

P.N.D.C.L. 329

HOME MORTGAGE FINANCE ACT, 1993

ARRANGEMENT OF SECTIONS

SECTION

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SCHEDULE

Financial Institutions

P.N.D.C.L. 329

HOME MORTGAGE FINANCE ACT, 1993¹

AN ACT to establish a home mortgage scheme and to provide for related matters.

1. Establishment of Home Mortgage Financing Scheme

There is hereby established the Home Mortgage Financing Scheme.

2. Objects of the Scheme

The objects of the Scheme are,

- (a) to provide mortgage financing for the purchase of dwelling houses by private individuals and institutions including the financing of the completion of uncompleted houses, and

1. This Act was issued as the Home Mortgage Finance Law, 1993 (P.N.D.C.L. 329) made on the 5th day of July, 1993 and notified in the *Gazette* on 28th May, 1993. Under section 4 (b) of the Provisional National Defence Council (Establishment) Proclamation, 1981, a "Law made by the Council shall, unless otherwise provided in that Law, come into force on the date it is made". The 1992 Constitution came into force on the 7th day of January, 1993 although the Constitution was made on the 8th day of May, 1992, and notified in the *Gazette* on 15th May, 1992.

- (b) to establish a secondary mortgage market with a view to making money available to the financial institutions which are participating in the Scheme.

3. Company to administer the Scheme

(1) The Home Finance Company Limited may administer the Scheme through the financial institutions specified in the Schedule.

(2) The Minister may, on the advice of the Bank of Ghana after consulting the company, by legislative instrument, amend the Schedule.

4. Remedies of mortgagee on default

On failure of performance of an act secured by a mortgage to which this Act applies, the mortgagee may

- (a) sue the mortgagor or obligor or both on a personal covenant to perform, or
- (b) realise the security of the mortgagee in the mortgaged property in all or any of the ways provided in this Act.

5. Appointment of receiver on default

(1) On failure of performance of an act secured by a mortgage to which this Act applies, the mortgagee may appoint a receiver for the purposes of this section.

(2) A receiver appointed under subsection (1)

- (a) may take possession of the mortgaged property and collect by demand or action in the name of the mortgagor or the mortgagee or otherwise, the income including arrears accruing from the mortgaged property;
- (b) may give valid receipts for the income collected; and
- (c) may do any other act necessary or proper to manage the property including the making of reasonable repairs and improvements to the property to protect its value or to maintain or increase the income from the property.

(3) For the purposes of this Act a receiver appointed under this section is the agent of the mortgagor and the mortgagor is solely responsible for the receiver's acts or default.

(4) A person paying money to the receiver shall not be concerned to enquire whether a case had happened to authorise the receiver to act.

(5) The receiver may be removed and a new one appointed at any time by the mortgagee in writing.

(6) The fact that a mortgagee has taken possession of property subject to a mortgage to which this Act applies shall not prevent the mortgagee from appointing a receiver under this section in respect of that property.

(7) A receiver is entitled to retain the remuneration of the receiver out of moneys received by the receiver and in satisfaction of the costs, charges and expenses incurred as receiver a commission at a rate not exceeding five per cent on the gross amount of the moneys received, that is specified in the appointment as receiver.

(8) Where a rate is not so specified then at the rate of two and a half percent of that gross amount or any other rate that the High Court may allow on an application made by the receiver for that purpose.

(9) The receiver shall, if so directed in writing by the mortgagee, insure to the extent to which the mortgagor ought to have insured and kept insured against loss or damage by fire and any other risks specified in the mortgage agreement out of the moneys received by the receiver, the building, effects or property, comprised in the mortgage of an insurable nature.

(10) A receiver appointed under this section shall apply the moneys received by the receiver

- (a) in discharge of the rents, taxes, rates and any other outgoings affecting the mortgaged property;
- (b) in payment of the annual sums of money or interest on the principal sums of money due and having priority to the mortgage;
- (c) in payment of the commission of the receiver and of premium payable in accordance with the mortgage and cost of effecting the necessary repairs;
- (d) in payment of the interest accruing in respect of a principal money due under the mortgage;
- (e) in or towards the discharge of a principal money due under the mortgage if so directed in writing by the mortgagee,

and shall pay the residue or the money received by the receiver to the person who but for the possession of the receiver would have been entitled to receive the income of which the receiver is appointed receiver or who is otherwise entitled to the mortgaged property.

(11) A person who obstructs a receiver in the performance of functions under this Act commits an offence and is liable on conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment; and in the case of a continuing offence, to a further fine not exceeding twenty-five penalty units for each day during which the offence continues.

(12) Section 16 of the Mortgages Act, 1972² shall not apply to a mortgage to which this Act applies.

6. Mortgagee's remedies

(1) A mortgagee's right to take possession of mortgaged property shall be the same as that provided for under the Mortgages Act, 1972.³

(2) Subject to this section, a mortgagee in possession is entitled to sell all or a part of the mortgaged property.

2. N.R.C.D. 96.

3. N.R.C.D. 96.

(3) A person who

(a) fails without reasonable excuse, the proof of which lies on that person, to vacate premises which is subject to a mortgage to which this Act applies on being requested to do so by the mortgagee in possession, or

(b) obstructs a mortgagee in the exercise of a power conferred by this section, commits an offence and on conviction is liable to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment; and in the case of a continuing offence, to a further fine not exceeding twenty-five penalty units in respect of each day during which the offence continues.

