



## Memorandum of Mortgage

Form of registerable memorandum  
Section 209, Land Transfer Act 2017

Memorandum Number

**2021/4351**

Barcode

Class of instrument in which provisions are intended to be included:

Mortgage

Person executing memorandum:

TSB Bank Limited

The following provisions are intended for inclusion in instruments of the above class

# Memorandum of Mortgage

Effective 7 September 2021



## About your mortgage

This document sets out the terms and conditions of the mortgage that you have given us over your property.

This mortgage contains important information about the rights and obligations you and we have relating to your property and this mortgage. We recommend you get legal advice before you give us this mortgage. Ask your lawyer if you have questions about it.

## Your mortgage is a legal document

You will sign an authority and instruction form authorising a lawyer or conveyancer to register this mortgage against your property on the electronic land register. When you sign that form, you will be bound by this mortgage.

The Property Law Act 2007 contains terms that by law are also terms of this mortgage. Those terms are in Schedule 2 of the Property Law Act 2007.

If any terms of the Property Law Act 2007 differ from any terms of this mortgage, the terms of this mortgage apply.


We think some terms are particularly important for you, so we have highlighted them in shaded boxes like this one.

## We will be fair and reasonable

When we do anything relating to your mortgage, including where you ask us to do something, we will act fairly and reasonably. We will consider the circumstances and our obligations as a responsible lender.

## We have added examples or extra information

In some places, we include examples or some extra information we think will be helpful. We show this with:

 These icons and examples are not terms of this mortgage. You need to read and make sure you understand all the terms of this mortgage.



As part of our commitment to you, this document meets the WriteMark Plain Language Standard. The WriteMark is an internationally recognised plain language quality mark.

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## 1. Certain words have special meanings

Some words or phrases in this mortgage have specific meanings. We include a glossary below to explain the meanings of these words.

### **Bank document**

When we talk about a bank document, we mean a guarantee from you, or any document where we agree to lend money or provide a financial product to you. For a person who enters a home loan contract, a bank document includes each home loan schedule, the home loan terms and conditions, the home loan fees information and any loan variation letters. 'Bank document' also includes any mortgage and any other security agreement or other agreement between us.

### **Costs**

When we talk about costs we mean all the following:

- Costs we have to pay as a result of exercising any of our rights under this mortgage — for example, legal costs or any costs we have to pay if we are required to sell your property.
- Costs of getting any report relating to your property if we believe you are likely to be in breach of this mortgage — for example, a valuation report.
- Costs of a receiver appointed under this mortgage, or any fees they charge. These costs apply where a receiver exercises any of their powers under this mortgage or the Receiverships Act 1993.
- Any unpaid rates, taxes, insurance payments or rent you must pay for your property, or its use, that we or a receiver have paid on your behalf.

### **Guarantee**

A guarantee is a separate document that a person signs agreeing to pay us amounts another person owes us.

### **Insolvent**

To be insolvent means one or more of the following:

- You cannot pay the money you owe on time.
- You are made bankrupt — if you are an individual.
- You go into receivership, liquidation, statutory management or administration.
- A terminating event occurs under section 86 of the Limited Partnerships Act 2008 — if you are a limited partnership.
- Other events happen relating to your solvency, where that event is described as an insolvency event, event of default or similar in a bank document to which you are party — if you are not an individual.

### **Money you owe us**

When we talk about the money you owe us, we mean any amount you owe us, including:

- Amounts you owe us, or you owe us together with others under this mortgage or under any other bank document or a judgment.
- Amounts you owe us now, or may owe us in future.
- Amounts we pay or owe others on your behalf.
- Amounts we pay when enforcing our rights against you and any judgment we get against you.
- Interest on any of these amounts, at the rate agreed. If we have not agreed an interest rate, we will apply our unarranged overdraft interest rate, which is displayed on our website.
- Any costs we or a receiver have paid, including legal costs.

### **Mortgage**

A mortgage is a type of security over property.

### **Mortgagee**

A mortgagee is the lender who has been given a mortgage. We are the mortgagee.

### **Mortgagor**

A mortgagor is the person who is giving the mortgage. You are the mortgagor. Sometimes you have borrowed money or have received financial products from us. Other times you will have guaranteed a person who has borrowed money or received financial products from us.

