



Queensland

Legal Profession (Solicitors) Rule 2006

Subordinate Legislation 2006 No. 167

made under the

Legal Profession Act 2004

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1 Short title

This rule may be cited as the *Legal Profession (Solicitors) Rule 2006*.

2 Commencement

This rule commences on 30 June 2006.

3 Particular former rules comprise the solicitors rule

- (1) The schedule contains provisions of the *Queensland Law Society Rules 1987* as in force immediately before 30 June 2006.
- (2) The schedule has effect subject to section 4.

4 Changes to former provisions

- (1) The provisions in the schedule have effect as if—
 - (a) a reference in the schedule to a practising practitioner or a practitioner, however described, were a reference to a solicitor, other than a government legal officer; and
 - (b) a reference in the schedule to a practice were a reference to a law practice; and
 - (c) a reference in the schedule to a conveyancer were omitted; and
 - (d) a reference in the schedule to—
 - (i) the *Life Insurance Act 1945* were a reference to the *Life Insurance Act 1995* (Cwlth); and
 - (ii) the Companies (Queensland) Code were a reference to the *Corporations Act 2001* (Cwlth).
- (2) Also, the schedule, rule 78(2) has effect as if the words ‘he should not be called upon to appear before the Statutory Committee to be dealt with according to law’ read instead ‘he or she should not be the subject of a complaint to the legal services commissioner’.

- (3) Further, the schedule, rule 85 has effect as if paragraphs (iii)(d) and (e) were omitted and the following paragraph were inserted instead—

‘(d) a building society or credit union that is an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth),’.

- (4) In addition, a reference in the schedule, rule 87A, to an excluded mortgage is a reference to an excluded mortgage within the meaning of the *Queensland Law Society Act 1952*, section 24A as in force immediately before 1 July 2004.

5 Expiry

This rule expires on 30 June 2007.

Schedule**Provisions of former
Queensland Law Society Rules
1987**

section 3

78

(1) A practising practitioner shall not share with any unqualified person receipts from his practice except in the following cases—

(a) He may pay an annuity or other sum out of profits to a retired partner or the dependants or legal personal representatives of a deceased partner.

(b) He may pay an annuity or other sum out of profits to a retired solicitor or conveyancer or the dependants or legal personal representatives of a deceased solicitor or conveyancer, from whom he has purchased the goodwill of the practice formerly carried on by such retired or deceased solicitor or conveyancer:

Provided that the contract of purchase is in writing and that the provisions of such contract relating to payments of an annuity or other sum as aforesaid have been approved by the Council.

(c) In a case where at the request of the dependants or legal personal representatives of a deceased solicitor or conveyancer he conducts the practice formerly carried on by such deceased solicitor or conveyancer pending the sale of the goodwill thereof, he may pay to such dependants or legal personal representatives a sum out of the profits of such practice:

Provided that the period for which he so conducts such practice shall not exceed one year, or such longer period as the Council may approve.

(d) Where the Council has approved of his doing so and he complies with any conditions subject to which the approval was given.

Schedule (continued)

- (2) The Council may by writing under the hand of the secretary require any practising practitioner suspected of contravening subrule (1) hereof to show cause by affidavit or otherwise why he should not be called upon to appear before the Statutory Committee to be dealt with according to law.

80 Advertising

- (1) A practitioner may advertise or promote the practitioner's expertise or practice in any way the practitioner considers appropriate.
- (2) However, a practitioner must not advertise or promote the practitioner's expertise or practice in a way that—
 - (a) is false, misleading or deceptive; or
 - (b) would contravene the *Fair Trading Act 1989*; or
 - (c) if done by a corporation, would contravene the *Trade Practices Act 1974* (Cwlth).
- (3) A practitioner who advertises or promotes the practitioner's expertise or practice in a way that is false, misleading or deceptive or would contravene the *Fair Trading Act 1989* or *Trade Practices Act 1974* (Cwlth) commits unprofessional conduct.

