

SOUTH AUSTRALIA**STATE TAXATION OFFICE****Stamp Duties****Circular No. 23****MORTGAGE DUTY - CERTIFICATION TO SATISFY
SECTION 79(3) OF THE STAMP DUTIES ACT****BACKGROUND**

Section 79(3) of the Stamp Duties Act provides as follows:-

"Notwithstanding any provision of the Real Property Act, 1886 no reconveyance or discharge of any mortgage given for an unlimited amount shall be registered unless the duty payable upon the highest amount advanced upon the security has been paid."

Certification to satisfy Section 79(3)

In order that the Registrar-General can be satisfied that stamp duty has been paid upon the highest amount advanced under the security or other associated documentation a certification to that effect will be required to be attached to or endorsed upon all discharges of mortgage lodged for registration in the Lands Titles Office. This requirement will take effect for all discharges lodged in the Lands Titles Office from 14 September, 1992.

The form of the notation to be placed on each discharge is as set out on page 2.

Section 107 provides:-

107. Any person making, or assisting in making, any false statement or any fraudulent alterations in any statement or document required under this Act with intent to evade the payment of duty shall be guilty of a misdemeanour and shall be liable to imprisonment for a period not exceeding three years and to a fine of two hundred dollars.

TO THE REGISTRAR-GENERAL

RE: MORTGAGE NO. _____

For the purposes of Section 79(3) of the Stamp Duties Act, I certify that;

- 1. The purpose of the loan* is (specify whether residential, non residential etc.) _____
- 2. The mortgage protects/** does not protect the provision of funds under a bill facility or guarantee? _____
- 3. The greatest amount outstanding at any time to the mortgagee or any other person under or in connection with the mortgage*** was _____
- 4. Stamp duty paid on this mortgage indicates that the mortgage has been stamped to reflect \$_____ for which the mortgage would be security.

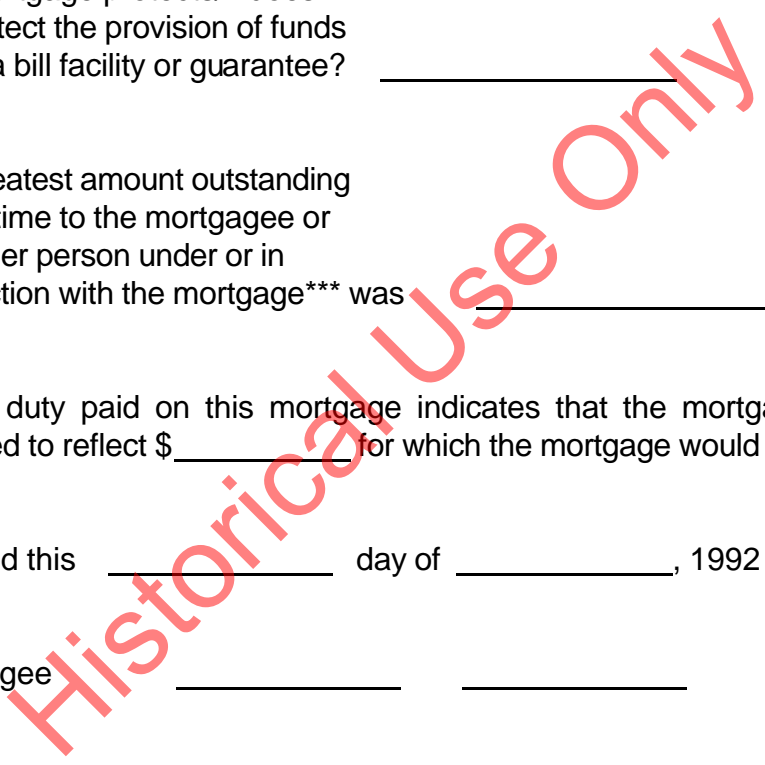
Certified this _____ day of _____, 1992

Mortgagee _____

Note* This refers to any money extended by the mortgagee or any other person for which the mortgage would be used as a security in the event of a default that would entitle the mortgagee to enforce the security of the mortgage.

Note** Delete whichever does not apply and initial the deletion.

Note*** This amount must include the greatest amount outstanding to the mortgagee or any other person for which the mortgage would be used as a security in the event of a default that would entitle the mortgagee to enforce the security of the mortgage.



The Lands Titles Office Registration Process

Where the stamping of the mortgage reflects the greatest amount outstanding at any time to the mortgagee or any other person under or in connection with the mortgage at any time the Registrar-General will proceed in the registration process (subject to all matters normally considered by the Registrar-General being in order). Where the mortgage document has been stamped for a lesser amount than the total amounts outstanding the Registrar-General will raise a requisition as below:-

"Refer Stamp Duties Office re Section 79(3) of the Stamp Duties Act".

The discharge and mortgage will then need to be referred to the Commissioner of Stamps in relation to duty payable (if any). The Commissioner of Stamps will then assess the mortgage for additional duty if such is payable. Once additional duty is paid or, if none is payable, the Registrar-General will then proceed to registration.

Lodgement with the Commissioner of Stamps prior to settlement

Parties wishing to ensure that discharges will be accepted by the Registrar-General may lodge the relevant documentation with the Commissioner of Stamps at least five working days prior to any settlement being scheduled.

The certificate, set out on page 2, will need to be completed and forwarded to the Commissioner together with the mortgagee's copy of the mortgage and a copy of the original mortgage (Lands Titles Office copy).

Once the Commissioner is satisfied that all duty has been paid the discharge will be endorsed to reflect his view. The certificate will still be required to be submitted to the Registrar-General.

Consequence of Failing to or Falsely Certifying the Instrument

Should the discharge of mortgage not meet the requirements of this circular in relation to duty payable the discharge will not be registered. Failure to complete the certificate and/or satisfy any requisition raised by the Registrar-General may result in the rejection of the discharge of mortgage from the registration process. This will also have the effect of a loss of priority in the registration process.

Any person who makes a false statement in the certification may be prosecuted pursuant to Section 107 of the Stamp Duties Act.

Forms

Supplies of certificate forms will be available initially from the Lands Titles Office. The forms may be photocopied when initial supplies are depleted.

M K Walker
COMMISSIONER OF STAMPS

L B Kidd
REGISTRAR-GENERAL

25 August, 1992

Historical Use Only