

S.M.C.D. 23

**NATIONAL MORTGAGE, FINANCING AND GUARANTEE
SCHEME ACT, 1976**

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S.M.C.D.23

**NATIONAL MORTGAGE, FINANCING AND GUARANTEE
SCHEME ACT, 1976¹**

AN ACT to establish a scheme for the provision of the financing of the construction of dwelling houses and to provide for related matters.

The Scheme

1. Establishment of the Scheme

There is hereby established a national mortgage financing and guarantee scheme.

2. Objects of the Scheme

The objects of the Scheme are

- (a) to promote the financing of the construction of dwelling houses by private individuals for their personal occupation including the financing of the making of extensions and renovations to dwelling houses;
- (b) the financing of the construction of dwelling houses by organisations engaged in the business of building dwelling houses for sale or letting out to individuals for their occupation;
- (c) the provision by the Bank of an indemnity in respect of losses incurred by financial institutions participating in the Scheme arising out of defaults in payment of loans granted by them under the Scheme;

1. This Act was issued as National Mortgage, Finance and Guarantee Scheme Decree (S.M.C.D. 23) made on the 25th day of March, 1976 and notified in the *Gazette* on 20th April, 1976.

- (d) the establishment by the Bank of secondary mortgage market with a view mainly to providing for the liquidity when required of a financial institution participating in the Scheme.

3. Qualification for a loan

(1) Subject to this Act, an individual is not qualified for a loan under the Scheme unless that individual

- (a) has been engaged for a continuous period not less than three years prior to the application for a loan under the Scheme, in an employment prescribed by the Bank, proof of which shall be provided by that individual to the financial institution from which the loan is sought,
- (b) provides from the resources of that individual a contribution to the cost of financing the housing project in respect of which the loan is sought to an extent not less than five percent of the total cost of the housing project, and
- (c) has kept an account with the financial institution from which the loan is sought for a continuous period of not less than three years unless the financial institution agrees to accept a shorter period.

(2) An organisation is not qualified for a loan under the Scheme unless

- (a) it is an organisation specified in the Second Schedule or prescribed by the Rules made by the Bank by executive instrument under section 36, and
- (b) it provides from its own resources a contribution to the cost of financing the housing project in respect of which it seeks the loan to an extent not less than ten percent of the total cost of the housing project.

4. Administration of the Scheme

The Scheme shall be administered by the Bank, which shall set up a machinery for the effective administration of the Scheme.

5. Administration through specified financial institutions

(1) Subject to section 4, the Bank shall administer the Scheme through the financial institutions specified in the First Schedule.

(2) The Minister acting on the advice of the Bank may, by Legislative Instrument, amend the First Schedule.

Loans

6. Mode of application for a loan

A person or an organisation wishing to apply for a loan under the Scheme shall apply in writing for application forms to a financial institution specified in the First Schedule.

7. Rate of interest

The rate of interest payable on a loan granted under the Scheme shall be two percent above the current savings deposits rate of interest per annum on the reducing balance of the loan.

8. Terms for the grant of a loan

(1) The amount of a loan granted shall not exceed ninety-five percent of the total estimated cost of the housing project or ninety percent in the case of loans obtained by an organisation referred to in section 3 (2).

(2) The applicant shall enter into a loan agreement with the financial institution.

(3) The applicant shall, in addition to any other terms which the financial institution considers prudent, undertake in the agreement referred to in subsection (2),

- (a) to keep in good repair the property used as security for the loans;
- (b) to take out in respect of the loan or property, which has been acquired with the proceeds of the loan or both, an insurance policy or policies with an insurer and on the terms and conditions approved by the Bank; and
- (c) to repay the loan in accordance with the loan agreement.

9. Security for a loan

Where a loan is granted under the Scheme,

- (a) the property in respect of which the loan is granted shall be mortgaged as security to the financial institution, and
- (b) the title deeds and mortgage deeds relating to the property, duly stamped and registered shall be deposited with the financial institution.

