



formal releases or reconveyances to all of the lending institutions. Under this Section a Statutory Receipt can now be endorsed on or annexed to the back of an original Mortgage and it is unnecessary to have either a Deed of Release and Memorial in the case of unregistered land or a Discharge in the case of registered land executed under the seal of the lending institution.

A Receipt under this Section shall operate to vacate the mortgage and shall without any reconveyance or surrender vest the Estate of and in the property comprised in the mortgage in the person for the time being entitled to the equity of redemption.

The Receipt shall be sufficient for the purposes of registration both in the Registry of Deeds and in the Land Registry.

Section 18 will only apply however, where all monies secured by a mortgage or charge have been fully repaid irrespective of whether the mortgage or charge is for all sums due or for a limited amount. Unless the mortgagor or chargor repays everything that is owed to the Bank by him on every account, it is not appropriate for the Bank to execute a form of receipt under Section 18 for two reasons:

- (a) the fact that all monies have not been repaid and may interfere with the statutory operation of Section 18 and,
- (b) execution of such a receipt might prejudice the Bank in recovering the balance of what is owing.

To ensure that all monies secured by a mortgage/charge will be included in the redemption figures provided by a lending institution, a Solicitor's letter requesting redemption figures from a lending institution should include the following:

- (1) A request for up-to-date redemption figures, indicating the amount necessary to redeem the loan in question and all other monies secured quoting the loan account number.
- (2) A request for confirmation that the lending institution does not hold any other mortgage or other security on the property in question.
- (3) A request for confirmation that on payment of the sum indicated by the lending institution as the amount necessary to redeem the loan and all other monies secured the lending institution will release the property from all encumbrances and execute an appropriate Deed of Discharge/Vacate/Receipt as appropriate.

Unless a solicitor receives confirmation of the above points in writing from the lending institution concerned, then he is not properly in a position to give an Undertaking to provide a release of a mortgage. Some lending institutions may have more than one charge on the property. A request for redemption figures quoting one loan account number only may

## **S. 18 HOUSING ACT, 1988**

### **RELEASE OF MORTGAGES**

## CHAPTER 11

LOANS, MORTGAGES  
AND CHARGES

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### S. 18 HOUSING ACT, 1988

#### RELEASE OF MORTGAGES

(Contd.)

result in redemption figures for that account only being furnished. Also, as with some Bank mortgages, the Deed of mortgage may secure not only the monies due in respect of the home loan but also monies outstanding on foot of an overdraft facility/credit card.

It is essential to obtain the correct figures from the lending institution. A simple request for the amount due on the home loan is not enough. A simple request for the amount due to redeem one loan is not adequate, if there is more than one. The lending institution must be made aware that the request is for redemption figures, which if paid, will entitle the borrower to a release of the property from all security held.

It is felt that if solicitors adhere to the above guidelines, the pitfalls experienced by some solicitors in redeeming loans will be avoided.

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**S**olicitors acting for borrowers are frequently presented with forms of debenture or mortgage debenture which are intended to secure their clients' liabilities to the lending

### STANDARD FORM BANK DEBENTURES

bank. The solicitors should advise the client on the nature of the commitment to follow from the client's execution of the debenture.

In many cases these debentures are pre-printed and include provisions which are not appropriate to the particular loan.

In considering whether the debenture is in an appropriate form, the solicitor should have sight of the bank's loan offer to the client. The debenture should not do any more that enable the bank to take security in the form agreed to by the client. In certain forms of debenture the bank in addition to taking a floating charge will also seek to take a fixed charge over future acquired assets. Apart from the consideration of the validity of such specific provisions, particularly relating to future acquired registered land, the facility offered to the client by the bank may not in the first instance have provided for such a charge. The solicitor should protect his client from executing a debenture which reserves to the bank security over and above what was provided for by the bank in the loan offer letter and accepted by the client.

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**W**hen houses are sold vendors normally cancel their home insurance and obtain a refund in respect of the unexpired period of cover. In certain cases insurance cover