84 Duty to render costs

- (1) A practitioner shall within a reasonable time after being so requested in writing by a client render to the client a bill of costs covering all work for that client to which such request relates or for which he has not already rendered a bill of costs or been paid.
- (2) If such practitioner fails or neglects to render such bill of costs within one month after receiving such request or within such further period as the client in writing allows or as may in the circumstances be reasonable he shall if requested by the client forthwith pay to the client all moneys and if so requested shall deliver to the client all documents which he is holding on behalf of that client, notwithstanding that he might otherwise

Schedule (continued)

be entitled to a lien upon those moneys or documents for payment of his bill of costs.

85

A practitioner, or a firm of practitioners, engaged by a person to negotiate or otherwise act in respect of a contract or mortgage under or upon which that person has provided or agrees to provide credit to any other person shall not during the course of such engagement act for such other person in respect of the same matter or in respect of any other matter in which the credit (or any part of it) has been or is intended to be applied unless the provider of the credit shall be an excepted person.

An excepted person for the purpose of this rule shall be—

- (i) a member of the family of the said other person or any corporation, partnership, syndicate, joint venture or trust in which the whole of the beneficial interest is presently vested in one or more of such persons;
- (ii) a related corporation of such other person as aforesaid;
- (iii) a person or a company of the kind described hereunder—
 - (a) a corporation authorised to carry on banking business in Australia or a related corporation thereof,
 - (b) a corporation authorised to carry on insurance business in Australia or a related corporation thereof,
 - (c) a company registered under the *Life Insurance Act 1945*,
 - (d) a building society registered under the *Building Societies Act 1985* or under corresponding legislation of any State or Territory of Australia,
 - (e) a credit society registered under the *Credit Societies Act 1986* or under corresponding legislation of any State or Territory of Australia,

Schedule (continued)

- (f) a trustee company specified in the Second Schedule to the *Trustee Companies Act 1968* or authorised to carry on business under corresponding legislation of any State or Territory of Australia,
- (g) a registered corporation in terms of the *Financial Corporations Act 1974* or a related corporation thereof,
- (h) a company listed on any stock exchange in Australia or a related corporation thereof,
- (i) a government instrumentality, or
- (iv) the vendor of any property the subject of such credit transaction.

For the purpose of this rule and the following rule the words ***related corporation*** have the meaning ascribed to them by the Companies (Queensland) Code.

For the purpose of this and the following Rule ***member of the family*** includes a child, grandchild, sibling, parent, grandparent, spouse of any of the foregoing, and for the purpose of this definition a person who lives with another person as a spouse, although not legally married to that other person, shall be deemed to be a member of the family of that other person in the same manner as he would be if he were married to that other person.

86 Limitation on borrowings and guarantees etc.

- (1) A practitioner shall not borrow money from a client unless such client is—
 - (i) a person or company listed in subclauses (a) to (i) inclusive of subrule (iii) of the preceding rule;
 - (ii) a member of the family of the practitioner or any corporation, partnership, syndicate, joint venture or trust in which or the shares in which the whole of the beneficial interest is presently vested or is capable only of being vested in the practitioner, one or more members

Schedule (continued)

of the family of such practitioner or in a person or company to whom or to which subrules (i) or (iii) of this Rule apply; or

- (iii) such other person or categories of persons as the Council may determine from time to time.
- (2) A practitioner must not, without the council's written consent—
 - (a) guarantee the performance of a third party's obligation in relation to an amount borrowed from a client; or
 - (b) indemnify a client against loss because of the non-performance of a third party's obligation in relation to an amount borrowed from the client.
- (3) A practitioner must not act for a client who wants to invest an amount if—
 - (a) the amount to be invested is to be borrowed by a related person; or
 - (b) without the council's consent, a related person is to guarantee the performance of a third party's obligation in relation to an amount.
- (4) In this section—

amount borrowed, from a client, includes interest and any other costs payable in relation to the amount.

