

Mortgage Processing on EDR Financial Institutions Manual





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1. The EDR process

When logging into the EDR system on your Client Service Provider's (CSP) website, a document stamping option will be displayed.

Document stamping

By selecting this option, a list of all available EDR document types will be displayed. Select the document type required, enter the information requested and submit the data to OSR.

If the information submitted is accepted, a notice of assessment (confirmation statement) will be issued which will enable you to endorse your document with OSR accountable stamps.

By issuing a notice of assessment, OSR has created a liability for payment, which must be paid in accordance with your Notice of Approval.

If the information supplied to OSR is not accepted, you will receive an error message detailing why the transaction was rejected.

Notice of assessment (confirmation statement)

A notice of assessment is confirmation that the transaction has been accepted by OSR. The notice of assessment includes:

- a unique transaction number that is OSR's record of the transaction
- details of the transaction
- the duty and any interest payable
- stamping details.

The stamping details section of your notice of assessment provides the information required to correctly endorse the documents.

A copy of the notice of assessment must be printed for each transaction and retained as part of your records.

OSR accountable stamps

There are three types of accountable stamps that can be issued to an approved person:


1. Duty stamp
2. Alteration noted stamp
3. Upstamping stamp

Duty stamp

The duty stamp is used to endorse all mortgage documents (other than upstamping transactions). It may only be used after a mortgage has been processed through EDR and a notice of assessment produced. This stamp must be applied clearly in the 'Office of State Revenue use only' box in blue or black ink.

The duty stamp has three fields you need to complete:

- duty
- transaction number
- assessment detail.

	Office of State Revenue NSW Treasury
Client No: 1712502	007
Duty: _____	Trans No: _____
Asst details: _____	

See the stamping details section of the notice of assessment for this information.

Field	What to include in this field
Duty	This is the amount of duty payable on the document being endorsed. This amount must not include the duty payable on any associated documents (eg collaterals) or any interest that may be charged. Documents that are assessed exempt must have the word 'Exempt' inserted in this field.
Transaction number	This number represents OSR's record of your transaction
Assessment details	This field indicates the basis of an assessment in specific circumstances. The information required for each transaction is printed on the notice of assessment in the stamping details section.

Alteration noted stamp

The stamp is **only** to be used on mortgages endorsed by you as the approved person using the EDR system. This stamp is to be used **prior** to endorsement with the duty stamp when an addition or an alteration to a document is made to any of the following:

- the mortgagee or mortgagor
- the title reference or land description
- the execution date.



The stamp may also be used **after** endorsement if the alterations do **not** affect the duty payable (eg the addition of a given name, a minor change in spelling or the updating of a reference title).

Your stamp is not to be used on mortgages endorsed by other approved persons or OSR.

Where a mortgage requires an alteration to be noted you must not note the alteration in the boxes provided for the Department of Lands details. You must note the alteration in the left-hand margin adjacent to where the error has occurred.

Upstamping stamp

The stamp is used to endorse all upstamping matters including multistate upstamping transactions. The stamp can also be used to note collateral mortgages in respect of a further advance. This stamp must be applied clearly on the back page of the mortgage.

The upstamping stamp has five fields you need to complete:

1. Date of advance
2. Total amount secured
3. Duty paid
4. Transaction number
5. Multi NSW per cent.

Office of State Revenue		NSW Treasury		
Client No: 1712502		Stamp No:20		
UP STAMPING				
Date of Advance	Total Amount Secured	Duty Paid	Transaction Number	Multi NSW %

Field	What to include in this field
Date of Advance	Date of the further advance.
Total Amount Secured	Total amount now secured as a result of further advance.
Duty Paid	Duty assessed on the increase in the amount secured on a prime mortgage, or 'Noting' for noting a collateral mortgage of an increase in the amount secured.
Transaction Number	This number represents OSR's record of your transaction.
Multi NSW per cent	NSW dutiable proportion.

2. Relevant legislation

Chapter 7 in the Duties Act 1997 outlines mortgage duty, how it is calculated, and lists the details of concessions and exemptions.

Mortgages – Chapter 7, *Duties Act 1997*

Part 1 Introduction and overview

203A – Abolition of mortgage duty – effective 1 July 2012

1. Mortgage duty is abolished on and from 1 July 2012.
2. However, mortgage duty remains chargeable, and this chapter continues to apply, in respect of the following:
 - a) a mortgage first executed before 1 July 2012 (including any advances or further advances made in respect of the mortgage before that date),
 - b) an instrument of security referred to in section 208 (3) that first affects land in New South Wales before 1 July 2012,
 - c) an instrument of security referred to in section 208 (3A) that first affects relevant property in New South Wales before 1 July 2012,
 - d) an instrument that first becomes a mortgage or evidences the terms of a mortgage, as referred to in section 208 (4), before 1 July 2012.
3. A mortgage does not become liable to the additional duty referred to in section 208 (2) in respect of an advance or further advance that is made on or after 1 July 2012 (even if the mortgage was first executed before that date).

204 – Imposition of duty

This chapter charges duty on instruments that fall within the definition of a mortgage. Duty chargeable under this chapter is called mortgage duty.

Notes:

1. Mortgage duty is calculated, in most cases, according to 'the amount secured by the mortgage'. Contingent liabilities may also be included. This is dealt with in Part 2.
2. Ad valorem duty is only chargeable on one of a package of mortgages securing the same advance. This is dealt with in section 214.

3. Provision is also made for the apportionment, for duty purposes, of the amount secured by any mortgage over property in different Australian jurisdictions. This is dealt with in section 216.

205 – What is a mortgage?

For the purposes of this chapter, an instrument is a mortgage if it is:

- a) a security by way of mortgage or charge over property wholly or partly in New South Wales at the liability date, or
- b) (Repealed)
- c) a security by way of a transfer or conveyance of any property in New South Wales that is held in trust to be sold or otherwise converted into money, redeemable before such a sale or conversion either by express stipulation or otherwise, except where the transfer or conveyance is made for the benefit of creditors who accept the transfer or conveyance in full satisfaction of debts owed to them, or
- d) an instrument that, on the deposit of documents of title to property in New South Wales or instruments creating a charge on property in New South Wales, becomes a mortgage or evidences the terms of a mortgage.

Note: Certain instruments that would otherwise be caught by this definition are exempt under Part 4.

206 – What is an advance?

In this chapter, **advance** means the provision or obtaining of funds by way of financial accommodation, by means of:

- a) a loan, being:
 - (i) an advance of money, or
 - (ii) the payment of money for or on account of, or on behalf of, or at the request of, any person, or
 - (iii) a forbearance to require the payment of money owing on any account whatever, or
 - (iv) any transaction (whatever its terms or form) that in substance effects a loan of money, or
- b) a bill facility, being one or more agreements, understandings or arrangements as a consequence of which a bill of exchange or promissory note:
 - (i) is drawn, accepted, endorsed or made, and
 - (ii) is held, negotiated or discounted to obtain funds, whether or not the funds are obtained from the person who draws, accepts, endorses or makes the bill of exchange or promissory note and whether or not the funds are obtained from a person who is a party to any such agreement,

and includes contingent liabilities of the kind referred to in section 215.

207 – Who is liable to pay the duty?

The person liable to pay mortgage duty is the mortgagor or the person bound.

208 – When does a liability arise?

1. A mortgage becomes liable to duty on the date of its first execution.

2. A mortgage becomes liable to additional duty on the making of an advance or further advance if, as a result of that advance or further advance, the amount secured by the mortgage exceeds the amount secured by the mortgage at the time a liability to duty last arose under this Act.

Note. Section 219 exempts some further advances from duty.

3. An instrument of security that does not affect property in New South Wales at the date of first execution but that affects land in New South Wales at any time within 12 months after that date becomes liable to duty as a mortgage on the date on which it first affects the land, unless it is exempt from duty.
- 3a. An instrument of security that does not affect property in New South Wales at the date of first execution but that, at any time after execution, affects relevant property in New South Wales identified in the instrument or identified under an arrangement in place when the instrument was first executed, becomes liable to duty on the date it first affects that property, unless it is exempt from duty.
4. An instrument that, on the deposit of documents of title to property in New South Wales or instruments creating a charge on property in New South Wales, becomes a mortgage or evidences the terms of a mortgage becomes liable to duty as a mortgage on the deposit of the documents or instruments.
5. A reference in subsection (3) to land does not include a reference to an interest in land that is held by way of security.
6. For the purposes of this section, **relevant property** means any property, excluding land and the following kinds of property:
 - a) a marketable security that is quoted on the Australian Stock Exchange
 - b) an interest in a marketable security referred to in paragraph (a), or an interest in a marketable security if the interest is quoted on the Australian Stock Exchange
 - c) an interest in a unit trust scheme, being a unit trust scheme in respect of which units in the scheme have been issued to the public and 50 or more persons are beneficially entitled to units in the scheme
 - d) property the Chief Commissioner is satisfied is of a similar nature to property referred to in paragraph a), b) or c).

209 – When must duty be paid?

A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within three months after the liability to pay the duty arises.

210 – How is mortgage duty charged?

1. The amount of duty chargeable on a mortgage is calculated by reference to the amount secured by it at the liability date, as determined under Part 2.
2. The amount of duty is:
 - a) \$5, if no amount is secured by the mortgage or the amount secured by the mortgage is not more than \$16 000, or
 - b) if the amount secured by the mortgage is more than \$16 000 – \$5, plus a further \$4 for every \$1000, or part, by which the amount secured exceeds \$16 000.

3. The amount of duty chargeable on the mortgage at a liability date is to be reduced by the amount of ad valorem duty (if any) for which the mortgage has already been duly stamped under this Act.
4. No refund of duty is payable because the amount of ad valorem duty for which a mortgage has already been duly stamped under this Act exceeds the duty chargeable under subsection (2) on the amount secured by the mortgage at a liability date.

211 – Consequences of non-payment of duty

A mortgage on which duty is required by this chapter to be paid is unenforceable to the extent of any amount secured by the mortgage on which duty has not been paid.

212 – Where is property located?

1. For the purposes of this chapter, property in the following forms is taken to be located in the place specified:
 - a) shares in or securities of a body corporate:
 - (i) in the case of a company within the meaning of the Corporations Act 2001 of the Commonwealth – in the place where the company is taken to be registered for the purposes of that Act, or
 - (ii) in any other case – in the place of incorporation of the body corporate
 - b) units in a unit trust scheme:
 - (i) in the place where the register on which the units are registered is kept, or
 - (ii) in the place of residence of the manager of the unit trust scheme, if the register on which the units are registered is not kept in Australia
 - c) debt securities of a Government of a State or Territory of the Commonwealth – in the State or Territory concerned.
2. Subsection (1) (a) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to section 1070A (4) of that Act.

Part 2 Calculating the amount secured by a mortgage

213 – Amount secured by mortgage

1. For the purposes of this chapter, the **amount secured** by a mortgage is the amount of any advances made under an agreement, understanding or arrangement for which the mortgage is security (even if the amount of advances made exceeds the amount of advances recoverable under the mortgage).
2. A reference in this chapter to an advance secured by or made under a mortgage includes a reference to any advance made under an agreement, understanding or arrangement for which the mortgage is security (whether or not the advance is recoverable under the mortgage).
3. To avoid doubt, an advance made under an agreement, understanding or arrangement includes any advance made as a consequence of a variation to that agreement, understanding or arrangement.

214 – Mortgage packages

1. The Chief Commissioner must, at the liability date for a mortgage, assess the mortgage, together with any other instruments of security, as a **mortgage package** if the mortgage and other instruments secure or partly secure the same money.
2. This section applies regardless of when the other instruments of security were first executed.
3. Duty on a mortgage package is to be assessed under this part as if the instruments comprising the mortgage package, to the extent that they secure the same moneys, were a single mortgage.
4. One of the mortgages in the mortgage package is to be stamped, or upstamped, with any ad valorem duty paid under this Act for the mortgage package and each other mortgage in the mortgage package is to be stamped as a collateral mortgage.
5. If any of the mortgages in the mortgage package partly secures other moneys, that mortgage is to continue to be treated as a separate mortgage under this chapter in respect of the other moneys that it secures and may be stamped for the duty chargeable in respect of those other moneys.

