

**Reprint  
as at 1 December 2014**



**Securities Act (Contributory  
Mortgage) Regulations 1988**

(SR 1988/143)

Securities Act (Contributory Mortgage) Regulations 1988: revoked, on 1 December 2014, by section 5(d) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Paul Reeves, Governor-General

**Order in Council**

At Wellington this 27th day of June 1988

Present:

His Excellency the Governor-General in Council

Pursuant to section 70(1) of the Securities Act 1978, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and in accordance with a recommendation of the Securities Commission, hereby makes the following regulations.

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**These regulations are administered by the Ministry of Business, Innovation, and Employment.**

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## Regulations

- 1 Title and commencement**
- (1) These regulations may be cited as the Securities Act (Contributory Mortgage) Regulations 1988.
- (2) These regulations shall come into force on 1 January 1989.

- (3) Notwithstanding subclause (2), an application may be made under these regulations by any person for registration as a broker at any time on or after 1 November 1988 as if these regulations had come into force on that date and any person so applying may be registered as a broker under and for the purposes of these regulations with effect on and from the date of the commencement of these regulations.

## **2 Interpretation**

- (1) In these regulations, unless the context otherwise requires,—
- Act** means the Securities Act 1978
- auditor** means a qualified auditor
- broker** means a contributory mortgage broker
- capital value** in relation to land has the same meaning as in the Rating Valuations Act 1998
- company** means a company within the meaning of the Companies Act 1955 or the Companies Act 1993, as the case may be
- contribution** means money paid by any person for the purpose of obtaining, or that is used to obtain, an interest in a contributory mortgage; and includes money owing under a contributory mortgage to a contributory mortgage broker or that broker's nominee company
- contributor** means—
- (a) a person who makes a contribution:
- (b) a person who holds an interest in a contributory mortgage
- contributory mortgage** means a mortgage of land that—
- (a) secures money owing to 2 or more persons or to a nominee on behalf of 2 or more persons, whether or not the mortgage originally secured money owing to only 1 person; or
- (b) has the same priority in respect of the land as another mortgage or mortgages of that land;—
- and, for the purposes of this definition, money owing to not more than 5 persons as joint tenants shall be deemed to be owed to one person

**contributory mortgage broker** means a person (not being a mortgagor under the mortgage or any other person to whom or for whose benefit any money is lent in consideration for the mortgage given by the mortgagor) who—

- (a) offers an interest in a contributory mortgage to the public for subscription; or
- (b) manages interests in a contributory mortgage, being interests that have been offered to the public for subscription, whether or not that person holds beneficially any interest in that mortgage

**finance rate** has the same meaning as in the Credit Contracts Act 1981

**general authority** means an authority given by a contributor to a broker that complies with regulation 6(1)

**government valuation** in relation to any land, means the capital value of the land set forth in a district valuation roll in accordance with the Valuation of Land Act 1951

**improvements** has the same meaning as in the Rating Valuations Act 1998

**interest in a contributory mortgage** means an interest in, or right to receive, the whole or part of any moneys secured by a contributory mortgage

**land value** has the same meaning as in the Rating Valuations Act 1998

**modified land value** means an amount equal to the land value of any land after deduction of the costs of removal or demolition of any buildings or improvements on the land

**nominee mortgage** means a contributory mortgage held in the name of a nominee company as a mortgagee

**principal sum** in relation to a contributory mortgage, means the sum specified in the mortgage as the amount payable by the mortgagor to the mortgagee, other than the following amounts:

- (a) interest and other finance charges;
- (b) payments made by the mortgagee repayment of which under the terms of the contributory mortgage is secured by that mortgage

**registered bank** has the same meaning as in the Reserve Bank of New Zealand Act 1989

**registered valuer** means a person who is a registered valuer within the meaning of the Valuers Act 1948

**special authority** means an authority given by a contributor to a broker that complies with regulation 6(5)

**trust account** means a current account established and maintained in accordance with regulation 17.

- (2) In these regulations a reference to the term **Registrar** shall be construed as a reference to the District Registrar of Companies at Wellington.
- (3) In these regulations contributions of a contributor which are credited to the account of a mortgagor under an existing contributory mortgage for the purpose of repaying, whether directly or indirectly, the contributions of another contributor or money paid by a broker for an interest in a contributory mortgage, as the case may be, shall be deemed to be contributions which are paid to a vendor of an interest in a contributory mortgage.
- (4) Where any term or expression used in these regulations is not defined in these regulations but is defined in the Act, that term or expression shall, unless the context otherwise requires, have, in these regulations, the meaning given to it by the Act.

Regulation 2(1) **capital value**: amended, on 1 July 1998, pursuant to section 53 of the Rating Valuations Act 1998 (1998 No 69).

Regulation 2(1) **Commission**: revoked, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Regulation 2(1) **company**: substituted, on 1 July 1994, by section 3 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Regulation 2(1) **improvements**: amended, on 1 July 1998, pursuant to section 53 of the Rating Valuations Act 1998 (1998 No 69).

Regulation 2(1) **land value**: amended, on 1 July 1998, pursuant to section 53 of the Rating Valuations Act 1998 (1998 No 69).

Regulation 2(1) **registered bank**: amended, on 1 February 1990, pursuant to section 186(1) of the Reserve Bank of New Zealand Act 1989 (1989 No 157).

### 3 **Development mortgage defined**

For the purposes of these regulations **development mortgage** means a contributory mortgage secured by a charge over land that is being, or is intended to be, subdivided or improved, or on which buildings or other improvements are being, or are

intended to be, erected, or altered, or developed, as the case may be, where—

- (a) the mortgagor is required to apply the whole or part of the principal sum secured, or to be secured, by the mortgage, towards the costs of subdividing or improving the land, or erecting, or altering, or developing any buildings or other improvements on the land, as the case may be; and
- (b) the amount of the principal sum secured, or to be secured, by the mortgage, or the aggregate amount of the principal sums secured or intended to be secured by the mortgage and any other mortgages ranking, or intended to rank, prior to or equally therewith, exceeds two-thirds of the modified land value of the land as set forth in a valuation report; and
- (c) the cost of subdividing or improving the land, or erecting or altering, or developing any buildings or other improvements on the land, as the case may be, exceeds 5% of the modified land value of the land as set forth in a valuation report.

#### 4 Nominee company defined

- (1) For the purposes of these regulations, **nominee company** in relation to a broker, means a company,—
  - (a) in the case of a company within the meaning of the Companies Act 1955, that has a memorandum of association in the form set out in Schedule 1 and articles of association in the form set out in Schedule 2; or
  - (b) in the case of a company within the meaning of the Companies Act 1993, that has a constitution that contains provisions that meet the requirements set out in Schedule 2A; and
  - (c) that has a name that has a recognisable connection with the broker and that contains the word “Nominee” or “Nominees”; and
  - (d) all the shares in which are held by or on behalf of the broker.
- (2) The memorandum of association of a broker’s nominee company may, notwithstanding subclause (1)(a), contain other pro-

visions that are in addition to, but not inconsistent with, Schedule 1.

- (3) The articles of association of a broker's nominee company may, notwithstanding subclause (1)(a), contain other provisions that are in addition to, but not inconsistent with, Schedule 2.
- (4) The constitution of a brokers' nominee company may, notwithstanding subclause (1)(b), contain other provisions that are in addition to, but not inconsistent with, Schedule 2A.

Regulation 4: substituted, on 1 July 1994, by section 3 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

## 5 Valuation report defined

- (1) For the purposes of these regulations **valuation report** means a written report relating to land that is, or is to be, charged as security for a contributory mortgage and which—
  - (a) is prepared and signed by an independent registered valuer; and
  - (b) is dated as at a date not earlier than 4 months before the date of the contributory mortgage; and
  - (c) contains the information and other matters specified in Schedule 3.
- (2) For the purposes of subclause (1), a registered valuer is not an independent registered valuer if—
  - (a) that registered valuer and any broker who offers interests in the contributory mortgage to the public for subscription, or any mortgagor under the mortgage, are relatives, one being the spouse, civil union partner, or de facto partner of the other or being the parent, brother, sister or child of the other or of the spouse, civil union partner, or de facto partner of the other; or
  - (b) that registered valuer or any person employed by that registered valuer is, or has been within 1 year of the preparation of the valuation report,—
    - (i) a member or director of the broker or the broker's nominee company or the mortgagor; or
    - (ii) a member or a director of any company which is a holding company or a subsidiary of the broker or the broker's nominee company or the mortgagor

- or which is a partner or joint venturer with the broker or mortgagor; or
- (c) there is any other relationship or interest between the registered valuer and the broker or the broker's nominee company or the mortgagor that is likely to influence the judgment of the registered valuer.

