



New South Wales

Legal Profession Amendment (Mortgage Practices) Regulation 2001

under the

Legal Profession Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Legal Profession Act 1987*.

BOB DEBUS, M.P.,

Attorney General

Explanatory note

The object of this Regulation is to set out requirements relating to mortgage transactions that are negotiated by solicitors, as a consequence of the commencement of the *Legal Profession Amendment (Mortgage Practices) Act 2000*. The requirements relate to the following matters:

- (a) disclosure and authorisation,
- (b) record keeping,
- (c) inquiries,
- (d) obtaining independent advice,
- (e) documentation and record keeping,
- (f) investment restrictions,
- (g) valuation of properties,
- (h) information to be given to the Law Society Council,
- (i) mortgages held by nominees,
- (j) how money is to be dealt with,

2001 No 721

Legal Profession Amendment (Mortgage Practices) Regulation 2001

Explanatory note

- (k) default procedures,
- (l) managed investment schemes.

This Regulation is made under the *Legal Profession Act 1987*, including sections 38J, 115, 117 (2), 118 (5), 119 (1), 122E and 216 (the general regulation-making power).

Legal Profession Amendment (Mortgage Practices) Regulation 2001

1 Name of Regulation

This Regulation is the *Legal Profession Amendment (Mortgage Practices) Regulation 2001*.

2 Commencement

This Regulation commences on 7 September 2001.

3 Amendment of Legal Profession Regulation 1994

The *Legal Profession Regulation 1994* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

2001 No 721

Legal Profession Amendment (Mortgage Practices) Regulation 2001

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Clause 27 Definitions

Omit “clause 55 (1)” from the definition of *trust records* in clause 27 (1).
Insert instead “clause 55 (2)”.

[2] Part 7A, Division 5

Omit the Division. Insert instead:

Division 5 Mortgage transactions

54 Definitions

(1) In this Division:

borrower has the same meaning as it has in Part 9 of the Act.

contributor has the same meaning as it has in Part 9 of the Act.

contributory mortgage has the same meaning as it has in Part 9 of the Act.

lender has the same meaning as it has in Part 9 of the Act.

mortgage has the same meaning as it has in Part 9 of the Act.

mortgagee includes anyone who takes a mortgage or proposes to take a mortgage to secure money lent to a borrower.

nominee means a person who holds a mortgage, as mortgagee, as a trustee for or on behalf of one or more persons.

registered valuer means a practising real estate valuer registered under the *Valuer's Registration Act 1975*.

regulated mortgage has the same meaning as it has in Part 9 of the Act.

responsible entity has the same meaning as it has in Part 9 of the Act.

solicitor's nominee company means a corporation of which each member and each director is a solicitor, a partner of a solicitor or a person approved by the Law Society Council.

State regulated mortgage has the same meaning as it has in Part 9 of the Act.

Summary of Mortgage means the Summary of Mortgage required to be prepared and issued under clause 56.

valuation means a valuation of a kind required to be obtained under clause 56C.

- (2) For the purposes of this Division, 2 or more persons who are lenders on a joint account are to be regarded as one person.

54A Application of Division

This Division applies to a solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in respect of a regulated mortgage.

55 Authority to secure by regulated mortgage

- (1) A solicitor must provide a contributor or lender lending, or proposing to lend, money secured by a regulated mortgage with a form of disclosure notice approved by the Law Society Council for the purposes of this clause and a lending authority in the form of Form 6.
- (2) A solicitor must not, whether alone or by an associate or otherwise, cause or permit the application to a loan secured by a regulated mortgage of:
- (a) any money to which section 61 (1) of the Act applies, or
 - (b) any money that is advanced, or to be advanced, where the borrower is introduced to the lender or contributor by:
 - (i) the solicitor or an associate of the solicitor, or
 - (ii) an agent of the solicitor, or
 - (iii) a person engaged by the solicitor for the purpose of introducing the borrower to the lender or contributors,

unless the solicitor has previously obtained from the lender or contributor for whom or on whose behalf the money is to be applied a lending authority in the form of Form 6 in respect of that money.