client means a person (save and except a person advised by another practitioner independently employed and instructed in respect of that transaction) between whom and a practitioner (or partner at any time of a practitioner or employer of a practitioner) any relationship of solicitor and client exists and also includes any person seeking to invest money through a practitioner or approached by or on behalf of a practitioner for that purpose.

related person, of a practitioner, means—

- (a) the practitioner's employee, employer or partner; or
- (b) a member of—
 - (i) the practitioner's family; or

Schedule (continued)

- (ii) the family of a person mentioned in paragraph (a);
or
 - (c) a corporation, joint venture, partnership, syndicate or trust in which the practitioner or a person mentioned in paragraph (a) or (b) has shares or a beneficial interest, whether or not vested in the person;
- other than a person or company mentioned in subsection (1)(i).¹

87 Mortgage practices

- (1) This rule does not apply to any mortgage of which a practitioner is the beneficial owner or to any mortgage held by a practitioner or a corporation in his or its capacity as the trustee of any will or settlement or to any mortgage which when executed or transferred will be so held.
- (2) For the purpose of this rule—

contact request form, for a contributory mortgage, means a written form stating that, if a contributor requires the contributor's contact details to be given to other contributors, the contributor must complete the form as to what contact details are to be given and sign it and return it to the responsible practitioner within 14 days of the date the default notice issued.

contributor means any person who provides or proposes to provide moneys on the security of a contributory mortgage arranged by a practitioner.

contributory mortgage means a mortgage to secure moneys provided by two or more persons. Two or more persons providing moneys on joint account shall for the purpose of this rule be regarded as a single person.

default notice, for a contributory mortgage, means a written notice to a contributor that—

- (a) gives full particulars of a material default; and

¹ See section 85 for the meaning of *member of the family*.

Schedule (continued)

- (b) states the date the notice is issued; and
- (c) advises that the contributor may request a meeting of contributors by signing and returning the meeting request form to the responsible practitioner within 14 days of the date the notice issued; and
- (d) advises that the contributor may request that the contributor's contact details be given to all other contributors by signing and returning the contact request form to the responsible practitioner within 14 days of the date the notice issued.

material default—

1 A ***material default***, for a contributory mortgage, is—

- (a) a default by the borrower in payment under the mortgage of interest so that interest is owing for a period of not less than 3 months; or
- (b) a default by the borrower in repayment under the mortgage of part or all of the principal so that the part or all of the principal is owing for a period of not less than 3 months after the date for repayment.

2 For this definition, payment of interest by or on behalf of the responsible practitioner does not remedy a default mentioned in item 1(a).

meeting request form, for a contributory mortgage, means a written form stating that, if a contributor requires a meeting of contributors because of a material default, the contributor must sign the form and return it to the responsible practitioner within 14 days of the date the default notice issued.

mortgage means a mortgage, charge, security, bill of sale, loan contract or any document purporting to secure or regulate the payment of moneys.

lender and ***borrower*** means as the context requires the person to whom and the person by whom any moneys are payable pursuant to any mortgage.

mortgage register means a register maintained for the purpose of this rule containing the particulars specified in schedule 2.

Schedule (continued)

nominee means a practitioner or practitioner's nominee company in whose name a mortgage or contributory mortgage is held.

practitioner's nominee company means a corporation each of the members and each of the directors of which is a practitioner or other person first approved by the Council.

principal, for a contributory mortgage, means the moneys provided to the borrower under the mortgage.

report about a mortgage, for a contributory mortgage, means a written report that—

- (a) states the amount of principal outstanding for the mortgage; and
- (b) gives details of any reports and proposals obtained by the responsible practitioner about property against which the mortgage is secured, including valuation reports and marketing proposals; and
- (c) states the responsible practitioner's opinion about the period of time the property against which the mortgage is secured may take to sell; and
- (d) states the responsible practitioner's opinion about the extent to which it is likely that there will be a deficiency in the principal and interest paid under the mortgage.

responsible practitioner, for a contributory mortgage, means—

- (a) the practitioner who acts as trustee of the mortgage; or
- (b) if a practitioner's nominee company acts as trustee of the mortgage, each practitioner who is a member or director of the company.

trustee company means a trustee company specified in the second schedule to the *Trustee Companies Act 1968* or authorised to carry on business under corresponding legislation of any State or Territory of Australia.