Regulation 5(2)(a): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## **6 Form of general authority and special authority**

- (1) Subject to subclause (2), every general authority shall be—
- (a) in the form set out in Schedule 4; and
  - (b) dated; and
  - (c) properly completed and signed by the contributor.
- (2) A general authority may contain instructions or other provisions that are in addition to, but not inconsistent with, Schedule 4.
- (3) A general authority shall not authorise an investment in a development mortgage.
- (4) A general authority shall not authorise an investment on mortgage for a term of less than 30 days or more than 5 years.
- (5) Subject to subclause (6), every special authority shall be—
- (a) in the form set out in Schedule 5; and
  - (b) dated; and
  - (c) properly completed and signed by the contributor.
- (6) A special authority may contain instructions or other provisions that are in addition to, but not inconsistent with, Schedule 5.

## **7 Saving**

Nothing in these regulations limits the Securities Regulations 1983.

### *Registrar to maintain register of documents*

## **8 Registrar to maintain register of documents**

- (1) The Registrar shall maintain a register of all documents required to be registered under these regulations.

- (2) The register kept under subclause (1) shall be open to inspection by any person on payment of such fees as may be prescribed.
- (3) Any person may, on payment of the prescribed fee, obtain a copy of, or an extract from, any document or any part of a document registered under these regulations.

*Registration of brokers and other requirements  
relating to brokers*

**9 Brokers to be registered**

No person shall act as a broker unless—

- (a) that person is registered as a broker with the Registrar in accordance with these regulations; and
- (b) an auditor has consented to act as that person's auditor in the form contained in Schedule 6; and
- (c) the auditor referred to in paragraph (b) acts as the auditor for that person; and
- (d) a nominee company carries on business, or has been formed to carry on business, for that person as the nominee company of that person; and
- (e) a trust account is established and maintained in the name of that person's nominee company.

**10 Application for registration as a broker**

Every application for registration as a broker shall—

- (a) be dated; and
- (b) be signed by the applicant, or where the applicant is a body corporate or other body, by every director thereof; and
- (c) contain all of the information specified in Schedule 7; and
- (d) have attached thereto all of the documents and certificates specified in Schedule 8; and
- (e) be accompanied by payment of the prescribed fee.

**11 Registration of broker**

Upon receipt of an application that complies with regulation 10 the Registrar shall register the applicant as a broker.

**12 Broker to supply annual report to Registrar**

- (1) Every broker shall deliver an annual report to the Registrar in accordance with these regulations.
- (2) Every annual report shall—
  - (a) be dated; and
  - (b) be signed by the broker, or where the broker is a body corporate, by every director thereof, or by 2 directors signing on behalf of all directors, or by 1 director signing on behalf of all directors and by the secretary thereof; and
  - (c) contain all of the information specified in Schedule 9; and
  - (d) have attached thereto all the documents and certificates specified in Schedule 10.
- (3) Every annual report shall be delivered to the Registrar—
  - (a) in the case of a broker who is an individual, not later than 31 May in each year; and
  - (b) in the case of a broker who is not an individual, within 3 months after the end of the broker's financial year.

**13 Registration of annual report**

The Registrar shall register every annual report that complies with regulation 12.

**14 Broker to notify Registrar of changes in information supplied**

- (1) Every broker shall notify the Registrar of any changes in the information specified in Schedule 7 and contained in the application for registration made by the broker pursuant to regulation 10.
- (2) Every broker shall notify the Registrar of any changes in the information specified in Schedule 9 and contained in the most recent annual report delivered by the broker to the Registrar pursuant to regulation 12.
- (3) Notification required under subclauses (1) and (2) shall be given—
  - (a) in 1 or more documents dated and signed by the broker, or where the broker is a body corporate or other body,

- by every director thereof, or by 2 directors signing on behalf of all directors, or by 1 director signing on behalf of all directors and by the secretary thereof; and
- (b) within 30 days after the change occurs.

**15 Exercise of FMA's powers under Securities Act 1978**

- (1) If the FMA makes an order under section 44B(2)(a) or (b) of the Act, the Registrar must, upon receiving a copy of that order, place the order on the register of documents maintained under regulation 8.
- (2) If the FMA makes an order under section 44B(2)(c) of the Act that the broker cease to act as a broker in respect of all contributory mortgages previously allotted, the Registrar must, upon receiving a copy of that order, place the order on the register of documents maintained under regulation 8, and the registration of the broker named in the order is cancelled for the period specified in the order.
- (3) If a broker fails to comply with the requirements of regulation 12 or 14, the Registrar may notify the FMA of the failure.

Regulation 15: substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

*Restrictions on business carried on by broker's  
nominee company*

**16 Restrictions on business carried on by broker's nominee company**

- (1) Notwithstanding section 15A of the Companies Act 1955 or section 16 of the Companies Act 1993, as the case may be, and notwithstanding anything in its memorandum or articles of association or constitution, as the case may be, no nominee company shall carry on any business or do any act, matter or thing except in accordance with or incidental to the following objects:
- (a) to act as a nominee company holding mortgages, charges, debentures, instruments by way of security, and securities of all kinds (whether contributory or otherwise) or any interest therein upon a bare trust for the legal or beneficial owner or owners thereof and as such nominee to lend moneys:

- (b) on behalf of the beneficial owner or owners to exercise and enforce all and any powers, remedies, or benefits conferred by, or attaching to, or resulting from, or incidental to, or consequent upon, the holding of any such security or interest therein:
  - (c) on behalf of the beneficial owner or owners to buy in at the sale of land, or any interest in land, under any power of sale conferred by any mortgage charge or other security in which such beneficial owner or owners have an interest, and to resell such land or any part or parts thereof by public auction, private contract or otherwise and pending such resale to exercise all or any of the rights and powers of an owner and pay and discharge rates and other outgoings in respect thereof and generally manage the same:
  - (d) on behalf of the beneficial owner or owners to execute and give all such variations, discharges, transfers, instruments, acknowledgements and other documents and perform all such acts and things as may be required in respect of any security or interest therein held by the company:
  - (e) to maintain and operate the trust account of the nominee company:
  - (f) to do the acts matters and things provided for in the Act and these regulations in respect of nominee companies.
- (2) Every broker shall ensure that the nominee company of that broker does not carry on any business or do any act, matter or thing except in accordance with, or incidental to, the objects specified in subclause (1).

Regulation 16(1): amended, on 1 July 1994, by section 3 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

#### *Trust accounts*

### **17 Trust account to be maintained by broker's nominee company**

- (1) Every broker shall ensure that the broker's nominee company establishes and maintains a trust account with a registered bank in the name of that nominee company.

- (2) Every broker shall ensure that the trust account of that broker's nominee company—
  - (a) is not overdrawn; and
  - (b) is not used for any purposes other than those of receiving, or holding, or disbursing, money in accordance with these regulations.

*Receipt and disbursement of contributions by  
broker*

**18 Contributions to be held in trust**

- (1) Every contribution received by a broker or a broker's nominee company shall be held in trust for the contributor and shall, immediately after it is received, be paid into the trust account of that broker's nominee company.
- (2) Every contribution made by a broker shall be paid into the trust account of the broker's nominee company.

**19 Disbursement of contributions**

Subject to these regulations, every broker shall ensure that no contribution is paid out of the trust account of that broker's nominee company unless it is—

- (a) paid to a mortgagor under, or a vendor of an interest in, a contributory mortgage, in accordance with a general authority; or
- (b) paid to a mortgagor under, or a vendor of an interest in, a contributory mortgage, in accordance with a special authority and the contributor has been given or sent a document or documents signed by the broker containing and having annexed thereto, in the case of a development mortgage, the information and other matters specified in Schedule 11, and in the case of any other contributory mortgage, the information and other matters specified in Schedule 12; or
- (c) otherwise invested in accordance with a general authority; or
- (d) otherwise invested in accordance with a special authority; or
- (e) paid to the contributor.