215 – Contingent liabilities

1. A mortgage that is used or is capable of being used (whether directly or through a chain of relationships) to recover the whole or any part of an amount contingently payable in connection with an advance:
 - a) by a guarantor or indemnifying party under a guarantee or indemnity, or
 - b) by another party under another instrument of a different kind,
is liable to duty as if the amount of the contingent liability under the guarantee, indemnity or other instrument (or, where there is more than one guarantee, indemnity or other instrument, the greatest contingent liability) were a separate advance made under the agreement, understanding or arrangement for which the mortgage is security.
2. In the case of a mortgage that is part of a chain of relationships referred to in subsection (1), a reference in that subsection to a contingent liability is a reference to a contingent liability limited to the amount of any advance by any party in the chain, and does not include a reference to any other kind of contingent liability.
3. This section does not apply if the Chief Commissioner is satisfied that there is no connection between the mortgage and any advance by any party to the arrangements.
4. Nothing in this section requires duty to be paid more than once in respect of an advance.

216 – Mortgages over property not wholly within New South Wales

1. Mortgage duty is to be assessed for a mortgage over property that is partly within and partly outside New South Wales as if the amount secured by the mortgage were only the dutiable proportion.

2. The **dutiable proportion** is to be calculated in accordance with the following formula:

$$DP=AS \times \frac{V}{T}$$

where:

DP is the dutiable proportion

AS is the amount secured by the mortgage on which duty would, but for this section, be charged at the liability date

V is the value of the property in New South Wales affected by the mortgage

T is the value of all property affected by the mortgage

3. The dutiable proportion is to be calculated by reference to the value of the properties according to any referable point specified in subsection (4).
4. A referable point is any of the following prepared within 12 months before the liability date for the mortgage:
 - a) an independent valuation of the secured property
 - b) a statement of the mortgagee based on information obtained by the mortgagee in deciding to make the advance to the mortgagor
 - c) property valuations used by the mortgagor in preparing an annual return to be lodged under the Corporations Act 2001 of the Commonwealth
 - d) a financial report of the mortgagor, certified by an independent auditor as presenting a true and fair view of a corporation's financial position
 - e) agreed property valuations that form the basis of the mortgagor's insurance policies
 - f) another document the Chief Commissioner considers to be appropriate for calculating the dutiable proportion.
5. However, if there is more than one referable point for a mortgage, the referable point is the later or latest of the referable points.
6. and 7. (Repealed)

217 – Collateral mortgages – minimum duty

A collateral mortgage is chargeable with a minimum duty of \$50.

217A, 218 – (Repealed)

218A – Security

1. A stamped mortgage or a collateral mortgage that was, but is no longer, part of the same mortgage package and no longer secures the same money secured by that package is not security for any other advance unless duty in respect of the other advance has been paid.
2. The withdrawal of a mortgage from a mortgage package will not, for the purposes of this chapter, affect the amount for which the remaining mortgage or mortgages are security.

218B, 218BA – (Repealed)

218C – Multi-jurisdictional statement

1. If mortgage duty is imposed on the dutiable proportion of a mortgage (whether for a mortgage over property not wholly in New South Wales, a mortgage package or on initial or subsequent advances), the mortgagor and mortgagee must, within three months after the liability arises:
 - a) make a written statement, in an approved form, about the location and value of the secured property, and
 - b) lodge the statement with the Chief Commissioner.Maximum penalty: 100 penalty units.
2. The making and lodging of a statement under subsection (1) by either the mortgagor or the mortgagee relieves the other person from complying with that subsection.
3. The statement may be taken to be the mortgage, or mortgages comprising the mortgage package.

Part 3 Duty concessions

218D – Concession for advances charged with duty under corresponding Acts

1. If the total of the amount of ad valorem duty chargeable under this Act in respect of the amount secured by a mortgage at a liability date and the amount of duty paid under a corresponding Act in respect of the mortgage exceeds the maximum duty charge in respect of the mortgage, the amount of ad valorem duty chargeable on the mortgage at the liability date is to be reduced by the amount necessary to ensure that the maximum duty charge is not exceeded.
2. The **maximum duty charge** in respect of the mortgage is the amount of ad valorem duty that would be chargeable in respect of the amount secured by the mortgage at the liability date if:
 - a) it were a single mortgage over property wholly within New South Wales (that is, disregarding section 216), and
 - b) it had not previously been stamped under this Act for any ad valorem duty.
3. The amount of duty paid under a corresponding Act in respect of the mortgage is the total of all ad valorem duty already paid in respect of the amount secured by the mortgage under any corresponding Act.
4. If a mortgage has already been duly stamped under this Act for an amount of duty, any reduction in the amount of duty chargeable on the mortgage at the liability date that is made under section 210 (3) is to be made after making any reduction required by this section.
5. To avoid doubt, this section extends to a mortgage package assessed as a single mortgage.

219 – Additional advances of not more than \$10 000 in 12 months

Duty is not chargeable on additional advances secured by or under a mortgage if the total of the additional advances so secured does not exceed \$10 000 in any 12-month period, not being the period of 12 months following the making of the initial advance.

220 – Refinancing of loans

1. In this section:

land used for aquaculture means land subject to an aquaculture permit (within the meaning of the Fisheries Management Act 1994).

refinancing mortgage means a mortgage that:

- a) secures the amount of the balance outstanding under an earlier mortgage that is discharged or to be discharged as part of the arrangements for the new mortgage, and
 - b) is created to secure an advance to the same borrower as under the earlier mortgage, and
 - c) is over the same or substantially the same property or part of the property as the earlier mortgage.
2. For the purposes of subsection (1), mortgages are created to secure an advance to the same borrower if, either directly by the mortgages themselves or indirectly through one or more collateral arrangements, the same person obtains the advances secured by them.
3. A refinancing mortgage is taken to have been stamped with ad valorem duty as a mortgage in respect of the duty-free refinancing amount, except as provided by subsection (5).

3A. For the purposes of this section, the **duty-free refinancing amount** is the lesser of the following amounts:

- a) the amount secured by the earlier mortgage on which duty has been paid under this Act or in relation to which an exemption from duty has been obtained
- b) \$1 000 000.

3B. However, if the refinancing mortgage is over land used for primary production or land used for aquaculture, the **duty-free refinancing amount** is the maximum amount payable under or secured by the earlier mortgage (being an amount in relation to which mortgage duty has been paid or in relation to which an exemption from duty has been obtained).

Note: 'Land used for primary production' is defined in the Dictionary.

4. If an advance is refinanced by more than one lender, so that mortgages given to the lenders together secure the balance outstanding under an earlier mortgage, the definition of **refinancing mortgage** in subsection (1) is to be construed as though:
- a) the reference to a mortgage securing the outstanding balance were a reference to the aggregate of such mortgages, and
 - b) the reference to property were a reference to the property securing the aggregate of refinancing advances made by the lenders under their combined mortgages, to the intent that, if the requirements of the definition, as so construed, are satisfied, each lender is taken, for the purposes of this section, to be the holder of a refinancing mortgage.
5. If, as provided by subsection (4), each of a number of lenders is the holder of a refinancing mortgage, a refinancing mortgage held by each lender is taken to have been duly stamped with ad valorem duty as a mortgage in respect of an amount equal to the same proportion of the duty-free refinancing amount as the amount secured by that mortgage bears to the total amount secured by the refinancing mortgages held by all the lenders.

6. If each of two or more refinancing mortgages severally secures the same advance:
 - a) the provisions of subsection (3) or (5), as the case may be, apply to such one of the mortgages as the Chief Commissioner determines, and
 - b) no duty is chargeable in respect of any of the others.
7. (Repealed)
8. Duty at the rate of \$4 per \$1000 or remaining part of \$1000 is payable on the amount by which the advance made under a refinancing mortgage (not being a mortgage on which, by virtue of subsection (6)(b), no duty is chargeable) exceeds:
 - a) the duty-free refinancing amount, or
 - b) the proportion of that amount referred to in subsection (5), in the case of a refinancing to which subsection (4) applies.
- 8A. If a borrower is a related body corporate of a borrower under an earlier mortgage, the firstmentioned borrower is taken to be the same borrower or the same person for the purposes of subsection (1) or (2).
9. If a borrower under an earlier mortgage dies, or is a party to a marriage that has been dissolved or annulled or, in the opinion of the Chief Commissioner, has broken down irretrievably or is party to a de facto relationship that, in the opinion of the Chief Commissioner, has been terminated, the remaining borrower is, or the remaining borrowers are, taken to be the same borrower or the same person for the purposes of subsection (1) or (2).
10. A party to a marriage or de facto relationship may provide a statement to the Chief Commissioner, in the form of a statutory declaration, to the effect that:
 - a) in the case of a marriage:
 - (i) the party intends to apply for a dissolution or an annulment of the marriage, or
 - (ii) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed, or
 - b) in the case of a de facto relationship, the de facto relationship has been terminated.

The Chief Commissioner is required to have regard to any such statement in exercising his or her functions under subsection (9).
11. Subsection (10) does not limit the functions of the Chief Commissioner under section 72 of the *Taxation Administration Act 1996*.

221 – Eligible mortgages under First Home Plus

1. Duty is payable in accordance with the following paragraphs on an advance secured by an eligible mortgage under Division 1 of Part 8 of Chapter 2 or a mortgage in support of such an eligible mortgage, but only to the extent that the amount of the advances qualifies under section 77 (3) or (4):

a) if the property has a private dwelling built on it:

Dutiable value of dutiable property subject to the agreement or transfer	Discounts on duty (%)
Not more than \$500 000	100
More than \$500 000 but not more than \$535 000	75
More than \$535 000 but not more than \$565 000	50
More than \$565 000 but less than \$600 000	25

b) if the property comprises a vacant block of residential land:

Dutiable value of dutiable property subject to the agreement or transfer	Discounts on duty (%)
Not more than \$300 000	100
More than \$300 000 but not more than \$350 000	75
More than \$350 000 but not more than \$400 000	50
More than \$400 000 but less than \$450 000	25

- For the purpose of assessing any further advances secured by such a mortgage, duty is taken to have been paid on the amount of advances to which subsection (1) applies.
- This section does not prevent section 221B from applying in respect of a mortgage.

Note: Section 221B extends a general mortgage duty exemption to all mortgages associated with owner occupied housing, and takes effect on and from 1 September 2007.

Part 3A Exemptions for mortgages associated with housing

221A – Definitions

In this part:

alterations or additions, in relation to a private dwelling house, includes:

- any improvements to the parcel of land on which the dwelling house is constructed, and
- the maintenance, repair or renovation of the dwelling house or of an improvement referred to in paragraph (a).

APRA reporting standard means a reporting standard determined by the Australian Prudential Regulation Authority under section 13 of the *Financial Sector (Collection of Data) Act 2001* of the Commonwealth.

private dwelling house includes:

- a lot within the meaning of the *Strata Schemes Management Act 1996*, and
- a land use entitlement that confers a right to occupy a private dwelling house.

residential land means a parcel of vacant land that is zoned or otherwise designated for use under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) for residential or principally for residential purposes.