### **On demand**

If an amount is said to be payable on demand, this means you must pay this amount promptly when we ask you to pay it.

## Person

A person includes a natural person, any body corporate or other entity (whether or not having separate legal personality). It also includes two or more persons.

## Responsibility

Responsibility means each of the following:

- A person's responsibility or liability for debts they owe, or another person owes, including the money you owe us.
- A person's responsibility or liability for another person's losses or costs.
- A person's responsibility to do or not do something.


## Receiver

A receiver is a person appointed to do the following:

- Take control of another person's assets.
- Sell those assets to repay the money you owe us.

## Security

Security means any right over property that we rely on to repay the money you owe if a breach of a bank document occurs.

 This mortgage is a security because it gives us a right to sell property if you do not repay the money you owe us.

## We and our

When we talk about 'we' and 'us', we mean TSB Bank Limited.

'Our' has a similar meaning.

## You

When we talk about 'you', we mean each person who signs the authority and instruction form granting us the mortgage over your property.

For more than one mortgagor, 'you' means each person separately, and two or more people together. Each person must comply with this mortgage.

The following apply if you are a limited partnership under the Limited Partnerships Act 2008:

- All partners, including the general partner, need to comply with this mortgage.
- References to 'you' are also a reference to the general partner.

'Your' has a similar meaning.

## Your property

Your property means the land described in the authority and instruction form you signed. It includes all the following:

- Your rights and interests in the land.
- Structures on the land, such as a house or any other building.
- Anything else attached to the land or those structures that the law treats as being part of the land.

## 2. Each of us has agreed responsibilities

We have agreed to lend money or provide financial products to you or to a person who you have guaranteed.

In return, you agree to:

- Give us security over your property on the terms set out in this mortgage.
- Give us security over all insurance policies over your property.
- Give us security over all lease agreements, licences, authorities or consents for your property or the use of your property.
- Give us security over payments you receive when others use your property — for example, rent.
- Comply with the mortgage and other bank documents.
- Give us the rights in this mortgage and any other rights we have under the law as mortgagee.

### 3. You agree to pay us all the money you owe us

You agree to repay us all the money we lend you and all other money you owe us. See the glossary for more details about the money you owe us.

You must pay us the money you owe us when any bank document says you need to, or on demand. You must pay all the money you owe us in full, in the same currency as the money you owe us, without deducting any amounts or exercising any right of set-off. 'Set-off' is reducing any payment owing to us where we hold any of your money — for example, in a bank account.

### 4. Your mortgage has a priority amount

A priority amount is a legal term. It means the maximum we can recover before paying another person who also has a security over your property. A priority amount is not the total amount you owe us under this mortgage.

If the authority and instruction form does not state a priority amount, our priority amount is \$30,000,000 plus interest.

### 5. You have responsibilities relating to your property

Because we rely on your property for security, you agree to do certain things. We describe these things in this section and in sections 7, 8, 9 and 11.

#### **You must protect the value of your property**

You must do everything reasonably possible to make sure the value of your property does not materially decrease. In particular, you must:

- Keep your property in good condition.
- Repair any damage to your property as soon as reasonably possible.

You may also have to take other steps.

#### **You must comply with all laws and pay all amounts relating to your property**

You must:

- Comply with all laws or other rules affecting your property or the use of your property, if not complying is likely to materially decrease your property's value. You must also comply with all laws or other rules that affect our relationship with you.
- Get and keep all resource consents and building consents for the normal use of your property.
- Pay all rates, taxes and other charges relating to your property on time.

### 6. We may have to pay your rates if you do not

If you do not pay your rates on time, a council can legally make us pay them for you. We will have to pay these overdue rates even if you think you have a good reason not to pay them. If we pay these overdue rates, the amount paid can be added to the money you owe us.

This means we will charge you interest on those amounts. Instead, we can ask you to pay the amount of the overdue rates to us on demand, or deduct them from any of your accounts with us.

### 7. Ask us before you do certain things

Unless we have agreed in writing, you must not do any of the following things:

- Sell, transfer, rent or subdivide your property.
- Materially change or move any structure on your property.
- Grant security (including a mortgage) or any other rights over your property or other property secured by this mortgage.
- Change the normal use of your property.
- Do anything else that materially reduces the value of your property.