**20 Restrictions on distribution of contributions under contributory mortgage**

- (1) Every broker shall ensure that no contribution is paid out of the trust account of that broker's nominee company to a mortgagor under, or a vendor of an interest in, a contributory mortgage—
  - (a) if at the time of the payment the broker knows or ought to know that any document relating to the mortgage sent or given to any contributor to the mortgage is false or misleading in a material particular (whether or not the document became so misleading as a result of a change of circumstances occurring after the document was sent or given to the contributor) or is inconsistent with the mortgage; or
  - (b) if, after the payment, the amount, or the aggregate of the amounts, paid or applied, would exceed the amount specified in any special authority given by the contributor or in the mortgage, as the case may be, as the principal sum of the mortgage; or
  - (c) if the date when the final balance of the principal sum is due and payable under the mortgage is later than any date specified in any special authority given by any contributor to that mortgage as the date for repayment of contributions to that contributor.
- (2) Every broker shall ensure that no contribution is paid out of the trust account of that broker's nominee company—
  - (a) unless the mortgage, executed by the mortgagor and in a form that is registrable under the Land Transfer Act 1952, has been received by the broker or the broker believes on reasonable grounds that it has been received by a solicitor acting on behalf of the broker; and
  - (b) unless all buildings or improvements situated upon the property which is charged with the mortgage are insured to the full insurable value thereof against loss or damage by fire and other perils by an insurance office in New Zealand approved by the broker, and the policy of insurance or cover note names the broker's nominee company or all of the contributors to the mortgage, as the case may be, as loss payees under the policy.

**21 Restrictions on distribution of contributions under development mortgage which provides for payment of principal sum by instalments**

Every broker shall ensure that no contribution is paid out of the trust account of that broker's nominee company to a mortgagor under, or a vendor of an interest in, a development mortgage under which the principal sum is to be paid or applied by instalments unless—

- (a) the contribution is paid in accordance with a special authority authorising investment in that mortgage; and
- (b) the special authority authorises payment by instalments and contains a description of the manner in which the instalments are to be paid and of any conditions to be fulfilled before payment; and
- (c) the mortgage provides for payment by instalments and contains a description, corresponding with the description mentioned in paragraph (b), of the manner in which the instalments are to be paid and of any conditions to be fulfilled before the payment; and
- (d) there are in the trust account or investments referred to in regulation 27, contributions made by contributors to that mortgage which equal in aggregate a sum equal to the amount of the principal sum less the amount of any instalments previously paid or applied; and
- (e) the aggregate of the amount paid under the mortgage and the amount of the payment or application does not exceed the amount recommended in a valuation report obtained by the broker as suitable for an advance; and
- (f) there are sufficient funds available in the form of contributions retained in the trust account, or investments referred to in regulation 27, to complete the development on the basis of that valuation report.

**22 Restrictions on distribution of contributions under development mortgage which does not provide for payment of principal sum by instalments**

Every broker shall ensure that no contribution is paid out of the trust account of that broker's nominee company to a mortgagor under, or a vendor of an interest in, a development mortgage,

not being a development mortgage under which the principal sum is to be paid or applied by instalments, unless—

- (a) the contribution is paid in accordance with a special authority authorising investment in that mortgage; and
- (b) there are in the trust account and investments referred to in regulation 27, contributions made by contributors to that mortgage which equal in aggregate a sum equal to the amount of the principal sum after deducting the amount of the payment or application and the amount of any advances on account of the principal sum previously paid or applied; and
- (c) the aggregate of the amount paid under the mortgage and the amount of the payment or application does not exceed the amount recommended in a valuation report obtained by the broker as suitable for an advance; and
- (d) there are sufficient funds available in the form of contributions retained in the trust account, or investments referred to in regulation 27, to complete the development on the basis of that valuation report.

### **23 Brokers fees and charges**

The amount of any fee charged by a broker and payable by a mortgagor under a contributory mortgage and the amount of any charges incurred by a broker and payable by a mortgagor under a contributory mortgage may, notwithstanding regulations 19 to 22, be deducted from the money advanced to that mortgagor and paid to the broker.

#### *Receipt and disbursement of other money by broker*

### **24 Payments in respect of investments**

- (1) All money received by a broker or a broker's nominee company in repayment of the investment of contributions and all other money received by a broker or a broker's nominee company in respect of the investment of contributions shall be held in trust for the contributors entitled thereto, and shall, immediately after it is received, be paid by the broker into the trust account of the broker's nominee company.

- (2) All money referred to in subclause (1) shall be held in trust for the contributors pending—
- (a) disbursement in accordance with regulation 19; or
  - (b) payment to the broker in reimbursement for any payment made by the broker to or on behalf of a contributor for which the broker is entitled to be reimbursed; or
  - (c) payment to any other person in accordance with a written instruction given by the contributor to the broker that specifies the amount of the payment and the person to whom the payment is to be made.

**25 Payments by mortgagor**

- (1) All money received by a broker or a broker's nominee company in repayment of any principal sum or by way of interest in respect of a contributory mortgage shall be held in trust for the contributors under the mortgage and shall, immediately after it is received, be paid into the trust account of the broker's nominee company.
- (2) All money referred to in subclause (1), shall be held in trust for the contributors to the mortgage pending—
- (a) disbursement in accordance with regulation 19; or
  - (b) payment to the broker in reimbursement for any payment made by the broker to or on behalf of a contributor for which the broker is entitled to be reimbursed; or
  - (c) payment to any person in accordance with a written instruction given by the contributor to the broker that specifies the amount of the payment and the person to whom the payment is to be made.

**26 Information to be given to contributor where contributions paid to mortgagor pursuant to general authority**

Every broker shall, within 7 days after a contribution is paid or applied pursuant to a general authority to or on behalf of a mortgagor under, or a vendor of an interest in, a contributory mortgage, send or give to the contributor a document or documents signed by the broker containing, in relation to the contributory mortgage,—

- (a) details of the amount of money paid or applied under the contributory mortgage; and
- (b) the information and other matters specified in Schedule 12.

**27 Investment of contributions**

- (1) Contributions invested by a broker in accordance with a general authority or a special authority pending disbursement to a mortgagor under, or a vendor of an interest in, a contributory mortgage shall be invested in the name of the contributor or in the name of the broker's nominee company as trustee for the contributor.
- (2) Every broker shall, at the request of a contributor, supply to that contributor, such information relating to any investment referred to in subclause (1), as may be specified by the contributor.

*Duties of brokers***28 Duty of broker to ascertain sufficiency of assets**

Every broker shall take reasonable steps to ensure that before any contribution or other money is paid or applied to or on behalf of a mortgagor under, or a vendor of an interest in, a contributory mortgage, there are assets available, or which will be available under the personal covenant of the mortgagor, or a guarantee or indemnity, which are sufficient, or will be sufficient, to discharge the amounts payable under the contributory mortgage as they become due.

**29 Broker to ensure compliance with Credit Contracts Act 1981**

Every broker shall comply with the provisions of Part 2 of the Credit Contracts Act 1981 on behalf of the contributors to every contributory mortgage in respect of which that broker acts.

**30 Duties of broker regarding mortgage and other documents**

- (1) Every broker shall ensure that every contributory mortgage in respect of which that broker acts states—

- (a) if the mortgage is a nominee mortgage, the name of the broker's nominee company as mortgagee; or
  - (b) if the mortgage is not a nominee mortgage, the names of all the contributors to that mortgage as mortgagees.
- (2) Every broker shall take reasonable steps to ensure, in the case of every contributory mortgage in respect of which that broker acts, that—
  - (a) the mortgage is registered at the earliest practicable date; and
  - (b) the interests of contributors to the mortgage are protected if registration of the mortgage is delayed for any reason.
- (3) Every broker shall ensure, in the case of every contributory mortgage in respect of which that broker acts, that—
  - (a) the mortgage, any collateral securities, and, where the mortgage is a first mortgage, the certificate of title to the land charged and any policies of insurance, are at all times safely held on behalf of the contributors; and
  - (b) all general authorities and special authorities relating to contributions to the mortgage and copies of all documents provided to contributors and mortgagors respectively are filed or maintained so as to be readily available for inspection by the broker's auditor.

**31 Duty of broker to ensure continuing management of contributory mortgages**

Every broker who acts in respect of a contributory mortgage shall continue to act as a broker in respect of that contributory mortgage unless—

- (a) in the case of a nominee mortgage—
  - (i) another person who is registered under these regulations as a broker has agreed to act as a broker in respect of the management of that contributory mortgage; and
  - (ii) all the contributors having an interest in the contributory mortgage agree in writing to that person acting as broker in respect of that contributory mortgage; and

- (iii) the broker delivers to that person all books and documents in that broker's possession or under that broker's control, or in the possession or under the control of that broker's nominee company, relating to the contributory mortgage, including without limitation—
  - (A) the securities and documents referred to in regulation 30(3);
  - (B) a copy of the accounts required to be kept under regulation 38; and
- (iv) the broker causes to be paid to that person all money held in the trust account of the broker's nominee company on behalf of the contributors to that contributory mortgage; and
- (v) the broker delivers to that person a memorandum of transfer (registrable under the Land Transfer Act 1952) transferring the interest of the broker's nominee company in the contributory mortgage to that person's nominee company; or
- (b) in the case of a contributory mortgage, not being a nominee mortgage,—
  - (i) all the contributors having an interest in the contributory mortgage agree in writing that the broker shall not be required to act as a broker in the management of the interests of those contributors; and
  - (ii) the broker delivers to a person designated in writing by all the contributors to the contributory mortgage all securities and documents referred to in regulation 30(3) in the possession of the broker or under the broker's control; and
  - (iii) the broker causes to be paid to the contributors to the contributory mortgage all money held in the trust account of the broker's nominee company.

