

I certify that this is a copy of the authorised version of this Act as at 1 July 2019, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 July 2019.

Robyn Webb
Chief Parliamentary Counsel
Dated 29 July 2019



TASMANIA

HOMES (SALE OF MORTGAGES) ACT 1993

No. 104 of 1993

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HOMES (SALE OF MORTGAGES) ACT 1993

No. 104 of 1993

An Act to provide for the sale of home mortgages vested in the Tasmanian Development Authority, to amend the *Homes Act 1935* and to remove doubts as to the validity of mortgages and acts done under that Act

[Royal Assent 23 December 1993]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Homes (Sale of Mortgages) Act 1993*.

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Part 1 – Preliminary

2. Commencement

- (1) Parts 1, 2 and 3 and sections 33, 36 and 37 commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears

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Authority means the Tasmanian Development Authority;

instrument includes –

- (a) an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law); and
- (b) a judgment, order and process of a court;

legal proceedings includes an arbitration;

liabilities includes all liabilities, duties and obligations, whether actual, contingent or prospective;

property means any legal or equitable estate or interest (whether present or future and

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whether vested or contingent) in real or personal property and includes money, documents, securities, choses in action and other rights;

purchaser means any person, other than the Minister, who is a party to a sale under section 6 and who, by virtue of that sale is the transferee or assignee of, or takes a beneficial interest in, any property and includes the successor or assignee of any such person;

rights includes all rights, powers, privileges and immunities, whether actual, contingent or prospective;

sale includes a transfer, assignment and any other disposition of property, whether for consideration or not;

security means a mortgage or charge, whether legal or equitable, or a debenture, bill of exchange, promissory note, guarantee, lien or pledge or any other property or transaction representing security for the payment of money or for the discharge of an actual or contingent liability;

TDA home mortgage means a mortgage vested in the Authority to secure a loan for housing but does not include any such mortgage that under any regulations made and in force under this Act is excluded from the operation of this Act.

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4. Objects of Act

The objects of this Act are to provide for the sale of all or some of the TDA home mortgages without affecting the rights of mortgagors.

5. Act to bind Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2 – SALE OF TDA HOME MORTGAGES

6. Power of Minister to sell TDA home mortgages

- (1) The Minister may, with the approval of the Treasurer and without such notice or consent as may be required by any other law, sell any TDA home mortgage to any person on such terms and conditions as the Minister thinks fit.
- (2) On a sale under subsection (1) the purchaser succeeds to the rights and liabilities of the Authority under the mortgage.
- (3) On a sale under subsection (1), the Minister must cause to be laid before each House of Parliament a report in accordance with subsection (4).
- (4) The report is to be laid before the House within 15 sitting days of the House after the expiration of 60 days after the sale takes effect and is to include –
 - (a) a statement of the date on which the sale was completed; and
 - (b) a description of the mortgages which are the subject of the sale; and
 - (c) full particulars of the consideration for the sale and of any other money payable in respect of the sale; and
 - (d) a summary of the effect of any guarantees or indemnities provided in connection with the sale; and

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- (e) a statement of the manner of application of the proceeds of the sale; and
- (f) a statement of any other terms or conditions of the sale which in the opinion of the Minister are material.

7. Proceeds of sale

- (1) The proceeds of a sale under this Part are to be paid into an account established in the Public Account and, after discharge of the liabilities of the State in respect of those proceeds, are to be applied in retirement of State debt.
- (2) There may be deducted from the proceeds of sale before payment as required by subsection (1) such amount as the Treasurer approves to meet the expenses reasonably incurred in connection with the sale.

8. Construction of instruments

- (1) Where –
 - (a) a TDA home mortgage is sold under section 6; and
 - (b) in an instrument that was in force immediately before the date on which the sale takes effect there is a reference to the Authority relating to that mortgage –

that instrument has effect on and from that date, except in so far as the context or subject-matter otherwise indicates or requires, as if the

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reference were, or included as the case may require, a reference to the purchaser.

- (2) Where a TDA home mortgage that is sold under section 6 confers any power by reference to a provision of the *Homes Act 1935*, the powers exercisable under that provision are, for the purposes of that mortgage, taken to be conferred on the purchaser.

9. Supplementary provisions with respect to legal proceedings, documents, &c.

Where a TDA home mortgage is sold under section 6 –

- (a) legal proceedings instituted by or against the Authority relating to that mortgage before and pending on the date on which the sale takes effect may be continued by or, as the case may be, against the purchaser; and
- (b) a judgment or order of a court obtained in those proceedings by or against the Authority relating to that mortgage may on and after that date be enforced by or, as the case may be, against the purchaser; and
- (c) a document addressed to and purporting to be served on the Authority relating to that mortgage and to those proceedings is taken to be served on the purchaser.