221B – Mortgages associated with owner occupied housing

1. Mortgage duty is not chargeable in respect of a mortgage if the mortgage secures an advance or advances made for the purpose of owner occupied housing and no other advances.
2. If a mortgage secures an advance made for the purpose of owner occupied housing and another advance that is not made for that purpose, mortgage duty is not chargeable in respect of the mortgage in relation to the amount advanced for the purpose of owner occupied housing.
3. This section applies in respect of a mortgage only if the borrower under the mortgage is a natural person or, if there is more than one borrower, each of them is a natural person.
4. An advance is made for the purpose of owner occupied housing if it is to be applied wholly or predominantly for one or more of the following purposes:
 - a) financing the acquisition of a residence
 - b) financing the construction of a residence
 - c) financing alterations or additions to a residence
 - d) financing the acquisition of residential land
 - e) repaying another advance, if the advance to be repaid was made for the purpose of owner occupied housing (within the meaning of this section).
5. For the purposes of this section, a **residence** is a private dwelling house that is used and occupied or intended to be used and occupied by the borrower, or by any of the borrowers, as a place of residence.
6. To avoid doubt, an exemption provided for by this section is not available in respect of any advance that is to be applied wholly or predominantly for business or investment purposes (or both).
7. The Chief Commissioner may, by written instrument, determine the criteria that may be applied by lenders for the purpose of establishing that the exemption provided for by this section applies in respect of an advance.
8. Without limiting subsection (7), the Chief Commissioner may determine that an advance is taken to be made for the purpose of owner occupied housing if it meets criteria set out in any APRA reporting standard relating to housing finance that is specified by the Chief Commissioner to be applicable to the exemption under this section.
9. A determination made by the Chief Commissioner under this section:
 - a) may be varied or revoked by the making of a further determination, and
 - b) has effect according to its tenor.
10. The exemption provided for by this section takes effect on and from 1 September 2007.

221C – Mortgages associated with investment housing

1. Mortgage duty is not chargeable in respect of a mortgage if the mortgage secures an advance or advances made for the purpose of investment housing and no other advances.

2. If a mortgage secures an advance made for the purpose of investment housing and another advance that is not made for that purpose, mortgage duty is not chargeable in respect of the mortgage in relation to the amount advanced for the purpose of investment housing.
3. This section applies in respect of a mortgage only if the borrower under the mortgage is a natural person or, if there is more than one borrower, each of them is a natural person.
4. An advance is made for the purpose of investment housing if it is to be applied wholly or predominantly for one or more of the following purposes:
 - a) financing the acquisition of investment housing
 - b) financing the construction of investment housing
 - c) financing alterations or additions to investment housing
 - d) repaying another advance, if the advance to be repaid was made for the purposes of investment housing (within the meaning of this section).
5. For the purposes of this section, **investment housing** is any private dwelling house that is used, or is intended to be used or sold, for investment or business purposes (or both) by the borrower or by any of the borrowers.
6. The Chief Commissioner may, by written instrument, determine the criteria that may be applied by lenders for the purpose of establishing that the exemption provided for by this section applies in respect of an advance.
7. Without limiting subsection (6), the Chief Commissioner may determine that an advance is taken to be made for the purpose of investment housing if it meets criteria set out in any APRA reporting standard relating to personal or commercial finance that is specified by the Chief Commissioner to be applicable to the exemption under this section.
8. A determination made by the Chief Commissioner under this section:
 - (a) may be varied or revoked by the making of a further determination, and
 - (b) has effect according to its tenor.
9. The exemption provided for by this section takes effect on and from 1 July 2008.

Part 4 Other exemptions

222 – Exempt mortgages and supporting instruments

1. This chapter does not apply to a mortgage executed before 1 January 1975.
2. Other instruments that are exempt from payment of mortgage duty are:
 - a) a mortgage created solely for the purpose of providing security in accordance with a condition imposed on the grant of bail in criminal proceedings, and
 - b) a mortgage taken by a non-profit organisation in conjunction with a lease in respect of which no duty is chargeable under this Act, and
 - c) a mortgage of any ship or vessel, or of any part, interest, share or property of or in any ship or vessel, and

- d) a mortgage given by the Government of the Commonwealth or the Government of New South Wales or by any public statutory body constituted under a law of this State, and
 - e) a mortgage to which an offshore banking unit is a party and that would not be liable to duty if it were executed outside New South Wales, and
 - f) a mortgage under the *Liens on Crops and Wool and Stock Mortgages Act 1898*, and
 - f1) an agricultural goods mortgage under the *Security Interests in Goods Act 2005*, and
 - g) a mortgage that secures an amount advanced by an employer or a related body corporate of an employer to an employee of the employer, for the purpose of financing a purchase by the employee of shares in the employer, or a related body corporate of the employer, if the amount advanced (and the total of all advances that the mortgage secures) does not exceed \$16 000.
3. The exemption provided by subsection (2) (d) does not apply to a mortgage given by a public statutory body in relation to a transaction, or any one of a class of transactions, specified in a proclamation made by the Governor and published in the Gazette in respect of the public statutory body concerned.
 4. Duty is not chargeable in respect of a mortgage made or given by:
 - a) a council or county council under the *Local Government Act 1993*, or
 - b) WorkCover Authority.
 5. Duty is not chargeable on an instrument referred to in section 205 (d) if it is executed for the purposes of money market trading operations conducted or to be conducted by the person executing the instrument.
 6. Duty is not chargeable in respect of a mortgage:
 - a) that is taken or is to be taken by the Sydney Futures Exchange Clearing House or the Options Clearing House Pty. Limited, and
 - b) that is or will be made available to it by a clearing member of the market, and
 - c) that does not secure an advance.
 7. Duty under this chapter is not chargeable on a charge over land that is created under an agreement for the sale or transfer of the land if any part of the deposit or balance of the purchase price for the land is paid to the vendor (or as the vendor directs) before completion of the sale or transfer.

223 – Mortgages associated with certain credit contracts

1. If:
 - a) a mortgage secures an amount advanced under a consumer credit contract and no other advance, and
 - b) the total amount advanced under the consumer credit contract does not exceed \$35 000,
 mortgage duty is not chargeable in respect of the mortgage.

2. If:
 - a) a mortgage secures an amount advanced under a consumer credit contract and another advance, and
 - b) the total amount advanced under the consumer credit contract does not exceed \$35 000,

mortgage duty is not chargeable on the mortgage in relation to the amount advanced under the consumer credit contract.

3. If:
 - a) a mortgage secures an amount advanced under a consumer credit contract (whether or not it also secures any other advance), and
 - b) the total amount advanced under the consumer credit contract exceeds \$35 000,

the whole of the amount advanced under the consumer credit contract comprises or forms part of the advances secured by the mortgage.

4. (Repealed)

5. In this section:

consumer credit means credit regulated under the Consumer Credit Code.

Consumer Credit Code means:

- a) the provisions of the Code by that name set out in the Appendix to the *Queensland Consumer Credit (Queensland) Act 1994*, as applied and in force in any Australian jurisdiction, or
- b) the provisions of an Act of an Australian jurisdiction that are in the same, or substantially the same, terms as that Code.

224 – Farm machinery and commercial vehicles

1. Mortgage duty is not chargeable on so much of an advance to a natural person or a strata corporation for the acquisition of farm machinery or a commercial vehicle as is secured by the mortgage.

2. In this section:

commercial vehicle means:

- a) a motor vehicle or trailer within the meaning of the *Road Transport (Vehicle Registration) Act 1997* constructed or adapted principally for the carriage of goods but does not include a motor vehicle of the kind known as a utility, a station wagon or a panel van, or
- b) a vehicle without motive power of its own and constructed or adapted principally for the carriage of goods and for being drawn by a motor vehicle within the meaning of that Act.

farm machinery means:

- a) a harvester, binder, tractor, plough or other agricultural implement, or
- b) a boat within the meaning of the *Fisheries Management Act 1994* or fishing gear within the meaning of that Act, or
- c) any other goods of a class commonly used for the purposes of a farming undertaking that are determined by the Chief Commissioner to be farm machinery for the purposes of this section,

where the goods are acquired for the purposes of a farming undertaking.

farming undertaking includes:

- a) any agricultural, apicultural, dairy farming, horticultural, orcharding, pastoral, poultry keeping, viticultural or other business involving the cultivation of the soil, the gathering of crops or the rearing of livestock, and
- b) the business of taking fish, crustacea, oysters or any other marine, estuarine or fresh-water animal life, and
- c) the cutting of timber for sale, and
- d) any class of business determined by the Chief Commissioner to be a farming undertaking.

225 – Certain debentures and related instruments

1. Mortgage duty is not chargeable on a mortgage solely securing the repayment of advances arising from the issue by a financial corporation or a related corporation of a debenture.
2. Mortgage duty is not chargeable on a mortgage in respect of advances arising from the issue by a financial corporation or a related corporation of a debenture if the mortgage secures in part the repayment of those advances.
3. This section applies to a debenture issued, or a mortgage executed, by a related corporation only in so far as the debenture is issued, or the mortgage is executed, for the purposes of raising funds to be used for a financial corporation.
4. In this section:
 - **financial corporation** means a corporation whose sole or principal business is providing finance to the public, including making loans to the public.
 - **related corporation**, in relation to a particular financial corporation, means a corporation that is, with respect to the financial corporation, a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

Part 5 Miscellaneous

226 – Payment on mortgages associated with debenture issues

1. This section applies if:
 - a) a corporation is or will be under a liability to repay money received or to be received by it in respect of its debentures, and
 - b) the repayment is secured by a mortgage first executed before the cut-off date, and
 - c) the corporation is a party to an instrument of trust relating to the debentures.
2. If the corporation and the trustee for the debenture holders give a written undertaking in the approved form to the Chief Commissioner:
 - a) a mortgage first executed by the corporation before the cut-off date and solely securing the repayment of money received or to be received by the corporation in respect of its debentures is not liable to mortgage duty in respect of advances made before the debenture concession closure date arising from debentures subscribed for before the cut-off date, and

- b) a mortgage, not executed by the corporation, and first executed before the cut-off date, solely securing the repayment of such money is liable to duty of \$10 in respect of advances made before the debenture concession closure date arising from debentures subscribed for before the cut-off date, and
- c) a mortgage, whether executed by the corporation or by another party, and first executed before the cut-off date, and securing in part the repayment of such money is not liable to mortgage duty in respect of advances made before the debenture concession closure date arising from debentures subscribed for before the cut-off date.

Note: The *State Revenue Legislation Amendment Act 2003* terminated the concession provided for by this section in respect of mortgages executed, or debentures subscribed for, on or after the cut-off date.

3. The undertaking binds the corporation and the trustee to lodge with the Chief Commissioner, in July each year, a statutory declaration setting out, in the following categories, the total amount subscribed for in New South Wales before the cut-off date in respect of the corporation's debentures during the year ending on the previous 30 June (but not including amounts repayable at call or in less than 30 days) and binds the corporation to pay duty in the following amounts:

Money repayable at or after the expiration of not less than 30 days and not more than three months	\$2 for every \$10 000, or part
Money repayable at or after the expiration of not less than three months and not more than six months	\$2 for every \$1000, or part
Other money (except money repayable at call or in less than 30 days)	\$4 for every \$1000, or part

Money repayable at call after a specified period is taken to be money repayable at the expiration of that period.

- 3A. The obligation to lodge a statutory declaration in July each year ceases after July 2003.

- 3B. Section 208 (2) applies in respect of a mortgage referred to in subsection (2), or a collateral mortgage that secures the same money as is secured by a mortgage referred to in subsection (2), if an advance or further advance is made on or after the debenture concession closure date, as if the reference to the amount secured by the mortgage at the time a liability to duty last arose were a reference to the total of:

- a) the disclosed debenture amount, and
- b) any advances or further advances made on or after the cut-off date in respect of which duty has been paid under this chapter.

- 3C. (Repealed)

- 3CA.

A mortgage executed before the cut-off date that is not liable to duty under subsection (2) and in respect of which no further advances have been made on or after the debenture concession closure date is taken to have been duly stamped.