### **32 Restrictions on dealing with nominee mortgages**

- (1) Every broker shall ensure that no nominee mortgage shall be mortgaged or transferred to any person unless—

- (a) all the contributors having an interest in the mortgage receive written notice of the proposed mortgage or transfer specifying the name of the proposed mortgagee or transferee and the consideration for the proposed mortgage or transfer; and
  - (b) all contributors having an interest in the mortgage consent in writing to the proposed mortgage or transfer.
- (2) Subject to subclause (3), every broker shall ensure that no interest of a contributor in a nominee mortgage shall be mortgaged or transferred to any person unless—
  - (a) the contributor receives written notice of the proposed mortgage or transfer specifying the name of the proposed mortgagee or transferee and the consideration for the proposed mortgage or transfer; and
  - (b) the contributor consents in writing to the proposed mortgage or transfer.
- (3) Nothing in subclause (2) applies to the mortgage or transfer of an interest of a contributor in a nominee mortgage made at the written request of that contributor.

### **33 Restrictions on creation of prior charges and discharges of nominee mortgages**

- (1) Every broker shall ensure that no memorandum of priority or other document is executed enabling a prior or *pari passu* charge to be created in respect of land charged with a nominee mortgage without the written consent of all the contributors to that mortgage.
- (2) Every broker shall give written notice to all contributors to a nominee mortgage of any charge or encumbrance (being a charge or an encumbrance which can be registered without a memorandum of priority or other document signed by the mortgagee) which is registered in respect of the land which is charged with that nominee mortgage and which has, or may have, priority over, or rank equally with, that mortgage.
- (3) Every notice under subclause (2) shall be given within 14 days after the broker becomes aware of the registration of the charge or encumbrance.

- (4) Every broker shall ensure that, except with the written consent of all the contributors to the mortgage, no nominee mortgage or collateral security is discharged (whether wholly or partially) until all money secured by the mortgage has been paid to that broker's nominee company.
- (5) Nothing in subclause (4) applies to the partial discharge of a nominee mortgage if—
  - (a) the mortgage authorises partial releases to be given and specifies any conditions on which partial releases may be given corresponding with the conditions specified in any statement referred to in paragraph (b); and
  - (b) the statement given to contributors pursuant to regulation 19(b) or regulation 26 states that partial releases of the mortgage may be given and also states any conditions on which partial releases may be given; and
  - (c) in the case of a nominee mortgage which is a development mortgage, it is a condition of the mortgage that before a partial release of the mortgage is given the broker obtains a written valuation report prepared and signed by a registered valuer which states that, in the opinion of the valuer, the value of the balance of the land or interest in land after the partial release provides adequate security for the principal sum secured by the mortgage; and
  - (d) the conditions contained in the mortgage relating to the partial release are complied with.

#### **34 Duties of broker in case of default by mortgagor**

- (1) Every broker shall give written notice to all the contributors to a contributory mortgage of—
  - (a) any default for at least 30 days by the mortgagor in the payment of interest due under the mortgage or in the repayment of any part of the principal sum;
  - (b) any other default by the mortgagor under the mortgage which is not remedied within 30 days after the default is, or should have become, known to the broker unless the default does not materially affect the contributors or their security.

- (2) Every notice under subclause (1) shall specify the action the broker is taking or proposes to take in respect of the default.
- (3) Subject to regulation 36, every broker shall do, and shall procure that broker's nominee company to do, all such things as that broker or that nominee company is empowered to do in respect of the default.
- (4) No broker and no nominee company of a broker shall charge the contributors to a contributory mortgage any sum in connection with the exercise by that broker or that nominee company on behalf of the contributors of the powers of the mortgagee under the mortgage except for disbursements including reasonable legal fees incurred in connection with the exercise of those powers.

**35 Broker to furnish names of contributors**

In any case where the contributors to a contributory mortgage have not been paid any sum payable under the mortgage within 14 days after that sum becomes due, the broker shall, forthwith after receiving a written request from a contributor to the mortgage, send to that contributor a list of the names and last known addresses of all the contributors to that mortgage.

**36 Meetings of contributors**

- (1) Any broker may, from time to time, summon a meeting of all the contributors to a contributory mortgage.
- (2) Every broker shall, at the request in writing of that broker's auditor, summon a meeting of all the contributors to a contributory mortgage.
- (3) In the case of any default of the kind referred to in regulation 34(1), every broker shall, if requested by not less than one-third of the contributors to the contributory mortgage, summon a meeting of all the contributors to that mortgage.
- (4) Every meeting of the contributors to a contributory mortgage shall be summoned by sending by post a notice, specifying the time and place of the meeting, and the business for consideration, to every contributor at that contributors last known address not later than 14 days before the date of the proposed meeting.

- (5) The business for consideration at any meeting summoned pursuant to this regulation shall be confined to—
  - (a) receiving reports from the broker, or the broker's nominee company, or the broker's auditor, on matters relating to the contributory mortgage:
  - (b) giving instructions to the broker or the broker's nominee company with respect to the exercise of any right, power or remedy under the mortgage:
  - (c) such other matters as are unanimously agreed to by all the contributors present at the meeting.
- (6) The contributors present at the meeting shall appoint a person to chair the meeting.
- (7) All matters calling for a decision at any meeting shall be decided by a majority of the votes cast by the contributors present and voting at the meeting either in person or by an agent duly authorised in writing.
- (8) At any meeting summoned pursuant to this regulation each contributor is entitled to one vote for each \$100 of the principal sum secured by the contributory mortgage and owed to that contributor whether due for repayment or not.
- (9) The decision of any meeting summoned pursuant to this regulation shall be binding on the broker and the broker's nominee company.

**37 Broker to maintain register of contributory mortgages**

Every broker shall establish and maintain, in a form approved by the broker's auditor, a register of contributory mortgages which shall contain, in relation to each contributory mortgage,—

- (a) the name and address of the mortgagor:
- (b) a description of the mortgage sufficient to identify it:
- (c) details of the principal sum secured by the mortgage:
- (d) the dates on which interest is payable under the mortgage:
- (e) the date or dates on which the principal sum or any part of the principal sum falls due for repayment:
- (f) the names and addresses of the contributors to the mortgage:

- (g) the amount of the contribution of each contributor to the mortgage:
- (h) such other information as may be specified by the broker's auditor.

**38 Broker to maintain accounting records**

- (1) Every broker shall at all times keep, and shall ensure that the broker's nominee company at all times keeps, in such manner as will enable the audit thereof to be conveniently and properly carried out and in a form approved by the broker's auditor, books of account and other accounting records in respect of the business carried on by the broker as a broker that correctly record and explain the transactions of the broker and the broker's nominee company.
- (2) Without limiting the generality of subclause (1), such books of account and accounting records shall contain—
  - (a) in relation to every contribution received, the name of the contributor; and
  - (b) in relation to any other money received—
    - (i) the name of the person from whom the money was received;
    - (ii) the name of the contributor entitled thereto; and
  - (c) in relation to every contribution paid to a mortgagor under, or a vendor of an interest in, a contributory mortgage—
    - (i) the name of the contributor;
    - (ii) the name of the mortgagor;
    - (iii) details sufficient to identify the mortgage; and
  - (d) in relation to any other payment made—
    - (i) the name of the person to whom the payment is made;
    - (ii) the name of the contributor on whose behalf the payment is made.

