

Mortgage Insurance

Cap. 233.

MORTGAGE INSURANCE REGULATIONS, 1966

L.N. 1966/
98.
1971/18.
1974/212.
1981/42.
1982/44.
1988/83.
1999/28.
2000-25.

Authority: These Regulations were made on 30th June, 1966 by the Minister under section 17 of the *Mortgage Insurance Act*.

Commencement: 8th August, 1966.

1. These Regulations may be cited as the *Mortgage Insurance Regulations, 1966*.

2. (1) In these Regulations,

"gross debt service ratio" means the ratio which the annual amount payable by the borrower in respect of the principal and interest on the mortgage plus taxes and peril insurance on mortgaged property bears to the estimated gross annual income of the borrower;

"inspector" means the Manager of the Corporation or his authorised representative or such other person as the Corporation may appoint in writing for the inspection of houses;

"spouse" has the meaning assigned to it by sections 2(3) to 2(5) of the *Succession Act*.

1981/42.
Cap. 249.

(2) Where the borrower includes

1981/42.

(a) both spouses applying jointly; or

(b) one spouse or a single woman applying independently,

then, the whole of the borrower's income and one-quarter of the income of not more than 2 children may be taken into consideration for the purpose of determining the gross debt service ratio.

1999/28. **3.** (1) An application for an approved loan shall be made to an approved lender in a form specified by the Corporation, and shall be accompanied by a loan investigation fee in the amount of \$100, \$75 of which shall be retained by the approved lender and the remaining \$25 shall be paid to the Corporation.

(2) Notwithstanding paragraph (1), where

(a) the borrower of a loan insured by the Corporation (in this regulation referred to as "the original loan") proposes to transfer to a purchaser his interest in mortgaged property securing the loan subject to the mortgage existing thereon; and

(b) in consequence thereof application is made to the Corporation by the purchaser and the approved lender to insure a loan to the purchaser on the security of the said mortgaged property on terms which include the release of the aforesaid borrower from his personal covenant to repay the original loan,

1999/28. then, in such case the loan investigation fee shall be \$90.

1981/42. **4.** (1) An approved lender who is prepared to make an approved loan to a borrower shall submit to the Corporation the application from the borrower and a request for an undertaking to insure, together with the loan investigation fee and 3 copies of the working drawings, specifications and site plans.

(2) Where an approved lender applies to the Corporation for an undertaking to insure loans to be made in relation to houses under a housing scheme, the approved lender shall submit with the application such working drawings, site plans and other information in relation to such housing scheme as the Corporation may require.

(3) In this regulation, "housing scheme" means a scheme for the laying out or subdivision of land and for the construction of houses thereon.

1999/28. **5.** The rate of interest payable by a borrower in respect of a loan to be insured up to a maximum of \$100 000 shall be 6 per cent; and in excess of \$100 000 the rate shall not exceed the maximum rate of interest as may from time to time be determined by market influence.

6. (1) Upon receipt of an application for an approved loan, the Corporation shall

- (a) determine whether the property upon which the proposed house is to be constructed is suitable for housing purposes;
- (b) verify that construction of the house has not commenced; or if construction of the house has commenced or has been completed that
 - (i) the house is being built or has been built according to standards of construction acceptable to the Corporation; or
 - (ii) the house is one in respect of which the Corporation has previously issued a mortgage insurance policy;
- (c) satisfy itself that the working plans and specifications comply, or, after amendments and alterations as noted thereon, will comply, with standards of construction acceptable to the Corporation;
- (d) determine the appraised value of the house when completed.

(2) In respect of any or all matters specified in paragraph (1) hereof, the Corporation may refer the copies of the working drawings, specifications and site plans to the inspector and accept his certificate in relation to such matters without further investigation.

7. (1) If the Corporation approves the application, with or without amendment, it shall issue an undertaking to insure, advising the approved lender of the terms and conditions under which it will insure a loan.

(2) If an application is approved by the Corporation with amendment and subsequently the applicant withdraws the application within 30 days after the date of the undertaking to insure, the loan investigation fee shall be refunded by the Corporation to the approved lender and by the approved lender to the applicant.