10. Form of mortgage agreement

A mortgage agreement under this Act shall be in the form prescribed by the Bank acting in consultation with the Attorney-General.

11. Disbursement of loan

(1) Where the loan granted is intended for the acquisition of an existing dwelling house, the purchase price shall be paid by the financial institution direct to the vendor on the basis of a certificate issued by a valuer approved by the financial institution.

(2) Where a loan granted is intended for the construction of a new dwelling house by a contractor, the property shall be constructed by a contractor approved by the financial institution.

(3) The financial institution shall release to the borrower's contractor direct not more than twenty percent of the amount of the loan after the borrower has committed to the cost of physical development on the site the minimum contribution required from the borrower under section 3.

(4) The borrower shall submit subsequent requests for funds to the financial institution which shall vet the requests on the basis of a certificate issued by a valuer approved by the financial institution on the work done before releasing funds for the housing project, and the sums of money approved under this subsection shall be paid direct to the borrower's contractor.

Payment of Loans

12. Payment of the loan

(1) In the case of a loan which is granted for the purchase of an existing house, repayment of principal and payment of interest shall, unless otherwise agreed between the borrower and the financial institution, commence one month after the date of the drawing on the loan amount.

(2) In the case of a loan which is granted for the purpose of constructing a new dwelling house, repayment of principal and payment of interest shall, unless otherwise agreed between the borrower and the financial institution, commence nine months after the date of the first drawing on the loan or two months after completion of the construction of the dwelling house whichever is easier.

(3) Despite anything in subsection (2), interest shall, in a case to which that subsection applies, accrue on the part of the loan released for the purpose of constructing the house from the day of the release, and the interest shall be paid at the time, in the instalments and in the manner agreed between the financial institution and the borrower.

13. Mode of payment

The loan and interest on the loan shall be paid by the borrower to the financial institution by monthly instalments or in accordance with any other arrangement agreed between them.

14. Period of repayment

The period of repayment of a loan and payment of interest on the loan shall not be less than ten years nor more than twenty-five years in the case of a particular class of loan except where the Bank otherwise directs.

15. Special terms for organisations

(1) Subject to this Act, where an organisation which is engaged in the construction of dwelling houses for sale, obtains a loan for that purpose, the Bank may provide for special terms and conditions as it considers fit in an agreement or a mortgage relating to the loan.

(2) The Bank may in particular, and without prejudice to the generality of subsection (1), provide for the inclusion of a term in an agreement or a mortgage referred to in that subsection to the effect that despite section 12 of the Mortgages Act, 1972² a transfer by sale of a dwelling house under the Scheme shall relieve the organisation effecting the transfer of its personal liability on a covenant in the mortgage and for the transfer of the liability to the transferee, and the condition shall have effect accordingly.

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

(3) Subsection (2) and (3) of section 12 of the Mortgages Act, 1972³ shall be deemed to be modified to the extent necessary to give full effect to a condition imposed by virtue of subsection (2) of this section.

16. Indemnity against non-payment

The Bank shall provide an indemnity of ninety-five percent of a loss incurred by a financial institution as a result of the default of a mortgagor in the payment of the principal of the loan and the interest.

17. Commission in respect of indemnity

In respect of the indemnity afforded to a financial institution by the Bank under section 16, the financial institution shall pay to the Bank monthly, a commission at the rate of one-half of one percent per annum on the balance of the loan for the time being outstanding which amount is, for the purposes of this Act, part of the interest payable by the borrower under section 7.

18. Non-application of Insurance Act

The Insurance Act, 1989⁴ shall not apply to an indemnity granted by the Bank under section 16 of this Act.

Default in Payment

19. Default in payment

(1) Where the mortgagor fails to make an instalment payment fourteen days after the due date for the payment, the financial institution shall draw the attention of the mortgagor in writing to this fact and demand urgent steps to be taken to remedy the default by the mortgagor.

(2) If a payment is not made and the immediately following month's instalment also falls into arrears, the financial institution shall send to the mortgagor a demand note in the prescribed form for the immediate payment of the total amount which has fallen into arrears.