2001 No 721

Legal Profession Amendment (Mortgage Practices) Regulation 2001

Schedule 1 Amendments

- (3) Subclause (2) does not apply if:
 - (a) the money is applied pursuant to the written instructions of a lender or contributor who has nominated the borrower and specified the security, its priority and the terms of the loan independently of any advice given by the solicitor to the lender, and
 - (b) the lender or contributor has not been introduced to the borrower by:
 - (i) the solicitor or an associate of the solicitor, or
 - (ii) an agent of the solicitor, or
 - (iii) a person engaged by the solicitor for the purpose of introducing the borrower to the lender or contributors.
- (4) A solicitor who is the attorney under power of a lender or contributor must not:
 - (a) apply the funds of the lender or contributor to a loan not authorised in accordance with subclause (2), or
 - (b) execute, on the lender's or contributor's behalf, an authority referred to in subclause (2) unless subclause (5) is complied with.
- (5) This subclause is complied with only if:
 - (a) the instrument granting the power was executed before 1 January 1987, or
 - (b) the instrument granting the power contains a specific power enabling the solicitor to make the loan to which the authority relates, or
 - (c) at the time the instrument granting the power was executed, the signature of the donor was witnessed by a solicitor instructed independently of the donee and that solicitor certified in writing on the instrument that he or she had explained to the donor the donee's power of investment and that the donee had a discretion to choose the security and the terms for any investment.

- (6) A solicitor who obtains the execution, by or on behalf of a lender or contributor, of a lending authority in the form of Form 6 must not delete any of the contents of the Form (except if an alternative is provided in the Form) and must ensure that any clauses in the Form are not varied or contravened, whether directly or indirectly, by the mortgage documents or any associated documents.
- (7) An authority in the form of Form 6 is taken to be an authority for the purposes of section 122 (2) (b) of the Act.

55A Loan applications

- (1) A solicitor must advise a lender or contributor whose loan is proposed to be secured by a regulated mortgage as to the effect of any applicable provisions of the *Consumer Credit (New South Wales) Code* and the *Farm Debt Mediation Act 1994*.
- (2) A solicitor must, before advancing the money for, or extending, a loan secured by a regulated mortgage do the following:
 - (a) verify the identity of the borrower, so as to ensure that the person executing the mortgage as the mortgagor is identical with, and the same person as, the registered proprietor of the property secured by the mortgage,
 - (b) satisfy himself or herself as to the borrower's ability to meet his or her obligations under the mortgage,
 - (c) check the credit record of the borrower through the Credit Reference Association of Australia (CRAA) and disclose any default record of the borrower to the lender or contributor in the disclosure statement given under clause 55,
 - (d) carry out appropriate enquiries in relation to any property to be secured by the mortgage, including a title search, land tax search, a certificate under section 149 of the *Environmental Planning and Assessment Act 1979* and an identification survey report if the security comprises improved land (other than strata title).

2001 No 721

Legal Profession Amendment (Mortgage Practices) Regulation 2001

Schedule 1

Amendments

- (3) A solicitor must, before advancing the money for, or extending, a loan secured by a regulated mortgage obtain written approval to the advance or extension from:
 - (a) in the case of a firm of solicitors, each principal of the firm (if there are 3 or fewer principals) or 3 principals of the firm (if there are more than 3 principals), or
 - (b) in the case of an incorporated legal practice, each solicitor director of the practice (if there are 3 or fewer solicitor directors) or 3 solicitor directors of the practice (if there are more than 3 solicitor directors).
- (4) A solicitor's letter of offer relating to a loan to be secured by a regulated mortgage must contain the form of words approved by the Law Society Council for the purposes of this subclause.
- (5) A solicitor's loan approval letter relating to a loan to be secured by a regulated mortgage must contain the form of words approved by the Law Society Council for the purposes of this subclause.

55B Identity of borrower

A solicitor must ensure that, in relation to loans secured by a regulated mortgage:

- (a) there is a standard process for verifying the identity of borrowers, and
- (b) records are kept of the method of verification of identity for the duration of the mortgage.

55C Independent advice

- (1) A solicitor must if:
 - (a) a borrower does not have a solicitor acting for the borrower in relation to a loan secured by a regulated mortgage, or
 - (b) the solicitor is also acting for the borrower,obtain from the borrower a certificate by another solicitor to the effect that the other solicitor has explained the effect of the mortgage to the borrower.

- (2) A solicitor must obtain from any guarantor of a loan secured by a regulated mortgage a certificate by another solicitor to the effect that the other solicitor has explained the effect of the guarantee to the guarantor.
- (3) A certificate obtained under this clause must be retained by the solicitor.
- (4) A solicitor must not act for both the borrower and the lender or contributor in respect of a regulated mortgage unless the solicitor has complied with subclause (1).

