

Seychelles

## People's Housing Mortgages Act Act 21 of 1981

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## Seychelles

# People's Housing Mortgages Act Act 21 of 1981

Commenced on 29 December 1981

*[This is the version of this document at 30 June 2012 and includes any amendments published up to 30 June 2014.]*

*[Act 21 of 1981; Act [15 of 1985](#)]*

### Part I – Preliminary

#### 1. Citation

This Act may be cited as the People's Housing Mortgages Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**borrower**" means the mortgagor or chargor in respect of a housing loan;

"**Corporation**" means the Seychelles Housing Development Corporation established under the Seychelles Housing Development Corporation Act;

"**defendant**", in relation to an application under [section 8\(1\)](#), means the borrower in terms of that section;

"**housing loan**" includes any loan which the Minister certifies in his opinion was granted by the Government or the Corporation for the purposes of housing;

"**housing mortgage**" means a mortgage in favour of the Corporation in respect of a housing loan (whether the mortgage was made before or after the commencement of this Act and including mortgages assigned to the Corporation under section 18 of the Seychelles Housing Development Corporation Act) and for the purposes of sections [4](#) and [6](#) and Part III of this Act includes a Tenant's Mortgage under the Tenants' Rights Act;

"**Minister**" means the Minister appointed by the President to supervise the Corporation in terms of section 2 of the Seychelles Housing Development Corporation Act;

"**mortgage**" includes charge; and

"**public body**" means—

- (a) a department, division or agency of the Government;
- (b) a body corporate directly constituted by an Act or Decree of Seychelles;
- (c) a company incorporated and registered under the Companies Act, of which the Government is a majority shareholder and nominates the majority of directors; or
- (d) any other body of persons, whether corporate or incorporate, carrying on a service or undertaking which in the opinion of the Minister is of a public nature for the benefit of Seychelles.

#### 3. Effect of Act

This Act shall have effect notwithstanding any other law to the contrary and notwithstanding the terms of any lease, tenancy agreement or licence to occupy.

## Part II – General provisions

### 4. Formalities for housing mortgages

- (1) Notwithstanding the Notaries Act and sections 17, 18 and 39(1) of the Mortgage and Registration Act, a housing mortgage may be inscribed, registered, erased or discharged on the written application of an authorised officer of the Corporation in accordance with the other provisions of those Acts, as the case may be.
- (2) The Board of Directors of the Corporation may authorise officers of the Corporation for the purposes of subsection (1).

### 5. Warranty by borrower

- (1) Unless otherwise provided in a housing mortgage, the borrower shall be deemed to warrant and guarantee to the Corporation that he has full power and legal right to mortgage the property and will warrant and defend title to the property against any other claimant.
- (2) Notwithstanding [section 2](#), this section shall only apply to housing mortgages executed after the commencement of this Act.

### 6. Deduction of repayments from salaries etc.

- (1) The Corporation may require a borrower to authorise his employer, bank or other person to deduct sums in respect of housing mortgage repayments from his salary, wages or other monies due to him and to pay those sums to the Corporation.
- (2) A person receiving an authority in terms of subsection (1) shall be bound—
  - (a) to acknowledge receipt to the Corporation of that authority;
  - (b) to make the deductions in accordance with that authority out of any sums due by him to the borrower; and
  - (c) immediately to pay those sums to the Corporation in accordance with that authority:Provided that if that person is at any time unable to comply with paragraph (b) or (c) he shall so inform the Corporation in writing, stating his reasons.
- (3) The Corporation may, where a borrower has failed to authorise the deduction of sums in respect of housing mortgage repayments under subsection (1) or where an authorisation under subsection (1) has ceased before repayment in full of the housing loan, direct an employer to deduct such sums for such periods, as may be specified in the direction, from the salary, wage, or other money due from him to a borrower in his employment and to pay those sums to the Corporation.
- (4) A direction under subsection (3) may relate to deduction of sums that have become due and are unpaid before the date of the direction or of sums that may become due and payable after that date or of both sums.
- (5) An employer who receives any direction under subsection (3) shall, notwithstanding any law or contract of employment relating to payment of salary or wage, comply with the direction.
- (6) Any payment made under subsection (3) by an employer to the Corporation in respect of a borrower shall be credited to the account of the borrower in repayment of his housing loan and shall be a sufficient discharge, to the extent of that payment, of all claims by the borrower against the employer in respect of the salary, wage or other money due to him.