(3) A copy of the demand note shall be forwarded to the Bank.

(4) The demand note

(a) shall be delivered by hand and a receipt acknowledged in writing by the mortgagor, or

(b) shall be sent by registered mail to the address provided by the mortgagor,

and where the latter method is used in the demand note shall be deemed to have been received by the mortgagor at the time at which it would have been delivered in the ordinary course of post.

(5) If a settlement of the arrears is not made after the date of issue of the demand note and the mortgagor does not make a satisfactory arrangement with the financial institution for the settlement of the amount outstanding, the mortgagor shall be regarded to be in default as soon as the fourth succeeding month's instalment falls into arrears.

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

4. P.N.D.C.L. 227.

20. Information to the Bank in case of default

Where the mortgagor is in default under subsection (5) of section 19 in respect of which default an indemnity is afforded by the Bank, the financial institution shall forward a claim in writing for the amount in default to the Bank.

21. Transfer of the mortgage to the Bank

Where the Bank has paid to the financial institution ninety-five percent of the outstanding balance on the loan, the financial institution shall transfer the mortgager in respect of the loan and the documents relating to the loan to the Bank.

22. Appointment of receiver on default

(1) On the 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) may take possession of the mortgaged property and collect by demand, action in the name of the mortgagor or mortgagee or otherwise, the income including arrears accruing from the mortgaged property, give valid receipts for the income collected and 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 that property.

(3) A receiver appointed under this section becomes the agent of the mortgagor and the mortgagor is solely responsible for the receiver's acts or default unless the mortgagee otherwise directs.

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

(5) The mortgagee may in writing remove the receiver and appoint a new one.

(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 appointed under this section is entitled to retain out of money received by the receiver for the remuneration of the receiver, and in satisfaction of the costs, charges and expenses incurred by the receiver as receiver a commission at a rate not exceeding five percent on the gross amount of the money received, as is specified in the appointment of the receiver, and where a rate is not so specified then at the rate of two and a half percent of that gross amount of any other rate that the Court may think fit to allow on an application made by the receiver for that purpose.

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

(9) A receiver appointed under this section shall apply the money received

- (a) in discharge of the rents, taxes, rates and any other required outgoings affecting the mortgaged property;

- (b) in payment of the annual sums of money and any other payments, interest on the principal sums, due and having priority to the mortgage in right of which the receiver is a receiver;
- (c) in payment of the commission and of premiums payable in accordance with the mortgage and the cost of effecting necessary repairs;
- (d) in payment of the interest due 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 of 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 appointment as receiver was made or who is otherwise entitled to the mortgaged property.

(10) A person who obstructs a receiver duly appointed under this section in the performance of functions commits an offence and is liable on summary 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 one penalty unit for each day during which the offence continues.

(11) Section 16 of the Mortgages Act, 1972⁵ does not apply to a mortgage to which this Act applies.

23. Mortgagee's right to possession

(1) In the exercise of the right of possession under section 17 of the Mortgages Act, 1972⁶, the mortgagee under a mortgage to which this Act applies is not obliged to take a court proceedings; and where that mortgagee is unable to enter and take possession peaceably, the mortgagee may use reasonable force that is necessary including, but without prejudice to the generality of this subsection, the use of the services of the police for the eviction of the mortgagor or any other person.

(2) A person who

- (a) fails without reasonable excuse, the proof of which lies on that person, to vacate the premises which is subject to a mortgage to which this Act applies on being duly requested so to do under subsection (1) of section 17 of the Mortgages Act, 1972⁷ and of this section, or
- (b) obstructs a mortgagee in the exercise of a power conferred on the mortgagee by this section,

commits an offence and is liable on summary 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 one penalty unit in respect of each day during which the offence continues.

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

6. N.R.C.D. 96.

7. N.R.C.D. 96.

24. Sale of mortgaged property on default

(1) On the failure of performance of an act secured by the mortgage the mortgagee under a mortgage to which this Act applies may sell or cause the mortgaged property to be sold.