55D Insurance of secured property

- (1) A solicitor must ensure that, in the case of mortgaged property under a regulated mortgage that is improved land (other than strata title property), an insurance policy is in force, in the name of the mortgagee and the mortgagor, for the full replacement value of the improvements.
- (2) The solicitor must sight a Certificate of Currency for the insurance policy at or before the time of settlement and must retain a copy of it.
- (3) A solicitor must, in the case of property that is a strata title property, sight a Certificate of Currency relating to building insurance for the property at or before the time of settlement and must retain a copy of it.

55E Registration of mortgages

- (1) A solicitor must ensure that the regulated mortgage, and any variation of the mortgage, is registered.
- (2) Subclause (1) applies to a variation of the term of the mortgage, an increase in the principal secured by the mortgage or a variation of the interest rate.

56 Summary of Mortgage

- (1) A solicitor must comply with this clause within 21 days after the date on which any of the following occurs:
 - (a) when money is first advanced under a regulated mortgage on behalf of a lender or contributor (including a contributor who becomes a contributor in addition to, or in substitution for, any other contributor to the loan),

2001 No 721

Legal Profession Amendment (Mortgage Practices) Regulation 2001

Schedule 1

Amendments

- (b) on the transfer of a regulated mortgage,
 - (c) on being authorised to collect the principal and interest due under a regulated mortgage except on any discharge or partial discharge of a mortgage,
 - (d) on any variation of a regulated mortgage.
- (2) A solicitor must:
- (a) prepare and issue to each lender and contributor whose money has been lent or will be lent under a regulated mortgage a Summary of Mortgage in respect of the money and its application that is in the form of Form 8, and
 - (b) include a copy of the Summary of Mortgage, in alphabetical order according to the name of the mortgagor, in the Investments Register kept by the solicitor.

56A Investments Register

- (1) A solicitor must keep and maintain an Investments Register in accordance with this section.
- (2) The Investments Register must include the following:
 - (a) copies of all Summaries of Mortgage required to be prepared by the solicitor for regulated mortgages, in alphabetical order according to the mortgagor's names, with separate sections for undischarged and discharged mortgages,
 - (b) a mortgage history register for each regulated mortgage,
 - (c) a record for each lender or contributor,
 - (d) a list of undischarged regulated mortgages, capable of being produced on demand from the Register, disclosing for each mortgage the mortgage reference number, the name of the mortgagor and the total amount of the mortgage,

- (e) a list of the following:
 - (i) all regulated mortgages arranged, varied and discharged, including details of the mortgagor, mortgagee, principal contributed by each lender or contributor and the date of each mortgage, variation or discharge,
 - (ii) the names of all lenders or contributors who have invested in regulated mortgages, the mortgages in which they have invested, the date of investment and repayment and the amount of principal secured by each mortgage.
- (3) The mortgage history register for a regulated mortgage is to contain the following:
 - (a) the mortgage reference number,
 - (b) the name and address of the mortgagor,
 - (c) the address of the property subject to the mortgage,
 - (d) the date the mortgage is repayable,
 - (e) the date of, and details of, any variations of the mortgage,
 - (f) the name and address of each lender or contributor and the principal amount contributed by each lender or contributor.
- (4) The record for each lender or contributor is to contain the following:
 - (a) the mortgage reference number,
 - (b) the name and address of the lender or contributor,
 - (c) the amounts invested and the date of the mortgage or substitution,
 - (d) the amounts repaid and the date of discharge of the mortgage or substitution,
 - (e) a resulting balance after each entry.
- (5) On the discharge of a regulated mortgage, the solicitor must ensure that the date of discharge is recorded on the Summary of Mortgage in the Investments Register and that the Summary is relocated with the Summaries applying to discharged mortgages.

56B Investment restrictions

- (1) Money received by a solicitor for investment in a regulated mortgage must not be invested in the following regulated mortgages:
 - (a) any mortgage where the total amount of money secured by all current regulated mortgages arranged by the solicitor and any associate of the solicitor exceeds \$7.5 million,
 - (b) any mortgage where the total amount of money secured by the mortgage exceeds \$1 million,
 - (c) any mortgage where the loan to valuation ratio exceeds 75% of a valuation based on the unencumbered present day value of the property,
 - (d) a mortgage that is subject to a prior mortgage,
 - (e) any mortgage securing a loan or advance under which the borrower is in default.
- (2) A solicitor must not:
 - (a) publicly advertise seeking money for investment in mortgages, or
 - (b) offer a loan to any person whose usual address is outside New South Wales, except for a local offer in a border area.

