

## SCHEDULES

### SCHEDULE 8

Section 35.

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

##### *Construction*

- 1 In this Schedule—
- “the consideration payable” means the consideration payable for the acquisition of the relevant interest;
  - “the landlord” means the person from whom the relevant interest is being acquired;
  - “the relevant interest” means any such interest as is mentioned in paragraph 2(1).

##### *Duty of nominee purchaser to redeem mortgages*

- 2 (1) Where in accordance with section 35(1) a conveyance will operate to discharge any interest from a mortgage to secure the payment of money, it shall be the duty of the nominee purchaser to apply the consideration payable, in the first instance, in or towards the redemption of any such mortgage (and, if there are more than one, then according to their priorities).
- (2) If any amount payable in accordance with sub-paragraph (1) to the person entitled to the benefit of a mortgage is not so paid, nor paid into court in accordance with paragraph 4, the relevant interest shall remain subject to the mortgage as regards the amount in question, and to that extent section 35(1) shall not apply.
- (3) Subject to sub-paragraph (4), sub-paragraph (1) shall not apply to 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) shall not have effect in relation to a charge in favour of trustees for debenture holders which, at the date of the conveyance by virtue of which the relevant interest is acquired by the nominee purchaser, is (as regards that interest) a specific and not a floating charge.

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

- 3 (1) For the purpose of determining the amount payable in respect of any mortgage under paragraph 2(1)—
- (a) a person entitled to the benefit of a mortgage to which that provision applies shall not be permitted to exercise any right to consolidate that mortgage with a separate mortgage on other property; and

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- (b) if the landlord or any participating tenant is himself entitled to the benefit of a mortgage to which that provision applies, it shall rank for payment as it would if another person were entitled to it, and the nominee purchaser shall be entitled to retain the appropriate amount in respect of any such mortgage of a participating tenant.
- (2) For the purpose of discharging any interest from a mortgage 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 mortgage, 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—
- (a) in respect of the costs of re-investment or other incidental costs and expenses; and
  - (b) in respect of any reduction in the rate of interest obtainable on re-investment.

#### *Payments into court*

- 4 (1) Where under section 35(1) any interest is to be discharged from a mortgage and, in accordance with paragraph 2(1), a person is or may be entitled in respect of the mortgage 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 mortgage, or
  - (b) for any reason mentioned in sub-paragraph (2) below difficulty arises in making a payment in respect of the mortgage,
- the nominee purchaser may pay into court on account of the consideration payable the amount, if known, of the payment to be made in respect of the mortgage or, if that amount is not known, the whole of that consideration or such lesser amount as the nominee purchaser thinks right in order to provide for that payment.
- (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 his identity cannot be 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 nominee purchaser if, before execution of the conveyance referred to in paragraph 2(1), notice is given to him—
- (a) that the landlord, or a person entitled to the benefit of a mortgage on the relevant interest, 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 the landlord, or
  - (b) that steps have been taken to enforce any mortgage on the relevant interest by the bringing of proceedings in any court, or by the appointment of a receiver, or otherwise;

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and where payment into court is to be made by reason only of a notice under this subparagraph, 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.

#### *Savings*

- 5 (1) Where any interest is discharged by section 35(1) from a mortgage (without the obligations secured by the mortgage being satisfied by the receipt of the whole or part of the consideration payable), the discharge of that interest from the mortgage 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 the landlord or any other person.
- (2) Nothing in this Schedule or section 35 shall be construed as preventing a person from joining in the conveyance referred to in paragraph 2(1) for the purpose of discharging the relevant interest from any mortgage 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.