

**Document Class:** MORTGAGE  
**Document Name:** Drought Relief  
**Document Description:** Prime Mortgage - Drought  
**Document Code:** DMP

## Mortgage Duty

No stamp duty is payable on a mortgage executed on or after 1 July 2009. This guide note applies to a mortgage dated on or before 30 June 2009 and the funds are advanced on or before 30 June 2009. For a mortgage dated on or after 1 July 2009 or dated pre 1 July 2009 but the funds are advanced on or after 1 July 2009, refer to the document heading:

[Exemptions – Mortgage/Discharge of Mortgage or Encumbrance – Non Dutiable Mortgage / Discharge \(MEX\)](#)

## Introduction

On 25 October 2006, the Government announced a drought assistance package for South Australia's farming communities and this includes *ex gratia* mortgage stamp duty relief. The mortgage stamp duty relief does not have any geographical limitations, and therefore is available for farmers within any area of the State.

The stamp duty relief is available for farmers in their own right, and includes corporate entities, and/or family trust arrangements that may own the land/operate the farm.

The relief only applies to the duty payable on borrowings of working capital to fund normal operating costs of the farm enterprise as a consequence of the drought and does not include the duty payable on borrowings for capital items such as further land, property improvements, vehicles, plant and equipment acquisitions or investments including farm management deposits.

In order to be considered for relief an applicant must be engaged in the "business of primary production":

The business of primary production is the business of agriculture, pasturage, viticulture, apiculture, poultry farming, forestry or any other business consisting of the cultivation of soils, the gathering of crops, the rearing of livestock, but excludes the propagation and harvesting of fish or other aquatic organisms.

The business of primary production must be:

- a significant commercial activity that is or will be profitable;
- operated with repetition and regularity;
- an activity organised and carried out in a systematic/business like manner;
- a considerable size and scale;
- not considered a hobby, recreation or sporting activity; and
- registered for GST and have an ABN

A mortgage is defined at section 76 of the SD Act and includes a document creating, acknowledging, evidencing or recording a legal or equitable interest in, or charge over real or personal property as security for a liability.

This document class can be used to determine stamp duty on the first stamping of a drought prime mortgage where the loan is for:

- home acquisition or improvement purposes; and/or
- capital to fund normal operating costs of the farm enterprise as a consequence of the drought; and/or
- capital to fund such items as land, property improvements, vehicles, plant, equipment acquisitions or investments including farm management deposits.

The amount of the loan in respect of each of the above categories must be included in the respective field on the RevNet screen and on the *Ex gratia* Mortgage Stamp Duty Relief form to enable calculation of the duty and the payment of the *ex gratia* mortgage stamp duty relief.

The RevNet screen under Document Details includes fields for:

- Total Security Home – this is for the amount of the loan for home acquisition or improvement purposes.
- Total Operating Security – this is for the amount of the loan for working capital to fund normal operating costs of the farm enterprise as a consequence of the drought.
- Total Other Security - this is for the amount of the loan not included in the other two categories.

Note that these amounts are also required to be completed on the *Ex gratia* Mortgage Stamp Duty Drought Relief form.

The *ex gratia* payment amount will display on the RevNet screen. This amount will be deducted from the "TOTAL PAYABLE" for that document and for the batch. The RevNet user will **not** be debited for the *ex gratia* amount, this will be paid through the RevNet functionality when the batch is submitted to RevenueSA.

### Owner Occupied Mortgages

A mortgage taken out for the purposes of securing a loan that has been or is to be applied for **home acquisition or improvement** is exempt from stamp duty.

A loan will be considered to be applied for **home acquisition or improvement** purposes to the extent that it is used for one or more of the following purposes:

- purchasing land on which residential premises have been, or are to be built, that the mortgagor (or, if there are two or more mortgagors, at least one of them) intends to occupy as his or her sole principal place of residence;
- building, or making additions or improvements to, residential premises that the mortgagor (or, if there are two or more mortgagors, at least one of them) occupies or intends to occupy as his or her sole or principal place of residence; or
- repaying a loan previously taken out for one or more of the above purposes; and
- the mortgagor/s are natural persons.

### Mixed Purpose Loan

A mortgage securing a loan that has been, or is to be, applied in part for home acquisition or improvement purposes and in part for other purposes, is liable to duty as if it secured only so much of the loan as is to be applied for the other purposes.

**The following similar transactions cannot be stamped under this document heading:**

If the liability secured by the mortgage exceeds \$400, the mortgage secures real property and the funds are for home acquisition or improvement purposes and funding not for normal operating costs as a consequence of the drought, it may be stamped under the document heading:

[Mortgages – Prime Mortgage \(Other\)](#) (M).

If the liability secured by the mortgage exceeds \$400, the mortgage does not secure real property and is not a Consumer Mortgage it may be stamped under the document heading:

- [Mortgages – Prime Mortgage \(Other\)](#) (M).

If the document is a consumer mortgage it may be stamped under the document heading:

- [Mortgages – Consumer Mortgage](#) (M).

A cross-collateral mortgage to the extent of the prime liability is stamped under this document heading. A cross-collateral mortgage to the extent of the collateral liability may be stamped under the document heading:

- [Mortgage – Collateral](#) (COL).

### What *documents* can I stamp under this document heading?

- a LTO Form M1 - Memorandum of Mortgage;
- any other document that is defined as a mortgage (except a consumer mortgage) where the property secured by the Mortgage is real property.

### What types of *transactions* can I stamp under this document heading?

A prime mortgage is deemed **suitable** for self-stamping under this document heading where:

- the document creates a charge over property located only in South Australia to secure the payment or repayment of a debt; and
- the liability secured exceeds \$400, and

- the dutiable portion of the loan is to fund normal operating costs as a consequence of the drought.

### What stamp duty is payable on this document?

The mortgage is exempt from duty to the extent that the loan is for home acquisition or improvement purposes.

The mortgage is chargeable with duty to the extent of the loan which is applied to fund normal operating costs as a consequence of the drought. However the duty will be paid by way of *ex gratia* payment through the RevNet functionality.

If the secured liability exceeds \$400 but does not exceed \$4,000 the minimum stamp duty chargeable is \$10.

### What evidence do I need to retain for audit purposes?

For audit purposes, you will need to retain the following documentation:

- a copy of the stamped document; and
- the *Ex gratia* Mortgage Stamp Duty Relief form.

### Example 1 – Prime Mortgage

Bob wants to take a second mortgage over her farm for \$200,000. The purpose of this loan is \$100,000 for home improvement purposes, \$20,000 for other purposes and \$80,000 to fund further operating costs as a consequence of the drought.

A memorandum of mortgage has been executed. The loan portion of \$100,000 for home improvement purposes is exempt from duty. The stamp duty is charged on the dutiable liability secured by the mortgage (\$100,000) using the mortgage rate of duty as prescribed in schedule 2 of the Act (ie \$151 stamp duty is payable).

However, the duty on \$80,000 (\$121) will be paid by way of *ex gratia* payment through the RevNet functionality and the duty on \$20,000 (\$31) is payable by the client.

Enter into RevNet the amounts of:

- \$100,000 as Total Security Home
- \$80,000 as Total Operating Security
- \$20,000 as Total Other Security

### What section of the SD Act applies?

Sections 76 to 80 inclusive

Refer also Stamp Duties Circular No. 274