56C Valuation

- (1) A solicitor must, before any money is advanced under a loan secured by a regulated mortgage, obtain:
 - (a) for the lender or contributor, a current valuation of the mortgaged property by a registered valuer, and
 - (b) evidence that the valuer holds current professional indemnity insurance to a value that is not less than \$500,000 and that covers valuations made for the purposes of regulated mortgages.
- (2) The valuation must be expressed to be for the purpose of establishing the unencumbered present day value of the property, not taking into account any future proposed development, and must address the matters contained in the solicitor's request for the valuation.

- (3) The solicitor's request for a valuation must contain the form of words approved by the Law Society Council for the purposes of this clause.
- (4) A valuation prepared for the borrower may be assigned to a lender or contributor for the purposes of this clause, but only if the valuer and the valuation meet the requirements of this clause in respect of a valuation obtained on behalf of a lender or contributor.
- (5) If a mortgage is varied and the lender or contributor previously relied on a valuation prepared for the borrower, the lender or contributor may continue to rely on that valuation if it meets the requirements of this clause in respect of a valuation obtained on behalf of a lender or contributor.
- (6) A valuation obtained under this clause must be not more than 6 months old when money is first advanced under the loan and, in the case of a loan that is rolled-over, must be not more than 3 years old when the loan is rolled-over.

56D Appointment of accountant

A solicitor must:

- (a) appoint an accountant to audit the solicitor's mortgage practice, and
- (b) appoint the accountant on terms that require the accountant to carry out annual compliance examinations in accordance with a work program approved by the Law Society Council, and
- (c) ensure that the accountant lodges with the Law Society, within 21 days of completing the examination, a report on the examination in the form approved by the Law Society Council.

56E Notification of State regulated mortgages to Law Society Council

- (1) For the purposes of section 119 (1) of the Act, a solicitor must notify the Law Society Council in writing of the following matters on a quarterly basis:

2001 No 721

Legal Profession Amendment (Mortgage Practices) Regulation 2001

Schedule 1 Amendments

- (a) a list of current State regulated mortgages in respect of which the solicitor has acted for the lender or contributor and the total amount secured by all those mortgages,
 - (b) the name of each mortgagor and mortgagee,
 - (c) the amount secured by each mortgage.
- (2) The notice is to be given within 28 days of the end of each quarter.

57 Mortgage held by nominee

- (1) A solicitor must not, whether alone or by an associate or otherwise, cause or permit an application to a loan secured by a regulated mortgage of any money referred to in clause 55 (2) if the loan is to be secured by a regulated mortgage to be held by a nominee, unless the nominee is one of the following:
- (a) the solicitor,
 - (b) one or more of the solicitor's partners, with or without the solicitor,
 - (c) a solicitor's nominee company maintained by the solicitor and the solicitor's partners (if any) in the manner prescribed by clause 58.
- (2) Except in the case of a mortgage to be held by a solicitor's nominee company or an incorporated legal practice, a solicitor must not arrange or agree to arrange a regulated mortgage that is intended to be held in the name of a corporation (other than a public trustee company) of which that solicitor is a member or director if the mortgage is to be held by that corporation as a trustee for the beneficial owner.

58 Solicitor's nominee company

- (1) If a solicitor's nominee company is a nominee, a solicitor who is a member or director of the company must not, while the company holds a regulated mortgage for another person:

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- (a) cause or permit any person to become a member or director of the company unless the person is a partner of the solicitor or, in the case of a sole practitioner, a person who is approved by the Law Society Council, holds only 1 share in the company and holds the share in trust for the solicitor as beneficial owner, or
 - (b) cause or permit the company to act otherwise than as a nominee company holding regulated mortgages, or an interest in regulated mortgages, on trust for the beneficial owners, or
 - (c) receive, or cause or permit the company to receive, any financial benefit from its activities other than any professional costs or management fees properly chargeable by the solicitor in respect of a regulated mortgage held by the company, or
 - (d) cause or permit the constitution of the company, while any of its members or directors are persons other than the solicitor or his or her partner or partners, to contain a provision that:
 - (i) denies the solicitor a casting vote at a meeting of its directors, or
 - (ii) entitles a director to appoint an alternate director or attorney to act in the place of the director, or
 - (iii) entitles a shareholder to appoint a proxy other than the solicitor.
- (2) A solicitor who has obtained from a lender or contributor an authority under clause 55 must not prepare a transfer of any regulated mortgage to a company of which the solicitor is a member or director unless:
- (a) the company is the solicitor's nominee company, an incorporated legal practice, a public trustee company or a responsible entity, and
 - (b) the mortgage is to be held by the company as trustee for the beneficial owner of the mortgage.