(2) A sale of a mortgaged property under subsection (1) may be conducted by public auction or private contract and is otherwise subject to the conditions determined by the Bank.

(3) 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.

(4) The Bank may prescribe in respect of the failure to perform all or any class of acts what period is considered reasonable for the purpose of subsection (3) but in the case of a default in the payment of principal or interest or both the notice shall be not less than sixty days.

(5) Where a mortgagee has in the exercise of the power of sale under this section sold or caused the mortgaged property to be sold to another person the title of the purchaser shall not be 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 shall be personally liable for a loss caused by that sale being carried out in any or all of the circumstances described in the subsection.

(6) Neither the mortgagor nor an encumbrancer is precluded from purchasing the mortgaged property at a sale under this section.

(7) A mortgagee at whose instance the sale was 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 Court.

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

(9) The purchaser of the mortgaged property under this section takes the title to the property free of the interests to which the mortgage of the mortgagee who caused the sale has priority and free of that mortgage, but subject to the interests which have priority to that mortgage, 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 mortgage of the mortgagee who caused the sale.

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

(11) Proceeds from a sale under this section shall be distributed

- (a) first, in payment of the expenses properly incurred as 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 mortgage;
- (c) thirdly, in payment in the order of priority of the encumbrances subsequent to that of the mortgagee who caused the sale,

and the residue to the mortgagor or the successors in interest of the mortgagor.

(12) A mortgagee on whom a right of sale is conferred by this section is, for the purposes of this Act, not a trustee of the mortgagor in respect of that right.

25. Court proceedings for possession or sale

Despite anything in this Act, where at least seventy-five percent of the total loan amount has been paid or tendered by or on behalf of the borrower, the financial institution shall not enforce a right to recover possession of the premises or its right of sale otherwise than by a court action.

26. Secondary mortgage market

(1) The Bank shall, for the purposes of the Scheme, establish and operate under section 13 of the Mortgages Act, 1972⁸ a secondary mortgage market at which a mortgage to which the Scheme applies may be sold, purchased, transferred or accepted.

(2) A transfer of a mortgage to which the Scheme applies may be made only between the Bank and a financial institution or between a financial institution and any other institution.

(3) Where in order to enhance the liquidity of a financial institution that institution requests the Bank to purchase a mortgage held by it the Bank shall comply with the request.

(4) A financial institution shall not under this section sell or transfer more than fifty percent of the total value of the mortgages held by it at a particular time and in respect of which an indemnity is afforded by the Bank under section 16 of this Act.

(5) The price payable for a mortgage sold or transferred by a financial institution under this section, or taken over by the Bank at the request of the financial institution under subsection (3) of this section shall be the outstanding balance of the loan and interest at the time of the sale or transfer.

27. Obligations of financial institution after transfer to Bank

(1) In the case of a transfer of a mortgage by a financial institution to the Bank, the financial institution making the transfer shall for a fee of one half of one percent per annum on the reducing balance of the loan,

- (a) collect the monthly instalments due from the mortgagor and pay the instalments to the Bank;
- (b) continue to operate an escrow account in respect of the mortgagor as referred to in section 28 for the benefit of the Bank;

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- (c) report promptly to the Bank a default by the mortgagor on repayment of the monthly instalments;
- (d) furnish to the Bank any other information and returns that the Bank may reasonably request.

(2) The fee of one half on one percent shall be realised by the financial institution by deducting the amounts from the monthly interest payment received from the mortgagor before remitting the amount to the Bank.

Miscellaneous

28. Escrow account

A financial institution which has granted a loan under this Act, a part of which or interest on which remains unpaid shall, unless the Bank otherwise directs, maintain in respect of the borrower an escrow account separate from the account through which the loan and interest on the loan is paid, through which the payments shall be made by the borrower to the financial institution of moneys advanced by the financial institution to or on behalf of the borrower towards meeting expenses in respect of insurance premiums, rates, repairs and any other reasonable charges relating to the mortgaged property.