(3) If the Corporation refuses to approve the application, the loan investigation fee shall be refunded by the Corporation to the approved lender and by the approved lender to the applicant.

8. Where an application has been refused or withdrawn under regulation 7, the Corporation shall return to the approved lender all copies of the working drawings, specifications and site plans.

9. Where, pursuant to the issue of an undertaking by the Corporation to insure, an approved lender has agreed to make a loan to a borrower, the approved lender shall forthwith forward to the Corporation details of the loan in a form specified by the Corporation.

10. (1) Where, as aforesaid, an approved lender has agreed to make a loan in order that the borrower may erect a house, the Corporation shall make arrangements for inspections during construction and at the completion of the house, to ensure that the work of construction is carried out in reasonable conformity with the working drawings, specifications and site plans and in accordance with the standards of construction acceptable to the Corporation, and in any event not less frequently than

- (a) once at the time of laying the foundations;
- (b) once at or about the time the roof is completed; and
- (c) once at the completion of the house.

(2) It shall be the responsibility of the Corporation to carry out or cause to be carried out the inspections referred to in paragraph (1) hereof, but it shall not be the responsibility of the Corporation to provide architectural supervision during the construction of the house. Borrowers or purchasers shall be responsible for making their own arrangements with the builder and shall not be entitled to assume that their interests have been or are being looked after by the Corporation or the approved lender making the loan.

11. Within 10 days of an inspection under regulation 10, the inspector shall forward to the Corporation an inspection report in a form specified by the Corporation. The inspector shall also send to the borrower and to the approved lender a copy each of such

inspection report at the same time as it is sent to the Corporation. If the inspection report lists any adverse departures from the working drawings, specifications and site plans or standards of construction, the loan shall not be insured until such departures have been corrected to the satisfaction of the inspector or the approved loan has been reduced by the Corporation pursuant to regulation 12.

12. If any departure from the working drawings, specifications and site plans or standards of construction is not corrected as required by the inspector, he shall so advise the Corporation and the Corporation may advise the approved lender that, if the said departures are not corrected within a time specified by the Corporation,

- (a) the undertaking to insure issued by the Corporation in respect of the loan will be withdrawn and cancelled and shall cease to have any effect whatsoever, and no portion of the loan investigation fee shall be refundable to the approved lender or the borrower; or
- (b) the loan will only be insured in a specified reduced amount, and the maximum loan under the law shall be the amount of the loan as so reduced.

13. The approved lender shall be responsible for the searching of title, the obtaining of a surveyor's certificate or sketch or a certificate under regulation 14 showing or reciting the distances of the house from the boundary lines and any apparent encroachments thereon, the making of the loan and the taking of security therefor, and all things reasonably necessary to protect the security, all in accordance with normal mortgage practice.

14. When it seems in the best interest of the borrower and the approved lender, the Corporation may, on the request of the approved lender, approve the acceptance, in lieu of a surveyor's certificate, of a similar certificate from a civil engineer or other competent person who may be an employee of the lender.

15. If, prior to making an approved loan, an approved lender discovers defects in title to the property to be mortgaged to secure the loan, it may request the approval of the Corporation of such defects. The Corporation may give approval to such defects, if it is satisfied that the defects will not adversely affect the saleability of the title.

16. (1) An approved lender may charge to the borrower

- 1981/42.
- (a) the loan investigation fee prescribed in regulation 3;
 - (b) the insurance fee prescribed in section 5 of the Act;
 - (c) the cost of determining the appraised value of the house as required under regulation 6;
 - (d) the cost of carrying out inspections as required under regulation 10;
 - (e) the cost of obtaining a surveyor's certificate or a certificate under regulation 14;
 - (f) fees and disbursements for an attorney-at-law
 - (i) for searching and settling the title to the property;
 - (ii) for preparing, stamping and recording (and registering) the mortgage and for necessary copies thereof;
 - (iii) for preparing and registering any other security required by the Corporation;

and no other charge, fee or discount shall be chargeable to the borrower in respect of any approved loan, save only such charges as may be permitted by the mortgage.

(2) An approved loan shall be made at not less than par by the approved lender to the borrower, and the borrower shall not be subjected to a charge in the nature of a discount or commission.