- (3) Where a practitioner's nominee company holds any property as a nominee or trustee for another person a practitioner who is a member or director of that company shall not—

Schedule (continued)

- (a) permit any person to become a member or director of that company unless that person is a practitioner or other person first approved by the Council; or
- (b) permit that company to undertake any other activity.

(4)(a) Every practitioner who—

- (i) prepares a mortgage, payments pursuant to which are to be collected by that practitioner; or
- (ii) is authorised to collect moneys payable under any mortgage, except on any discharge or partial discharge of the mortgage; or
- (iii) takes a transfer of mortgage to himself or prepares a transfer thereof to a practitioner's nominee company of which he is a member or director;

shall keep a mortgage register and shall enter in that mortgage register the particulars specified in schedule 2 within one month after—

- (iv) the date on which moneys are first provided under the mortgage; or
- (v) the date on which the mortgage becomes one to which this subrule applies;

whichever date last occurs.

- (b) For every other mortgage held in the name of a nominee the same particulars as are required to be entered in such register by paragraph (a) of this subrule shall be entered in the mortgage register of—

- (i) the practitioner who is such nominee; or
- (ii) the practitioner who is the director or one of the directors of the practitioner's nominee company which is such nominee;

as the case requires.

- (c) Every practitioner who prepares a variation of any mortgage to which paragraph (a) or (b) of this subrule applies shall, within one month thereafter, enter in the mortgage register such of the particulars specified in schedule 2 as may in the

Schedule (continued)

circumstances be necessary, in consequence of such variation, to maintain the accuracy of the mortgage register.

- (5)(a) Except in the case of a mortgage to be held by a practitioner's nominee company a practitioner shall not arrange or agree to arrange a mortgage which is intended to be held in the name of a corporation (other than a trustee company) of which that practitioner is a member or director where the mortgage will be held by that corporation as trustee for the beneficial owner thereof.
- (b) If a practitioner shall, notwithstanding the provisions of paragraph (a) of this subrule, arrange or agree to arrange a mortgage which is intended to be held in the name of a corporation (other than a trustee company) of which that practitioner is a member or director where the mortgage will be held by that corporation as trustee for the beneficial owner thereof, the other provisions of this rule shall apply to such practitioner in relation to such mortgage in the same way as if such mortgage was or was intended to be held in the name of a practitioner's nominee company.
- (6)(a) A practitioner shall not prepare a transfer of any mortgage to any company of which he is a member or director other than to a solicitor's nominee company or a trustee company where such mortgage will be held by the company as trustee for the beneficial owner thereof.
- (b) If a practitioner shall, notwithstanding the provisions of paragraph (a) of this subrule, prepare a transfer of any mortgage to any company of which he is a member or director other than to a solicitor's nominee company or a trustee company where such mortgage will be held by the company as trustee for the beneficial owner thereof, the other provisions of this rule shall apply to such practitioner in relation to such transfer and mortgage in the same way as if such transfer was or was intended to be in favour of a practitioner's nominee company.
- (7) A practitioner—
 - (a) shall obtain the prior written authority of the lender or of each contributor, as the case requires, in or to the effect

Schedule (continued)

of the form in Part A or B of schedule 1 before any moneys are provided to a borrower under a mortgage to which subrule (4)(a)(i) applies;

