the purchaser is, notwithstanding any provision of that Act to the contrary, taken to be the registered proprietor of that mortgage and may deal with it accordingly.

(3) The Recorder of Titles may register a dealing relating to a mortgage in land referred to in subsection (2), executed by the purchaser, if the dealing is in a registrable form, notwithstanding that the purchaser is not recorded as the registered proprietor of that mortgage in the Register kept under the *Land Titles Act 1980*.

(4) Where a mortgage in land to which the *Registration of Deeds Act 1935* applies is, by virtue of a sale under section 6 of this Act, vested in the purchaser, a dealing relating to that estate or interest may, if executed by the purchaser and if otherwise in a registrable form, be registered by the Recorder of Titles, notwithstanding that no dealing formally vesting that mortgage in the purchaser has been registered under that Act.

### **Exemption from tax for sale documents**

**11—(1)** In this section, “**State tax**” means application or registration fees, stamp duty or any other tax, duty, fee or charge imposed by any Act or law of Tasmania.

(2) State tax is not payable in respect of any document prepared in connection with the sale of a TDA home mortgage.

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## **PART 3**

### **MISCELLANEOUS AND SUPPLEMENTAL**

#### **Regulations**

**12—**The Governor may make regulations for the purpose of this Act.

#### **Administration of Act**

**13—**Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990—*

- (a) the administration of Parts 1 and 2 and this Part of this Act is assigned to the Minister for State Development and Resources; and
- (b) the Department responsible to the Minister for State Development and Resources in relation to the administration of those provisions is the Tasmanian Development Authority.

**PART 4****AMENDMENTS OF HOMES ACT 1935***Division 1—Preliminary***Principal Act**

14—In this Part, the *Homes Act 1935*\* is referred to as the Principal Act.

*Division 2—Amendments***Section 3 amended (Interpretation)**

15—Section 3 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) the definition of “Authority”;
- (b) by omitting “or the Authority” from the definition of “eligible person” in subsection (1);
- (c) by omitting from subsection (2) “or the Authority”.

**Section 4 amended (Administration)**

16—Section 4 (1) of the Principal Act is amended as follows:—

- (a) by omitting “their” and substituting “his or her”;
- (b) by omitting “and the Authority”.

**Section 5 amended (Property to be held on behalf of the Crown)**

17—Section 5 of the Principal Act is amended by omitting “or the Authority” and “or by the Authority, as the case may be,”.

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\* 26 Geo. V No. 98. For this Act, as amended to 1959, see the Reprint of Statutes (1826-1959), Vol. 2, page 915. Subsequently amended by No. 18 of 1961, No. 55 of 1965, No. 27 of 1966, Nos. 1, 51 and 80 of 1973, Nos. 28 and 101 of 1976, Nos. 20, 29, 59 and 110 of 1977, No. 12 of 1978, No. 19 of 1980, No. 99 of 1982, Nos. 24 and 88 of 1983, Nos. 2 and 29 of 1984, No. 14 of 1987, No. 55 of 1988, No. 5 of 1990 and No. 46 of 1991.

**Section 6AB amended (Delegation)**

**18**—Section 6AB (1) of the Principal Act is amended by omitting “delegation)” and substituting “delegation and the power to borrow money)”.

**Section 8 substituted and sections 8A and 8B inserted**

**19**—Section 8 of the Principal Act is repealed and the following sections are substituted:—

**Borrowing from Treasurer**

8—(1) The Treasurer may lend to the Director, out of money provided by Parliament for the purpose, such money as the Treasurer considers appropriate for the performance of the functions and exercise of the powers of the Director under this Act and any such loan is subject to any conditions determined by the Treasurer.

(2) An amount lent under subsection (1) and any interest payable in respect of the loan is a debt repayable by the Director to the Consolidated Fund.

**Borrowing from person other than Treasurer**

8A—(1) The Director may borrow money with the approval of the Treasurer from a person other than the Treasurer for the purposes of performing the functions and exercising the powers of the Director under this Act.

(2) The total of all amounts of money borrowed under this section during a financial year is not to exceed the maximum amount determined by the Treasurer, in writing, in respect of that financial year.