- 3D. For the purposes of this section, the disclosed debenture amount is the total amount of debentures subscribed for in New South Wales before the cut-off date and disclosed to the Chief Commissioner in a statutory declaration referred to in subsection (3).
4. In this section, a reference to an amount subscribed for in respect of debentures includes a reference to an amount represented by debentures issued on the conversion or renewal of an existing holding of debentures or other marketable securities.
- 4A. To avoid any doubt, subsection (3B) extends to a mortgage executed on or after 1 January 1975 and before 1 January 1999.
5. In this section:
- **cut-off date** means the date of commencement of Schedule 1 to the State Revenue Legislation Amendment Act 2003.
 - **debenture concession closure date** means the date on which the Bill for the State Revenue Legislation Further Amendment Act 2005 was introduced into the Legislative Assembly.

227 – Unregistered mortgages protected by caveats (anti-avoidance provision)

1. A caveat under the *Real Property Act 1900* in which an estate or interest is claimed under an unregistered mortgage is chargeable with duty.
2. The amount of duty is:
 - a) if the mortgage is chargeable, but not stamped, with mortgage duty – the same amount as is chargeable on the mortgage, or
 - b) if the mortgage is stamped, or is not chargeable, with mortgage duty – \$50.
3. The person liable to pay the duty is the mortgagor.
4. This section does not apply to a caveat lodged in respect of a mortgage that is exempt from mortgage duty under Part 4.

227A – Transfer of mortgages

1. If a mortgage is transferred (whether or not at the request or direction of any party) to:
 - a) a person who, either in connection with the transfer or at a later time, makes an advance or further advance under or secured by the mortgage, or
 - b) a person who is a party to arrangements (referred to in section 215) relating to such an advance or further advance,the transferred mortgage is taken, for the purpose of determining its liability to duty under this Act, to be a new mortgage on which no duty has been paid and is liable to duty in respect of the advance or further advance accordingly.
2. The date of first execution of the transferred mortgage is taken to be:
 - a) in the case of a mortgage where the advance or further advance was made in connection with the transfer – the date of first execution of the transfer, and
 - b) in the case of a mortgage where the advance or further advance was made at a later time – the date of the first such advance or further advance.

3. If an insufficient amount of duty has been paid on a mortgage to which this section applies before it is taken by this section to be a new mortgage, the Chief Commissioner is not prevented from recovering at any time the amount of duty with which, in the Chief Commissioner's opinion, the mortgage was properly chargeable from the mortgagor or person bound.
4. This section does not apply to the following:
 - a) a mortgage referred to in section 220 (3B),
 - b) a transfer of a mortgage by a corporation to another corporation if the Chief Commissioner is satisfied that, had the transfer been a dutiable transaction, it would not be chargeable with duty under section 281 (relating to transfers between members of the same group of corporations),
 - c) a transfer of a mortgage in connection with, or in preparation for creating, issuing, marketing or securing, a mortgage-backed security,
 - d) a transfer of a mortgage from a person who holds the mortgage as trustee for another person to a new trustee appointed in substitution for the former trustee.
5. This chapter applies to a mortgage referred to in subsection (1) in the same way as it applies to any other mortgage, except as provided by subsection (6).
6. For the purposes of section 218B (1), a transferred mortgage is not considered to have been duly stamped in respect of any duty paid before the transfer on advances made before the transfer.

228 – Stamping counterpart or collateral instrument if mortgage is lost, destroyed or cannot be produced

A counterpart of a mortgage or a collateral security for an amount secured by a mortgage is taken to be the mortgage and may accordingly be stamped or upstamped for mortgage duty purposes if, on application by or on behalf of a person who is a party to the mortgage, the Chief Commissioner is satisfied that the mortgage has been lost or destroyed or, because of being deposited in the Land and Property Management Authority office or from other reasonable cause, cannot conveniently be produced.

Miscellaneous Duties – Chapter 10, *Duties Act 1997*

272 – Replicas

1. Duty is chargeable on a replica:
 - a) at \$50, or
 - b) at the same amount as the duty with which the instrument the replica is intended to replace was stampable,whichever is the lesser.
2. The persons liable to pay the duty are the parties to the replica or any one or more of them.
3. A replica that is duly stamped is to be marked in such manner as the Chief Commissioner thinks fit to denote that it is a replica.

4. In this section, **replica** means an instrument that:
 - a) is executed to replace, and
 - b) contains the same terms as, but no other terms than, those contained in,

a previously executed instrument that has been lost, spoiled or destroyed and that, in the Chief Commissioner's opinion, has been duly stamped.

General Exemptions from Duty – Chapter 11, *Duties Act 1997*

275 Charitable and benevolent bodies

1. Duty under this Act is not chargeable on a transfer, or an agreement for the sale or transfer, or a lease, of dutiable property to, or a declaration of trust over dutiable property held or to be held on trust for, or a mortgage given by or on behalf of, an exempt charitable or benevolent body.
- 1A. Duty under section 58 (Establishment of a trust relating to unidentified property and non-dutiable property) is not chargeable on an instrument that declares a trust over property held or to be held on trust for an exempt charitable or benevolent body.
2. (Repealed)
- 2A. Landholder duty is not chargeable on the acquisition of an interest in a landholder by an exempt charitable or benevolent body.
3. In this section:

exempt charitable or benevolent body means:

 - a) any body corporate, society, institution or other organisation for the time being approved by the Chief Commissioner for the purposes of this paragraph whose resources are, in accordance with its rules or objects, used wholly or predominantly for:
 - (i) the relief of poverty in Australia, or
 - (ii) the promotion of education in Australia, or
 - b) any body corporate, society, institution or other organisation that, in the opinion of the Chief Commissioner, is of a charitable or benevolent nature, or has as its primary object the promotion of the interests of Aborigines and if:
 - (i) (in the application of this definition for the purposes of subsection (1) or (1A)) the dutiable transaction or instrument is for such purposes as the Chief Commissioner may approve in accordance with guidelines approved by the Treasurer, or
 - (ii) (Repealed)
 - (iii) (in the application of this definition for the purposes of subsection (2A)) the land holdings of the landholder are being used or are to be used for such purposes as the Chief Commissioner may approve in accordance with guidelines approved by the Treasurer, or
 - c) any person acting in the person's capacity as trustee for a body corporate, society, institution or other organisation referred to in paragraph (a) or (b).

landholder duty means the duty chargeable under Chapter 4.

275A – Partial exemption for certain transactions by charitable and benevolent bodies

1. If the Chief Commissioner is satisfied, in relation to a transfer, or an agreement for the sale or transfer, or a lease, of land to a charitable or benevolent body, or a declaration of trust over land held or to be held on trust for a charitable or benevolent body, that the land is used or to be used partly for an exempt purpose, the dutiable value of the land is, for the purpose of charging duty under Chapter 2, to be reduced by the portion of that dutiable value that is referable to the portion of the land used or to be used for an exempt purpose.
2. and 3. (Repealed)
4. If the Chief Commissioner is satisfied, in relation to a mortgage given by or on behalf of a charitable or benevolent body, that the land the subject of the mortgage is used or to be used partly for an exempt purpose, the amount secured by the mortgage is, for the purpose of charging duty under Chapter 7, to be reduced by the proportion of the amount secured that is referable to the portion of the land used or to be used for an exempt purpose.
5. If the Chief Commissioner is satisfied, in relation to an acquisition of an interest in a landholder by a charitable or benevolent body, that any of the land holdings of the landholder are used or to be used for an exempt purpose, the unencumbered value of that land holding is to be disregarded when calculating the duty chargeable on the acquisition under Chapter 4.
6. This section does not limit section 275.
7. In this section:
 - **charitable or benevolent body** means any body corporate, society, institution or other organisation that, in the opinion of the Chief Commissioner, is of a charitable or benevolent nature, or has as its primary object the promotion of the interests of Aborigines.
 - **exempt purpose** means a purpose approved by the Chief Commissioner under section 275.

276 – Public hospitals

Duty under this Act is not chargeable on:

- a) a dutiable transaction in respect of dutiable property, if a public hospital would be the person liable to pay the duty, or
- b) an instrument executed by or on behalf of a public hospital, if the public hospital would be the person liable to pay the duty.

277 – Councils and county councils

1. Duty under this Act is not chargeable in the case of a body, being a council or county council under the *Local Government Act 1993*, on the following:
 - a) a dutiable transaction in respect of dutiable property if the body is the person described in this Act as the person liable to pay the duty,
 - b) an instrument executed by or on behalf of any such body if the body is the person described in this Act as the person liable to pay the duty,
 - c) an application by any such body to register a motor vehicle,
 - d) any insurance taken out by or on behalf of any such body.

2. However, this section does not exempt dutiable transactions, instruments or insurance issued, given, taken out, or executed by, to or on behalf of any such body in connection with or arising from the establishment, acquisition and operation of any trading undertaking, being:
 - a) the supply of electricity, gas, liquefied petroleum gas or hydraulic power and the supply and installation of associated fittings and appliances, or
 - b) the operation of a coal mine and the supply and distribution of coal, or
 - c) the operation of a public transport service, or
 - d) the supply of building materials.

278 – Department of Housing and Aboriginal Housing Office tenants

1. Duty under this Act is not chargeable on an agreement for the sale or transfer, or a transfer, of land, or a mortgage executed to finance or assist the purchase of that land (but only to the extent to which the amount secured by the mortgage is to finance or assist that purchase), or a mortgage in support of that mortgage, if the purchaser or borrower, or at least one of the purchasers or borrowers:
 - a) is, at the date of the transaction or the date of the first execution of the instrument, an eligible tenant, and
 - b) will obtain not less than 25 per cent of the beneficial ownership of the land, and
 - c) intends to occupy the land as his or her principal place of residence.
2. For the purposes of this section, a person is an **eligible tenant** if the person:
 - a) is a tenant of the Department of Housing, or
 - b) is a tenant under the Community Tenancy Scheme administered within that Department, or
 - c) is a tenant of the Aboriginal Housing Office.
3. This section applies in respect of an agreement for sale or transfer, or a transfer, of land in respect of which an eligible tenant obtains less than 100 per cent of the beneficial ownership of the land only if:
 - a) the other purchasers are natural persons, and
 - b) the Chief Commissioner is satisfied that each of those other purchasers is a member of the eligible tenant's family or a person who is genuinely assisting the eligible tenant to acquire the land as his or her principal place of residence.
4. For the purpose of subsection (3), the New South Wales Land and Housing Corporation is not considered to be a purchaser.
5. The exemption conferred by this section is conditional on the eligible tenant occupying the land concerned as his or her principal place of residence for a continuous period of at least six months, with that occupation starting within 12 months (or such longer period as the Chief Commissioner may approve) after completion of the agreement for sale or transfer, or transfer, of the land. This requirement is referred to as the **residence requirement**.

6. The Chief Commissioner may, if satisfied that there are good reasons to do so in a particular case:
 - a) modify the residence requirement by approving a shorter period of occupation by an eligible tenant, or
 - b) exempt an eligible tenant from compliance with the residence requirement.
7. If an eligible tenant fails to comply with the residence requirement, the eligible tenant must, within 14 days after the end of the period for compliance:
 - a) give written notice of that fact to the Chief Commissioner, and
 - b) pay to the Chief Commissioner the duty that would have been payable on the transactions or instruments concerned if they had not been exempt from duty under this section.
8. A person who fails to comply with subsection (7) is guilty of an offence.
Maximum penalty: 50 penalty units.
9. For the purposes of this section, a person is a member of an eligible tenant's **family** if:
 - a) one is the spouse or de facto partner of the other, or
 - b) the relationship between them is that of parent and child, brothers, sisters, or brother and sister.
10. This section does not prevent section 221B from applying in respect of a mortgage.

Note: Section 221B extends a general mortgage duty exemption to all mortgages associated with owner occupied housing, and takes effect on and from 1 September 2007.

279 – Specialised agencies

Duty under this Act is not chargeable on any instrument executed by or on behalf of a Specialised Agency within the meaning of the **Convention on the Privileges and Immunities of the Specialised Agencies** that was approved by the General Assembly of the United Nations on 21 November 1947 in respect of which instrument the Specialised Agency is the person described in this Act as the person liable to pay the duty.

