

SOUTH AUSTRALIA**STATE TAXATION OFFICE****Stamp Duties****Circular No. 26**

This Circular is issued to provide further guidance to financial institutions and conveyancers in relation to the Section 79(3) of the Stamp Duties Act certification required by Circular No. 23 issued on 25 August, 1992.

LIMITED MORTGAGES

Mortgages securing defined amounts are stamped to reflect the amount of monies advanced. Where this amount is limited Section 79(3) does not operate as it deals only with mortgages given for unlimited amounts.

A certification as set out in Circular No. 23 is not required.

The mortgage panel of a discharge of a limited mortgage should state the mortgage number and the fact that the mortgage is limited, viz., MORTGAGE NO. 9999999 is a limited mortgage.

COLLATERAL MORTGAGES

Mortgages stamped collaterally to a prime security that is for an unlimited amount will require a certificate. The certificate will need to set out the fact that the mortgage is a collateral and provide details of the prime document, its purpose, maximum amount outstanding and extent of stamping.

It would be acceptable if the certificate in this case stated in Section 1:-

The mortgage is collateral to advances made under MORTGAGE NO. 9999999.

COMMON MORTGAGES

Where a number of properties are covered by a common mortgage and discharges are lodged in respect of individual portions of the overall parcel the certificate will need to refer to the status of the mortgage at the time the discharge is executed.

It would be acceptable if the certificate in Section 1, in this case stated:-

The mortgage is classified by the LTO as a common mortgage and covers various titles. The purpose of the loan is "...(provide detail)...".

PRIVACY OF INFORMATION

Discharges presented to the Commissioner of Stamps, once approved, will be endorsed to state that registration can proceed. The certificate will then be retained by the Commissioner. The endorsement by the Commissioner will be sufficient to allow the Registrar-General to proceed to register the discharge. In this way client confidentiality for financial institutions is protected and information supplied to the Commissioner is protected by the secrecy provisions of the Stamp Duties Act. Certificates attached to discharges lodged at the Lands Titles Office will also be retained by the Commissioner and will not form part of the public record.

CERTIFICATION

The certificate to satisfy Section 79(3) should be signed by the mortgagee(s) or a person(s) with the authority to discharge.

EXTRA DUTY

Where it is considered that extra duty is payable under a mortgage the Commissioner will ask the parties to provide full details in relation to the certification by way of an opinion form and will formally express his opinion in respect of the mortgage thus providing the taxpayer with Objection and Appeal rights.

LODGEMENT WITH THE COMMISSIONER OF STAMPS PRIOR TO SETTLEMENT

Discharges accompanied by the completed certificate which have been presented to the Commissioner will be endorsed as shown below. As previously indicated in Circular 23 discharges accompanied by the completed certificate will be dealt with by the Commissioner within five working days.

The endorsement will contain the wording:-

"Based upon the information provided by or on behalf of the mortgagee the Commissioner is satisfied that duty has been paid upon the highest amount advanced under the Security".

LANDS TITLES OFFICE PROCESS

All discharges will be accepted by the Lands Titles Office for lodgement. There is no compulsion to complete the certificate. Discharges will be accepted whether or not the certificate is completed but a certificate will facilitate the process of seeking the Commissioner's advice..

Discharges which have been endorsed by the Commissioner and discharges of mortgages for limited amounts will proceed through the normal examination and registration process of the Lands Titles Office.

Discharges which have not been endorsed by the Commissioner will proceed through the Lands Titles Office process, subject to the advice of the Commissioner. Reference to the Commissioner will be made directly by the Lands Titles Office rather than by way of the requisition procedures set out in Circular 23. Should any irregularities be found the Commissioner will deal directly with the parties concerned.

PRODUCTION OF MORTGAGES

The production of the Lands Titles Office copy of the mortgage will no longer be initially required for discharges lodged with the Commissioner. However, the Commissioner may request that those documents be provided in particular cases.

DATE OF OPERATION

The date of commencement of operation of Circular 23 has been extended to 21 September, 1992 to take account of the requests for a time extension made by various parties.

M K Walker
COMMISSIONER OF STAMPS

L B Kidd
REGISTRAR-GENERAL