## 8. Tell us if certain things happen to your property

You agree to tell us if any of the following things happen:

- Something happens that means you can no longer use your property in the same way you could when you entered this mortgage.
- The zoning for your property changes.
- Something happens that is likely to reduce the value of your property or negatively affect its use — for example, legal actions or disputes about your property or erosion or other environmental impacts on it.
- Any government agency, including a local government agency, informs you that your property may be affected by climate change — for example, due to increased risk of coastal flooding or erosion.

## 9. Insure your property for the full cost of restoring it

You must insure and keep your property insured for the full amount it would cost to restore your property to a new condition, unless we agree in writing that you can insure it differently. You must also pay your insurance premiums on time to keep the insurance in place.

### What risks the insurance must cover

The insurance must cover losses and damage caused by fire, natural disaster and any other risks normally covered by standard comprehensive insurance policies for properties similar to your property. The insurance policy must not contain any non-standard exclusions or limitations.

We can ask you to get other types of insurance. For example, if your property is located near a coastline or river, we may require you to insure your property against coastal flooding or climate change risks. If you are leasing your property to others, we can ask for insurance for loss of rental payments.

You agree that clauses 3(2) and 8(2) of part 1 of Schedule 2 of the Property Law Act 2007 do not apply to this mortgage.

- ⓘ Clause 3(2) sets out what happens to the money you owe us when we are paid any insurance proceeds but we agree alternative arrangements in this mortgage. Clause 8(2) sets out your obligations to insure your property if your property is already mortgaged. However, the provisions in this mortgage replace the terms in clauses 3(2) and 8(2).

### Your insurer must meet our requirements

We want to make sure the insurer can pay out if needed. This means that the financial strength and stability of your insurer is important to us.

You can choose your insurer but they must meet our requirements. Our requirements may include the insurer's credit rating. Our requirements may change from time to time but we will not ask you to change your insurer once you have taken out your insurance.

### You must not cancel or change your insurance unless we have agreed

Your property must remain insured. You must not cancel or allow your insurance to lapse unless we have agreed in writing. You must also not change your insurance in a way that is likely to affect us negatively. For example, you must not reduce the amount of cover or change to an insurer that does not meet our requirements.

### You must provide us information about your insurance

You must promptly give us information about your insurer, the insurance over your property and any insurance claims if we ask you for it. You must also give us a certificate of insurance if we ask for it.

### You must name us on your insurance policy

Our interest as mortgagee must be noted on your insurance policy.

We must also be named as the loss payee for all claims, so your insurer pays us directly if your property is damaged, without needing any other person to agree before payment is made to us.

### You must tell us if your property is damaged

You must tell us as soon as reasonably possible of any loss or damage to your property. You must do this if the loss or damage is likely to allow you to make an insurance claim.

You must make a claim with your insurer and EQC (the Earthquake Commission) if needed, as soon as reasonably possible, within any time limits that apply.

You must not agree to settle any insurance claim unless we have agreed in writing.

### **Your insurer must pay us any insurance money**

If you receive any money directly from the insurer, you must hold that on trust for us.

Your insurer must pay us any insurance money for loss or damage to your property. We can decide what to do with this money, including deciding whether to rebuild or repair your property. Or we can use the money to repay the money you owe us.

### **We can take steps to keep your property insured**

You must not do anything that means your insurance will no longer apply.

If you do not pay your insurance premiums, we can pay these on your behalf, but we do not have to. We can do this even if you think you have a good reason not to pay. If we do pay any insurance premiums, we can stop paying them any time.

If we do pay any insurance premiums, we can add the amount we pay to the money you owe us. This means we will charge you interest on those amounts. Instead, we can ask you to pay the amount of these insurance premiums to us on demand, or deduct them from any of your accounts with us.

We can also get our own insurance over your property if you have not adequately insured it, but we do not have to. Even if we get our own insurance over your property or pay your insurance premiums, it remains your legal responsibility to insure your property.

## **10. You must do certain things if your property is a stratum estate**

A stratum estate is a type of property ownership under the Unit Titles Act 2010. Often, owners share walls or spaces, such as in apartments and units.