- (7) Where a borrower who has authorised deduction under subsection (1) or in respect of whom a direction has been received under subsection (3)—
- (a) leaves the employment of an employer while such authorisation or direction is in force; or
  - (b) withdraws the authorisation given under subsection (1),
- the employer shall inform the Corporation the happening of any such event.
- (8) A borrower who—
- (a) withdraws any authorisation given by him under subsection (1) before repayment in full of his housing loan; or
  - (b) leaves the employment of an employer before repayment in full of his housing loan,
- shall inform the Corporation the happening of any such event.
- (9) A borrower shall, where he is in the employment of an employer, inform the Corporation—
- (a) the name and address of his employer; and
  - (b) in the event of a change of employment thereafter, the name and address of his new employer.
- (10) Any person who contravenes the provisions of subsection (5) or subsection (7) or subsection (8) or subsection (9) shall be guilty of an offence and liable on conviction to a fine of R.5,000.

## 7. Regulations

The Minister may make regulations prescribing any matters that are required or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Part III – Remedies for breach of mortgage condition

### 8. Application for possession

- (1) Where
- (a) immovable property is mortgaged to
    - (i) the Corporation in a housing mortgage; or
    - (ii) a public body authorised by the Minister by order in the *Gazette* to use the remedies provided in this Part; and
  - (b) there has been a breach by the borrower of a condition of the mortgage; and
  - (c) the Corporation or the public body has given the borrower written notice of the breach, requiring him to remedy it within 28 days of the notice or such longer period as is specified in that notice; and
  - (d) the borrower has failed to remedy the breach in the time required in that notice,
- then, notwithstanding any other written law, the Corporation or public body may apply to the Supreme Court in accordance with this Act for possession of the property.
- (2) In an application to the Supreme Court under subsection (1)—
- (a) the borrower shall be made the defendant;
  - (b) the Corporation or public body shall file with the application an affidavit verifying it and testifying with full particulars, that the conditions in subsection (1) exist in relation to the property;

- (c) the application shall give notice to the defendant of the rights of the Corporation or the public body under [section 9](#) and shall require him, if he believes that all the conditions in subsection (1) do not exist in relation to the property, to comply with [section 9\(1\)](#); and
- (d) a copy of the application and the affidavit shall be served on—
  - (a) the defendant; or
  - (b) if the defendant is not resident in Seychelles, the Curator.
- (3) In the case of a public body authorised under subsection (1) (a) (ii), this Part applies to mortgages made before or after the date of that order.
- (4) In this section "borrower" includes the mortgagor or chargor in respect of a loan by a public body authorised under subsection (1) (a) (ii).

## 9. Defendant's affidavit

- (1) If the defendant disputes that the conditions in [section 8](#) (1) exist in relation to the property, he must, within 14 days of being served with the application—
  - (a) file with Supreme Court an affidavit in response to the application testifying, with full particulars of his reasons, to that contention; and
  - (b) serve a copy of his affidavit on the Corporation or the public body, as the case may be.
- (2) Within 14 days of receipt of a copy of the defendant's affidavit in terms of subsection (1) (b), the Corporation or public body may file a further affidavit in reply to the defendant's affidavit in reply to the defendant's affidavit and where it does so it shall serve a copy of that further affidavit on the defendant.

## 10. Decree for possession

- (1) Any time after 28 days after the application has been served on the defendant, the Corporation or public body may request the Supreme Court for a decree of possession of the mortgaged property, which the Supreme Court shall grant unless—
  - (a) it is satisfied that the conditions in [section 8\(1\)](#) do not exist or that there is reasonable doubt whether they exist, in which case the Supreme Court shall grant leave to defend; or
  - (b) another person appears to have or claims an interest in the mortgaged property, in which case the Supreme Court shall grant that person leave to show cause why the decree of possession should not be made.

The grant of a decree of possession may be made either unconditionally or on such terms as to giving security or as to time of trial or otherwise as the Supreme Court may think fit.

- (2) Notice of a request under subsection (1) shall be given in writing by the Corporation or public body to the defendant if he filed an affidavit under [section 9\(1\)](#).
- (3) A decree for possession granted under subsection (1) shall confer on the Corporation or the public body the sole right of possession and ownership (including power of sale) of the mortgaged property and, on its being transcribed in the Register of Deeds or registered in the Land Register, it shall have the effect of—
  - (a) terminating any lease, tenancy agreement or licence to occupy, whether transcribed or registered or not, which is then subsisting in respect of the property; and
  - (b) erasing any mortgage inscribed or discharging any charge registered in favour of the Corporation or the public body, as the case may be, against the property.

## **11. Rules of Court**

The Chief Justice may make rules of court for the better carrying out of this Part of this Act.