



Queensland

# **Property Law (Mortgagor Protection) Amendment Act 2008**

**Act No. 68 of 2008**









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**An Act to amend the Property Law Act 1974 for a particular purpose  
[Assented to 4 December 2008]**

## **The Parliament of Queensland enacts—**

### **1 Short title**

This Act may be cited as the *Property Law (Mortgagor Protection) Amendment Act 2008*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **3 Act amended**

This Act amends the *Property Law Act 1974*.

### **4 Amendment of s 85 (Duty of mortgagee as to sale price)**

(1) Section 85, heading, after ‘mortgagee’—

*insert—*

**‘or receiver’.**

(2) Section 85(1), ‘a mortgagee, in the exercise after the commencement of this Act’—

*omit, insert—*

‘a mortgagee, including as attorney for the mortgagor, or a receiver acting under a power delegated to the receiver by a mortgagee, in the exercise’.

(3) Section 85—

*insert—*

‘(1A) Also, if the mortgage is a prescribed mortgage, the duty imposed by subsection (1) includes that a mortgagee or receiver must, unless the mortgagee or receiver has a reasonable excuse—

(a) adequately advertise the sale; and

(b) obtain reliable evidence of the property’s value; and

- (c) maintain the property, including by undertaking any reasonable repairs; and
- (d) sell the property by auction, unless it is appropriate to sell it in another way; and
- (e) do anything else prescribed under a regulation.

Maximum penalty—

- (a) if the contravention of duty relates only to paragraph (e)—20 penalty units; or
- (b) otherwise—200 penalty units.’.

- (4) Section 85(3), after ‘mortgagee’, first mention—

*insert—*

‘or receiver’.

- (5) Section 85(4), ‘shall be guilty of’—

*omit, insert—*

‘commits’.

- (6) Section 85(5), after ‘mortgagee’—

*insert—*

‘or receiver’.

- (7) Section 85(7)—

*renumber* as section 85(9).

- (8) Section 85—

*insert—*

‘(7) Nothing in sections 83(1)(a), 89(3) and 92(2) affects the duty imposed by this section.

‘(8) Nothing in this section affects the operation of a law of the Commonwealth, including, for example, the Corporations Act, section 420A.

- ‘(10) In this section—

***prescribed mortgage*** means a mortgage of a kind prescribed under a regulation.’.

[s 5]

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**5 Amendment of s 89 (Provisions as to exercise of power of sale)**

Section 89(3), ‘Subject to section 85, the’ and footnote—  
*omit, insert—*  
‘The’.

**6 Insertion of new pt 21**

After part 20—  
*insert—*

**‘Part 21 Transitional provision for  
Property Law (Mortgagor  
Protection) Amendment Act  
2008**

**‘352 Mortgagor protection**

- ‘(1) Section 85, as amended by the amending Act, applies to mortgages whether made before or after the commencement of this section.
- ‘(2) However, section 85(1A) does not apply to a mortgagee or receiver if, immediately before the commencement, the mortgagee—
- (a) was entitled to immediately exercise the power of sale conferred by this Act or otherwise; and
  - (b) was not prevented from doing so by section 84(1).
- ‘(3) In this section—

*amending Act* means the *Property Law (Mortgagor Protection) Amendment Act 2008*.’.