**39 Register of contributory mortgages and accounting records to be audited**

- (1) Subject to subclauses (3) and (8), every person who has consented to act as the auditor of a broker shall, in respect of each financial year of the broker, audit the broker's register of con-

- tributory mortgages and the books of account and other accounting records of the broker and the broker's nominee company in order to ascertain whether—
- (a) the register of contributory mortgages and books of account and other accounting records have been properly maintained;
  - (b) the broker has complied with the provisions of the Act and these regulations.
- (2) For the purposes of carrying out such audit for each financial year the auditor shall examine the broker's register of contributory mortgages and the books of account and other accounting records of the broker and the broker's nominee company—
- (a) on at least 1 occasion during each of the first, second, and third quarters of that financial year; and
  - (b) on at least 1 occasion within 3 months after the close of that financial year.
- (3) No auditor shall be required to carry out an audit in relation to a contributory mortgage if—
- (a) the mortgage is registered under the Land Transfer Act 1952; and
  - (b) the mortgagees named in the mortgage are the contributors to the mortgage; and
  - (c) each of the contributors has instructed the broker in writing that all moneys payable to the contributors under the mortgage are to be paid directly to the contributors.
- (4) Forthwith after the completion of each examination of the register of contributory mortgages and the books of account and other accounting records of the broker and the broker's nominee company the auditor shall—
- (a) prepare a report of the results of that examination; and
  - (b) send a copy of that report to the broker; and
  - (c) if the report discloses any breach of the Act or these regulations by the broker, send a copy thereof to the Registrar.
- (5) Within 3 months of the close of the broker's financial year the auditor shall prepare a report of the results of the audit.
- (6) Every report shall contain a statement by the auditor as to whether—

- (a) the register of contributory mortgages and books of account and other accounting records have been properly maintained;
  - (b) the broker has complied with the provisions of the Act and these regulations.
- (7) Within 14 days after completing the report the auditor shall—
- (a) send a copy of the report to the broker;
  - (b) if the report discloses any breach of the Act or these regulations by the broker, send a copy of the report to the Registrar.
- (8) No person who has consented to act as auditor of a broker shall be required to comply with the provisions of this regulation if—
- (a) that person sends to the Registrar written notice stating that that person has ceased to act as the auditor of that broker; and
  - (b) another auditor has consented, in accordance with these regulations, to act as the auditor of the broker and a copy of such consent has been sent to the Registrar.

### *General*

**40 Persons to whom notice to be given by director of contributory mortgage broker for purposes of section 57A of the Securities Act 1978**

For the purposes of section 57A(2)(c) of the Securities Act 1978, every person who is a director of a contributory mortgage broker shall, upon becoming aware of any breach of these regulations, give notice of that breach to every contributor in respect of whom that breach relates.

**41 Offences**

A broker or a director of a broker who contravenes, or fails to comply with, any provision of these regulations commits an offence, and is liable on conviction to a fine not exceeding \$5,000.

Regulation 41: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**Schedule 1**  
**Form of memorandum of association of**  
**nominee company**

r 4

The Companies Act 1955  
Private Company limited by shares

**Memorandum of association of [name] Nominee Company Limited**

- 1 The name of the Company is [name] Nominee Company Limited.
- 2 The Company is a Private Company.
- 3 The liability of the members is limited.
- 4 The share capital of the Company is dollars (\$[amount]) divided into [number] shares of one dollar (\$1) each.

We, the several persons whose names, addresses and descriptions are subscribed hereto, are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Date:

Name in full:

Description and address:

Signature:

Number of shares taken by each subscriber:

Witness:

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## **Schedule 2**

r 4

### **Form of articles of association of nominee company**

#### Preliminary

- 1 The regulations contained in Table A in Schedule 3 of the Companies Act 1955 and hereinafter called Table A are hereby adopted by the company with and subject to the exclusions, conditions and modifications hereinafter mentioned.

#### Share capital and variation of rights

- 2 Regulations 2 to 5 (both inclusive) of Table A are hereby excluded. The holders of the shares in the capital of the company shall be the persons acting as brokers (as that term is defined in regulation 2(1) of the Securities Act (Contributory Mortgage) Regulations 1988) and persons acting on their behalf.

#### Transfer of shares

- 3 Regulation 24 of Table A is hereby excluded. The directors may, in their absolute and uncontrolled discretion, refuse to register any transfer of shares and shall not be bound to give any reason therefor.

#### Proceedings at general meetings

- 4 Regulation 54 of Table A is hereby excluded. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided the quorum for the general meeting shall be persons present not being less than 2 in number and holding or representing by proxy or otherwise as by these regulations provide not less than 51% of the shares in the capital of the company.
- 5 Any member may at any time and from time to time by power of attorney appoint any person (being a person qualified to be a shareholder pursuant to the provisions of Article 2) to be his attorney to attend meetings of the company and on his behalf to vote and to sign any entry in the company's minute book and generally direct for him in his capacity as a member of the

company as fully and effectually to all intents and purposes as such member could do in his own proper person if personally present.

#### Directors

- 6 Regulation 76 of Table A is hereby excluded. No director shall be entitled to remuneration or to the payment of any expenses incurred by him.
- 7 Regulation 77 of Table A is hereby modified by inserting the following proviso to the end thereof:  
“provided always, that no director appointed by the Securities Commission pursuant to section 44B of the Securities Act 1978, shall be subject to any shareholding qualification.”
- 8 Regulation 78 of Table A is hereby excluded.
- 9 Each director shall have the power by notice in writing, or by telex, facsimile, telegram, or cable to the company to appoint any person (being a person qualified to be a director of the company and including any other director) to act as a deputy director in his place during his inability to act as a director and each director may at his discretion by notice in writing, or by telex, facsimile, telegram, or cable to the company remove his deputy director. On any such appointment being made the deputy director shall whilst acting in the place of the director he represents exercise and discharge all the powers, rights, duties, and privileges (including the right of acting as Chairman) of the director appointing him and be subject in all respects to the same terms and provisions as the director.

#### Powers and duties of directors

- 10 Clauses (2) and (4) of Regulation 84 of Table A are hereby excluded.
- 11 A director may vote in respect of any contract or arrangement in which he is interested and if he does so his vote shall be counted and he shall be counted in the quorum present at the meeting.
- 12 A director notwithstanding his interest may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any office or place or profit under

the company, or whereat the terms of such appointment are arranged and he may vote on any such appointment or arrangement.

#### Rotation of directors

- 13 Regulations 89 to 97 inclusive of Table A are hereby excluded.

#### Proceedings of directors

- 14 Regulation 99 of Table A is hereby modified by inserting the following proviso at the end thereof:

“provided always, that if the Commission appoints any person or persons as a director or directors in place of all of the directors of the company pursuant to section 44B of the Securities Act 1978, such director or directors shall constitute a quorum for the transaction of the business of the directors.”

- 15 Regulation 100 of Table A is hereby excluded. If at any time there shall be only 1 director of the company (whether through failure to appoint a director or otherwise howsoever) such director shall have and may exercise all the powers given to the directors or any 2 of them by these presents or by the law.

- 16 Regulation 106 of Table A is hereby modified by inserting the following at the end thereof:

“Notwithstanding the foregoing provisions of the Article, a resolution authorising the execution of discharges, partial discharges and variations of mortgages and other securities (including memoranda of satisfaction and consents to entry of memoranda of satisfaction) shall be valid and effectual if signed by not less than 2 directors where the number of directors is 2 or more and by the sole director where there is only 1 director.”

#### Secretary

- 17 Regulation 111 of Table A is hereby excluded. No person shall be appointed or hold office as secretary who is the sole director of the company.

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### Execution of documents

- 18 Regulation 113 of Table A is hereby excluded.
- 19 The seal (if any) shall be held by the secretary of the company and shall only be used by the authority of a resolution of the directors.
- 20 An instrument must be—
- (a) executed by affixing the seal (if any) to the instrument which shall be signed by 2 directors (if the company has more than 1 director) or by 1 director whose signature must be witnessed (if the company has only 1 director); or
  - (b) signed by 2 directors (if the company has more than 1 director) or 1 director whose signature must be witnessed (if the company has only 1 director).

Date:

Name in full:

Description and address:

Signature:

Witness:

Schedule 2: amended, on 1 July 1994, by section 3 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

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## Schedule 2A

r 4

### Matters to be provided in constitution of nominee company

Schedule 2A: inserted, on 1 July 1994, by section 3 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Every constitution of a nominee company must provide as follows:

#### Shareholders

- 1 That any shareholder may at any time and from time to time by power of attorney appoint any person qualified to be a shareholder of the company to be his or her attorney to attend meetings of the company and on his or her behalf to vote and sign any resolution or other document and generally act for him or her in all respects in relation to the affairs of the company.
- 2 That a quorum for a meeting of shareholders is present if shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.
- 3 That the holders of shares in the company are the persons acting as brokers (as that term is defined in regulation 2(1)) and persons acting on their behalf.

#### Shares

- 4 That the shares in the company are of the same class.
- 5 That the board may not issue different classes of shares.
- 6 That the directors may, in their absolute and uncontrolled discretion, refuse to register any transfer of shares and shall not be required to give any reason for doing so.

#### Directors

- 7 That each director shall have the power by notice in writing, or by telex, facsimile, telegram, or cable to the company to

appoint any person (being a person qualified to be a director of the company and including any other director) to act as a deputy director in his or her place during his or her inability to act as a director and each director may at his or her discretion by notice in writing, or by telex, facsimile, telegram, or cable to the company remove his or her deputy director. On any such appointment being made the deputy director shall whilst acting in the place of the director he or she represents exercise and discharge all the powers, rights, duties, and privileges (including the right of acting as chairperson) of the director appointing him or her and be subject in all respects to the same terms and provisions as the director.