If your property is a stratum estate, you may be a member of the body corporate with the other unit/apartment owners. This means you must also do the following:

- Pay all body corporate payments on time.
- Comply with the rules of the body corporate and the Unit Titles Act 2010.
- Provide us with any notices from the body corporate that is likely to affect the value of your property in a negative way.

When exercising any voting rights for the body corporate, unless we have agreed in writing first, you must not vote on any resolution that requires a unanimous vote or special resolution.

Examples of these sorts of resolutions include where the body corporate wants to collapse the development or wants to give a person rights to occupy common property.

You must also allow us to exercise any of your voting rights on the rules of the body corporate if we ask you.

If we ask you to cast your vote in a certain way, you must do so.

## **11. You have extra responsibilities if you lease your property from others**

You lease your property if it is leasehold or subject to a cross-lease.

If you lease property from anyone, that person also has rights in your property, so you must:

- Comply with the lease and pay all rent on time.
- Do everything reasonably possible to renew or extend the lease.
- Do or sign anything necessary to give us effective security over the lease.

## **12. You must do certain things if you lease your property to others**

If we have agreed you can lease your property to others, you must do the following things:


- Do everything reasonably possible to ensure the person you have leased your property to complies with the lease.
- Do everything reasonably possible to collect all rental payments when they are due.



## 13. What happens if you do not comply with this mortgage

### You must comply with this mortgage

Breaching this mortgage could have very serious consequences for you. For example, if you breach this mortgage, we may exercise our rights to sell your property.

 Get in touch with us early if you think you may have any problems complying with this mortgage or repaying your loan. We may be able to work with you or give you support or information to help.

### What will be a breach of this mortgage

You will breach this mortgage if any of the following happen:

- You do not make a payment on time under any bank document.
- You do not comply with this mortgage and do not correct the non-compliance (if possible) within a reasonable period of time. What is reasonable depends on the type of breach.
- Any information you give us is not correct or is misleading. This type of breach only applies where if you had provided correct and complete information, we would not have made the loan or financial products to you or another person who you have guaranteed.

It will also be a breach of this mortgage if:

- This mortgage becomes invalid or we cannot enforce it for reasons beyond our control.
- You become insolvent or a person takes steps to make you insolvent.

### We can ask you to repay any money you owe us

If a breach of this mortgage occurs, we can write to you, asking you to fix the breach, or repay any money you owe us, or exercise any legal rights. We can ask you to repay the money you owe us even if some of this money is not yet due. We can fix any breach by paying any costs that we believe are needed to fix the breach. This forms part of the money you owe us.

We can also do anything you can do to, or with, your property, including the following things:

- We can sell or manage your property.
- We can lease your property, or cancel or change any existing lease for your property.
- We can perform your obligations under this mortgage or ask anyone else to do this for us.
- We can do anything a mortgagee can legally do.

We may do one or more of the things above, but we do not have to.

## 14. We can appoint a receiver

If a breach of this mortgage occurs, we can appoint a receiver over all property that we have security over. We can also appoint a receiver if you ask us to.

- The receiver will be your agent, not ours.
- We will appoint the receiver in writing.
- We will decide what to pay the receiver, but you must pay these costs.
- The receiver can do anything we can do under this mortgage, and anything a receiver can legally do.
- The receiver can also do anything that you can do relating to property subject to this mortgage and the income from it.

## 15. You agree to protect us from any claims against us when we enforce this mortgage

You agree to protect us or a receiver from any claims that may be made against us or a receiver because you have breached this mortgage. You also agree to protect us from any claims made against us because we have exercised or chosen not to exercise our rights under this mortgage. This is called an indemnity.

'Protecting' us or a receiver means paying us for any loss or costs we incur as a result of a claim.

You agree to protect our officers, employees and agents in the same way.

This indemnity does not apply when a claim is successfully made against us or a receiver as a result of the relevant person doing any of the following:

- Acting dishonestly.
- Engaging in wilful misconduct.
- Being grossly negligent.

We are not responsible for any losses you may suffer because of us enforcing or not enforcing any of our rights under this mortgage.

## 16. You appoint us as your attorney

An attorney is a person you appoint who has the right to act for you or to do things on your behalf.