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10. Mortgages under the *Land Titles Act 1980* or the *Registration of Deeds Act 1935*

- (1) On a sale of a TDA home mortgage under section 6, the Minister must provide the Recorder of Titles with a certificate specifying the purchaser and the land subject to the mortgage.
- (2) Where a mortgage in land under the *Land Titles Act 1980* is, by virtue of a sale under section 6 of this Act, vested in the purchaser, the purchaser is, notwithstanding any provision of that Act to the contrary, taken to be the registered proprietor of that mortgage and may deal with it accordingly.
- (3) The Recorder of Titles may register a dealing relating to a mortgage in land referred to in subsection (2), executed by the purchaser, if the dealing is in a registrable form, notwithstanding that the purchaser is not recorded as the registered proprietor of that mortgage in the Register kept under the *Land Titles Act 1980*.
- (4) Where a mortgage in land to which the *Registration of Deeds Act 1935* applies is, by virtue of a sale under section 6 of this Act, vested in the purchaser, a dealing relating to that estate or interest may, if executed by the purchaser and if otherwise in a registrable form, be registered by the Recorder of Titles, notwithstanding that no dealing formally vesting that mortgage in the purchaser has been registered under that Act.

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11. Exemption from tax for sale documents

(1) In this section –

State tax means application or registration fees, stamp duty or any other tax, duty, fee or charge imposed by any Act or law of Tasmania.

(2) State tax is not payable in respect of any document prepared in connection with the sale of a TDA home mortgage.

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Part 3 – Miscellaneous and Supplemental

PART 3 – MISCELLANEOUS AND SUPPLEMENTAL

12. Regulations

The Governor may make regulations for the purpose of this Act.

13. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of Parts 1 and 2 and this Part of this Act is assigned to the Minister for State Development and Resources; and
- (b) the Department responsible to the Minister for State Development and Resources in relation to the administration of those provisions is the Tasmanian Development Authority.

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PART 4 – AMENDMENTS OF *HOMES ACT 1935*

Division 1 – Preliminary

14. Principal Act

In this Part, the *Homes Act 1935* is referred to as the Principal Act.

Division 2 – Amendments

15 - 35.

The amendments effected by these sections have been incorporated into the authorised version of the Homes Act 1935.

Division 3 – Validation provisions

36. Validation of mortgages

All mortgages made for the purposes of the Principal Act before the day on which this Act receives the Royal Assent are taken to have been made in accordance with the Principal Act and, if subsisting on that day, are taken to continue in effect according to their terms notwithstanding anything to the contrary in that Act.

37. Validation – Director of Housing

During the period commencing on 1 October 1990 and ending on 25 April 1993,

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notwithstanding the absence of a formal appointment of the Director of Housing –

- (a) the person purporting to perform the functions or exercise the powers of the Director of Housing is taken to have been validly appointed as such; and
- (b) the Director of Housing as a corporation sole is taken to have continued in existence; and
- (c) any act or thing done or omitted to be done by –
 - (i) the person purporting to perform the functions or exercise the powers of the Director of Housing; or
 - (ii) a person purporting to act as a delegate of the Director of Housing –

is as valid as if it had been done or omitted to be done by a person duly appointed as Director of Housing.

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SCHEDULE 1

The amendments effected by this Schedule have been incorporated into the authorised version of the Homes Act 1935.

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sch. 2

SCHEDULE 2

The amendments effected by this Schedule have been incorporated into the authorised version of the Homes Act 1935.

NOTES

The foregoing text of the *Homes (Sale of Mortgages) Act 1993* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 July 2019 are not specifically referred to in the following table of amendments.

| Act | Number and year | Date of commencement |
|--|-----------------|--|
| <i>Homes (Sale of Mortgages) Act 1993</i> | No. 104 of 1993 | 23.12.1993 (Parts 1, 2, 3 and ss. 33, 36, 37) 20.4.1994 (remaining provisions) |
| <i>Financial Management (Consequential and Transitional Provisions) Act 2017</i> | No. 4 of 2017 | 1.7.2019 |

TABLE OF AMENDMENTS

| Provision affected | How affected |
|--------------------|------------------------------------|
| Section 7 | Amended by No. 4 of 2017, Sched. 1 |