- 8 That no director shall be entitled to remuneration or to the payment of any expenses incurred by him or her.
- 9 Subject to clause 10, that the shareholding qualification for directors may be fixed by the company and, unless and until it is so fixed, no qualification is required.
- 10 That no director appointed by the Financial Markets Authority pursuant to section 44B of the Securities Act 1978 shall be subject to any shareholding qualification.  
Schedule 2A clause 10: amended, on 1 May 2011, by section 84(2) of the Financial Markets Authority Act 2011 (2011 No 5).
- 11 Subject to clause 12, that the quorum necessary for the transaction of the business of directors may be fixed by the directors and, unless so fixed, shall be the majority of directors.
- 12 That if the Financial Markets Authority appoints any person or persons as a director or directors in place of all of the directors of the company pursuant to section 44B of the Securities Act 1978, such director or directors shall constitute a quorum for the transaction of the business of the directors.  
Schedule 2A clause 12: amended, on 1 May 2011, by section 84(2) of the Financial Markets Authority Act 2011 (2011 No 5).

- 13 That, subject to clause 14 of this Schedule, clause 7 of Schedule 3 of the Companies Act 1993, shall apply.
  - 14 That a resolution authorising the execution of discharges, partial discharges and variations of mortgages and other securities (including memoranda of satisfaction and consent to entry of memoranda of satisfaction) shall be valid and effectual if signed by not less than 2 directors where the number of directors is 2 or more and by the sole director where there is only 1 director.
  - 15 The seal (if any) shall be held by the director (if the company has only 1 director), or a director (if the company has more than 1 director), of the company and shall only be used by the authority of a resolution of the director (if the company has only 1 director), or 2 directors (if the company has more than 1 director).
  - 16 An instrument must be—
    - (a) executed by affixing the seal (if any) to the instrument which shall be signed by 2 directors (if the company has more than 1 director) or by 1 director whose signature must be witnessed (if the company has only 1 director);  
or
    - (b) signed by 2 directors (if the company has more than 1 director) or 1 director whose signature must be witnessed (if the company has only 1 director).
-

**Schedule 3**

r 5(1)

**Information and other matters to be  
contained in valuation report**

- 1 The name and address of the registered valuer and a brief description of that registered valuer's qualifications.
- 2 A statement that the valuation report is made by the registered valuer as an independent registered valuer within the meaning of regulation 5.
- 3 The situation, description, and area of the land that is, or is to be charged as security for the contributory mortgage.
- 4 A list of any encumbrances appearing on the certificate of title for the land as at the date of the valuation report and, if the registered valuer has been instructed by the broker or the mortgagor that any of the encumbrances are to be discharged before registration of the contributory mortgage, a statement to that effect.
- 5 The land value and the capital value of the land as shown on the most recent government valuation of the land and the date of that valuation.
- 6 The present use of the land and, if known to the registered valuer, the proposed use of the land.
- 7 The opinion of the registered valuer as to the land value of the land free of encumbrances.
- 8 The nature and value of any improvements situated on the land.
- 9 The opinion of the registered valuer as to the capital value of the land free of encumbrances.
- 10 In the case of a development mortgage—
  - (a) the opinion of the registered valuer as to the modified land value of the land; and
  - (b) a description of the development and the opinion of the registered valuer as to the capital value of the land free of encumbrances after completion of the development.
- 11 The basis upon which the valuation is made and any assumptions used in making the valuation.
- 12 If the land is, or to the knowledge of the registered valuer is proposed to be, used for the purpose of producing income, a

- statement by the registered valuer as to the amount of income that the land can be reasonably expected to produce on an annual basis under conditions prevailing at the time that the report is made.
- 13 The registered valuer's recommendation as to the amount for which the land provides adequate security for a loan on first mortgage free of encumbrances.
- 14 If the registered valuer has been instructed that the land is to remain or become, subject to any encumbrances which will rank in priority to, or *pari passu* with, the contributory mortgage, a statement to that effect, particulars of those encumbrances, and the registered valuer's recommendation as to the amount for which the land subject to those encumbrances provides, or would provide, adequate security for a loan on mortgage ranking *pari passu* with, or subject to, them, as the case may be.
- 15 A statement by the registered valuer that:
- (a) the valuation has been prepared for use by intending lenders; and
  - (b) the registered valuer has consented to the distribution of the report to intending lenders and that, as at the date of the report, the registered valuer has not withdrawn that consent.
- 16 The date as at which the report is prepared.
-

**Schedule 4**  
**Form of general authority for investment**  
**on contributory mortgage**

r 6(1)

To [*name of broker*]

I/We hereby instruct and authorise you to invest on my/our behalf the capital sum specified below in accordance with the Securities Act (Contributory Mortgage) Regulations 1988 and the following instructions—

- (1) The capital sum shall be invested in 1 or more contributory mortgages of land (not being development mortgages within the meaning of those regulations) [*insert any restrictions desired, eg, first, second or subsequent mortgages, freehold or leasehold land*] and, pending such investment, shall be dealt with as follows [*state instructions*]:
- (2) The aggregate of the principal sums advanced under and secured by the mortgage and the amount of all charges ranking ahead or equally therewith shall not exceed [*state proportion not exceeding two-thirds*] of the capital value of the land subject to the mortgage as stated in a valuation report within the meaning of those regulations and the loan shall be made in accordance with the recommendation of the registered valuer expressed in that report:
- (3) The term of the loan shall be [*specify term of loan in accordance with regulation 6(4) of those regulations*]:
- (4) Interest shall accrue at the rate current when the loan is made and shall be paid quarterly [*alternatively state other instructions*]:
- (5) Where the mortgage is a nominee mortgage within the meaning of those regulations:
  - (a) the documents of security shall be completed and held in the name of [*insert name and address of broker's nominee company*] (hereinafter referred to as the Company);
  - (b) the Company will act as a trustee for me/us and other contributors (if any);
  - (c) the Company shall, as its directors deem appropriate, exercise on behalf of the contributors all the rights, powers and remedies conferred by law including the

power to buy in at any sale of the property charged by the security;

- (d) the Company shall be entitled to indemnity from the contributors proportionately to their contributions in respect of all costs, claims and other liabilities arising in relation to the mortgage and the principal sum thereby secured [*this paragraph may be excluded by the broker*].

- (6) Upon repayment of any principal sum you shall—
- (a) invest the money in accordance with this authority if it has not then been revoked:
- (b) pay the money to me/us at the address given below:
- (c) pay the money for the credit of my/our bank account mentioned below:

Delete as appropriate.

- (7) Upon receipt of interest you shall—
- (a) invest the money in accordance with this authority if it has not then been revoked:
- (b) pay the money to me/us at the address given below:
- (c) pay the money for the credit of my/our bank account mentioned below:

Delete as appropriate.

- (8) This authority shall remain in force until revoked by me/us in writing.
- (9) I/We acknowledge that I/we have received a copy of this authority.

Full name of investor(s):

Address of investor(s):

Amount to be invested:

Bank account —name of bank:

—name of account:

—number of account:

Date of this authority:

Signature of investor(s):

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## Schedule 5

r 6(5)

### Form of special authority for investment on contributory mortgage

To [*name of broker*]

I/We hereby instruct and authorise you to invest on my/our behalf the capital sum specified below in accordance with the Securities Act (Contributory Mortgage) Regulations 1988 and the following instructions—

- (1) The capital sum shall be invested on the security of 1 or more contributory mortgages of land of which details are given below, and pending such investment shall be dealt with as follows [*state instructions*]:
- (2) Interest shall accrue at the rate shown, and shall be paid quarterly [*alternatively state other instructions*]:
- (3) Where the mortgage is a nominee mortgage within the meaning of those regulations—
  - (a) the documents of security shall be completed and held in the name of [*insert name and address of broker's nominee company*] (hereinafter referred to as the Company);
  - (b) the Company will act as a trustee for me/us and other contributors (if any);
  - (c) the Company shall, as its directors deem appropriate, exercise on behalf of the contributors all the rights, powers and remedies conferred by law including the power to buy in at any sale of the property charged by the security;
  - (d) the company shall be entitled to indemnity from the contributors proportionately to their contributions in respect of all costs, claims and other liabilities in relation to the mortgage and the principal sum thereby secured [*this paragraph may be excluded by the broker*]:
- (4) Upon repayment of any principal sum you shall—
  - (a) pay the money to me/us at the address given below:
  - (b) pay the money for the credit of my/our bank account mentioned below:

- (c) retain the money in the trust account of your nominee company for disbursement in accordance with my/our directions:

Delete as appropriate.