29. Rates

Where a mortgagor under a mortgage to which this Act applies fails to pay the property rates due in respect of the mortgaged property, the mortgagee may pay the rates and moneys paid

- (a) shall be secured with the same priority as the mortgage, and
- (b) shall be added to the principal sum with interest at the same rate as on the principal sum of money.

30. Section 15 of Mortgage Act, 1972 modified

Subject to this Act, on the failure of performance of an act secured by a mortgage to which this Act applies the mortgagee may exercise all or any of the rights referred to in section 15 of the Mortgages Act, 1972⁹ or conferred by this Act; and accordingly the words "and in no other way notwithstanding any provision to the contrary in the mortgage" appearing in paragraph (b) of that section shall not apply to a mortgage to which this Act applies.

31. Section 21 of Mortgage Act, 1972 disappplied

Section 21 of the Mortgages Act, 1972¹⁰ shall not apply to a mortgage to which this Act applies.

9. N.R.C.D. 96.

10. N.R.C.D. 96.

32. Mortgagor's right to transfer restricted

A mortgagor under a mortgage to which this Act applies shall not transfer an interest in the mortgaged property under section 12 of the Mortgages Act, 1972¹¹ without the consent in writing of the mortgagee.

33. Penalty for using loan for unauthorised purpose

(1) A person who, being a person to whom a loan is granted under this Act, uses the whole or part of the proceeds of the loan for a purpose other than the purpose for which the loan is granted, commits an offence and is liable on summary conviction, to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding twelve months or to both the fine and the imprisonment.

(2) Subsection (1) is without prejudice to the liability to repay the loan and to pay the interest on the loan.

34. Offences by bodies of persons

(1) Where an offence under this Act or under the Rules is committed by a body of persons,

- (a) in the case of a body corporate, every director and officer of the body corporate shall be deemed to have committed that offence, and
- (b) in the case of a partnership, every partner or officer of the body shall be deemed to have committed that offence.

(2) A person shall not be convicted of an offence under subsection (1) if it is proved that the offence was committed without the knowledge of that person or that due diligence was exercised to prevent the commission of the offence having regard to the circumstances.

35. Rules

The Bank may, by executive instrument, make Rules as appear to it necessary for the efficient implementation of and otherwise for giving full effect to this Act.

36. Application of Mortgages Act

Except as otherwise provided in this Act, the Mortgages Act, 1972¹² shall apply to a mortgage under this Act.

37. Interpretation

In this Act, unless the context otherwise requires,

“amount in default” means an amount in respect of a loan granted under this Act remaining unpaid as a result of the mortgagor's failure to make the necessary payments required by the terms of the mortgage including overdue interest and other charges recoverable in accordance with normal banking practice, but the total amount

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in default for the purpose of computation of the claim shall not exceed the total amount of the loan in respect of which indemnity has been furnished by the bank,

“**Bank**” means the Bank of Ghana;

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

“**court**” means a court of competent jurisdiction;

“**demand note**” means a notice to the mortgagor demanding the arrears due;

“**escrow account**” means the account described in section 28;

“**financial institution**” means an institution specified in the First Schedule;

“**housing project**” means a project in respect of which a loan is to be or has been granted under this Act;

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

“**prescribed**” means prescribed by the Bank;

“**Rules**” means the Rules made under this Act;

“**Scheme**” means the national mortgage financing and guarantee scheme established by section 1;

“**valuer**” includes a quantity surveyor.

SCHEDULES

FIRST SCHEDULE

[Section 5 (1)]

Financial Institutions

1. Ghana Commercial Bank.
2. Barclays Bank of Ghana Limited.
3. Standard Bank Ghana Limited.
4. Bank for Housing and Construction.
5. National Saving and Credit Bank.
6. National Investment Bank.
7. Agricultural Development Bank.
8. Merchant Bank (Ghana) Limited.
9. First Ghana Building Society.

SECOND SCHEDULE

[Section 3 (2)]

Construction Organisations

1. State Housing Corporation.
 2. Tema Development Corporation.
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