- (b) shall not without the consent in writing of each contributor arrange any contributory mortgage under which moneys to be provided to a borrower are to be made available otherwise than in a lump sum;
 - (c) shall not arrange any contributory mortgage under which it is proposed that progressive payments will be made to any borrower unless the practitioner at the date of the first payment to a borrower to be made pursuant to such mortgage has received from all contributors the full amount being contributed by each contributor; or at such date holds and enforceable unconditional agreement given by a bank (as defined by the *Banking Act 1959-1984*) to provide the difference between the maximum amount to be provided to the borrower under such contributory mortgage and the amounts contributed by the contributors and such agreement is not revocable except upon the full amount to be provided under such contributory mortgage being received from the contributors or on the discharge of the mortgage.
- (8) A practitioner shall not arrange a mortgage to which subrule (4)(a)(i) applies where the mortgage—
- (a) will be subject to any prior mortgage; or
 - (b) is not intended to be registered, if registration of mortgages of the kind of property referred to therein is permitted by any Act;

unless the express written consent of the lender or, in the case of a contributory mortgage, of each contributor has first been obtained by the practitioner.

- (9)(a) Whenever any moneys to be provided on mortgage are received by a practitioner from a lender or a contributor an account in the name of that lender or that contributor shall be established in the practitioner's trust account ledger and the moneys received credited to that account.

Schedule (continued)

- (b) Before any moneys are provided on a mortgage in the name of a nominee an account in respect of that mortgage shall be established in the practitioner's trust account ledger in the name of such nominee and the amount to be provided by the lender or, in the case of a contributory mortgage, by each contributor shall be paid to the nominee's account.
 - (c) A separate account in the trust account ledger in the name of the nominee shall be established in respect of each mortgage loan held or intended to be held in the name of the nominee.
 - (d) In the case of any mortgage held in the name of a nominee any payments received from or on account of the borrower shall be paid into the practitioner's trust account and first credited to the nominee's account in the trust account ledger relating to such mortgage. As soon as practicable thereafter the amount credited to such nominee's account less any amounts properly debited against such account shall be paid to the lender or in the case of a contributory mortgage to the contributors in the proportions to which such contributors are respectively entitled or in such other manner as all of the contributors shall agree and direct.
- (10)(a) In respect of every mortgage to which subrule (4) applies the practitioner shall within one month after the date of—
- (i) the first payment to the borrower under the mortgage; or
 - (ii) the transfer of the mortgage; or
 - (iii) being authorised to collect payments from or on account of the borrower except on any discharge or partial discharge of the mortgage; or
 - (iv) any variation of such mortgage;
- prepare and execute a summary of mortgage containing the particulars specified in schedule 2. The original summary of mortgage shall be retained by the practitioner and within the said period of one month copies shall be forwarded to the lender and in the case of a contributory mortgage to each contributor.
- (b) Where there is any change of contributors the practitioner shall within one month after that change prepare and supply to

Schedule (continued)

any new contributors a summary of mortgage containing the particulars specified in schedule 2. The original summary of mortgage required by this paragraph shall be retained by the practitioner and within the said period of one month copies shall be forwarded to each new contributor.

- (11) Every practitioner who prepares, or in whose name is held, or who is a director of a practitioner's nominee company in whose name is held, a mortgage to which subrule (4) applies shall ensure that the provisions of any Acts regulating or controlling such mortgage or creating duties, obligations or restrictions in relation thereto are complied with in respect of that mortgage.
- (12) All mortgages, certificates of title, insurance policies and any other deeds or documents relating to any security in respect of which any mortgage has been given shall be retained by the practitioner unless directed in writing by the lender or, in the case of a contributory mortgage, by all contributors, to hand the same to some other person.
- (13) If for any substantial reason it is not possible to complete any part of the mortgage register or the summary of mortgage within the times specified by subrules (4) and (10), the practitioner shall complete the register and the summary as required omitting the particulars not then available.
- (14) If there is a material default in a contributory mortgage, the responsible practitioner must, as soon as reasonably practicable but not more than 28 days after the material default happens, give each contributor—
 - (a) a default notice; and
 - (b) a copy of subrule (2) and subrules (14) to (28); and
 - (c) a report about the mortgage; and
 - (d) a meeting request form; and
 - (e) a contact request form.
- (15) At the written request of—
 - (a) contributors whose interests represent not less than 25% of the moneys secured by the contributory mortgage; or

Schedule (continued)

