

<b>Document Class:</b>	<b>MORTGAGES</b>
<b>Document Name:</b>	<b>Prime Mortgage</b>
<b>Document Description:</b>	<b>Land</b>
<b>Document Code:</b>	<b>MP</b>

### 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

This guide note explains how stamp duty is calculated on a mortgage where the liability secured 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.

This document class can be used to determine stamp duty on the first stamping of a prime mortgage secured over land when the loan is for:

- home acquisition or improvement purposes;
- for home acquisition or improvement **and** a loan for other purposes; or
- other purposes.

### 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 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.

A cross collateral mortgage is a document which is stamped as a prime security and a collateral security as part of a group of mortgage documents.

The cross collateral mortgage to the extent of the collateral security is stamped under the document heading:

- [Mortgages – Collateral](#) (COL)

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

If the mortgage is a South Australian Real Property Act mortgage where the funds are used for a purpose other than for home acquisition or improvements, that forms part of a package with interstate securities, between the same parties and is to be stamped on a proportional basis, refer to the document heading:

- [Mortgages – Prime Mortgage – SA Land \(Proportional\)](#) (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)

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

- a LTO Form M1 - Memorandum of Mortgage.

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

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

- the document creates a charge over real property located only in South Australia to secure the payment or repayment of a debt; and

The mortgage can be stamped under this document heading where the above conditions apply or the mortgage is being stamped as a cross collateral for the extent of the prime liability or is a mortgage that is part of a package with interstate securities. See examples in this guide note.

If the mortgage is securing a loan for home acquisition or improvement purposes only, the document can be stamped with a manual “Exempt Mortgage” rubber stamp rather than processing it on RevNet.

However, if you choose to use the manual stamp you will not have the ability to pay the LTO fees for that document via RevNet. These will need to be paid directly to the LTO.

For further information or to obtain an “Exempt Mortgage” rubber stamp please contact RevNet Assistance on 8207 2333.

### **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 for other purposes. The rate is prescribed in Schedule 2 of the SD Act.

Where the loan is for other purposes and the secured liability exceeds \$400 but does not exceed \$6,000 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;
- evidence of the purpose of the advance;
- an executed copy of the building contract (where vacant land is being purchased on which residential premises of the mortgagor/s will be built), if applicable.

### **Example 1 – Prime Mortgage – Home**

Bob wants to buy a house at Flagstaff Hill for \$500,000 in which he intends to reside. He has \$50,000 that he can use as a deposit but needs to borrow \$450,000 from the bank. The bank agrees to loan him the \$450,000 provided he enters into a mortgage using the house as security.

A Memorandum of Mortgage has been executed. As the purpose of the advance is for home acquisition or improvement purposes, the mortgage is exempt.

### **Example 2 – Cross Collateral Securities**

Ted borrows \$500,000 from XYZ Bank secured by a mortgage over his house, the mortgage has been stamped exempt. Alice borrows \$700,000 from XYZ Bank secured by a mortgage over her house, this mortgage has been stamped exempt. Both of these documents have been stamped under this document heading:

- [Mortgages – Prime Mortgage – Land \(MP\)](#)

Ted and Alice each execute cross guarantees whereby they guarantee the payment of each others loan and give their property as collateral security for each others loan.

XYZ Bank now wants to stamp these documents cross collateral to each other. The mortgage over Ted's house is stamped as a cross collateral to Alice's mortgage for \$700,000. The mortgage over Alice's house is stamped as a cross collateral to Ted's for \$500,000. Both of these mortgages are stamped as cross collateral under the document heading:

- [Mortgages – Collateral \(COL\)](#)

Refer to [Stamp Duties Circular No 82](#) for more advice on cross collateral securities.

### **Example 3 – Prime Mortgage Home and Non Home purpose**

Sue and Neil are purchasing a home at Morphett Vale in which they intend to reside. They wish to borrow \$250,000 from a bank using their new home as security. This loan includes an amount of \$50,000 not for the purpose of their home acquisition.

A Memorandum of Mortgage has been executed. The stamp duty is charged on the portion not for home acquisition purposes (\$50,000) using the rate of duty as prescribed in Schedule 2 of the SD Act (ie \$208 stamp duty is payable).

### **Example 4 – Prime Mortgage Home (vacant land with building contract)**

Dorothy and Paul have signed a contract to purchase vacant land. They have signed a contract to build a home on this land in which they intend to reside with Bob's Building Pty Ltd. They have borrowed \$450,000 to finance this. As all of the \$450,000 is to be used for home acquisition or improvement purposes the mortgage is stamped Exempt.

### **Example 5 – Prime Mortgage Home (vacant land with no building contract)**

John and Janine have signed a contract to purchase vacant land. They intent to build their new home on this land in the near future, however, at the time of settlement they have not signed a contract to build. They have borrowed \$150,000 to finance the purchase of the vacant land.

As the parties cannot evidence their intention that this loan is for home acquisition or improvement purposes the loan cannot be considered to be for home acquisition or improvement purposes.

Stamp duty is charged on \$150,000 using the rate of duty as prescribed in Schedule 2 of the SD Act.

NB: If John and Jane later build and borrow further funds, this advance will be exempt from duty providing the parties can evidence this advance is for home acquisition purposes, eg, by providing a building contract.

The original duty paid is not refundable.

**Example 6 – Prime Mortgage Home (vacant land, owner ready to build)**

Fred and Wilma have signed a contract to purchase vacant land. They intend to build their home on this land using various sub contractors. They have had plans drawn by an architect and are ready to commence building soon after settlement. They have borrowed \$420,000 to finance the purchase of the land and the building costs.