(3) The Director may use all or part of his or her assets as security for money borrowed under subsection (1) and any interest or charges payable in respect of that borrowing.

(4) If requested to do so by the Director, the Treasurer may guarantee the payment or repayment to a person from whom the Director borrows money under subsection (1) of any or all of the following:—

(a) the amount borrowed;

- (b) any interest payable in respect of the amount borrowed;
- (c) any charges relating to the borrowing;
- (d) any expenses of that person incurred in relation to the borrowing and which are payable by the Director.

(5) A guarantee is subject to any conditions determined by the Treasurer.

(6) A payment or repayment which is required under a guarantee is payable from money provided by Parliament for the purpose.

(7) If the Treasurer makes any payment or repayment under a guarantee, an amount equal to the amount so paid or repaid and any interest payable by the Director in accordance with the conditions to which the guarantee is subject is a debt repayable by the Director into the Consolidated Fund on the conditions and in the manner determined by the Treasurer.

### **Financial arrangements**

8B—(1) In this section, “**financial arrangement**” means—

- (a) an interest rate swap; or
- (b) a forward interest rate agreement; or
- (c) a futures contract or futures option, within the meaning of the Corporations Law, relating to an interest rate or a foreign currency; or
- (d) an option in respect of an existing financial security or a security which the Director has authority to create; or
- (e) any other transaction or arrangement that has been approved by the Treasurer in writing for the purposes of this section.

(2) The Director may enter into and perform a financial arrangement in accordance with any guidelines in force under subsection (3).

(3) The Treasurer may issue guidelines relating to financial arrangements or the exercise of the power of the Director to enter into and perform financial arrangements.

**Section 9 amended (Guarantee of loans)**

**20**—Section 9 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “under section 8,” and substituting “for the purposes of this Act by the Tasmanian Development Authority before the commencement of the *Homes (Sale of Mortgages) Act 1993*,”;
- (b) by omitting from subsection (3) “Revenue”.

**Section 17 amended (Sale of dwelling-houses)**

**21**—Section 17 of the Principal Act is amended by omitting subsections (6A) to (6D), both inclusive.

**Section 18D amended (Guarantee and indemnity by Treasurer)**

**22**—Section 18D (1) of the Principal Act is amended by omitting “18C (1)” and substituting “8 or 18C (1)”.

**Section 27 repealed and section 27A substituted**

**23**—Sections 27 and 27A of the Principal Act are repealed and the following section is substituted:—

**Director may refuse to enter into contract, &c.**

27A—(1) The Director may refuse—

- (a) to enter into a contract for the sale to an eligible person of any land or land and dwelling-house; and
- (b) to make an advance to an applicant under this Act.

(2) A decision of the Director under this section is final.

**Section 28A inserted**

**24**—After section 28 of the Principal Act, the following section is inserted:—

**Power of Treasurer to authorize variable interest rates**

28A—Notwithstanding any other provision of this Act, the Treasurer may, by instrument in writing and subject to such terms and conditions as may be specified in that instrument, authorize the Director to provide for the payment of interest in a mortgage under this Act at a rate which may be varied from time to time at the discretion of the Director.

**Section 32 amended (Sale where borrower bankrupt)**

25—Section 32 of the Principal Act is amended by omitting “or the Authority” and “or the Authority (as the case requires)” and “or it”.

**Section 35 amended (Remedies for recovery of instalments)**

26—Section 35 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (2) (b) “or the Authority”;
- (b) by omitting from subsection (3) “and the Authority”.

**Section 39 amended (Extension of time for repayment)**

27—Section 39 (1) of the Principal Act is amended by omitting “or the Authority” (wherever occurring) and “or it”.

**Section 40 amended (Director to obtain reports from inspectors and valuers)**

28—Section 40 (1) of the Principal Act is amended by omitting “or the Authority, as the case requires,”.

**Section 41 substituted**

29—Section 41 of the Principal Act is repealed and the following section is substituted:—

**Register of purchases, tenancies and advances**

41—The Director must keep—

- (a) a register or list of all purchases, tenancies and advances made or granted under this Act; and
- (b) an alphabetical list of the names of the persons included in each register or list.

