

Document Class: MORTGAGE
Document Name: Drought Relief
Document Description: Refinancing - Drought
Document Code: DMF

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* 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

This guide note explains how stamp duty is calculated on a drought refinancing mortgage and where further funds are advanced.

The second schedule of the SD Act provides relief for a mortgage that secures a refinancing loan. However that exemption only extends to the balance that is outstanding under the previous mortgage and cannot exceed the amount of stamping of the previous mortgage.

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

- refinancing to the amount of the outstanding debt **plus** a further advance for home acquisition or improvement purposes; and/or
- refinancing to the amount of the outstanding debt **plus** a further advance to fund normal operating costs as a consequence of the drought; and/or
- refinancing to the amount of the outstanding debt **plus** a further advance to fund such items as land, property improvements, vehicles, plant, equipment and 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:

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

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.

What documents can I stamp under this document heading?

- a LTO Form M1 – Memorandum of Mortgage; and
- any other document that is defined as a mortgage.

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.

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

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

- the new mortgage provides for the refinancing of a loan secured by a previous mortgage;
- the previous mortgage is being fully discharged;
- both the new mortgage and the previous mortgage apply to the same or at least some of the same property; and
- the borrower/s is/are the same as in the previous mortgage.

What stamp duty is payable on this document?

The document is exempt from stamp duty to the extent of the balance outstanding under the previous mortgage and cannot exceed the amount of stamping of the previous mortgage.

The document is exempt on a further advance if it is for home acquisition or improvement purposes.

If the transaction includes a further advance that is not for home acquisition or improvement purposes duty is charged on this liability as a new loan using the mortgage rate of stamp duty as prescribed in Schedule 2 of the SD Act. However, the duty will be paid by way of *ex gratia* payment through the RevNet functionality.

What evidence do I need to retain for audit purposes?

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

- copies of the stamped documents (both the previous mortgage and the new mortgage);
- a copy of the Application for Refinancing Exemption form;

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

Example 1 – Refinancing with Increase in Security

William has a mortgage over his farm securing \$750,000 with the Country Side Bank. He now wishes to refinance this mortgage with the Friendly Bank and increase the total secured liability to \$1,000,000.

William has completed an Application for Refinancing Exemption form which states that:

- the new mortgage provides for the refinancing of a loan secured by a previous mortgage;
- the previous mortgage is being fully discharged;
- both the new mortgage and the previous mortgage apply to the same or at least some of the same property; and
- the borrower is the same as in the previous mortgage.

William executes a new Memorandum of Mortgage with Friendly Bank. This document is not chargeable to the extent of the balance that is outstanding under the mortgage with Country Side Bank, which is now \$700,000. Of the further advance of \$300,000:

- \$200,000 is for home acquisition or improvement purposes; and
- \$60,000 is for normal operating costs as a consequence of the drought; and
- \$40,000 is for property improvements

The further advance of \$200,000 for home acquisition or improvement purposes is exempt from duty. The further advance of \$100,000 for other purposes is liable to duty of \$151 (ie. on \$100,000) using the mortgage rate of duty as prescribed in Schedule 2 of the SD Act. However the duty on \$60,000 (\$91) will be paid by way of *ex gratia* payment through the RevNet functionality.

Enter into RevNet the amount of:

- \$700,000 as the Balance Outstanding
- \$200,000 as the Further Security Home
- \$60,000 as the Further Operating Security
- \$40,000 as the Further Other Security (duty payable is \$112)

What section of the SD Act applies?

Section 79

Schedule 2, clause 11

Refer also Stamp Duties Circular No. 274