- (5) Upon receipt of interest you shall—
- (a) pay the money to me/us at the address given below:
- (b) pay the money for the credit of my/our bank account mentioned below:
- (c) retain the money in the trust account of your nominee company for disbursement in accordance with my/our directions:

Delete as appropriate.

- (6) The details regarding the mortgage(s) are as follows:

Borrower:

Security (particulars of property to be charged and nature of security):

If the security is not a first charge, details (including amount) of the charge (s) having priority:

Total principal sum to be secured:

Term:

Interest:

Priority:

Other terms:

- (7) I/we acknowledge that I/we have received a copy of this authority.

Full name of investor(s):

Address of investor(s):

Amount to be invested:

Bank account —name of bank:

—name of account:

—number of account:

Reprinted as at  
1 December 2014

**Securities Act (Contributory Mortgage)  
Regulations 1988**

Schedule 5

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Date of this authority:

Signature of investor(s):

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**Schedule 6**  
**Consent of auditor**

r 9(1)

Pursuant to regulation 9 of the Securities Act (Contributory Mortgage) Regulations 1988, I, [*full name of auditor*] of [*full address of auditor*]

- (a) hereby consent to act as auditor for [*full name of broker*] of [*full address of broker*]; and
- (b) confirm that I will continue to so act until I am released from my obligations as auditor in accordance with those regulations.

Date:

Signature of auditor:  
  
\_\_\_\_\_

**Schedule 7**

r 10

**Information to be contained in application  
for registration as broker**

- 1 Where the applicant is an individual, the full name and address of the applicant.
  - 2 Where the applicant is a body corporate, the full name of the applicant, the address of its registered office, and the full name and address of every director of the applicant.
  - 3 The full name of the applicant's nominee company and the address of its registered office.
  - 4 The full name and address of every person who is an officer, director or shareholder of the applicant's nominee company.
  - 5 The name and address of the registered bank where the trust account for the applicant's nominee company is kept.
  - 6 The name and address of the applicant's auditor.
-

**Schedule 8**

r 10

**Documents and certificates to be attached  
to application for registration as a broker**

- 1 A copy of the constitution of the applicant's nominee company.  
Schedule 8 clause 1: substituted, on 1 July 1994, by section 3 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).
  
- 2 *[Revoked]*  
Schedule 8 clause 2: revoked, on 1 July 1994, by section 3 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).
  
- 3(1) If the applicant is an individual, the latest audited financial statements of the applicant's business, which shall—
  - (a) be dated as at a date not earlier than 18 months before the date that the application is delivered to the Registrar; and
  - (b) include a statement of assets and liabilities of the business (excluding contributions in respect of, and principal sums secured by, contributory mortgages and other assets or liabilities in respect of trusts administered by the applicant) and a statement of the income and expenses of the business (excluding amounts received in respect of interest on the investment of contributions and interest under contributory mortgages); and
  - (c) include as a separate item or a note thereto, contributions in respect of, and principal sums secured by, contributory mortgages;
  - (d) include as a note thereto, a description and amount of any losses incurred by contributors arising from any contributory mortgage in respect of which the applicant has acted as broker during the accounting period for which the financial statements have been made up; and
  - (e) be signed by the applicant:
- (2) If the applicant is not an individual, the latest audited financial statements of the applicant, which shall—

- (a) be dated as at a date not earlier than 18 months before the date that the application is delivered to the Registrar; and
  - (b) include a statement of financial position (excluding contributions in respect of, and principal sums secured by, contributory mortgages) and a statement of financial performance (excluding amounts received in respect of interest on the investment of contributions and interest under contributory mortgages); and
  - (c) include as a separate item or a note thereto, contributions in respect of, and principal sums secured by, contributory mortgages; and
  - (d) include as a note thereto, a description and amount of any losses incurred by contributors arising from any contributory mortgage in respect of which the applicant has acted as broker during the accounting period for which the financial statements have been made up; and
  - (e) be signed by every director of the applicant.
- (3) For the purposes of paragraph (d) of subclause (1) and paragraph (d) of subclause (2), the expression **any losses incurred by contributors arising from any contributory mortgage** includes—
- (a) any contribution, or any part thereof, which has been paid to a mortgagor under a contributory mortgage and which has not been repaid to the contributor within 6 months of the due date; and
  - (b) any sum due by way of interest to a contributor which has not been paid to the contributor within 6 months of the due date.

Schedule 8 clause 3(2)(b): amended, on 1 October 1997, pursuant to section 6(1) of the Financial Reporting Amendment Act 1997 (1997 No 17).

Schedule 8 clause 3(2)(b): amended, on 1 October 1997, pursuant to section 6(2) of the Financial Reporting Amendment Act 1997 (1997 No 17).

- 4 A copy of the auditor's report on the financial statements of the applicant.

- 5 The consent of the applicant's auditor in the form set out in Schedule 6 signed not earlier than 14 days before the date the application is delivered to the Registrar.
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**Schedule 9**

r 12

**Information to be contained in annual  
report of broker**

- 1 Where the broker is an individual, the full name and address of the broker.
  - 2 Where the broker is a body corporate, the full name of the broker, the address of its registered office and the full name and address of every director of the broker.
  - 3 The full name of the broker's nominee company and the address of its registered office.
  - 4 The full name and address of every person who is an officer, director or shareholder of the broker's nominee company.
  - 5 The name and address of the registered bank where the trust account of the broker's nominee company is kept.
  - 6 The name and address of the broker's auditor.
-

**Schedule 10**

r 12

**Documents and certificates to be attached  
to annual report of a broker**

- 1(1) If the broker is an individual, the audited financial statements of the business carried on by the broker during the financial year, which shall—
- (a) include a statement of assets and liabilities of the business (excluding contributions in respect of, and principal sums secured by, contributory mortgages and other assets or liabilities in respect of trusts administered by the broker) and a statement of the income and expenses of the business (excluding amounts received in respect of interest on the investment of contributions and interest under contributory mortgages); and
  - (b) include as a separate item or a note thereto, contributions in respect of, and principal sums secured by, contributory mortgages; and
  - (c) include as a note thereto, a description and amount of any losses incurred by contributors arising from any contributory mortgage in respect of which the broker has acted as a broker during the accounting period for which the financial statements have been made up; and
  - (d) be signed by the broker.
- (2) If the broker is not an individual, the audited financial statements of the business carried on by the broker during the financial year which shall—
- (a) include a statement of financial position (excluding contributions in respect of, and principal sums secured by, contributory mortgages) and a statement of financial performance (excluding amounts received in respect of interest on the investment of contributions and interest under contributory mortgages); and
  - (b) include as a separate item or a note thereto, contributions in respect of, and principal sums secured by, contributory mortgages; and
  - (c) include as a note thereto, a description and amount of any losses incurred by contributors arising from any contributory mortgage in respect of which the broker

- has acted as a broker during the accounting period for which the financial statements have been made up; and
- (d) be signed by all of the directors of the broker, or by 2 directors signing on behalf of all directors, or by 1 director signing on behalf of all directors and by the secretary.
- (3) For the purposes of paragraph (c) of subclause (1) and paragraph (c) of subclause (2), the expression **any losses incurred by contributors arising from any contributory mortgage** includes—
- (a) any contribution, or any part thereof, which has been paid to a mortgagor under a contributory mortgage and which has not been repaid to the contributor within 6 months of the due date; and
- (b) any sum due by way of interest to a contributor which has not been paid to the contributor within 6 months of the due date.

Schedule 10 clause 1(2)(a): amended, on 1 October 1997, pursuant to section 6(1) of the Financial Reporting Amendment Act 1997 (1997 No 17).

Schedule 10 clause 1(2)(a): amended, on 1 October 1997, pursuant to section 6(2) of the Financial Reporting Amendment Act 1997 (1997 No 17).