**Section 44 amended (Power of Director to compound in case of breach of contract)**

30—Section 44 of the Principal Act is amended by omitting “or the Authority” and “or the Authority, as the case may be,”.

**Section 45 amended (Judgment of court not to affect contract of sale or mortgage)**

31—Section 45 of the Principal Act is amended by omitting “or of the Authority, as the case may be,”.

**Section 46B repealed**

32—Section 46B of the Principal Act is repealed.

**Section 47 amended (Regulations)**

33—Section 47 (1) of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (d) “same.” and substituting “same; and”;
- (b) by inserting after paragraph (d) the following paragraph:—
  - (e) provisions of a savings or transitional nature consequent on the enactment of the *Homes (Sale of Mortgages) Act 1993*.

**References to Tasmanian Development Authority**

34—Each of the provisions of the Principal Act specified in column 1 of the table specified in Schedule 1 is amended by omitting “Authority” and substituting “Director”.



**References to appropriate authority**

**35**—Each of the provisions of the Principal Act specified in column 1 of the table specified in Schedule 2 is amended by omitting “appropriate authority” and substituting “Director”.

***Division 3—Validation provisions*****Validation of mortgages**

**36**—All mortgages made for the purposes of the Principal Act before the day on which this Act receives the Royal Assent are taken to have been made in accordance with the Principal Act and, if subsisting on that day, are taken to continue in effect according to their terms notwithstanding anything to the contrary in that Act.

**Validation—Director of Housing**

**37**—During the period commencing on 1 October 1990 and ending on 25 April 1993, notwithstanding the absence of a formal appointment of the Director of Housing—

- (a) the person purporting to perform the functions or exercise the powers of the Director of Housing is taken to have been validly appointed as such; and
- (b) the Director of Housing as a corporation sole is taken to have continued in existence; and
- (c) any act or thing done or omitted to be done by—
  - (i) the person purporting to perform the functions or exercise the powers of the Director of Housing; or
  - (ii) a person purporting to act as a delegate of the Director of Housing—

is as valid as if it had been done or omitted to be done by a person duly appointed as Director of Housing.

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SCHEDULE 1

Section 34

AMENDMENT OF REFERENCES IN HOMES ACT 1935 TO AUTHORITY

| <p>COLUMN 1<br/>Provisions of <i>Homes Act 1935</i><br/>amended by omitting<br/>"Authority" and substituting<br/>"Director"</p> | <p>COLUMN 2<br/>Number of times word omitted<br/>occurs in provision</p> |
|---|--|
| Heading to Part V   | 1  |
| Section 19 (1)  | 2  |
| Section 19 (4) (b)  | 1  |
| Section 20 (3)  | 1  |
| Section 20 (4)  | 2  |
| Section 20 (5)  | 2  |
| Section 21 (1)  | 2  |
| Section 21 (2)  | 2  |
| Section 22 (1)  | 3  |
| Section 25 (c)  | 1  |
| Section 25 (d)  | 2  |
| Section 25 (e)  | 2  |

**SCHEDULE 2**

## Section 35

**AMENDMENT OF REFERENCES IN HOMES ACT 1935 TO  
APPROPRIATE AUTHORITY**

| COLUMN 1<br>Provisions of <i>Homes Act 1935</i><br>amended by omitting<br>“appropriate authority” and<br>substituting “Director” | COLUMN 2<br>Number of times words omitted<br>appear in provision |
|--|--|
| Section 17 (5) (b) (iii)   | 1  |
| Section 19 (1) (g)   | 1  |
| Section 29 (1)   | 1  |
| Section 29 (2)   | 1  |
| Section 30 (1)   | 1  |
| Section 30 (2)   | 7  |
| Section 31 (1)   | 3  |
| Section 31 (2)   | 2  |
| Section 34 (1)   | 1  |
| Section 34 (2)   | 4  |
| Section 34 (3)   | 1  |
| Section 35 (1)   | 2  |
| Section 35 (2)   | 5  |
| Section 35 (2A)  | 2  |
| Section 35 (4)   | 4  |
| Section 36   | 2  |
| Section 37   | 4  |

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*[Second reading presentation speech made in:—  
House of Assembly on 4 August 1993  
Legislative Council on 8 December 1993]*