



Queensland

# Property Law (Mortgagor Protection) Amendment Bill 2008







**2008**

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**A Bill**

for

**An Act to amend the *Property Law Act 1974* for a particular purpose**

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**The Parliament of Queensland enacts—** 1

<b>Clause 1</b>	<b>Short title</b>	2
	This Act may be cited as the <i>Property Law (Mortgagor Protection) Amendment Act 2008</i> .	3 4
<b>Clause 2</b>	<b>Commencement</b>	5
	This Act commences on a day to be fixed by proclamation.	6
<b>Clause 3</b>	<b>Act amended</b>	7
	This Act amends the <i>Property Law Act 1974</i> .	8
<b>Clause 4</b>	<b>Amendment of s 85 (Duty of mortgagee as to sale price)</b>	9
	(1) Section 85, heading, after ‘mortgagee’—	10
	<i>insert—</i>	11
	‘ <b>or receiver</b> ’.	12
	(2) Section 85(1), ‘a mortgagee, in the exercise after the commencement of this Act’—	13 14
	<i>omit, insert—</i>	15
	‘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’.	16 17 18
	(3) Section 85—	19
	<i>insert—</i>	20
	‘(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—	21 22 23 24
	(a) adequately advertise the sale; and	25
	(b) obtain reliable evidence of the property’s value; and	26

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|-------|---|----------------|
| (c)   | maintain the property, including by undertaking any reasonable repairs; and   | 1<br>2         |
| (d)   | sell the property by auction, unless it is appropriate to sell it in another way; and   | 3<br>4         |
| (e)   | do anything else prescribed under a regulation.   | 5              |
|       | Maximum penalty—  | 6              |
| (a)   | if the contravention of duty relates only to paragraph (e)—20 penalty units; or   | 7<br>8         |
| (b)   | otherwise—200 penalty units.’.  | 9              |
| (4)   | Section 85(3), after ‘mortgagee’, first mention—  | 10             |
|       | <i>insert—</i>  | 11             |
|       | ‘or receiver’.  | 12             |
| (5)   | Section 85(4), ‘shall be guilty of’—  | 13             |
|       | <i>omit, insert—</i>  | 14             |
|       | ‘commits’.  | 15             |
| (6)   | Section 85(5), after ‘mortgagee’—   | 16             |
|       | <i>insert—</i>  | 17             |
|       | ‘or receiver’.  | 18             |
| (7)   | Section 85(7)—  | 19             |
|       | <i>renumber</i> as section 85(9).   | 20             |
| (8)   | Section 85—   | 21             |
|       | <i>insert—</i>  | 22             |
| ‘(7)  | Nothing in sections 83(1)(a), 89(3) and 92(2) affects the duty imposed by this section.   | 23<br>24       |
| ‘(8)  | Nothing in this section affects the operation of a law of the Commonwealth, including, for example, the Corporations Act, section 420A. | 25<br>26<br>27 |
| ‘(10) | In this section—  | 28             |
|       | <i>prescribed mortgage</i> means a mortgage of a kind prescribed under a regulation.’.  | 29<br>30       |
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[s 5]

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<b>Clause 5</b>	<b>Amendment of s 89 (Provisions as to exercise of power of sale)</b>	1 2
	Section 89(3), ‘Subject to section 85, the’ and footnote—	3
	<i>omit, insert—</i>	4
	‘The’.	5
<b>Clause 6</b>	<b>Insertion of new pt 21</b>	6
	After part 20—	7
	<i>insert—</i>	8
<b>‘Part 21</b>	<b>Transitional provision for Property Law (Mortgagor Protection) Amendment Act 2008</b>	9 10 11 12
<b>‘352</b>	<b>Mortgagor protection</b>	13
‘(1)	Section 85, as amended by the amending Act, applies to mortgages whether made before or after the commencement of this section.	14 15 16
‘(2)	However, section 85(1A) does not apply to a mortgagee or receiver if, immediately before the commencement, the mortgagee—	17 18 19
	(a) was entitled to immediately exercise the power of sale conferred by this Act or otherwise; and	20 21
	(b) was not prevented from doing so by section 84(1).	22
‘(3)	In this section—	23
	<i>amending Act</i> means the <i>Property Law (Mortgagor Protection) Amendment Act 2008</i> .’.	24 25