- 2 A copy of the auditor's report on the financial statements.
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**Schedule 11**

r 19

**Information and other matters to be  
contained in document to be given to  
contributor in respect of development  
mortgage**

- 1 The name and address of the broker.
- 2 The name, address and occupation of every mortgagor under the mortgage.
- 3 The address, book and folio number of the certificate of title of the land which is, or is to be, charged by the mortgage.
- 4 A description of the mortgagor's estate in the land which is, or is to be, charged by the mortgage.
- 5 If the mortgagor's estate is leasehold, a statement that a copy of the lease is available to the contributor, free of charge, on request.
- 6 The present use of the land, and a brief description of the development, or proposed development, of the land.
- 7 In relation to the principal sum—
  - (a) the principal sum secured, or intended to be secured, by the mortgage; and
  - (b) the due date for repayment of the principal sum; and
  - (c) the terms of any right of early repayment of the principal sum.
- 8 In relation to interest payable under the mortgage—
  - (a) the rate of interest and any penalty rate that is, or is to be, payable;
  - (b) the dates upon which payment of interest is due;
  - (c) details of any collection commission or other amounts to be deducted from the interest by the broker;
  - (d) a description of the manner in which payments of interest will be collected from the mortgagor and disbursed to the contributors.
- 9 If the land which is, or is to be, charged by the mortgage is, or is to be, charged as security for any mortgages or other encumbrances which rank, or are to rank, ahead of, or equally with, the mortgage in point of security, a description of each such mortgage or encumbrance including:

- (a) a statement of the ranking, in point of security, of each such mortgage or encumbrance with respect to the mortgage; and
  - (b) the principal sum secured by each such mortgage or encumbrance; and
  - (c) a statement whether any of such mortgages or encumbrances provide for further advances that will rank ahead of or equally with the mortgage.
- 10 The finance rate calculated in accordance with the Credit Contracts Act 1981 in respect of the credit provided under the mortgage, and if the finance rate is different from the rate of interest, the reasons for the difference.
- 11 A statement, signed by each mortgagor, stating—
- (a) the expected costs of the development and a description of the basis on which such costs have been calculated; and
  - (b) the source of funds to be used to service all money borrowed in respect of the land including that to be secured by the mortgage during the development; and
  - (c) whether there are any circumstances that materially affect the trading or profitability of the mortgagor, the value of the land, the ability of the mortgagor to pay liabilities of the mortgagor due within the next 12 months, or the ability of the mortgagor to complete the development of the land.
- 12 The name and address of any person who is, or is to be, a guarantor or indemnifier of the obligations of the mortgagor under the mortgage and a description of the material terms of the guarantee or indemnity, as the case may be.
- 13 A brief description of any collateral security.
- 14 If the broker, or an associated person with the broker, is a guarantor or indemnifier of the obligations of the mortgagor under the mortgage, a statement to the effect that the latest financial statements of the guarantor, or the indemnifier, as the case may be, together with a copy of the auditor's report thereon, will be furnished to the contributor, free of charge, upon request.
- 15(1) If the mortgage is, or is to be, a nominee mortgage, a statement as to whether, under the terms of the mortgage, partial

- releases of the mortgage are authorised to be given and, if so, a description of the conditions on which such partial releases may be given.
- (2) All other terms of the mortgage (other than those implied by law).
- 16 If the mortgage provides that the principal sum is to be paid to the mortgagor in instalments—
- (a) a statement to that effect; and
  - (b) a description of the manner in which the instalment payments will be made including a description of the conditions to be fulfilled prior to the making of such payments.
- 17(1) A statement whether the mortgage is, or is to be, a nominee mortgage.
- (2) In the case of a nominee mortgage, the name of the broker's nominee company and the address of its registered office.
- 18 A description and quantification of any sums paid, or to be paid, to the broker in connection with the mortgage, including the name of the person who has paid, or is to pay, each sum.
- 19 A statement to the effect that a copy of the mortgage will be sent to each contributor or the authorised representative of the contributor, upon request, and without charge.
- 20 If the broker or any person who is, or is to be, a guarantor or indemnifier of the obligations of the mortgagor under the mortgage, is an associated person with the mortgagor, or has any interest in the land charged by the mortgage, a separate statement to that effect describing the nature of the association or interest.
- 21 The name and address of the auditor to the broker.
- 22 A statement by the broker to the effect that to the best of the broker's knowledge and belief the information in the statement is correct and not misleading and there are no material matters relating to the mortgage that are not set out therein.
- 23 If any information given to the contributor by or on behalf of the broker includes a statement by an expert, other than a registered valuer within the meaning of these regulations, a separate statement, signed by the expert, to the effect that the expert has given consent to the statement by the expert

being given to the contributor, and a statement of the expert's qualifications.

- 24 A copy of a valuation report within the meaning of regulation 5 containing the information and other matters specified in Schedule 3.
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**Schedule 12**

rr 19, 26

**Information and other matters to be  
contained in document to be given to  
contributor in respect of mortgage other  
than development mortgage**

- 1 The name and address of the broker.
- 2 The name, address and occupation of each mortgagor under the mortgage.
- 3 The address, book and folio number of the certificate of title, of the land which is, or is to be, charged by the mortgage.
- 4 The present use of the land and any proposed use of the land.
- 5 A description of the mortgagor's estate in the land which is, or is to be, charged by the mortgage.
- 6 If the mortgagor's estate is leasehold, a statement that a copy of the lease is available to the contributor, free of charge, on request.
- 7 In relation to the principal sum—
  - (a) the principal sum secured, or intended to be secured, by the mortgage; and
  - (b) the due date for repayment of the principal sum; and
  - (c) the terms of any right of early repayment of the principal sum.
- 8 In relation to interest payable under the mortgage—
  - (a) the rate of interest and any penalty rate that is, or is to be, payable;
  - (b) the dates upon which payment of interest is due;
  - (c) details of any collection commission or other amounts to be deducted from the interest by the broker;
  - (d) a description of the manner in which payments of interest will be collected from the mortgagor and disbursed to the contributors.
- 9 If the land which is, or is to be, charged by the mortgage is, or is to be, charged as security for any mortgages or other encumbrances which rank, or are to rank, ahead of, or equally with, the mortgage in point of security, a description of each such mortgage or encumbrance including:

- (a) a statement of the ranking, in point of security, of each such mortgage or encumbrance with respect to the mortgage; and
  - (b) the principal sum secured by each such mortgage or encumbrance; and
  - (c) a statement whether any of such mortgages or encumbrances provide for further advances that will rank ahead of, or equally with, the mortgage.
- 10 The finance rate calculated in accordance with the Credit Contracts Act 1981 in respect of the credit provided under the mortgage, and if the finance rate is different from the rate of interest, the explanation for the difference.
- 11 The name and address of any person who is, or is to be, a guarantor or indemnifier of the obligations of the mortgagor under the mortgage and a description of the material terms of the guarantee or indemnity, as the case may be.
- 12 A brief description of any collateral security.
- 13 If the broker, or an associated person with the broker, is a guarantor or indemnifier of the obligations of the mortgagor under the mortgage, a statement to the effect that the latest annual audited financial statements of the guarantor or indemnifier, as the case may be, together with a copy of the auditor's report thereon, will be furnished to the contributor, free of charge, upon request.
- 14 If the mortgage is, or is to be, a nominee mortgage a statement as to whether under the terms of the mortgage partial releases of the mortgage are authorised to be given and, if so, a description of the conditions on which such partial releases may be given.
- 15(1) A statement whether the mortgage is, or is to be, a nominee mortgage.
- (2) In the case of a nominee mortgage, the name of the broker's nominee company, and the address of its registered office.
- 16 A description and quantification of any sums paid, or to be paid, to the broker in connection with the mortgage, including the name of the person who has paid, or is to pay, each sum.

- 17 A statement to the effect that a copy of the mortgage will be sent to each contributor or the authorised representative of the contributor, upon request, and without charge.
- 18 If the broker, or any person who is, or is to be, a guarantor or indemnifier of the obligations of the mortgagor under the mortgage, is an associated person with the mortgagor, or has any interest in the land charged by the mortgage, a separate statement to that effect describing the nature of the association or interest.
- 19 The name and address of the auditor of the broker.
- 20 A statement by the broker to the effect that to the best of the broker's knowledge and belief the information in the statement is correct and not misleading and that there are no material matters relating to the mortgage that are not set out therein.
- 21 If any information given to the contributor by or on behalf of the broker includes a statement by an expert, other than a registered valuer within the meaning of these regulations, a separate statement, signed by the expert, to the effect that the expert has given consent to the statement by the expert being given to the contributor, and a statement of the expert's qualifications.
- 22 A copy of a valuation report within the meaning of regulation 5 containing the information and other matters specified in Schedule 3.

Marie Shroff,  
Clerk of the Executive Council.

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Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 30 June 1988.

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## **Reprints notes**

### **1 General**

This is a reprint of the Securities Act (Contributory Mortgage) Regulations 1988 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

### **2 Legal status**

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3 Editorial and format changes**

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4 Amendments incorporated in this reprint**

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 5(d)

Criminal Procedure Act 2011 (2011 No 81): section 413

Financial Markets Authority Act 2011 (2011 No 5): sections 82, 84(2)

Relationships (Statutory References) Act 2005 (2005 No 3): section 12

Rating Valuations Act 1998 (1998 No 69): section 53

Financial Reporting Amendment Act 1997 (1997 No 17): section 6

Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16): section 3

Reserve Bank of New Zealand Act 1989 (1989 No 157): section 186(1)

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