As the parties can evidence that all of these funds are to be used for home acquisition or improvement purposes the mortgage is stamped Exempt.

**Example 7 – Prime Mortgage (owner builder, intending to build later)**

Paul and Angela have signed a contract to purchase vacant land. They intend to build their home on this land some time later using various sub contractors. They have borrowed \$120,000 to finance the purchase of the land.

Two years later they are ready to build and borrow a further \$320,000 to finance the building costs. As this advance is to be used for home acquisition or improvement purposes this is stamped Exempt.

NB: No refund is applicable for the duty paid on the original advance of \$120,000.

**Example 8 – Prime Mortgage (owner builder, investment home now to be principal home)**

Mike has signed a contact to purchase vacant land. He intends to build an investment house on this land soon. He borrows \$120,000 and pays duty of \$523.

A year later Mike has a change of mind and decides to build a home on this land to be used as his principal place of residence. He borrows a further \$295,000 to finance the building. This increase is Exempt as the purpose of this advance is for home acquisition or improvement purposes.

The duty paid of \$523 cannot be refunded as that loan was not intended for home acquisition or improvement purposes at the time of that loan.

**Example 9 – SA Real Property Act Mortgage on a Multi-jurisdictional basis, home acquisition or improvement purposes only.**

James has investment properties in Victoria and New South Wales. He has purchased a home in Adelaide and has taken out a mortgage over this property. His bank wants to stamp this mortgage on proportional basis. Duty and security to which the mortgage is stamped is calculated as follows.

	<b>Property Value \$</b>	<b>Amount Secured \$</b>
SA – Home	400,000	300,000
Vic	300,000	200,000
NSW	350,000	300,000
<b>Total</b>	<b>1,050,000</b>	<b>800,000</b>

To calculate the SA security:

$$\frac{\text{Total value SA property secured by the mortgage}}{\text{Total value of property secured by the mortgage}} \times \text{Total Amount Secured}$$

= South Australian proportion

$$\frac{\$400,000}{\$1,050,000} \times \$800,000 = \$304,761$$

Enter into RevNet the amount of:

- \$304,761 as the Total Home Security.
- \$0.00 as the Total Security Non Home.

As all of this security is for home acquisition or improvement purposes, it is exempt from stamp duty.

**Example 10 – SA Real Property Act Mortgage on a Multi-jurisdictional basis, home acquisition or improvement purposes and other purposes**

Tom has investment properties in Victoria and New South Wales. He has purchased a home in Adelaide and has taken out a mortgage over this property. His bank wants to stamp this mortgage on a proportional basis. The mortgage is for home acquisition or improvement purposes and other purposes. Duty and security to which the mortgage is stamped is calculated as follows.

	Property Value \$	Amount Secured \$
SA – Home	200,000	100,000
SA - Other	250,000	150,000
Vic	300,000	200,000
NSW	350,000	300,000
<b>Total</b>	<b>1,100,000</b>	<b>750,000</b>

**Step 1:**

To calculate the SA security:

$$\frac{\text{Total value SA property secured by the mortgage}}{\text{Total value of property secured by the mortgage}} \times \text{Total Amount Secured}$$

= South Australian proportion

$$\frac{\$450,000}{\$1,100,000} \times \$750,000 = \$306,818$$

**Step 2:**

To calculate the SA other proportion:

$$\frac{\text{Total value SA property secured by the mortgage}}{\text{Total value of property secured by the mortgage}} \times (\text{Total Amount Secured} - \text{SA Home Amount Secured})$$

= South Australian other proportion

$$\frac{\$450,000}{\$1,100,000} \times (\$750,000 - \$100,000)$$

$$\frac{\$450,000}{\$1,100,000} \times \$650,000 = \$265,909$$

**Step 3:**

To calculate the SA Home portion:

$$\frac{\text{Value of South Australian assets secured by the mortgage}}{\text{Total value of property secured by the mortgage}} \times \text{SA Security (Home)}$$

= South Australian home proportion

$$\frac{\$450,000}{\$1,100,000} \times \$100,000 = \$40,909$$

Note: \$265,909 + \$40,909 = \$306,818 (ie. SA non home security + SA home security = total SA security).

To enable stamp duty determination on RevNet enter the amount of:

- \$40,909 in the Total Security Home field; and
- \$265,909 in the Total Security Non Home field.

The duty payable is \$1,180 (calculated on \$265,909).

**Example 11 – Mortgage over home and shop**

Max has entered into a contract to purchase a shop and house in which he will reside. He is borrowing \$190,000. The portion of the loan that relates to the:

- Shop is \$40,000; and
- Home is \$150,000.

The stamp duty is charged on the portion that is **not** for home acquisition purposes (\$40,000) using the rate of duty as prescribed in Schedule 2 of the SD Act (ie \$163 stamp duty is payable).

Enter into RevNet the amount of:

- \$150,000 as the Total Home Security.
- \$40,000 as the Total Security Non Home.

### **Example 12 – Mortgagor is eligible for the Ex Service Persons Exemption (home and farm)**

Fred has entered into a contract to farm property including a home in which he will reside. He is borrowing \$450,000. The portion of the loan that relates to the:

- Farm is \$400,000; and
- House and Curtilage is \$50,000.

The stamp duty is charged on the portion not for home acquisition purposes (\$400,000) using the rate of duty as prescribed in Schedule 2 of the SD Act (ie \$1,783 stamp duty is payable).

Enter into RevNet the amount of:

- \$50,000 as the Total Home Security.
- \$400,000 as the Total Security Non Home.

### **What sections of the SD Act applies?**

Sections 76 to 80 inclusive