59 Dealing with money through trust account

- (1) A solicitor must apply money for a loan secured by a regulated mortgage, or paid as principal or interest in respect of any such loan, only in accordance with this clause.

2001 No 721

Legal Profession Amendment (Mortgage Practices) Regulation 2001

Schedule 1 Amendments

- (2) The money to be advanced must first be credited to an account in the name of the lender or contributor established in the solicitor's trust account ledger.
- (3) Before any money is advanced under the regulated mortgage, the solicitor must:
 - (a) establish in his or her trust account ledger an account in respect of the mortgage in the mortgagor's name or, if the mortgage is held in the name of a nominee, in the name of the nominee and the mortgagor, and
 - (b) transfer to that account from the accounts of the lender, or of the contributors in the case of a contributory mortgage, the money to be lent.
- (4) If the regulated mortgage is held by a nominee, then a separate account in the solicitor's trust account ledger must be established in the name of the nominee in respect of each mortgage loan held or intended to be held in the name of the nominee.
- (5) All payments under the regulated mortgage in respect of interest and the repayment of principal:
 - (a) are to be received by the solicitor, and
 - (b) must be paid to the credit of the account in the trust account ledger relating to the regulated mortgage.
- (6) An amount credited to the account in the trust account ledger relating to a regulated mortgage must be transferred, as soon as is practicable:
 - (a) to the lender's account in the solicitor's trust account ledger, or
 - (b) in the case of a contributory mortgage, to the account of the contributors in the solicitor's trust account ledger in the proportions to which the contributors are entitled.

60 Notice of variation of mortgage

A solicitor must, within 21 days after the day on which a variation of a regulated mortgage is executed by a borrower:

- (a) give written notice of the particulars of the variation to each lender or contributor, and

- (b) record the particulars of the variation in the solicitor's Investments Register.

61 Additional or substituted contributions

The requirements of this Division apply to a new contributor to a contributory mortgage and to money advanced by a new contributor in the same way as they apply to the original contributors to the contributory mortgage and to money advanced by the original contributors.

62 Declaration of trust

A solicitor who is required to prepare and issue a Summary of Mortgage must, within 21 days after the obligation to do so arises in relation to a mortgage held by a nominee, prepare and have executed by the nominee an instrument in writing sufficient to manifest and declare the trust on which the mortgage is held by the nominee in accordance with section 23C (1) (b) of the *Conveyancing Act 1919*.

63 Retention of documents

- (1) A solicitor must retain at his or her principal place of practice any regulated mortgage together with all other mortgage documents and instruments declaring trusts related to the mortgage until:
 - (a) the mortgage is discharged, or
 - (b) the solicitor is directed otherwise in writing by the lender or, in the case of a contributory mortgage, by all the contributors.
- (2) The requirements of clause 28 as to the retention by a solicitor of trust records and controlled money records apply to an Investments Register maintained under this Division. The particulars of a mortgage recorded in the Investments Register must be retained in the Register during the currency of the mortgage and for 6 years following its discharge.
- (3) For the purposes of subclause (1), mortgage documents include title documents, lending authorities, valuations, insurance policies and any other deeds or documents relating to any security in respect of which any mortgage has been given.

2001 No 721

Legal Profession Amendment (Mortgage Practices) Regulation 2001

Schedule 1 Amendments

- (4) The mortgage and documents referred to in subclause (1) must be kept together in a deed packet filed in the name of the mortgagor and, if the mortgagor has more than one loan, the particular mortgage is to be identified on the deed packet by indicating the address of the security property.
- (5) A solicitor must maintain a current register of mortgage deed packets.
- (6) The mortgage deed packet may be retained in a normal safe custody register and must be cross-referenced to the matter file to which it relates. The matter file must also be cross-referenced to the mortgage deed packet.