In return for us agreeing to lend money to you or another person, you appoint us as your attorney. This appointment cannot be revoked, changed or cancelled by you. As your attorney, we can do anything that you agree to do under this mortgage, if you do not do it when we ask. If a breach of this mortgage occurs, the attorney can do anything you agree to do under this mortgage, without asking you.

Even though you appoint us as your attorney, we can decide not to act.

When we act as your attorney, you must immediately confirm any actions that we have taken. If we ask you to, you must also, on demand, pay the costs we have paid when we act as your attorney.

## 17. We will contact you in one of several ways

If we need to give you a letter or notice about this mortgage, we will do it in any of these ways:

- Give it to you personally.
- Send it by post.
- Send it electronically, including by email.

We will post or email you the letter or notice to the address we have for you.

If we give you a letter or notice personally or electronically, you are considered to have received it from us on the same day. If we post you a letter or notice, you are considered to have received it 4 days after we sent it.

If more than one person is named as giving the mortgage, we can give or send a letter or notice to only one of those people. If we do this, all the people named as giving the mortgage will be considered to have received it also. This applies unless the law requires us to do otherwise.

The ways of sending notices or letters set out here do not limit any other ways we are allowed to send notices or letters at law.

## 18. We can collect and use your personal information

All personal information we collect and use about you for this mortgage will be handled according to our Privacy Notice at [www.tsb.co.nz/privacy-notice](http://www.tsb.co.nz/privacy-notice).

## 19. We can transfer or assign our rights and obligations under this mortgage

We can transfer or assign our rights and/or obligations under this mortgage to anyone we choose. We can do this at any time and we do not need your agreement to do this.

The person we transfer or assign our rights under this mortgage to can exercise all our rights under this mortgage.

If we do transfer or assign our rights and/or obligations, under this mortgage, 'we', 'us', and 'our' also means the person we have transferred or assigned those rights and/or obligations to. If we assign our rights under your home loan contract, 'we', 'us', and 'our' will continue to mean TSB Bank Limited too.

You agree we can share any of your personal information, including personal information about your property, this mortgage or any other bank document, with that other person. We can share your personal information before the transfer or assignment happens. See our Privacy Notice at [www.tsb.co.nz/privacy-notice](http://www.tsb.co.nz/privacy-notice).

We may also agree in our loan contract to do other things when we transfer a loan contract. If so, we will also do those things when we transfer this mortgage.

## **You must not transfer or assign this mortgage**

You must not transfer your rights or obligations under this mortgage, unless we have agreed in writing.

## **20. When certain consumer laws may apply**

The following consumer protection laws may apply to this mortgage.

The Consumer Guarantees Act 1993 applies to this mortgage, unless the mortgage is security for the money you owe us for business purposes. In that case, we both confirm that we are in trade, the money you owe us secured by the mortgage is supplied and acquired in trade and we both agree to contract out of that Act. This will mean none of the guarantees, implied terms and other provisions of that Act apply to this mortgage.

Parts of the Credit Contracts and Consumer Finance Act 2003 only apply to consumer credit contracts. These parts apply if you are an individual and the money you owe us that is intended to be used, wholly or predominantly for personal, domestic or household purposes.

## **21. We have limited the legal responsibilities of some of your trustees**

We have limited the legal responsibilities of any professional or independent trustees.

If the trust's assets are not enough to repay us, we will not recover the money you owe us from those trustees' personal assets. However, we can recover the money you owe us from those trustees' personal assets if we suffer a loss because they breach their duties by doing any of the following:

- Acting dishonestly.
- Engaging in wilful misconduct.
- Being grossly negligent.

### **Legal responsibilities of other trustees**

The terms of this mortgage bind all other trustees personally. We can recover the money you owe us from other trustees' personal assets as well as from the trust assets.

## **22. What happens if a term is unlawful or not valid**

If any term of this mortgage is unlawful or does not meet any duty that we legally need to comply with, that term will be changed to be lawful or to comply with the law. That term will only be changed as needed and will not affect the other terms of this mortgage.

## **23. New Zealand law and legislation applies**

New Zealand law applies to this mortgage. Where we refer to laws in this mortgage, we are referring to New Zealand laws. The references also include any replacements or amendments to those laws.