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## SCHEDULES

### SCHEDULE 1

#### DISCHARGE OF MORTGAGES ETC.: SUPPLEMENTARY PROVISIONS

##### PART I

##### DISCHARGE IN PURSUANCE OF PURCHASE NOTICES

###### *Construction*

1 In this Part of this Schedule—

“the consideration payable” means the consideration payable to [<sup>F1</sup>the purchaser] for the disposal by him of the property referred to in [<sup>F2</sup>section 12B(7)];

[<sup>F1</sup>“the purchaser”] has the same meaning as in section 12, and accordingly includes any person to whom that section applies by virtue of [<sup>F3</sup>section 16(4) or (5)]; and

“the nominated person” means the person or persons nominated as mentioned in [<sup>F4</sup>section 12B(2)].

###### **Textual Amendments**

- F1** Words in Sch. 1 para. 1 substituted (1.10.1996) by 1996 c. 52, s. 92(1), Sch. 6 Pt. IV para. 11(1)(a); S.I. 1996/2212, art. 2(2) (with Sch.)
- F2** Words in definition of “consideration payable” in Sch. 1 para. 1 substituted (1.10.1996) by 1996 c. 52, s. 92(1), Sch. 6 Pt. IV para. 11(1)(b)(i); S.I. 1996/2212, art. 2(2) (with Sch.)
- F3** Words in definition of “the purchaser” in Sch. 1 para. 1 substituted (1.10.1996) by virtue of 1996 c. 52, s. 92(1), Sch. 6 Pt. IV para. 11(1)(b)(ii); S.I. 1996/2212, art. 2(2) (with Sch.)
- F4** Words in definition of “the nominated person” in Sch. 1 para. 1 substituted (1.10.1996) by 1996 c. 52, s. 92(1), Sch. 6 Pt. IV para. 11(1)(c); S.I. 1996/2212, art. 2(2) (with Sch.)

###### *Duty of nominated person to redeem mortgages*

- 2 (1) Where in accordance with [<sup>F5</sup>section 12B(5)(a)] an instrument will operate to discharge any property from a charge to secure the payment of money, it shall be the duty of the nominated person to apply the consideration payable, in the first instance, in or towards the redemption of any such charge (and, if there are more than one, then according to their priorities).
- (2) Where sub-paragraph (1) applies to any charge or charges, then if (and only if) the consideration payable is applied by the nominated person in accordance with that sub-paragraph or paid into court by him in accordance with paragraph 4, the instrument in question shall operate as mentioned in sub-paragraph (1)

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notwithstanding that the consideration payable is insufficient to enable the charge or charges to be redeemed in its or their entirety.

- (3) Subject to sub-paragraph (4), sub-paragraph (1) shall not apply to a charge which is a debenture holders' charge, that is to say, a charge (whether a floating charge or not) in favour of the holders of a series of debentures issued by a company or other body of persons, or in favour of trustees for such debenture holders; and any such charge shall be disregarded in determining priorities for the purposes of sub-paragraph (1).
- (4) Sub-paragraph (3) above shall not have effect in relation to a charge in favour of trustees for debenture holders which at the date of the instrument by virtue of which the property is disposed of by [<sup>F6</sup>the purchaser] is (as regards that property) a specific and not a floating charge.

#### Textual Amendments

- F5** Words in *Sch. 1 para. 2(1)* substituted (1.10.1996) by 1996 c. 52, s. 92(1), *Sch. 6 Pt. IV para. 11(2)(a)*; *S.I. 1996/2212, art. 2(2)* (with *Sch.*)
- F6** Words in *Sch. 1 para. 1(4)* substituted (1.10.1996) by 1996 c. 52, s. 92(1), *Sch. 6 Pt. IV para. 11(2)(b)*; *S.I. 1996/2212, art. 2(2)* (with *Sch.*)

#### *Determination of amounts due in respect of mortgages*

- 3 (1) For the purpose of determining the amount payable in respect of any charge under paragraph 2(1), a person entitled to the benefit of a charge to which that provision applies shall not be permitted to exercise any right to consolidate that charge with a separate charge on other property.
- (2) For the purpose of discharging any property from a charge to which paragraph 2(1) applies, a person may be required to accept three months or any longer notice of the intention to pay the whole or part of the principal secured by the charge, together with interest to the date of payment, notwithstanding that the terms of the security make other provision or no provision as to the time and manner of payment; but he shall be entitled, if he so requires, to receive such additional payment as is reasonable in the circumstances in respect of the costs of re-investment or other incidental costs and expenses and in respect of any reduction in the rate of interest obtainable on re-investment.