(3) The Corporation shall not issue a policy of insurance if the borrower is being charged by any person in respect of the loan a sum that, in the opinion of the Corporation, is in excess of a reasonable compensation for the services rendered by such a person.

(4) The charges specified in paragraphs (1)(a) and (f) may, with the approval of the Corporation, be included in the principal amount advanced to the borrower where the total amount lent does not exceed the maximum loan limit nor the prescribed loan to value ratio of 100% of the appraised value of the property. 1999/28.

17. Without the written approval of the Corporation, an approved lender shall not require a borrower to provide any

security for an insured loan other than a first mortgage pursuant to paragraph (b) of subsection (1) of section 4 of the Act.

18. (1) The monthly instalment to be paid by the borrower shall be sufficient

(a) to amortise the principal and interest of the approved loan in accordance with the terms and conditions of the undertaking to insure; and

(b) to provide an amount equal to one-twelfth of the estimated annual charges for fire, wind, earthquake and other insurance of property required to protect the interest of the mortgagee in accordance with normal mortgage practice.

(2) Where pursuant to subsection (3) of section 3 of the Act an approved loan is made in a lesser amount than that stated in the undertaking to insure, or where during the term of an insured loan a prepayment of principal is accepted by an approved lender, the approved lender may agree with the borrower to reduce the amount of monthly payments or any of them, provided that such reduced payments shall be sufficient to amortise the loan over the amortisation period established for the loan as approved.

19. (1) Where the construction of a house has been fully completed to the satisfaction of the inspector, or when a house has been built according to standards of construction acceptable to the Corporation, and the approved loan in respect thereof has been made, the approved lender may forward to the Corporation a request for an insurance policy in a form specified by the Corporation, together with a remittance in the amount of the insurance fee. 1981/42.

(2) On receipt of both a lender's request and his remittance made in respect of that request under paragraph (1), the Corporation shall issue to the lender an insurance policy pursuant to section 3 of the Act.

19A. (1) An approved loan for the construction of a house may be advanced by instalments to a borrower where the construction of the house is being carried out to the satisfaction of the Corporation. 1981/42.

(2) Each instalment of a loan that is advanced under paragraph (1) shall be insured by the Corporation in a manner approved by the Corporation.

(3) Where the construction of a house in respect of which advance instalments have been made has been fully completed to the satisfaction of the inspector, the borrower is entitled to an insurance policy covering the full amount of the loan.

20. Where during the term of an insured loan a prepayment of principal is made by a borrower, the approved lender may waive the interest charges payable in lieu of the notice provided in the mortgage securing the insured loan.

21. Except as provided in paragraph (2) of regulation 18 and in regulation 20, the owner of an insured mortgage shall not alter the terms of repayment without the approval of the Corporation nor permit any derogation in the rights of the mortgagee against the mortgaged premises by way of postponement, partial discharge or otherwise without the approval of the Corporation.

22. An approved lender shall not, without the approval of the Corporation, release any collateral security or personal covenant taken as further security to a loan which was insured subject to the taking of such further security.

23. (1) During the term of an insured loan an approved lender shall cause the interests of the mortgagee to be protected by fire, wind, earthquake and other insurance on the property in accordance with normal mortgage practice. If before the loan has been fully repaid, the mortgaged premises are damaged to an extent exceeding \$1,000 by fire or other cause normally covered by insurance; the approved lender shall notify the Corporation immediately after knowledge of the damage, and any repair of such damage shall be subject to inspection by the Corporation and shall be completed to its satisfaction.

(2) A claim by an approved lender under a policy of mortgage insurance shall be reduced by an amount equal to the amount by which the cost of repairing or replacing fire or other damage or loss to the mortgaged premises exceeds amounts paid under the insurance policy referred to in paragraph (1), unless the damage or loss shall have been repaired or replaced prior to settlement of any claim under the mortgage insurance, and any cost to the approved lender of effecting such repairs or replacements shall not be approved by the Corporation as a borrower's charge.