280 – Aboriginal land councils

Duty under this Act is not chargeable, in the case of an organisation that is the New South Wales Aboriginal Land Council, a Regional Aboriginal Land Council, or a Local Aboriginal Land Council, within the meaning of the *Aboriginal Land Rights Act 1983*, on the following:

- a) a dutiable transaction in respect of dutiable property if the organisation is the person described in this Act as the person liable to pay the duty,
- b) an instrument executed by or on behalf of the organisation if the organisation is the person described in this Act as the person liable to pay the duty,
- c) an application by the organisation to register a motor vehicle,
- d) any insurance taken out by or on behalf of the organisation.

282 – Mortgage-backed securities

1. Duty under this Act is not chargeable in respect of a mortgage over the interest of a person in a pool of mortgages relating to debt securities that are mortgage-backed securities issued by the person to secure the repayment of financial accommodation provided to the person.
2. Duty under this Act is not chargeable in respect of a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages in connection with creating, issuing, marketing or securing a mortgage-backed security.
3. Duty under this Act is not chargeable in respect of:
 - a) the issue or making of a mortgage-backed security, or
 - b) the transfer or assignment of or other dealing with a mortgage-backed security, or
 - c) the discharge, cancellation or termination of a mortgage-backed security.
4. Duty under this Act is not chargeable in respect of a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages for the purpose of creating, issuing, marketing or securing a mortgage-backed security:
 - a) to a person entitled to a mortgage-backed security or a trustee or agent for such a person, or
 - b) by or to a person who issues, makes or endorses a mortgage-backed security, or
 - c) to a person who provides security (whether as a guarantor, surety or otherwise) to a person entitled to a mortgage-backed security or a trustee or agent for such a person,if the mortgage is executed on or after 1 July 1998.

Note: Mortgage, mortgage-backed security and pool of mortgages are defined in the Dictionary.

283 – Instruments issued for the purpose of creating, issuing or marketing mortgage-backed securities

Duty under this Act is not chargeable on an instrument that, in the opinion of the Chief Commissioner, was executed for the purpose of creating, issuing or marketing mortgage-backed securities.

284 – Loan-backed securities

1. Duty is not chargeable in respect of an instrument that is or effects any of the following:
 - a) the issue or making of a loan-backed security,
 - b) the transfer or assignment of, or other dealing in, a loan-backed security,
 - c) an instrument that, in the Chief Commissioner's opinion, was executed for the purpose of creating, issuing or marketing loan-backed securities,
 - d) a mortgage over the interest of a person in a pool of loans, being a mortgage relating to loan-backed securities issued by the person to secure the repayment of financial accommodation provided to the person,

- e) a policy of insurance covering any or all assets in a pool of loans acquired or held for the purpose of issuing loan-backed securities, but only so far as the instrument relates to loan-backed securities.
2. This section does not remove any liability to pay duty in respect of a receipts return or a short term dealers return.

Note: Loan-backed security is defined in the Dictionary.

Miscellaneous – Chapter 12, *Duties Act 1997*

308 – Application of Act to Crown

1. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Legislature of New South Wales permits, the Crown in all its other capacities.
2. However, the Crown in right of New South Wales is not liable to pay duty unless this Act or any other Act expressly imposes a liability on the Crown in that capacity to pay duty.
3. A person or body listed in Schedule 2 is liable to pay duty under this Act, even if the person or body represents the Crown. This section does not operate to exempt any such person or body from liability to pay duty under this Act.
4. (Repealed)

Schedule 2 Crown bodies that are subject to this Act

Forests NSW

State Transit Authority of New South Wales

Sydney Harbour Foreshore Authority

3. Sample scenarios

3.1 Abolition of NSW mortgage duty – 1 July 2012

Mortgage duty is being abolished in NSW on 1 July 2012. NSW mortgage duty will not be chargeable on any advances made on or after 1 July 2012.

3.1.1 Sections 221B and 221C – no mortgage duty payable on certain housing loans

Sections 221B and 221C apply only if the borrower under the mortgage is a natural person or, if there is more than one borrower, each of them is a natural person.

Duty is not chargeable on advances made on or after 1 September 2007 in connection with owner occupied housing (s221B).

An advance is made for the purpose of owner occupied housing if it is to be applied wholly or predominantly for one or more of the following purposes:

- a) financing the acquisition of a residence
- b) financing the construction of a residence
- c) financing alterations or additions to a residence
- d) financing the acquisition of residential land
- e) repaying another advance, if the advance to be repaid was made for the purpose of owner occupied housing (within the meaning of this section).

Duty is not chargeable on advances made on or after 1 July 2008 for investment housing (s221C).

An advance is made for the purpose of investment housing if it is to be applied wholly or predominantly for one or more of the following purposes:

- a) financing the acquisition of investment housing
- b) financing the construction of investment housing
- c) financing alterations or additions to investment housing
- d) repaying another advance, if the advance to be repaid was made for the purposes of investment housing (within the meaning of this section).

Example

NSW mortgage secures housing advance of \$500 000. No duty payable.

Business advance of \$100 000 made.


Initial housing advance not chargeable.

Duty of \$341 payable on \$100 000.

For more details and examples, visit www.osr.nsw.gov.au

3.1.2 Registration of mortgages at the Land and Property Management Authority (LPMA) – S221B and S221C

- Where the borrowers are natural persons and the mortgagors are natural persons, the mortgage can be registered at LPMA without having to be stamped
- Where the borrowers are natural persons but the mortgagor is a company, the mortgage will need to be stamped before it can be registered at LPMA (see below)

	Office of State Revenue NSW Treasury
Client No: 1234567	007
Duty: <u>NC</u>	Trans No: _____
Asst details: <u>S221B or S221C</u>	_____

3.2 Advances and upstamping

3.2.1 A mortgage securing advances to different borrowers

NSW Mortgage

A mortgage secures an advance to Mr A of \$150 000.

A mortgage secures an advance to A Pty Ltd of \$100 000.

Duty = \$941 on \$250 000.

Note: A mortgage that is not part of a package should have one 'prime' stamp only – irrespective of the identity of the borrowers. If a mortgage has previously been stamped with multiple prime stamps it is deemed stamped to the aggregate of the amounts secured. (There is no need to pay an extra \$59 for each extra prime stamp). No further duty is payable on that mortgage unless the total amount secured exceeds that aggregate. At that point it should be a simple upstamp of that mortgage.

On a refinance the mortgage has to be discharged and all borrowers must be borrowers under the new mortgage.

3.2.2 All moneys mortgages securing the same money

Where you have two (2) or more all moneys mortgages that secure the same money, only one mortgage should be stamped as the 'prime' mortgage and the others stamped as collateral.

When the total advances secured exceeds the amount to which the prime mortgage is stamped, such mortgage must be upstamped (see 3.2.3) and the collateral mortgage/s noted (see 3.3.1).

Existing multiple 'primes'

If you have existing multiple prime all moneys mortgages that secure the same money, these must be properly stamped at the next liability point (upstamping).

The **earliest mortgage** must be 'noted' to show that it secures the aggregate of all the mortgages that secure the same money. Such mortgage should then be upstamped as required.

The other mortgage/s should be stamped \$50 collateral to the total now secured by the prime mortgage.

Example

A mortgage over property A is stamped to secure an advance of \$200 000 to X and a mortgage over property B is stamped to secure a separate advance of \$100 000 to X. These all moneys mortgages have been incorrectly stamped and the earlier mortgage over property A should have been upstamped to \$300 000 with the mortgage over property B stamped collateral.

X then borrows another \$150 000 (secured by both mortgages).

At that time the amount outstanding on the mortgage over property A is \$180 000 and the mortgage over property B is \$70 000. Hence, following the further advance the total indebtedness of X is \$400 000 (ie \$150 000 + \$180 000 + \$70 000). The mortgages therefore need to be stamped to secure \$400 000.

Stamping procedure

1. Place the upstamping stamp on the mortgage over property A to show it secures \$300 000 and complete the stamp as follows:
 - the date of advance is the date of the collateral mortgage
 - total amount secured is \$300 000
 - write 'N/A' in the duty paid column
 - the transaction number is the last transaction number on which ad valorem duty was paid on the collateral mortgage/s (mortgage over property B).

2. Upstamp the mortgage over property A to \$400 000 and stamp the mortgage over property B collateral to \$400 000:
 - process an upstamping transaction on EDR and include the appropriate number of collaterals
 - complete upstamping details on the mortgage over property A (to \$400 000)
 - place the duty stamp on the mortgage over property B and stamp as collateral (to \$400 000).
3. On or near the existing 'prime' stamp on the mortgage over property B write:
 - 'coll only – prime A (the folio id of mortgage A)'

For any further upstamplings see 3.2.3 (prime) and 3.3.1 (collateral).

Notes:

- Refinancing – if the above procedures are used, on a refinancing, all mortgages must be discharged and all borrowers must carry over to the new mortgages (except in the case of death, divorce or related body corporate).
- If the mortgages were correctly stamped (as separate primes), it will be necessary to now upstamp the earliest mortgage and mark the other mortgage collateral.

3.2.3 Upstamping

NSW Mortgage
Initial advance \$500 000

Duty paid = \$1941

At a later date a further advance of \$100 000 is made. At this time, the amount outstanding is \$450 000. Hence, following the advance, the mortgage secures \$550 000 and must be upstamped to this amount.

Duty payable on \$550 000 = \$2141

Less duty paid of \$1941

Duty payable = \$200

Note: If a mortgage has previously been upstamped by another party (eg OSR), you must place your own upstamp stamp on the mortgage if it needs to be upstamped again.

3.2.4 Additional advances of not more than \$10 000 in 12 months (Section 219 of the *Duties Act 1997*)

- a) A person/entity initially borrows \$100 000. Two years later, a further advance of \$15 000 is made. At that time amount outstanding is \$90 000. Duty of \$20 is payable (\$4 per \$1000 on \$5000) as the amount of the further advance is greater than \$10 000.

- b) A person/entity initially borrows \$100 000. Two years later a further advance of \$10 000 is made. At that time the amount outstanding is \$95 000. No duty is payable as the amount of the further advance does not exceed \$10 000. You may upstamp the mortgage to \$105 000 with no further duty payable. However if there are any further advances in the 12 months following the \$10 000 advance, the mortgage will be liable at \$4 per \$1000 from \$100 000.

3.2.5 Capitalised interest – is it an advance?

Although there are a number of different procedures whereby a lender may capitalise interest, such capitalisation is only considered to be an advance in circumstances where the obligation to pay interest is converted into an obligation to repay an additional advance.

That is:

- a) where there is an express agreement between the parties providing that interest would be discharged by a book entry which is deemed to be an advance of principal; or
- b) where there is an express agreement between the parties whereby an advance of principal would be made to discharge obligations for interest.

In these instances there is an obligation to upstamp the mortgage. For more information see Revenue Ruling DUT 027.

3.2.6 Mortgages dated prior to 1 January 1975

A mortgage executed before 1 January 1975 is not liable to duty (s222(1)). That applies to the initial advance and any further advances.

Collateral mortgages

A mortgage executed on or after 1 January 1975, that is collateral to a mortgage executed before that date is liable to full duty on the amount of advances secured. Section 217 does not apply.

Refinancing

A mortgage that refinances a mortgage executed before 1 January 1975 is liable to full duty on the amount of advances secured (unless section 221B or 221C applies).

3.3 Collateral mortgages

Note: If the collateral mortgage is executed on or after 1 July 2006 and before 1 July 2009 and is collateral to a mortgage or mortgage package where a reduced rate of duty has been paid section 218BA applies – see 3.9.