(4) The sale of a mortgaged property under this section may be by public auction or private contract and is otherwise subject to the conditions determined by the Company.

(5) A mortgagee who wishes to exercise the power of sale under this section shall give reasonable notice of the sale to the mortgagor and every encumbrancer of whom the mortgagee has notice.

(6) The Company may prescribe in respect of the failure to perform all or a class of acts what period is considered reasonable for the purpose of subsection (4), but in the case of default in the payment of principal or interest or both the notice shall be not less than six days.

(7) Where a mortgagee has in the exercise of the power of sale sold or caused to be sold the mortgaged property to another person, the title of the purchaser is not impeachable on the ground

(a) that a case has not arisen to authorise the sale, or

(b) that the notice required under subsection (3) has not been given, or

(c) that the power of sale was otherwise improperly or irregularly exercised;

but the mortgagee is personally liable for a loss caused by that sale being carried out in any or all of the circumstances referred to in this section.

(8) Neither the mortgagor nor an encumbrancer is precluded from purchasing the mortgaged property at a sale under this section; but a mortgagee at whose instance the sale is made does not have the right to purchase the mortgaged property except where the sale is carried out at a public auction or where it is carried out by a private contract approved by the mortgagor and all the encumbrancers or approved by the High Court.

(9) The mortgagee exercising the power of sale under this section may convey to the purchaser the whole of the interest of the mortgagor in the mortgaged property.

(10) The purchaser of the mortgaged property under this section shall take title to the property free of the interests to which the mortgagee who caused the sale has priority and free of that mortgagee but subject to the interests which have priority to that mortgagee, and is entitled as against any other person to the documents relating exclusively to the mortgaged property other than those title documents held by a person with an interest having priority to the mortgagee who caused the sale.

(11) The proceeds from a sale under this section shall be held in trust for distribution by the mortgagee who caused the sale.

(12) The proceeds from a sale shall be distributed

- (a) first, in payment of the expenses properly incurred as an incident to the sale or a prior attempted sale,
- (b) secondly, in payment of the sums of money secured by the mortgage or with the same priority as the mortgagee,
- (c) thirdly, payment in the order of priority of the encumbrances subsequent to that of the mortgagee who caused the sale, and
- (d) lastly, the residue to the mortgagor or the successors of the mortgagor in interest.

(13) A mortgagee on whom a power of sale is conferred by this section is not a trustee of the mortgagor in respect of that right.

(14) Sections 18 (9) and 14 (b) of the Mortgages Act, 1972⁴ shall not apply to a mortgage to which this Act applies.

7. Possession of sale through court proceedings

(1) Despite anything in this Act, where at least eighty-five per centum of the total loan amount has been paid or tendered by or on behalf of the borrower, the Company shall not enforce a right to recover possession of the premises or its power of sale otherwise than by a court action.

(2) Where the mortgage involves a progressive repayment scheme or in the case of an indexed transaction, where the principal advanced may be adjusted upwards, if the adjusted principal outstanding is less than fifteen per centum of the initial loan amount, the Company shall not enforce a right to recover possession of the premises or its power of sale otherwise than by a court action.

8. Application of Mortgages Act, 1972

Except as otherwise provided in this Act, the Mortgages Act, 1972⁵ shall apply to mortgages under this Act.

9. Bank of Ghana may request particulars of loans granted by Company

(1) The Company shall furnish, at the request of the Bank of Ghana, particulars of the loans granted to a person in whose activities or enterprise the Company or any of its directors, officers or employees is interested as director, agent, guarantor or principal shareholder.

(2) The Bank of Ghana may, if satisfied that the loan is not in the best interests of the public, in writing prohibit the Company from granting a further loan or permit a grant to be made only subject to the terms and conditions which the Bank of Ghana may impose or the Bank of Ghana may direct in writing to ensure the repayment of the loan so granted within the time and to the extent that the Bank of Ghana may specify in the direction, and the Company shall comply with the prohibition, terms, conditions or direction imposed or given by the Bank of Ghana.

4. N.R.C.D. 96.

5. N.R.C.D. 96.

10. Non-disclosure of information

(1) A director, an officer or any other employee of the Bank of Ghana shall not disclose any information relating to the affairs of the Company or a financial institution which that person acquired in the performance of functions except as required by law or by a Court of competent jurisdiction.

(2) A director, an officer or any other employee of the Company shall not disclose any information relating to the affairs of a borrower with the Company which is acquired in the course of duty except where the disclosure is authorised by the borrower or is in the interest of the Company.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

11. Interpretation

In this Act, unless the context otherwise requires,

“**Company**” means the Home Finance Company Limited;

“**Minister**” means the Minister responsible for Finance;

“**mortgage**” means a mortgage agreement entered into between the Home Finance Company Limited by itself or with any other party and the mortgagor;

“**mortgagee**” means the Home Finance Company Limited and the relevant financial institution;

“**mortgagor**” or “**borrower**” means a person who has taken a loan under the Scheme;

“**Scheme**” means the home finance scheme established by section 1.

SCHEDULE

[Section 3]

Financial Institutions

1. Barclays Bank of Ghana Limited.
 2. Ghana Commercial Bank (Ghana) Limited.
 3. Standard Chartered Bank (Ghana) Limited.
 4. Social Security Bank Limited.
 5. State Insurance Corporation.
 6. National Savings and Credit Bank Limited.
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