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## Public Ruling Duties Act:

### CONCESSIONAL (\$5) DUTY ON A TRANSFER OF MORTGAGE

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*A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.*

## What this Ruling is about

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1. The definition of existing right in Schedule 6 of the *Duties Act 2001* (the Duties Act) includes an existing right of the holder of a mortgage, including the debt secured by the mortgage, other than the holder of a mortgage-backed security.<sup>1</sup>
2. If the conditions in s.24(1) of the Duties Act are satisfied, the transfer duty payable on the transfer of an existing right of this kind is \$5. Otherwise, the general rate set out in s.24(2) applies.
3. This Public Ruling clarifies the phrase 'solely over land in Queensland' in s.24(1) and quantifies the amount of transfer duty imposed if there is one transaction for the transfer of several mortgages.

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<sup>1</sup> Paragraph (h) of the definition

## Ruling and explanation

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### Solely over land in Queensland

4. There is no loss of the \$5 nominal duty concession<sup>2</sup> where a mortgage over land in Queensland also contains security covenants relating to rents, profits, insurances and similar matters which are usually contained in securities of that type and which are incidental to the mortgage of the land. This is confirmed in the Explanatory Notes to the Duties Bill 2001<sup>3</sup> which provide:

‘Provided that the mortgage is not over other property, it will be solely over land in Queensland even though it may secure the usual covenants found in mortgages, such as those relating to insurance and incidental profits and rights of the land.’

### One transaction for the transfer of several mortgages

5. Often, there will be one transaction relating to the transfer of more than one mortgage. The concessional duty of \$5 applies to each separate dutiable transaction (i.e. the transfer of each mortgage).

## Date of effect

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6. This Public Ruling takes effect from the date of issue.

David Smith  
Commissioner of State Revenue  
Date of Issue 24 February 2009

## References

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Public Ruling	Issued	Dates of effect	
		From	To
DA024.1.1	24 February 2009	24 February 2009	Current
Supersedes Practice Direction DA 39.3	2 January 2007	2 January 2007	23 February 2009

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<sup>2</sup> Section 24(1) of the Duties Act

<sup>3</sup> At page 10