

Queensland



STAMP AMENDMENT BILL 1996

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1996

A BILL

FOR

An Act to amend the Stamp Act 1894

The Parliament of Queensland enacts—

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Short title

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Clause **1.** This Act may be cited as the *Stamp Amendment Act 1996*.

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Commencement

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Clause **2.** This Act commences on a day to be fixed by proclamation.

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Act amended

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Clause **3.** This Act amends the *Stamp Act 1894*.

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Insertion of new ss 69C-69M

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Clause **4.** After section 69B—

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insert—

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‘Purpose and application of exempting provisions

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‘**69C.(1)** The purpose of the exempting provisions is to reduce the duty payable by a person who borrows money to—

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(a) buy or build the person’s principal home; or

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(b) refinance an existing loan over the person’s principal home and gives the person’s principal home as security when refinancing.

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‘**(2)** The exempting provisions apply whether or not it is the person’s first home.

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‘Definitions for exempting provisions

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‘**69D.** In sections 69C to 69M and in schedule 1, under the heading ‘Mortgage, bond, debenture, and covenant’, exemptions 4 and 4A—

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“**exempting provisions**” means sections 69C to 69M and schedule 1, under the heading ‘Mortgage, bond, debenture, and covenant’,

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exemptions 4 and 4A.	1
“exemption” means exemption 4 or 4A mentioned in schedule 1, under the heading ‘Mortgage, bond, debenture, and covenant’.	2 3
“first borrower” , for a home, means a home borrower for whom the home is, or is to be, a first home.	4 5
“first home” see section 69E.	6
“home” means a place of residence under section 55A(1). ¹	7
“home borrower” see section 69F.	8
“home mortgage” means an instrument, or a number of instruments, a borrower gives to secure an advance of money for the borrower to buy or build the borrower’s principal home.	9 10 11
“home refinance borrower” see section 69G.	12
“home refinance mortgage” see section 69H.	13
“previous mortgage” , for a home refinance mortgage, see section 69H.	14
“principal home” , of a person, means the person’s principal place of residence.	15 16
‘Meaning of “first home”	17
‘69E. A home is a person’s “first home” if—	18
(a) the home is, or is to be, the person’s principal home; and	19
(b) the home is being bought or built by the person; and	20
(c) the person does not hold, and has not previously held, an interest in another home in Queensland or elsewhere.	21 22
‘Meaning of “home borrower”	23
‘69F.(1) A person is a “home borrower” for a home if—	24
(a) the person is the borrower under a home mortgage for the home;	25

¹ Section 55A (Duty relating to principal place of residence and first principal place of residence)

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and	1
(b) the person is to occupy the home, and remain in continuous occupation of it, as the person's principal home for a period of at least 6 months starting—	2 3 4
(i) if the home is being bought—within 6 months of the delivery of the possession of the home to the person; or	5 6
(ii) if the home is being built—within 1 year of the earliest signing by the person of any instrument constituting or forming part of the home mortgage.	7 8 9
‘(2) A home borrower can be a first borrower.	10
‘Meaning of “home refinance borrower”	11
‘69G. A person is a “home refinance borrower” for a home if the person is the borrower under a home refinance mortgage for the home and the home has been the person's principal home—	12 13 14
(a) if the home has been owned by the person for more than 6 months before the date of the earliest of any instrument constituting or forming part of the mortgage—for the 6 months before the date of the instrument; or	15 16 17 18
(b) in any other case—since the person owned the home.	19
‘Meaning of “home refinance mortgage” and “previous mortgage”	20
‘69H. A “home refinance mortgage” is an instrument securing, or a number of instruments of which at least 1 secures, a borrower's principal home when all or part of the amount advanced under the instrument or instruments is, or is to be, used to repay the balance owing under a mortgage given by the borrower that secures, or previously secured, the borrower's principal home (the “previous mortgage”).	21 22 23 24 25 26
‘Limited exemptions for certain owners	27
‘69I.(1) This section applies if a home mortgage or home refinance mortgage is given by more than 1 owner of the home but the home is not—	28 29

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(a) the first home for all the owners; or	1
(b) the principal home for all the owners.	2
‘(2) For a home mortgage if all the owners are not first borrowers, the amount of the exemption is to be calculated by allowing for each owner who is a first borrower an amount that bears to the following appropriate amount the same proportion as the value of the first borrower’s interest in the home bears to the home’s value—	3 4 5 6 7
(a) if the amount of the mortgage is less than \$100 000—the amount of the mortgage;	8 9
(b) in any other case—\$100 000.	10
‘(3) For a home mortgage if all the owners are not home borrowers, the amount of the exemption is to be calculated by allowing for each owner who is a home borrower, but not a first borrower, an amount that bears to the following appropriate amount the same proportion as the value of the home borrower’s interest in the home bears to the home’s value—	11 12 13 14 15
(a) if the amount of the mortgage is less than \$70 000—the amount of the mortgage;	16 17
(b) in any other case—\$70 000.	18
‘(4) For a home refinance mortgage if all the owners are not home refinance borrowers, the amount of the exemption is to be calculated by allowing for each owner who is a home refinance borrower an amount that bears to the following appropriate amount the same proportion as the value of the home refinance borrower’s interest in the home bears to the home’s value—	19 20 21 22 23 24
(a) if the balance owing under the previous mortgage is less than \$100 000—the balance;	25 26
(b) in any other case—\$100 000.	27
‘(5) For this section, if a person’s interest in a home is a joint tenancy, the person is taken to have an equal interest with the other joint tenant or tenants.	28 29 30
‘Failure to meet exemption criteria	31
‘69J.(1) This section applies to a person who received the benefit of	32