64 Practicability of completion of Summary of Mortgage and Investments Register

A solicitor who for any good reason is unable to record within the prescribed time all of the prescribed particulars in a Summary of Mortgage required by this Division to be given to a lender or contributor or in an entry to be made in the Investments Register must:

- (a) record the portion of the prescribed particulars that is then available in the required Summary of Mortgage and in an entry in the Investments Register, and
- (b) as soon as practicable after the omitted particulars are available, issue a duly completed Summary of Mortgage to any person who is entitled to receive it and complete the required entry in the Investments Register.

65 Default procedures

- (1) A solicitor must maintain systems to enable the early detection of defaults in the payment of principal or interest secured by a regulated mortgage or under the terms of a regulated mortgage.
- (2) The solicitor is to ensure that the following steps are taken if a default in the repayment of a loan secured by a regulated mortgage occurs:
 - (a) the borrower must be contacted within 7 days of the solicitor becoming aware of the default and the reason for the default ascertained,

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- (b) the borrower must be requested to pay the penalty rate of interest and any such interest is to be paid to the lender or contributor,
 - (c) the lender or contributor must be advised of the default and the action being taken with respect to the default,
 - (d) unless the lender or contributor instructs otherwise, action is to be commenced to recover outstanding principal, interest and costs if there is a default in payment of more than 2 months (in the case of interest) or 2 weeks (in the case of principal),
 - (e) if a default continues for more than 2 months, the solicitor must notify the Law Society Council in writing of the default and the action taken to rectify the default.

65A Run-out mortgages

- (1) The provisions of Division 5 of Part 7A, as in force immediately before the commencement of the *Legal Profession Amendment (Mortgage Practices) Regulation 2001*, continue to apply in respect of run-out mortgages.

Note. Division 4 of Part 9 of the Act limits the actions that a solicitor may take in respect of run-out mortgages.

- (2) The provisions of this Division (other than this clause) do not apply to run-out mortgages.
- (3) In this clause:
run-out mortgage has the same meaning as it has in Part 9 of the Act.

65B Managed investment schemes

A solicitor must ensure that the office of a responsible entity for a managed investment scheme is not located on the same part of any premises on which the legal practice of the solicitor is conducted.

65C Certain mortgages not regulated mortgages

The following mortgages are exempt from the definition of *regulated mortgage* in section 115 of the Act:

- (a) a mortgage of which a solicitor, or an associate of a solicitor, is the sole beneficial owner,

2001 No 721

Legal Profession Amendment (Mortgage Practices) Regulation 2001

Schedule 1 Amendments

- (b) a mortgage held by a solicitor or an associate of a solicitor as the trustee of a will or settlement or a mortgage that, when executed or transferred, will be so held,
- (c) a mortgage to a mortgagee who is the subject of a notice given by the Law Society Council to a solicitor, that exempts a mortgage to that mortgagee from the definition,
- (d) except as provided by clause 65B, a mortgage that is part of a managed investment scheme that is operated by a responsible entity.

[3] Schedule 1 Forms

Omit Forms 6 and 7. Insert instead:

Form 6 Lending authority

(Clause 55)

(Legal Profession Act 1987)

TO: (insert name of legal firm)

I/WE: (insert name(s) of investors) of
(insert address(es))

authorise and instruct you to invest on my/our behalf the sum of \$ on the terms and conditions contained in the Disclosure Notice (given under clause 55 of the *Legal Profession Regulation 1994*) dated and subject to the terms and conditions in this application form.

Full details of lender(s)

1 My/Our full name(s) and address(es) for the description on the mortgage document is/are:

Applicant

Mr/Mrs/Miss/Ms

Surname

Other names

Company name ACN

Address

Suburb/Postcode

Contact name (if company)

Email address

Date of birth

Occupation

(OR)

The mortgage is to be registered in the following name as Mortgagee:

Applicant

Mr/Mrs/Miss/Ms

Surname

Other names

Company name ACN

Address

Suburb/Postcode

Contact name (if company)

Email address

Date of birth

Occupation

Details of Borrower

2 Full name and address of the Borrower is

Value of security

- 3 The estimated value of the security at the date of the loan will be at least \$
- The value will be evidenced by
- 4 Total principal sum to be lent under the mortgage \$

2001 No 721

Legal Profession Amendment (Mortgage Practices) Regulation 2001

Schedule 1 Amendments

Security information

- 5 The total principal sum must be secured by way of a first registered mortgage over the security described in this Authority.
- 6 Details of the security:
 - (a) Term of Mortgage months
 - (b) Address of the property
 - (c) Nature of improvements
- 7 Name and address of Guarantor
- 8 There are to be no prior mortgages or charges affecting security.