- (b) not less than 25% of the total number of contributors for the contributory mortgage;
- the responsible practitioner must call a meeting of all contributors with the responsible practitioner for a date not more than 28 days after the date the default notice issued.
- (16) The time and place of the meeting must be reasonable in all the circumstances.
- (17) A contributor may, by signed notice, give any person a power to vote for the contributor by way of proxy vote at the meeting.
- (18) The responsible practitioner is to preside at the meeting and is to put the following question to the meeting—
- ‘That [name of the responsible practitioner *or* name of the practitioner’s nominee company] continue to act as trustee of the contributory mortgage.’.
- (19) At the meeting, the question is decided in the affirmative if either—
- (a) contributors whose interests represent more than 50% of the moneys secured by the contributory mortgage vote in the affirmative; or
- (b) a majority of the total number of contributors for the contributory mortgage vote in the affirmative.
- (20) The responsible practitioner is to have a vote only if the responsible practitioner is a contributor.
- (21) Contributors are able to take part in the meeting by telephone, closed-circuit television or another form of communication allowing reasonably contemporaneous and continuous communication between contributors taking part in the meeting.
- (22) The responsible practitioner must—
- (a) keep a record of the minutes of the meeting and its decision on the question; and
- (b) give the ASIC a copy of the record within 7 days after the meeting.

Schedule (continued)

- (23) A trustee's functions in relation to a contributory mortgage continue, despite the question mentioned in subrule (18) not being answered in the affirmative, until a new trustee is appointed by a court.
- (24) If the responsible practitioner fails to comply with subrule (14), (15), (27) or (28), the Society—
- (a) may comply with the subrule as if it were the responsible practitioner; and
 - (b) may require the responsible practitioner to give the Society a list of the names and addresses of all contributors for the contributory mortgage.
- (25) A failure of the responsible practitioner to comply, without reasonable excuse, with any of the following requirements is professional misconduct—
- (a) a requirement under subrule (14), (15), (16), (18), (24)(b), (27) or (28);
 - (b) continuation of a trustee's functions under subrule (23).
- (26) Strict compliance with the notice, report and forms mentioned in subrule (14) is not necessary and substantial compliance, including the use of a combined document, is sufficient.
- (27) The responsible practitioner must, at the request of a contributor, give the contributor's contact details to all other contributors for the contributory mortgage.
- (28) The contact details must be given—
- (a) if the responsible practitioner issued a default notice and the contributor returns a completed contact request form within 14 days of the date the default notice issued—within 21 days of the date the default notice issued; or
 - (b) otherwise—as soon as practicable after the responsible practitioner receives the request.

Schedule (continued)

Schedule 1**PART A—MORTGAGE INVESTMENT AUTHORITY**

(To be completed and obtained for each mortgage except where a general mortgage authority is applicable.)

To: *(Insert name and address of Lenders Solicitor(s))*

- (1) Total moneys to be provided \$ in one lump sum (or by a first payment of \$ and further payments on the following terms—
- (2) My contribution \$.
- (3) Estimated value of security \$ established by (e.g. last same price and date or valuation of *(name)* and brief details).
- (4) Address of security—
- (5) Borrower—*(name and address)*.
- (6) Term of facility months/years.
- (7) Interest rate/yield % per annum payable (quarterly/yearly etc.) \$.
- (8) Lender— the funds are to be provided in the name of—*(name and address)*.
- (9) The total sum provided is to be made available upon the security of a first mortgage (or upon the security of a mortgage the amount(s) of \$ being secured by prior mortgage(s)).
- (10) All correspondence is to be sent to me/us at my/our above address until further notice.
- (11) (Insert any other special conditions or circumstances and additional instructions).

(Where this authority is provided in relation to a second or subsequent mortgage the following additional paragraph must be inserted and underlined.)

Schedule (continued)

I ACCEPT THAT ANY RIGHTS OF THE LENDER UNDER THIS MORTGAGE (WHICH INCLUDES MY RIGHTS) ARE SUBJECT TO AND SECONDARY TO THE RIGHTS OF THE LENDER(S) UNDER THE PRIOR MORTGAGE(S) SECURED ON THIS SECURITY AS NOTED ABOVE.