#### *Payments into court*

- 4 (1) Where under [<sup>F7</sup>section 12B(5)(a)] any property is to be discharged from a charge and, in accordance with paragraph 2(1), a person is or may be entitled in respect of the charge to receive the whole or part of the consideration payable, then if—
- (a) for any reason difficulty arises in ascertaining how much is payable in respect of the charge, or
- (b) for any reason mentioned in sub-paragraph (2) below difficulty arises in making a payment in respect of the charge,
- the nominated person may pay into court on account of the consideration payable the amount, if known, of the payment to be made in respect of the charge or, if that amount is not known, the whole of that consideration or such lesser amount as the nominated person thinks right in order to provide for that payment.

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- (2) Payment may be made into court in accordance with sub-paragraph (1)(b) where the difficulty arises for any of the following reasons, namely—
- (a) because a person who is or may be entitled to receive payment cannot be found or ascertained;
  - (b) because any such person refuses or fails to make out a title, or to accept payment and give a proper discharge, or to take any steps reasonably required of him to enable the sum payable to be ascertained and paid; or
  - (c) because a tender of the sum payable cannot, by reason of complications in the title to it or the want of two or more trustees or for other reasons, be effected, or not without incurring or involving unreasonable cost or delay.
- (3) Without prejudice to sub-paragraph (1)(a), the whole or part of the consideration payable shall be paid into court by the nominated person if, before execution of the instrument referred to in paragraph 2(1), notice is given to him—
- (a) that [<sup>F8</sup>the purchaser] or a person entitled to the benefit of a charge on the property in question requires him to do so for the purpose of protecting the rights of persons so entitled, or for reasons related to the bankruptcy or winding up of [<sup>F8</sup>the purchaser], or
  - (b) that steps have been taken to enforce any charge on [<sup>F8</sup>the purchaser's] interest in that property by the bringing of proceedings in any court, or by the appointment of a receiver or otherwise;

and where payment into court is to be made by reason only of a notice under this sub-paragraph, and the notice is given with reference to proceedings in a court specified in the notice other than a county court, payment shall be made into the court so specified.

#### Textual Amendments

- F7** Words in Sch. 1 para. 4(1) substituted (1.10.1996) by 1996 c. 52, s. 92(1), Sch. 6 Pt. IV para. 11(2)(a); S.I. 1996/2212, art. 2(2) (with Sch.)
- F8** Words in Sch. 1 para. 4(3) substituted (1.10.1996) by 1996 c. 52, s. 92(1), Sch. 6 Pt. IV para. 11(2)(b); S.I. 1996/2212, art. 2(2) (with Sch.)

#### Savings

- 5 (1) Where any property is discharged by [<sup>F9</sup>section 12B(5)(a)] from a charge (without the obligations secured by the charge being satisfied by the receipt of the whole or part of the consideration payable), the discharge of that property from the charge shall not prejudice any right or remedy for the enforcement of those obligations against other property comprised in the same or any other security, nor prejudice any personal liability as principal or otherwise of [<sup>F10</sup>the purchaser] or any other person.
- (2) Nothing in this Schedule shall be construed as preventing a person from joining in the instrument referred to in paragraph 2(1) for the purpose of discharging the property in question from any charge without payment or for a lesser payment than that to which he would otherwise be entitled; and, if he does so, the persons to whom the consideration payable ought to be paid shall be determined accordingly.

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#### **Textual Amendments**

- F9** Words in Sch. 1 para. 5(1) substituted (1.10.1996) by 1996 c. 52, s. 92(1), **Sch. 6 Pt. IV para. 11(2)(a)**; S.I. 1996/2212, **art. 2(2)** (with Sch.)
- F10** Words in Sch.1 para. 5(1) substituted (1.10.1996) by 1996 c. 52, s. 92(1), **Sch. 6 PT. IV para. 11(2)(b)**; S.I. 1996/2212, **art. 2(2)** (with Sch.)

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