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exemption 4 for an instrument for a principal home, but who did not occupy, or remain in continuous occupation of, the home as the person's principal home for a period of at least 6 months starting—

- (a) if the home was bought—within 6 months of the delivery of the possession of the home to the person; or
- (b) if the home was built—within 1 year of the earliest signing by the person of any instrument constituting or forming part of the home mortgage.

‘(2) Within 28 days after this section applies to a person, the person must give written notice to the commissioner that the person did not occupy, or remain in continuous occupation of, the home as mentioned in subsection (1).

Maximum penalty—10 penalty units.

‘(3) Instead of prosecuting the person for an offence against subsection (2), the commissioner may demand and receive, by way of penalty, an amount equal to the additional duty reassessed for the instrument under subsection (5).

‘(4) However, the commissioner may reduce or waive the penalty the commissioner has demanded or could demand, if the commissioner considers it is equitable to do so.

‘(5) The instrument is chargeable with the duty that would have been charged if the instrument had been assessed in the first instance without the person receiving the benefit of exemption 4 for the instrument.

‘(6) For subsection (5), section 80² applies as if the amount of duty assessed in the first instance had been assessed at an insufficient amount.

‘Duty chargeable on certain exempt home mortgages

‘69K.(1) This section applies if a home mortgage has been exempted under exemption 4 and the mortgage is used to secure another loan or an additional advance.

² Section 80 (Amendment of assessments)

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‘(2) Duty is chargeable³ on the mortgage for the amount of the other loan or additional advance except to the extent—

- (a) the mortgage is exempted again under exemption 4 for the other loan or additional advance; and
- (b) the amount on which duty has previously been paid under the mortgage is more than the amount owing under it immediately before the other loan or additional advance is obtained.

‘Duty chargeable on certain home refinance mortgages

‘69L.(1) If a home refinance mortgage is exempt under exemption 4A and, when the mortgage is entered into, the amount, or the total of the amounts, secured under the mortgage (the **“total secured amount”**) is more than the balance owing under the previous mortgage, duty is chargeable on the home refinance mortgage for the amount calculated by using the formula—

$$A - B$$

where—

“A” means—

- (a) the amount by which the total secured amount is more than the balance owing for the previous mortgage; or
- (b) if the balance owing is more than \$100 000—the amount by which the total secured amount is more than \$100 000.

“B” means—

- (a) if there is a positive amount by which the amount on which duty has been paid under the previous mortgage is more than the balance owing for the previous mortgage—the amount; or
- (b) in any other case—zero.

‘(2) If a home refinance mortgage is exempt under exemption 4A and the mortgage is used to secure an amount (the **“further amount”**) as another loan or an additional advance, duty is chargeable on the mortgage

³ For the rate of the duty, see schedule 1, under the heading ‘Mortgage, bond, debenture, and covenant’.

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for the further amount less the amount calculated by using the formula—

$$C - D$$

where—

“C” means the total of the amounts on which duty has been paid on the home refinance mortgage and the previous mortgage.

“D” means the total of the amounts secured by the home refinance mortgage immediately before the further amount is secured by the mortgage.

‘(3) Subsection (2) applies to a home refinance mortgage only if subsection (1) does not apply, or has previously applied, to the mortgage.

‘(4) If the amount calculated under subsection (1) or (2) for an instrument is negative, duty is not chargeable on the instrument.

‘(5) For subsection (1), a mortgage made up of more than 1 instrument is entered into when any of the instruments is entered into.

‘(6) In subsection (1)—

“balance owing”, for a previous mortgage, means the amount owing under the mortgage immediately before the home refinance mortgage secures the total secured amount.

‘More than 1 instrument for home mortgage or home refinance mortgage

‘69M. If a home mortgage or home refinance mortgage is made up of more than 1 instrument, the commissioner may apply the exemption among the instruments in an equitable way.’.

Amendment of sch 1 (Stamp duties on instruments)

Clause 5. Schedule 1, under the heading ‘Mortgage, bond, debenture, and covenant’, exemption 4—

omit, insert—

‘4.(1) To the extent a home mortgage secures an advance used, or to be used, to buy or build a home borrower’s principal home, the mortgage is exempt up to an amount of—

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(a) if the home is a first home—\$100 000; or

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(b) in any other case—\$70 000.

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‘(2) If the property secured includes property (the “**other property**”) other than the home borrower’s principal home, the amount of the exemption is reduced by an amount that bears to the amount of the exemption the same proportion as the value of the other property bears to the value of all the property.

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‘4A. To the extent a home refinance mortgage secures an advance used, or to be used, to repay the balance owing under the previous mortgage, the home refinance mortgage is exempt up to an amount of—

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(a) if the balance owing under the previous mortgage is less than \$100 000—the balance; or

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(b) in any other case—\$100 000.’.

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