24. (1) Within 14 days after the end of each month, an approved lender shall deliver to the Corporation a report in a form specified by the Corporation, listing all insured loans which are in arrears for at least 90 days and relating to mortgaged property in respect of which pursuant to section 7 of the Act he is entitled to exercise the power to sell, and stating the extent of the arrears and the steps which are being taken to obtain payment.

(2) Within 30 days after the 31st day of December in each year, an approved lender shall deliver to the Corporation in a form specified by the Corporation a statement in respect of insured loans administered by the approved lender showing either

- (a) the aggregate amount outstanding as at the 31st day of December in that year; or
- (b) where the financial year of the approved lender ended on any date between the 30th day of September and the 31st day of December in that year, the aggregate amount outstanding as at that date.

25. In any case where the power of sale contained in a mortgage securing an insured loan is exercised pursuant to subsection (2) of section 7 of the Act and the property is sold at a price equal to or in excess of the reserve price, the approved lender shall forthwith

- (a) report the circumstances of the sale to the Corporation, and
- (b) advise the Corporation that any and all claims which the approved lender may have had under the said mortgage or under any policy of insurance issued in respect thereof have been fully paid and satisfied, and
- (c) advise the Corporation of the disposition of any proceeds of the sale in excess of the reserve price.

26. In the event of the sale of mortgaged property pursuant to paragraph (a) of subsection (4) of section 7 of the Act, the approved lender shall forthwith submit a claim in a form specified by the Corporation for the difference between the sale price and the settlement value of the property and the Corporation shall, within 30 days from the receipt by it of such claim, pay to the holder of the loan the amount approved by it as payable under the policy of mortgage loan insurance.

THE LAWS OF BARBADOS

27. In the event of a transfer to the Corporation or its nominee, pursuant to paragraph (b) or paragraph (d) of subsection (4) of section 7 of the Act, or in the event of a sale to the Corporation or its nominee, pursuant to paragraph (c) of subsection (4) of section 7 of the Act, the approved lender shall forthwith submit in a form specified by the Corporation a claim for the amount it considers to be payable under the applicable paragraph of subsection (4) of section 7 of the Act and such claim shall be accompanied by an abstract of title and full particulars concerning the loan and the state of the mortgaged property as are then in the possession of the approved lender, and, if required by the Corporation, a draft of the proposed conveyance or transfer to the Corporation or its nominee as the case may be.

28. Where an approved lender exercises the power of sale contained in a mortgage securing an insured loan and sells the mortgaged property, whether by public auction or private treaty, at a price less than the reserved price without the consent of the Corporation, the approved lender shall immediately advise the Corporation of the circumstances of the sale.

29. In the event of a claim under regulation 27, the Corporation may, at its own expense, cause a search to be made of the title to the property, and shall, within 30 days from the receipt of a claim, advise the approved lender whether or not it has any objection to the adequacy of title. The approved lender at its option and within 30 days of receipt of notice of any objection, or such longer period as the Corporation may approve, shall either satisfy the objection or withdraw the claim.

30. If a mortgage securing an insured loan provides that the mortgagor shall not lease or let the mortgaged property without the consent of the mortgagee, such consent in the case of a lease or letting for a period longer than 1 year shall not be given by the mortgagee without the prior approval of the Corporation.

31. When the Corporation has approved title to the property pursuant to regulation 29, the approved lender shall forthwith tender to the Corporation a conveyance or transfer of the property, and, subject to regulation 30, possession of the

property, and the Corporation shall within 30 days from the receipt by the Corporation of such conveyance or transfer, pay to the approved lender the amount determined by the Corporation as payable under the policy of mortgage insurance.

32. Borrower's charges shall be deemed to be approved if disbursed by an approved lender in accordance with the terms of the mortgage to safeguard the interests of the mortgagee and the Corporation, for insurance premiums for fire and other perils insured against, for taxes and other rates or charges levied against the property which have priority over the mortgage, or any emergency expense not exceeding in cost \$100, and for such other purposes and in such amounts as may be approved in writing by the Corporation.

33. To ensure compliance with the Act and these regulations, the approved lender shall permit the Corporation by its authorised representative during business hours to inspect the books, records and accounts of an approved lender with respect to any loans made pursuant to the Act.