3.3.1 Collateral mortgages (NSW only) – initial advance and upstamping

An advance of \$1 000 000 is secured by mortgages over properties X and Y. Duty of \$3941 is payable on one mortgage and the other mortgage is stamped with duty of \$50 as a collateral mortgage.

NSW Mortgage
Property X

NSW Mortgage
Property Y

Note: If the mortgage over property X is upstamped, the upstamp stamp (not the duty stamp) must also be placed on the collateral mortgage to note the amount of advances secured. No further duty is payable on the collateral mortgage and 'n/a' should be written in the 'duty paid' field of the upstamp stamp on the collateral.

3.3.2 Stamping a mortgage collateral to a non-NSW mortgage or a mortgage package which includes property outside NSW

When the collateral mortgage is executed, a mortgage package or new mortgage package is created. Duty is payable on the new NSW proportion of the total amount secured with a credit for NSW duty previously paid. If the collateral mortgage is the first NSW mortgage it would be stamped with the ad valorem duty. Otherwise the earliest NSW mortgage would be upstamped and the collateral mortgage stamped with duty of \$50. A multi-jurisdictional statement needs to be prepared each time. If duty has been paid in another jurisdiction, section 218D would apply – see 3.6.1.

3.3.3 Prime mortgage released – collateral mortgage now prime

Where the prime mortgage is released and the collateral becomes the prime, simply note on the collateral mortgage that it is now the prime.

Note: The collateral mortgage must be executed (not necessarily stamped) before the prime is released, or the new mortgage will be liable to ad valorem duty calculated on the amount secured.

If the collateral mortgage is executed but not stamped before the prime is released, it will be necessary to stamp it collateral first (because as at the date of first execution it was collateral to the prime that did exist at that time), then mark it as prime released, this now prime.

The diagram shows a stamp form from the Office of State Revenue NSW Treasury. The form includes the following fields and callouts:

- Client No:** 1712502
- Trans No:** 20 (Callout: Write the number the released prime was last endorsed with)
- Duty:** _____
- Asst details:** _____ (Callout: Write the prime released now prime (include total amount secured by released mortgage))
- Duty Paid:** _____ (Callout: Write N/A)

3.4 Mortgage packages – section 214

See also Revenue Ruling DUT 39 at the OSR website www.osr.nsw.gov.au

3.4.1 Packages over property wholly within NSW

Note: there is no 28 day rule for mortgage packages

Example

NSW mortgage stamped to secure an advance of \$1 000 000.
A further NSW mortgage executed to secure the same money
(whether or not on the same date).
No further advances.

Initial mortgage stamped with duty of \$3941.
Package created on execution of second mortgage.

Duty payable on package = \$3941.
Less duty paid on prime of \$3941.
Hence, no additional duty payable.

New mortgage is liable to duty of \$50 as a collateral mortgage
(section 217).

Example

NSW mortgage dated 1 August 2009 stamped to secure an advance
of \$1 000 000.
NSW mortgage dated on 1 March 2010 to secure a further advance
of \$500 000.

Initial mortgage stamped with duty of \$3941.
Package created on 1 March 2010 (100 per cent NSW).

Duty payable on amount secured by package (\$1 500 000) = \$5941
Less duty of \$3941.
Additional duty of \$2000 payable.

The initial mortgage would be upstamped and the new mortgage stamped.
\$50 as a collateral mortgage.

3.5 Multi-jurisdictional mortgage (single mortgage over property in and out of NSW) – initial advance and upstamping (Section 216 of the *Duties Act 1997*)

Example

The initial advance secured is \$2 000 000.

NSW property secured	=	\$900 000
QLD property secured	=	\$700 000
VIC property secured	=	\$200 000
ACT property secured	=	\$450 000

$$\text{Dutiable proportion} = \$2\,000\,000 \times \frac{\$900\,000}{\$2\,250\,000} = \$800\,000$$

Duty = \$3141

Following an additional advance, the amount of advances secured by the mortgage is \$2 600 000. At this time:

NSW property secured	=	\$800 000
QLD property secured	=	\$900 000
VIC property secured	=	\$300 000
ACT property secured	=	\$500 000

$$\text{Dutiable proportion} = \$2\,600\,000 \times \frac{\$800\,000}{\$2\,500\,000} = \$832\,000$$

Duty payable on \$832 000 = \$3269

Less duty paid = \$3141

Additional duty payable = \$128

Note: Any offshore property secured would be included in the calculation for advances made on or after 1 July 2006.

If duty has been paid in another jurisdiction section 218D may apply (Concession for advances charged with duty under corresponding Acts). See 3.6.1.

3.6 Packages over property in and out of NSW – section 214

Example

- i) NSW and interstate mortgages executed to secure \$1 000 000. No duty payable in other States. NSW portion 60 per cent.
Duty is payable on the NSW portion of \$1 000 000 (\$600 000).
Duty payable in NSW is \$2341.
- ii) Further advance of \$500 000 is secured by mortgages above. NSW portion now 50 per cent.
Duty on the NSW portion (50 per cent x \$1 500 000) = \$2941.
Less duty paid of \$2341.
Additional duty payable = \$600.

Example

- i) NSW mortgage dated 1 July 2009.
QLD mortgage dated 1 December 2009.
Liable to full duty on advances made prior to 1 December 2009.
Initial advance on 1 July 2009 = \$1 000 000.
Duty payable in NSW = \$3941.
- ii) Further advance on 1 December 2009 = \$500 000.
Package created on 1 December 2009. NSW proportion 60 per cent.
Duty on NSW proportion (60 per cent) \$900 000 = \$3541.
Duty already paid = \$3941.

Hence, no additional duty payable. The NSW mortgage would have to be stamped with \$0 duty to show it now secures \$1 500 000. No refund applicable in accordance with section 210.

Example

Interstate mortgage secures an advance of \$500 000 (no duty payable).
NSW mortgage executed to secure original advance of \$500 000 plus a further advance of \$200 000.

Duty payable on the NSW proportion of the total amount secured (\$700 000). NSW proportion = 40 per cent.

Duty of \$1 061 is payable on \$280 000 (40 per cent x \$700 000).

Example

NSW and QLD mortgages secure \$1 000 000.

NSW portion = 50 per cent.

Duty paid in NSW on (50 per cent of \$1 000 000) \$500 000 = \$1941.

Duty paid in QLD = \$2000.

QLD mortgage discharged

New NSW mortgage dated 1 December 2009 executed to secure further advance of \$1 000 000.

Total amount secured = \$2 000 000.

Duty payable on \$2 000 000 = \$7941.

Less duty paid in NSW = \$1941.

(no reduction for duty paid on a discharged interstate mortgage)

Additional duty payable = \$6000.

3.6.1 Packages over property in and out of NSW – duty paid in another jurisdiction (section 218D)

Example

NSW mortgage executed on or after 1 July 09 to secure same moneys as package stamped before 1 July 09. No further advances.

Original package stamped to secure \$1 000 000. NSW portion 50 per cent. NSW duty paid = \$1941. Duty paid in other States = \$800.

New NSW mortgage introduced into the package (no further advance).

New NSW portion = 75 per cent.

Duty on the NSW portion (75 per cent x \$1 000 000) = \$2941.

Maximum duty (duty on \$1 000 000) = \$3941.

Duty payable in NSW	=	\$2941	+
Duty paid in other States	=	\$ 800	
		<hr/>	
		\$3741	(does not exceed maximum duty).

Therefore duty payable in NSW is on the NSW proportion (\$750 000) = \$2941.

Less duty paid in NSW of \$1941.

Additional duty payable is \$1 000. Initial NSW mortgage is upstamped and \$50 is payable on the collateral mortgage.

Example

Same as above example but duty paid in other States = \$1600.

Duty on NSW portion (\$750 000) = \$2941.

Maximum duty (duty on \$1 000 000) = \$3941.

Duty payable in NSW (\$2941) + duty paid in other States (\$1600)
= \$4541 (does exceed the maximum by \$600).

Therefore duty payable in NSW reduced by \$600 (\$4541 – \$3941 = \$600).

Duty payable in NSW is therefore \$2341 (\$2941 – \$600).

Less duty paid in NSW of \$1941.

Duty payable = \$400.

Initial NSW mortgage is upstamped and \$50 is payable on the collateral mortgage.

Example

Further advance of \$500 000 made on or after 1 July 2009 to secure same moneys as package stamped before 1 July 2009 (whether or not new NSW mortgage executed).

Original package stamped to secure \$1 000 000. NSW portion 50 per cent. NSW duty paid = \$1941. Duty paid in other States = \$2000.

New NSW portion = 75 per cent.

Duty on NSW portion of (75 per cent x \$1 500 000) \$1 125 000 = \$4441.

Maximum duty (duty on \$1 500 000) = \$5941.

Duty payable in NSW (\$4441) + duty paid in other States (\$2000) = \$6441 (exceeds maximum duty payable by \$500).

Therefore NSW duty payable reduced by \$500 (\$6441 – \$5941 = \$500).

Duty payable in NSW is therefore \$3941 (\$4441 – \$500).

Less duty paid in NSW = \$1941.

Additional duty of \$2000 (\$3941 – \$1941) is payable and any collateral mortgage executed at the same time would be liable to duty of \$50.

Example

QLD mortgage dated February 2007. QLD mortgage duty of \$4000 paid to secure \$1 000 000.

2 x NSW mortgages dated July 2009 introduced. NSW portion 60 per cent.

No further advance.

Duty on NSW portion of \$1 000 000 (\$600 000) = \$2341.

Maximum duty payable (full duty NSW) = \$3941.

Duty payable (\$2341) + duty paid in Qld (\$4000) = \$6341 exceeds maximum (\$3941).

Duty payable in NSW must be reduced by \$2400 (\$6341 – \$3941).

Hence ad valorem duty payable in NSW is \$0 (\$2341 – \$2400).

One mortgage is stamped with \$0 to secure \$1 000 000 and the other is stamped \$50 collateral to secure \$1 000 000.

3.7 Refinancing of loans – section 220

One of the requirements for this concession is that a new mortgage is created (the refinance mortgage) and the earlier mortgage/s are discharged as part of the arrangements for the new mortgage.

For refinancing mortgages executed on or after 1 August 2005, a cap of \$1 000 000 applies to the concession. Such cap does not apply to refinancing mortgages over land used for primary production or aquaculture.

Note this section does not apply to refinancing mortgages for which either section 221B(4)(e) or 221C(4)(d) applies (ie where the predominant purpose of the advance is repaying housing loans for natural persons).

3.7.1 Refinancing of loans

The original mortgage is as follows:

NSW Mortgage \$250 000 – Property X
--

Borrower = ABC Pty Ltd.

Duty paid = \$941.

- a) If the original mortgage is refinanced – more is borrowed:

NSW Mortgage \$270 000 – Property X
--

Borrower = ABC Pty Ltd.

Duty on \$270 000 = \$1021.

Refinanced mortgage deemed stamped to \$250 000 with duty of \$941.

Therefore additional duty payable is $\$1021 - \$941 = \$80$.

- b) If the original mortgage is refinanced – less is borrowed:

NSW Mortgage \$220 000 – Property X
--

Borrower = ABC Pty Ltd.

Refinanced mortgage deemed stamped to \$250 000.

Duty = NIL (stamped to \$250 000).

- c) If mortgage (b) is refinanced – \$240 000 is borrowed:

NSW Mortgage \$240 000 – Property X
--

Borrower = ABC Pty Ltd.

Refinanced mortgage deemed stamped to \$250 000.

Duty = NIL (stamped to \$250 000).

3.7.2 Refinancing mortgages over \$1 000 000 (from 1 August 2005)

NSW mortgages only.

Where the prior mortgage is stamped to secure \$1 200 000:

Refinance amount:

- a) \$900 000 – exempt (stamped to \$1 000 000)
- b) \$1 100 000 – liable on \$100 000
- c) \$1 300 000 – liable on \$300 000

Note: the cap does not apply to refinancing mortgages over land used for primary production or aquaculture or refinancing mortgages for which either section 221B(4)(e) or 221C(4)(d) applies.

