

**86. Assessing mortgage duty**

- (1) For the purposes of section 16, the amount of mortgage duty chargeable on a mortgage specified in item 13 of the Second Schedule is calculated, subject to the exemptions set out in item 7 of the Third Schedule, by applying the rates of duty specified in item 13 to the secured amount in accordance with this Part.
- (2) A mortgage is not chargeable with any other duty.
- (3) An instrument, other than a mortgage, that effects or has an effect on the transfer of an interest in property as security under or in accordance with a mortgage is not chargeable with any duty.
- (4) A person must not give effect to, recognise, register or record an instrument to which subsection (3) applies if mortgage duty is payable on the mortgage referred to in that subsection and the duty has not been paid.  
Penalty: \$20 000.
- (5) Subsections (2) and (3) do not apply to, or in relation to, a mortgage or other instrument if the Commissioner is satisfied that —
  - (a) the transfer effected by the mortgage is not intended principally or solely as security under or in accordance with the mortgage; or
  - (b) the transfer effected by the other instrument is not intended principally or solely as security under or in accordance with a mortgage.

*[Section 86 inserted by No. 66 of 2003 s. 79; amended by No. 11 of 2005 s. 27.]*