

Western Australia

Property Law (Mortgagee's Power of Sale) Amendment Bill 2009

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Western Australia

LEGISLATIVE COUNCIL

(Introduced by Hon. Dr Sally Talbot, MLC)

**Property Law (Mortgagee's Power of Sale)
Amendment Bill 2009**

A Bill for

An Act to amend the *Property Law Act 1969* to require a mortgagee or chargee, in exercising a power of sale in respect of mortgaged or charged land, to take reasonable care to ensure that the land is sold for not less than its market value.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

2

1. Short title

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This is the *Property Law (Mortgagee's Power of Sale) Amendment Act 2009*.

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2. Commencement

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This Act comes into operation as follows on the day fixed by proclamation.

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1 **Part 2 — Amendments to the *Property Law Act 1969***

2 **3. Act amended**

3 The amendments in this Part are to the *Property Law Act 1969*.

4 **4. Section 59A inserted**

5 After section 59 insert the following section:

6

7 **59A. Duties of mortgagees and chargees in respect of sale**
8 **price of land**

- 9 (1) A mortgagee, in exercising a power of sale in respect
10 of mortgaged land, must take reasonable care to ensure
11 that the land is sold for —
- 12 (a) if the land has an ascertainable market value
13 when it is sold — not less than its market value;
14 or
- 15 (b) in any other case — the best price that may
16 reasonably be obtained in the circumstances.
- 17 (2) Subsection (1) applies to an agent appointed by a
18 mortgagee to sell the mortgaged land in the same way
19 as it applies to a mortgagee exercising a power of sale
20 in respect of mortgaged land.
- 21 (3) Nothing in section 62(3) or 65(2) of this Act, or in
22 section 108 of the *Transfer of Land Act 1893*, affects
23 the duty imposed by this section.
- 24 (4) The title of the purchaser cannot be challenged on the
25 ground that the mortgagee has committed a breach of
26 any duty imposed by this section, but a person who
27 suffers loss or damage as a result of the breach of the
28 duty has a remedy in damages against the mortgagee
29 exercising the power of sale or selling the land.

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- 1 (5) This section has effect despite any stipulation to the
2 contrary.
- 3 (6) Nothing in this section affects the operation of any rule
4 of law relating to the duty of the mortgagee to account
5 to the mortgagor.
- 6 (7) This section applies to mortgages whether made before
7 or after the commencement of this section but only in
8 relation to a sale arising as a consequence of a default
9 occurring after the commencement of this section.
- 10 (8) This section extends to mortgages under the *Transfer*
11 *of Land Act 1893*.

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