For refinancing of multi-jurisdictional mortgages see 3.7.4.

3.7.3 Refinancing of loans – more than one property

The original mortgages are stamped to secure \$350 000.



Borrower = ABC Pty Ltd.

Duty = \$1341 and \$50.

- a) The same borrower refinances the original mortgages plus another mortgage (all in NSW). The amount borrowed is \$400 000.

NSW Mortgage \$400 000 Property X	NSW Mortgage \$400 000 Property Y	NSW Mortgage \$400 000 Property Z
---	---	---

One of the new mortgages is deemed stamped with duty of \$1341 to secure \$350 000.

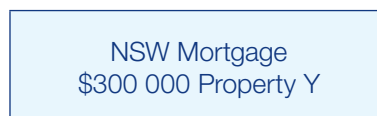
Duty payable on \$400 000 (new advance) = \$1541.

Less duty deemed paid of \$1341.

Additional duty payable = \$200 (\$1541 – \$1341).

One of the mortgages is stamped with duty of \$200 to secure \$400 000 and duty of \$50 is payable on the collateral mortgages.

- b) The same borrower refinances the original mortgages with less property. The amount borrowed is \$300 000.



The mortgage is taken to have been stamped to \$350 000.

Duty = NIL.

3.7.4 Multi-jurisdictional mortgages refinancing

Example

Original mortgage package stamped to secure \$1 500 000. NSW portion 50 per cent. NSW duty paid = \$2941.

Refinance for \$1 600 000. NSW portion now 60 per cent.

Duty on NSW portion (60 per cent x \$1 600 000 = \$960 000) = \$3781.

Less duty of \$2941 deemed paid on the refinanced mortgage (deemed stamped to \$750 000).

Duty of \$840 payable (\$3781 – \$2941).

Any duty paid in another jurisdiction not relevant to calculation.

Example

Original mortgage package stamped to secure \$10 000 000. NSW portion 50 per cent. NSW duty paid = \$19 941.

Refinance for \$11 000 000. NSW portion 50 per cent.

Duty on NSW portion = \$21 941.

Deemed stamped to \$1 000 000 (refinance cap).

Duty deemed paid = \$3941.

Duty payable = \$18 000 (\$21 941 – \$3941).

3.7.5 Multiple primes

Where there are two or more all moneys mortgages that secure the same money:

Mortgage 1 stamped to secure \$800 000.

Mortgage 2 stamped to secure \$700 000

- borrowers refinance and the refinance amount is \$1 200 000
- the prior mortgages are incorrectly stamped
- the earliest mortgage should have been upstamped to secure \$1 500 000 and the second mortgage stamped as collateral.

One of the refinance mortgages is deemed stamped with duty of \$3941 to secure \$1 000 000 (refinance cap).

Duty payable on refinance amount (\$1 200 000) = \$4741.

Duty deemed paid = \$3941.

Hence one of the refinance mortgages is liable to duty of \$800 (\$4741 – \$3941) to secure \$1 200 000 and the other mortgage is liable to duty of \$50 as a collateral mortgage.

3.7.6 Refinancing with more than one lender

An advance of \$500 000 is secured by mortgages over properties A and B.

The borrower refinances the mortgage over property A for \$300 000 with bank one and the mortgage over property B for \$300 000 with bank two.

Concession for refinance mortgage with bank one:

\$300 000 (advance from bank one) x \$500 000 = \$250 000

\$600 000 (total new advances)

Hence the refinance mortgage with bank one is deemed stamped with duty of \$941 on \$250 000.

Duty payable on new advance from bank one of \$300 000 = \$1141.

Hence the refinance mortgage must be stamped with duty of \$200 (\$1141 – \$941) to secure \$300 000.

The same applies to the refinance mortgage with bank two.

3.7.7 Refinancing with more than one lender where prior advance exceeds \$1 000 000

The original advance of \$1 600 000 is secured by mortgages over properties X (prime) and Y (collateral).

The borrower refinances mortgage over property X for \$800 000 with bank one and mortgage over property Y for \$800 000 with bank two.

Concession for refinance mortgage with bank one:

$\$800\,000$ (advance from bank one) x $\$1\,000\,000 = \$500\,000$
 $\$1\,600\,000$ (total new advances)

Hence the refinance mortgage with bank one is deemed stamped with duty of \$1941 on \$500 000.

Duty payable on new advance from bank one of \$800 000 = \$3141.

Hence the refinance mortgage must be stamped with duty of \$1200 (\$3141 – \$1941) to secure \$800 000.

The same applies to the refinance mortgage with bank two.

3.7.8 Refinancing from another institution where the borrower has an existing mortgage with your institution

Stamp the refinance mortgage under section 220. If such refinance mortgage and the existing mortgage with your institution secure the same money, you can then amalgamate the stamping in accordance with scenario 3.2.2 of these guidelines.

Note: If both mortgages (including the existing mortgage/s held by your institution) are being refinanced, both must be discharged to obtain the refinance concession.

3.7.9 Refinance mortgage over land used for primary production or aquaculture

Note: The \$1 000 000 cap does not apply to refinancing land used for primary production or aquaculture.

Land used for aquaculture means land subject to an aquaculture permit (within the meaning of the *Fisheries Management Act 1994*).

Examples

A previous mortgage over land used for primary production is stamped to secure \$1 500 000.

1. Refinance mortgage secures \$1 400 000.

Refinance mortgage is exempt from duty and is stamped up to \$1 500 000.

2. Refinance mortgage secures \$1 600 000.

Refinance mortgage is deemed stamped with duty of \$5941 on \$1 500 000.

Duty payable on \$1 600 000 = \$6341.

Hence refinance mortgage is stamped with duty of \$400 (\$6341 – \$5941) to secure \$1 600 000.

3.8 First Home Plus

Only applicable if the borrower or one of the borrowers is a company under First Home Plus One (shared equity arrangement – section 78B). Other First Home Plus mortgages should be exempt under section 221B.

3.8.1 First Home Plus examples

- a) The value of the home purchased is \$400 000, and the amount advanced is \$380 000.

Mortgage duty = exempt from duty.

- b) The value of the home purchased is \$530 000, and the amount advanced is \$540 000.

Mortgage duty = \$525.25 (75 per cent discount determined by value of property)

- c) The value of the land purchased is \$375 000, and the amount advanced is \$580 000 (including an amount to build).

Mortgage duty = \$1130.50 (50 per cent discount determined by value of land)

3.9 Duty paid at a reduced rate in another jurisdiction – section 218BA

This section only applies if you have a NSW mortgage executed on or after 1 July 2006 and before 1 July 2009 which is collateral to a mortgage or mortgage package stamped in another jurisdiction on which a reduced rate of duty has been paid. This section only applies to the first stamping of such mortgages. Normal upstamp rules then apply to the package.

Reduced rate jurisdictions

Western Australia	From 1 July 2006 to 30 June 2008
Tasmania	From 1 July 2006 to 30 June 2007
South Australia	From 1 July 2007 to 30 June 2009
Queensland	From 1 January 2008 to 30 June 2008

Example

A Western Australian mortgage is dated 1 August 2006 and is stamped with duty of \$600 (reduced rate) to secure advances of \$300 000. On 1 February 2007 a NSW mortgage is executed. A further advance of \$400 000 is then made. Property mix is 60 per cent in NSW and 40 per cent in WA.

On the date of first execution of the NSW mortgage section 218BA applies on \$300 000.

Duty on NSW proportion of \$300 000 (\$180 000) = \$661

Cap (NSW duty on \$300 000) = \$1141 less Duty paid in WA of \$600 = \$541.

Hence duty payable in NSW = \$541 – as it is lower than the NSW proportion. If the NSW proportion is lower, then that amount of duty is payable.

The NSW mortgage would then need to be upstamped to \$700 000.


3.10 Mortgages lost or destroyed

3.10.1 Stamping counterpart or collateral if mortgage is lost, destroyed or cannot be produced (Section 228 of the *Duties Act 1997*)

Such mortgages cannot be stamped on EDR. Representations must be made to the Chief Commissioner.


3.11 Consumer credit advances secured by Real Property mortgages (Section 223 of the *Duties Act 1997*)

- a) If a consumer credit advance (less than \$35 000) is secured by a Real Property mortgage, and the mortgagors are natural persons, mortgage duty is not chargeable in relation to that advance and the mortgage can be registered at LPMA without having to be stamped
- b) If a consumer credit advance (less than \$35 000) is secured by a Real Property mortgage, and the mortgagors are not natural persons, mortgage duty is not chargeable in relation to that advance but the mortgage will need to be stamped before it can be registered at LPMA (see below)

	Office of State Revenue NSW Treasury
Client No: 1712502	007
Duty: <u>NC</u>	Trans No: _____
Asst details: <u>S223</u>	_____

3.11.1 Farm machinery and commercial vehicles (Section 224 of the *Duties Act 1997*)

- a) If an advance for the acquisition of farm machinery or a commercial vehicle is secured by a mortgage (other than a real property mortgage), where the borrowers are a natural person or a strata corporation, mortgage duty is not chargeable and the mortgage does not need to be stamped or marked.
- b) If an advance for the acquisition of farm machinery or a commercial vehicle is secured by a Real Property mortgage, where the borrowers are a natural person or a strata corporation and the mortgagors are a natural person, mortgage duty is not chargeable and the mortgage can be registered at LPMA without having to be stamped.
- c) If an advance for the acquisition of farm machinery or a commercial vehicle is secured by a Real Property mortgage, where the borrowers are a natural person or a strata corporation and the mortgagors are not a natural person, mortgage duty is not chargeable but the mortgage will need to be stamped before it can be registered at LPMA (see on following page).

 Office of State Revenue NSW Treasury	
Client No: 1712502	007
Duty: <u>NC</u>	Trans No: _____
Asst details: <u>S224</u>	

3.12 Caveats

Duty will be chargeable on a caveat under the *Real Property Act 1900* in which an estate or interest is claimed under an unregistered mortgage where the mortgage:

- is chargeable with mortgage duty, but has not been stamped. In this case the caveat will be liable to the same rate of duty as a prime mortgage. See the information on Prime Mortgage for more details on these provisions
- has been stamped with mortgage duty, or is not chargeable with duty. In this case the caveat will be liable to duty of \$50. A stamped copy of the mortgage is required.

4. Supporting evidence and record keeping requirements

OSR conducts periodic client audits and reviews on EDR client transactions. The supporting evidence required to substantiate the duty payable on a mortgage transaction is outlined below. EDR clients (other than approved agents) must retain this evidence for a period of five years as set out in Part 8 Section 53 of the *Tax Administration Act 1996*. In the event of an audit or review, clients must make available:

- the endorsed mortgage
- EDR notice of assessment
- the relevant supporting evidence required.

Mortgages associated with owner occupied housing – section 221B

Evidence required:

To satisfy OSR that an advance falls within section 221B (owner occupied housing) of the *Duties Act 1997*, the mortgagee will need to have evidence of the following:

- i) the date and amount of the advance
- ii) the identity of the borrowers
- iii) the property description (eg folio identifier) of the securities
- iv) the predominant purpose of the advance.

In addition to the above, the mortgagee will need the following information to satisfy s221B(4)(e) – (ie repaying another advance):

- i) the identity of the borrowers under the earlier mortgage, and
- ii) the predominant purpose of the advances secured by such mortgage.

In respect of sections 221B, the loan contracts and mortgage documents held by the mortgagee should satisfy the amount of advance, identity of the borrowers, and the property description. The predominant purpose of the advance will need to be determined as part of the mortgagees application process, or as required for APRA reporting.

In respect of sections 221B(4)(e):

- i) a copy of the earlier loan contract; or
- ii) a declaration made by the borrower containing all the above information, will also be required.

