

Document Class: MORTGAGE
Document Name: Encumbrance
Document Code: M

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 / Encumbrance \(MEX\)](#)

Introduction

The guide note explains how stamp duty is calculated on an encumbrance where the liability secured by the document exceeds \$400.

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. An encumbrance is a charge over land, therefore, it is stamped as a mortgage.

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

The document can be in the form of:

- a LTO Form M2 – Memorandum of Encumbrance.

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

An encumbrance is deemed **suitable** for self-stamping under this document heading where:

- the document creates a charge over property located only in South Australia; and
- the liability secured exceeds \$400.

What stamp duty is payable on this document?

Stamp duty is calculated on the liability secured by the mortgage using the mortgage rate of stamp duty as prescribed in Schedule 2 of the SD Act.

To calculate the liability, multiply the rent charge by the term eg. \$1.00 per year for 3,999 years = \$3,999. Stamp duty is calculated on a liability of \$3,999.

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.

Example 1 – Encumbrance (liability exceeding \$400)

Bill buys land in a new housing estate and a condition of the purchase is that Bill execute an encumbrance to be registered over his land. This encumbrance includes certain building conditions.

The term of the encumbrance is 1,000 years and the rent charge is \$1 per annum.

The stamp duty is calculated using the mortgage rate of duty on a secured liability of \$1,000 (ie. \$10 stamp duty).

What section of the SD Act applies?

Section 76

Section 80