SOUTH AUSTRALIA

STATE TAXATION OFFICE

Stamp Duties **Circular No. 66**

AMENDMENTS TO MORTGAGE DUTY PROVISIONS

Your attention is drawn to an Act to amend the Stamp Duties Act, being the Stamp Duties (Penalties, Reassessments & Securities) Amendment Act which was assented to on 10 December, 1992 and has been proclaimed to come into force as from 14 December, 1992.

This circular provides an indication of those additional areas that this Office believes are now liable to duty and outlines practices that will be followed in administering the new provisions.

Taxpayers and their agents are advised that a full appreciation of the changes effected by the amendment can only be taken from a reading of the amending Act.

MORTGAGE DEFINITION

The definition of a mortgage has been modified and the Stamp Duties Office in determining if there is a liability to pay duty will apply the following tests:-

(a)Is there an instrument?

(b)Does the instrument create, acknowledge, evidence or record any legal or equitable interest in or charge over real or personal property by way of security for a liability?

OR

(c)Is an instrument of title pledged or deposited by way of security?

Where there is an instrument, a positive response to either (b) or (c) above will see the instrument liable for duty as a mortgage.

FUTURE OR CONTINGENT LIABILITIES

A mortgage that extends to future or contingent liabilities will be stampable as a mortgage to the extent of that future or contingent liability.

Where the amount of the future liability or extent of monies to be advanced is not known the Commissioner has the ability to seek information from the parties and assess duty based on the information supplied or on his estimate of the amount to be secured.

In the case of unlimited mortgages, which make up the greater majority of mortgages entered into, lodging parties will need to provide details of the highest amount to be secured on either a Stamp Duties Office lodgement form or in a mortgage return. Where such amount is later exceeded then the mortgage should be upstamped to reflect the higher amount secured.

WHAT IS LIABLE THAT MAY NOT HAVE BEEN PREVIOUSLY?

Instruments that are secured by a mortgage that were not liable previously such as:-

- Bank bill facilities;
- third party guarantees in respect of financial accommodation;
- guarantees in relation to financial accommodation;
- performance guarantees in relation to a monetary liability;
- put options.

All of the above are now liable for mortgage duty.

DISCHARGE PROCEDURES

The discharge of mortgage procedures put in place in September, 1992 related to the old Section 79(3) which has been replaced by the new provisions of Section 79(6). Discharges of mortgages for unlimited amounts will not be registered unless a certificate is provided by the mortgagee in relation to the amount secured and duty paid.

Section 79(6) provides:-

> "If a mortgage for an unlimited amount is registered under the Real Property Act, 1886, a discharge of the mortgage may not be registered unless the instrument of discharge is endorsed with a certificate by the mortgagee, an officer, agent or employee of the mortgagee, or some other person approved for the purposes of this subsection by the Commissioner-
>
> (a) stating the highest amount that was secured during the currency of the mortgage; and
>
> (b) stating that the mortgage has been duly stamped."

The amending Act will come into operation on 14 December, 1992.

<u>The certificate will no longer be required to be submitted to the Stamp Duties Office and should be lodged directly with the Registrar-General</u> after the 14 December, 1992. It obviously follows from this that there will no longer be any endorsement appearing on the certificate from the Commissioner as such endorsement is no longer necessary.

In summary mortgagees can:-

(a) in the immediate future continue to use the current certificate but lodge it directly with the Registrar-General; or

(b) in consultation with the Registrar-General and Commissioner of Stamps develop a stamp containing the certification which can be placed directly on the discharge of mortgage lodged with the Registrar-General;

(c) maintain the current procedures for limited mortgages.

PAYMENT OF DUTY BY WAY OF RETURN

The provisions for payment of mortgage duty by way of return have been replaced by a general power that enables the Commissioner to grant authorities for the payment of duty by return. The conditions of such return system will be set out by the Commissioner and the bodies currently approved for the payment of mortgage duty by return will be granted new authorities under the new provisions. At this time these authorities will not be significantly different to those applying under the old Section 76a.

COLLATERAL STAMPING

Procedures that relate to the stamping of collateral mortgages are currently under review. This Office will issue guidelines in relation to collateral stamping in early 1993 following consultation with industry groups.

The amendments in the amending Act will not affect collateral stampings in any significant way.

DATE OF OPERATION

The new provisions will apply to any instrument deemed to be a mortgage or a discharge of a mortgage that is executed on or after 14 December, 1992.

10 December, 1992

COMMISSIONER OF STAMPS