Agents acting on behalf of financial institutions can rely on instructions from such institution regarding the liability of an advance and whether the mortgage needs to be stamped.

Mortgages associated with investment housing – section 221C

Evidence required:

To satisfy OSR that an advance falls within section 221C (investment housing) of the Duties Act 1997, the mortgagee will need to have evidence of the following:

- i) the date and amount of the advance
- ii) the identity of the borrowers
- iii) the property description (eg folio identifier) of the securities
- iv) the predominant purpose of the advance.

In addition to the above, the mortgagee will need the following information to satisfy s221C(4)(d) – (ie repaying another advance):

- i) the identity of the borrowers under the earlier mortgage
- ii) the predominant purpose of the advances secured by such mortgage.

In respect of sections 221C, the loan contracts and mortgage documents held by the mortgagee should satisfy the amount of advance, identity of the borrowers, and the property description.

The predominant purpose of the advance will need to be determined as part of the mortgagees application process, or as required for APRA reporting.

In respect of sections 221C(4)(d):

- i) a copy of the earlier loan contract
- ii) a declaration made by the borrower containing all the above information, will also be required.

Agents acting on behalf of financial institutions can rely on instructions from such institution regarding the liability of an advance and whether the mortgage needs to be stamped.

Prime mortgage

A prime mortgage includes a real property mortgage, caveat, certain loan agreements, bills of sale, deeds of charge, etc.

Evidence required:

- evidence identifying the total amount secured, eg loan offer, loan approval, or letter from the mortgagee.

Collateral mortgage – section 217

Evidence required:

- a stamped copy of the prime mortgage/s
- supporting evidence to confirm that the collateral mortgage secures the same moneys as those secured by the other mortgage (eg loan agreement identifying the secured property).

Collateral mortgage – section 218BA (repealed 1 July 2009)

Evidence required:

- a stamped copy of the prime mortgage/s
- if claiming a credit for duty paid in other jurisdictions, evidence of the duty paid
- supporting evidence to confirm that the collateral mortgage secures the same moneys as those secured by the other mortgage (eg loan agreement identifying the secured property)
- evidence as required under ‘Multi-jurisdictional mortgages’ (below).

Eligible mortgages under First Home Plus

Evidence required:

- evidence identifying the total amount secured, eg loan offer, loan approval, or letter from the mortgagee
- a copy of the stamped FHP agreement for sale or transfer
- where the loan includes an amount to construct a home, any associated document relating to such construction is required.

Additional advance (upstamping)

Evidence required:

- evidence to identify the amount of the further advance and the total indebtedness secured immediately after the further advance is **required, eg: loan offer, loan approval, or letter from the mortgagee.**

Note: Mortgage duty is not chargeable on additional advances secured by a mortgage if the total of the additional advances does not exceed \$10 000 in any 12-month period, not being the period of 12 months following the initial advance.

Refinancing of loans

Evidence required:

- a declaration in the form of ‘Exemption from Mortgage Duty – Refinancing of Loans’ (ODA 11)
- a copy of the discharge of the earlier mortgage or a letter from the mortgagee confirming the discharge
- a copy of the original stamped earlier mortgage

- evidence identifying the amount secured under the new mortgage
- a copy of the earlier loan or facility agreement(s) will be required if the total amount secured under the refinanced (new) mortgage exceeds \$400 000.

Where the refinanced (new) mortgage does not exceed \$400 000:

- a copy of the earlier loan or facility agreement(s) will be required to establish the borrowers if the mortgagors on the old and new mortgage are not identical (other than death, divorce or related body corporate).

Where an original borrower has died:

- a copy of the death certificate or probate will be required.

Where an original borrower was a party to a marriage that has been dissolved, annulled or has broken down irretrievably; one of the following must be retained:

- a copy of the decree nisi
- a statutory declaration stating that the party intends to apply for a dissolution or an annulment of the marriage
- a statutory declaration stating that the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed
- copy of the stamped real property transfer.

Where an original borrower was a party to a defacto relationship that has been terminated:

- a statutory declaration stating that the de facto relationship has terminated, or
- a copy of the stamped real property transfer.

Where the new borrower is a related body corporate of the original borrower:

- evidence of such relationship, such as company searches, is required.

Multi-jurisdictional mortgages original

Evidence required:

- a declaration in the form of 'Multi-jurisdictional Mortgage Statement'(ODA 033)
- evidence identifying the total amount secured, eg loan offer, loan approval, or letter from the mortgagee
- recent evidence (within 12 months) to establish the value of the property securing the advance. The evidence can be one of the following:
 - ▶ an independent valuation of the secured property
 - ▶ a statement by the mortgagee based on information obtained in determining to make the advance to the mortgagor
 - ▶ property valuations used in preparing an annual return under the *Corporations Act*
 - ▶ financial reports of the mortgagor certified by an independent auditor
 - ▶ agreed valuations for property for insurance purposes.

Multi-jurisdictional mortgages upstamping

Evidence required:

- a declaration in the form of 'Multi-jurisdictional Mortgage Statement' (ODA 033)
- evidence identifying the amount of the further advance and the total indebtedness secured immediately after the further advance is required
- evidence of prior duty paid (NSW and other jurisdictions)
- recent evidence (within 12 months) to establish the value of the property securing the advance. The evidence can be one of the following:
 - ▶ an independent valuation of the secured property
 - ▶ a statement by the mortgagee based on information obtained in determining to make the advance to the mortgagor
 - ▶ property valuations used in preparing an annual return under the Corporations Act
 - ▶ financial reports of the mortgagor certified by an independent auditor
 - ▶ agreed valuations for property for insurance purposes.

Multi-jurisdictional mortgages refinancing

Evidence required:

- all evidence required for a multi-jurisdictional mortgage original, and
- a declaration in the form of 'Exemption from Mortgage Duty – Refinancing of Loans' (ODA 11)
- a copy of the discharge of the earlier mortgage or a letter from the mortgagee confirming the discharge
- a copy of the original stamped earlier mortgage
- evidence identifying the amount secured under the new mortgage
- a copy of the earlier loan or facility agreement(s) if the total amount secured under the refinanced (new) mortgage exceeds \$400 000

Where the refinanced (new) mortgage does not exceed \$400 000:

- a copy of the earlier loan or facility agreement(s) to establish the borrowers if the mortgagors on the old and new mortgage are not identical (other than death, divorce or related body corporate).

Where an original borrower has died:

- a copy of the death certificate or probate will be required

Where an original borrower was a party to a marriage that has been dissolved, annulled or has broken down irretrievably:

- a copy of the decree nisi, or
- a statutory declaration stating that the party intends to apply for a dissolution or an annulment of the marriage, or
- a statutory declaration stating that the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed, and
- copy of the stamped real property transfer.

Where an original borrower was a party to a defacto relationship that has been terminated:

- a statutory declaration stating that the de facto relationship has terminated.

Where the new borrower is a related body corporate of the original borrower:

- evidence of such relationship, such as company searches, is required.

Caveats

Evidence required:

- Where the caveat is stamped with ad valorem duty, evidence of the amount of the advance (eg loan agreement)
- Where the caveat is stamped \$50, a stamped copy of the relevant mortgage or evidence the advance is not chargeable (eg under s221B or 221C) is required

Exemption categories for mortgage duty

Evidence required:

- all claims for exemption (except S223) must provide evidence identifying the total amount secured, eg loan offer, loan approval, or letter from the mortgagee.

S222(4)a Councils and County Councils

Additional evidence required:

- Evidence substantiating that the mortgagor is a Council or County Council under the Local Government Act 1993.

S224 Farm Machinery and Commercial Vehicles

Additional evidence required:

- a declaration in the form of 'Mortgage Duty Concession Application Farm Machinery and Commercial Vehicles' (ODA 10).

S223 Consumer Credit Contracts

Additional evidence required:

- evidence substantiating that the loan security in part or whole secures an amount under a consumer credit contract.

S272 Replicas

Additional evidence required:

- a declaration in the form of 'Replica Instruments' (ODA 019) and a copy (including a photocopy) of the original mortgage re-executed by an authorised signatory of the financial institution.

S275 Societies or institutions for the relief of poverty or promotion of education*

Additional evidence required:

- the society's or institution's rules or objects include either the promotion of education in Australia or the relief of poverty in Australia or both of them; and
- its resources are used wholly or predominantly on either or both of the promotion of education in Australia or the relief of poverty in Australia.

For more information see Revenue Ruling DUT 6.

S275 Societies or institutions of a charitable or benevolent nature or for the promotion of Aborigines*

Additional evidence required:

- the society's or institution's rules or objects include either the promotion of education in Australia or the relief of poverty in Australia or both of them; and
- its resources are used wholly or predominantly on either or both of the promotion of education in Australia or the relief of poverty in Australia.

For more information see Revenue Ruling DUT 7.

***Section 275 transactions cannot be processed using EDR. These transactions plus all supporting documents must be presented in person or by mail to an OSR office.**

S276 Public Hospitals

Additional evidence required:

- evidence substantiating that the mortgagor is a public hospital (as defined in the Dictionary of the *Duties Act 1997*).

S278 Department of Housing and Aboriginal Housing Declaration

Additional evidence required:

- a declaration in the form of 'Declaration by a tenant of the Department of Housing or Aboriginal Housing Office' (ODA 022).

S279 Specialised Agencies

Additional evidence required:

- evidence substantiating that the mortgagor is a specialised agency.

S280 Aboriginal Land Councils

Additional evidence required:

- evidence substantiating that the mortgagor is an Aboriginal Land Council under the *Aboriginal Land Rights Act*.

S222 (2) Other Mortgages that are exempt from payment of duty

No further evidence required.

S282 Mortgage backed Securities

No further evidence required.

S283 Instruments for Mortgage backed Securities

No further evidence required.

S284 Loan Backed Securities

No further evidence required.

S308 Crown Exemptions

Additional evidence required:

- evidence substantiating that the mortgagor is a body representing the Crown.

5. Processing refunds and/or adjustments on EDR

Under the EDR program approved financial institutions cannot process their own refunds or make their own adjustments without OSR approval. EDR assessments can only be altered by OSR staff.

OSR has two distinct processes for matters that require cancellation or refund:

- a) any matters identified prior to duty being paid to OSR will be accommodated under the cancellation process
- b) if duty has been paid then the refund process will be implemented.

Cancellations

To cancel a transaction you will need to fax the following documents to OSR:

- EDR cancellation/refund form (ODA 046)
- copy of the stamped mortgage displaying cancellation and/or reassessment.

To cancel matters other than an upstamping you must draw two lines through the stamp and write the word 'cancelled'. For upstamping cancellations you must draw a line through the row of data.

Refunds

To obtain a refund you will need to fax the following documents to OSR:

- EDR cancellation/refund form (ODA 046)
- copy of the stamped mortgage displaying cancellation and/or reassessment
- sufficient evidence to substantiate your refund claim

On the refund application form you will need to nominate one of the following categories as the reason for the refund:

- reassessment, eg owner occupied loans, refinancing etc.
- duplication, eg multiple assessments for the same matter
- other

All refunds will be made payable to the financial institution unless otherwise directed.

Record keeping

For both cancellation and refund matters you must retain appropriate records to substantiate your claims.

For all cancellation matters you must retain:

- EDR cancellation/refund form (ODA 046)
- copy of the stamped mortgage displaying cancellation and/or reassessment.

If the matter has been reassessed then the supporting evidence required should be available for OSR audit and review purposes.

For refund matters you must retain:

- EDR cancellation/refund form (ODA 046)
- copy of the stamped mortgage displaying cancellation and/or reassessment.

If the matter has been reassessed then the supporting evidence required should be available for OSR audit and review purposes.

For more information on mortgage record keeping requirements refer to Part 4 of this document.

EDR clients must retain this evidence for a period of five years as set out in Part 8 Section 53 of the *Taxation Administration Act 1996*.