(Signatures)

Lender(s)

PART B—GENERAL MORTGAGE INVESTMENT AUTHORITY

(To be obtained only where a continuing instruction is to be given to a solicitor to advance moneys on freehold first mortgage investments without the lender previously specifying any particular first mortgage security.)

I/We (*name and address*) confirm my/our instructions to you to provide at your discretion the sum of \$ now held by you on my/our behalf on freehold first mortgage security to be held in the name of (*name and address of nominee*) and I/We acknowledge that the moneys to be made available under any such first mortgage may be provided by two or more contributors (including myself/ourselves) but will not exceed per centum of the valuation obtained by you and that within one month of each such provision of funds you will forward a summary of the mortgage.

All correspondence is to be sent to me/us at my/our above address until further notice.

I/We may cancel this authority at any time by written instructions to you.

(Signatures)

Lender(s)

Schedule (continued)

Schedule 2

Particulars to be specified in mortgage register and in summary of mortgage.

- (1) Name and address of lender.
- (2) Name and address of borrower.
- (3) Total sum of the loan.
- (4) Date on which the sum was made available.
- (5) A summary of the methods and/or periodic rate of payments of moneys pursuant to the mortgage.
- (6) The rate of interest, a summary of the method of variation of interest, if applicable, and a summary of the method and periodic rate of payment of interest, if not included within (5).
- (7) The security for the payment of moneys payable pursuant to the mortgage in sufficient detail to enable the security to be readily identified, and where applicable, title particulars, or alternatively that there is no security.
- (8) The registration, dealing or certificate number or other relevant identification.
- (9) Where relevant, insurance particulars.
- (10) Any other desired information.

Schedule (continued)

87A Excluded mortgages

- (1) A practitioner may practise in excluded mortgages only if the practitioner holds current mortgage fidelity insurance.
- (2) A practitioner who practises in excluded mortgages must—
 - (a) advise the secretary that the practitioner practises in excluded mortgages; and
 - (b) give the secretary details of the practitioner's mortgage fidelity insurance.
- (3) A practitioner must provide the advice and give the details mentioned in subsection (2) to the secretary as soon as practicable after—
 - (a) the commencement of this section; or
 - (b) if the practitioner is not practising in excluded mortgages at the commencement—the practitioner starts practising in excluded mortgages.
- (4) In this section—

mortgage fidelity insurance, of a practitioner, means insurance that provides fidelity insurance cover of at least \$950 000 for each claim arising out of an excluded mortgage in relation to whose preparation the practitioner accepts instructions to negotiate or otherwise act.

practise, in excluded mortgages, means accept instructions to negotiate, or otherwise act, in relation to the preparation of an excluded mortgage.

practitioner includes a firm of practitioners.

88 Offices

Except to the extent that he may have been exempted by the Council, a practitioner shall ensure and, if so required by the Council, shall furnish such evidence as the Council may require, that he or another practitioner entitled to practise and having a current practising certificate is at all times in charge of any office at which the practice of the first mentioned practitioner is conducted and ordinarily gives reasonable

attendance at such office during each day on which such office is open.

91 Books of account to be kept

Every practitioner shall keep proper books of account in respect of all moneys coming into his hands in the course of his practice whether such moneys be trust moneys or not, and shall keep in respect of all moneys so received proper serially machine-numbered receipts.

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Where a practitioner becomes aware whether in the course of his practice or otherwise, of facts or circumstances which give rise in his mind to a reasonable suspicion that the trust funds of some other practitioner are not in order it shall, unless such first-mentioned practitioner is acting for such other practitioner in a professional capacity, be his duty to report such facts or circumstances in writing to the secretary.

ENDNOTES

- 1 Made by the Governor in Council on 29 June 2006.
- 2 Notified in the gazette on 30 June 2006.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.