Contribution of lender

- 9 My/Our contribution to the loan \$

Authority

- 10 (a) Unless otherwise specified in paragraph 19 of this Authority, I am/we are not entitled to the repayment of my/our contribution until the mortgage is discharged.
- (b) Unless I/we notify the firm in writing at least 14 days before the maturity date that I/we wish to withdraw from the investment, the firm may permit the investment to continue until the mortgage is renewed or paid in full.
- (c) Unless I/we notify the firm in writing within 14 days of receipt of a request of a renewal confirmation that I/we wish this investment to end on the review date, the firm may renew the investment for a further term set out in the renewal confirmation.

Payment of principal and interest

- 11 Payments of interest and principal are to be:
 - *(a) paid by cheque to:
 - (OR)
 - *(b) by direct payment to the following account:
Account name

Bank details

Account number

Branch (BSB) number

(* Strike out whichever is not applicable)

Interest

12 *(a) The interest rate must not be varied during the term of the loan,
(OR)

*(b) The interest rate may be varied during the term of the loan on the
following basis:

(* Strike out whichever is not applicable)

13 The interest rate applicable to the loan is to be per cent per
annum payable in advance/arrears subject to a reduction
to per cent per annum for any payment that is made
within days after the due date for that payment.

Fees and charges

14 I/we authorise (insert name of legal firm) to deduct the following fees:

(a) a management fee of % from the interest paid by the
borrower,

(b) an exit fee of % of the value of the contribution.

The firm pays commission to brokers and licensed dealers as follows:

.....

Tax file number

15 I/we have/have not supplied tax file numbers to (insert name of legal firm).

Early repayment by Borrower

16 The Borrower may in some circumstances repay the loan before the
expiration of the period specified in paragraph 6 (a) of this Authority on
the following conditions

2001 No 721

Legal Profession Amendment (Mortgage Practices) Regulation 2001

Schedule 1 Amendments

Limitations to Authority

- 17 This Authority is given on the understanding that at the date of the making of the loan:
- (a) the Borrower will not be you or an associate, by which term is meant a person or company associated with a solicitor (as defined in section 60 (2) of the *Legal Profession Act 1987*), and
 - (b) you or any such associate will have no financial interest in the Borrower unless you disclose the relationship or interest to me/us and I/we have received written advices from an independent solicitor in the prescribed form,
 - (c) I am/We are aware that, in respect of any mortgage loan to which my/our money may be applied, you may also/will not act as solicitor for the Borrower.

Fidelity coverage

- 18 (a) I/We are aware that the fidelity insurance policy of (insert name of legal firm) is limited to \$4 million.
- (b) I/We are also aware that under a State regulated mortgage we are not entitled to make a claim against the Fidelity Fund for the purposes of obtaining compensation for pecuniary loss if a claim relates to a regulated mortgage for which the solicitor is required to have fidelity insurance.

Special conditions

19 Special conditions or instructions not relating to the security

I/We acknowledge having received, read and understood the information contained in the Disclosure Notice (given under clause 55 of the *Legal Profession Regulation 1994*), this Authority and the valuation(s) relating to the security property(s) and declare that the decision to invest in this mortgage is a decision based on my/our enquiries and is not based on any advice of the (insert name of legal firm).

Before I/we signed this Authority all of the required particulars had been inserted and all blank spaces had been filled up or ruled out.

Signature of investors

This form must be signed by the investor. All joint investors must sign. If the investor is a corporation, partnership, firm or unincorporated association, the person(s) authorised by its constitution must sign and state the capacity in which they are signing (eg director, secretary). If signed under power of attorney, the attorney must state that no notice of cancellation of the power has been received. The power of attorney must be produced if it has not already been noted by the firm.

Date

Signed:

.....
(Full name) (Signature)

.....
(And capacity if applicable)

.....
(Full name) (Signature)

.....
(And capacity if applicable)

.....
(Full name) (Signature)

.....
(And capacity if applicable)

[4] Schedule 1, Form 8

Omit the heading. Insert instead:

Form 8 Summary of Mortgage

2001 No 721

Legal Profession Amendment (Mortgage Practices) Regulation 2001

Schedule 1 Amendments

[5] Schedule 1, Form 8

Omit “epitome” and “Epitome” wherever occurring.

Insert instead “summary” and “Summary” respectively.

BY AUTHORITY