

**Document Class:** MORTGAGES  
**Document Name:** Substitute Security  
**Document Code:** MS

### 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

This guide note applies to a substitute mortgage where the liability to be secured by the substitute mortgage:

- does not exceed the liability secured by the original prime mortgage; or
- exceeds the liability secured by the original mortgage.

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, charge over real or personal property as security for a liability.

A substitute mortgage is a document that creates a charge over property whereby:

- the same parties substitute other property as security for their existing debt;
- the same parties substitute other documentation as security for their existing debt; or
- in respect of a mortgage over land, one of the mortgagors takes over the existing debt over the same land as “successor in title”.

“Successor in title” means a person succeeds another on the Certificate of Title. This occurs where a registered proprietor conveys their interest in the land to a remaining co-registered proprietor. It follows that the mortgage must be re-documented to reflect the new ownership of the land.

“Successor in title” does not apply where the land or an interest in land has been transferred to another person who is not a mortgagor and borrower on the original mortgage. “Successor in title” can apply to both natural persons and companies.

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

The document can be in the form of:

- a LTO Form M1 - Memorandum of Mortgage,
- a Debenture;
- a Fixed and Floating Charge; or
- any other document that is defined as a mortgage.

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

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

- the substitute security is given by the same person who gave the primary security (or their successor in title to that property);
- it is in respect of the same debt;
- the original prime mortgage has been stamped;
- the original prime mortgage is fully discharged;
- the discharge is dated on or after the date of the substitute security;
- a linking clause is included in the substitute security linking the document to the original prime mortgage; and
- further monies may be advanced to the borrower(s) and the liability secured by the document is increased at that time.

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

If the substitute mortgage is stamped to, or for an amount less, than the amount of liability on the original prime mortgage, the document is exempt from stamp duty.

If a further increase is made as part of the substitute mortgage, the mortgage is exempt from duty to the extent that the loan is for home acquisition or improvement purposes.

If the new total liability exceeds the amount of liability secured by the original prime mortgage, duty is payable on so much of the increase in liability as is applied for other purposes.

If the rate of duty payable on the mortgage has changed since it was previously stamped then the further duty is to be calculated as if the mortgage rate of stamp duty as prescribed in Schedule 2 of the SD Act has always applied.

### 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 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 discharged mortgage and new substitute security); and
- a copy of the stamped Discharge document .

### Example 1 – Substitute Security (different land)

Sue has a mortgage with the bank over a house at Henley Beach. Sue sells this property and purchases a house at Lobethal and arranges with her bank to substitute the Lobethal property as security for the mortgage currently secured by the Henley Beach property. Sue does not need to borrow further funds for this transaction.

The bank fully discharges the mortgage over the house at Henley Beach – this document is exempt. The bank can stamp the document under the document heading:

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

Sue executes the substitute mortgage - this document is “Exempt” from stamp duty.

### Example 2 – Substitute Security (different documentation)

Tom has a mortgage with the bank over a house at Tennyson. Tom re-finances this mortgage with a Credit Union for the same amount.

The bank transfers Tom's mortgage to the Credit Union.

The Credit Union fully discharges the mortgage over the house at Tennyson – this document is exempt. The Credit Union can stamp the document under the document heading:

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

Tom executes the substitute mortgage which secures the existing debt over the same land - this document is "Exempt" from stamp duty.

### **Example 3 – Substitute Security (Successor in Title)**

Pam and Tim have a mortgage with the bank over a house at Seaview Downs. The couple has separated and Pam agrees to convey her interest in the land to Tim.

The bank fully discharges the mortgage over the house at Seaview Downs – this document is exempt. The bank can stamp the document under the document heading:

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

Tim executes the substitute mortgage as "successor in title" which secures the existing debt over the same land - this document is "Exempt" from stamp duty.

### **Example 4 – Substitute Security (Different Parties)**

Pam, Tim and John are partners in a partnership, and are "mortgagors" and "debtors/borrowers" over the same land.

Mary wishes to be introduced to the partnership. As this will change the "mortgagors" and/or "debtors/borrowers", it does not fall within the definition of "successor in title" – this document is **not** exempt from stamp duty, and mortgage duty will apply as prescribed in Schedule 2 of the SD Act to the "new mortgage". Refer to the RevNet Document Heading:

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

### **Example 5 – Substitute Security with Further Advance for Home Purpose**

Sue has a mortgage with the bank over her home at Henley Beach, which was stamped to secure \$150,000 on 1 August 2002. Sue sells this property and contracts to purchase a home at Lobethal and arranges with her bank to substitute the Lobethal property for the mortgage currently secured by the Henley Beach property. Sue needs to borrow extra funds for this transaction, which requires the secured liability to be increased by \$50,000.

The bank fully discharges the mortgage over the house at Henley Beach – this document is exempt. The bank can stamp the document under the document heading:

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

The original prime mortgage was stamped for \$150,000 (\$226 stamp duty). The substitute mortgage will be stamped to secure \$200,000.

The mortgage is exempt as the further advance is for home acquisition or improvement purposes.

### Example 6 Substitute Increase – Home and Non Home

Fred has a mortgage with Big Bank stamped in 2001 to secure \$500,000. Fred has sold this property and contracted to purchase another property and needs to borrow a further \$300,000 from Big Bank being:

- \$200,000 for home acquisition or improvement purposes; and
- \$100,000 for other purposes.

The bank fully discharges the mortgage over the first property– this document is exempt. The bank can stamp the document under the document heading:

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

The original prime mortgage was stamped to secure \$500,000 (\$751 stamp duty) all for home acquisition or improvement purposes. The substitute mortgage will be stamped to secure \$800,000.

The further \$200,000 for home acquisition or improvement purpose is exempt from stamp duty. The stamp duty charged on the substitute mortgage increase is charged on the non home portion of \$100,000, ie, stamp duty of \$151.

Enter into RevNet the amount of:

- \$100,000 as the Total Sec Non Home
- \$0.00 as the Previous Sec Non Home
- \$700,000 as the Total Security Home

### Example 7 Substitute Increase –Non Home

Jack and Co Pty Ltd have a mortgage with Big Bank stamped in 2001 to secure \$600,000. Jack and Co Pty Ltd have entered into a substitute mortgage with Big Bank and wish to borrow a further \$400,000.

The bank fully discharges the mortgage over the first property– this document is exempt. The bank can stamp the document under the document heading:

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

The original prime mortgage was stamped to secure \$600,000 (\$901 stamp duty). The substitute mortgage will be stamped to secure \$1,000,000.

To calculate the stamp duty on this increase substitute security:

Stamp duty on the total non home amount (\$1,000,000 is \$1,501 stamp duty) minus stamp duty already paid on the document for the non home portion at the current rate of stamp duty (\$600,000 is \$901).

$\$1,501 - \$901 = \$600$  stamp duty payable on the increase.

Enter into RevNet the amount of:

- \$1,000,000 as the Total Sec Non Home
- \$600,000 as the Previous Sec Non Home
- \$0.00 as the Total Security Home

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

Schedule 2, Mortgage Head, Exemption 1.  
Section 79(2)(b).