

Residential Mortgage

→ These are the terms and conditions which form part of your mortgage. As this is an important document, please store it in a safe place.

Residential Mortgage

Granting a Mortgage

To grant a mortgage over land you must either:

- sign a document entitled "Mortgage (Residential Property)"; or
- sign an authority and instruction for an electronic transaction form, authorising a solicitor to register an electronic mortgage against the land.

You will be bound by the terms of this mortgage from the time that you grant the mortgage.

Memorandum of Common Provisions

This forms part of your mortgage. Some terms used in these terms and conditions have special meanings. These are set out in clause 6.

1 What is covered by the mortgage

1.1 Operative clause

In consideration of the "Secured Money" (defined in clause 1.2 below), you, as the mortgagor, hereby mortgage to Westpac NZ, for the benefit of itself and Westpac Banking Corporation ABN 33 007 457 141, incorporated in Australia all of your estate and interest in the land to which this mortgage relates.

1.2 Secured Money

Westpac NZ and Westpac Banking Corporation (together, the "Secured Parties"), may from time to time provide you with banking and other financial services. The "Secured Money" secured by the mortgage is all money which you (whether alone or with one or more others) may owe to the Secured Parties (including any transferee referred to in clause 4.7) now or in the future for any reason, including all further advances by way of financial accommodation as defined in section 93 of the Property Law Act 2007, and when used in relation to a Secured Party means the Secured Money owing to that Secured Party.

It includes money which you contingently owe a Secured Party now or in the future. It also includes money which you may owe a Secured Party if something happens or is discovered, even where there is no existing obligation to pay it.

Where there is more than one of you, the Secured Money includes amounts owed by any one or more of you and amounts owed by all of you.

1.3 Priority

The stated priority limit for the purposes of section 92 of the Property Law Act 2007, being

the maximum amount for which the mortgage has priority in relation to any subsequent mortgage, is as stated in the mortgage.

2 What you must pay

2.1 Payment

You must pay to the Secured Parties, on time, the Secured Money. You must pay the Secured Money on demand except where your Loan Agreement or another Bank Document provides otherwise in which case you must pay in the manner agreed in your Loan Agreement or that other Bank Document.

2.2 Costs and expenses

You must reimburse the Secured Parties, each Officer and each Attorney on demand for their reasonable costs and expenses:

- under the mortgage;
- in relation to the preparation, execution and completion of each Bank Document, and any subsequent consent, approval, waiver, amendment or release;
- in relation to the Mortgaged Property;
- in relation to any contemplated, attempted or actual enforcement of any of their Powers;
- in relation to a Secured Party receiving any amount under any Bank Document on a date other than the due date; *and*
- in relation to any enquiry by a governmental agency concerning you or related to a Bank Document.

Those costs and expenses include, in each case, legal fees and expenses on a full indemnity basis and goods and services tax on those amounts.

2.3 Interest

The following will apply except to the extent that you and the Secured Parties agree otherwise:

- interest will accrue on all parts of the Secured Money at the same rate as applies to the Secured Money under the relevant Bank Document. If there is no such rate, interest will accrue at the rate certified by an Officer to be the relevant Secured Party's Indicator Lending Rate (or the rate declared by the relevant Secured Party to be in substitution for it) plus the margin then applicable to similar accounts. If that rate changes, the changed rate will apply from the day on which the changed rate becomes generally applicable;
- interest will accrue on a daily basis based on a year of 365 days. It will be calculated

on the outstanding balance of each sum included in the relevant Secured Party's Secured Money, up to the date of actual payment from (and including) the date when that sum became owing by you. That date, in the case of an amount payable to cover a sum paid by a Secured Party to you or anyone else, will be taken to be the date when the Secured Party paid that amount;

- no offset is allowed, for the purpose of calculation of interest, for credit balances in any account held by you with a Secured Party;
- accrued interest is payable by you on demand;
- a Secured Party may, at the end of any period determined by that Secured Party, debit any of your accounts with unpaid interest. That interest shall bear interest as provided in this clause;
- the obligations in this clause apply after as well as before any judgment of a court.

2.4 Payments in the wrong currency

If, for any reason:

- a Secured Party receives or recovers an amount under a Bank Document in a currency other than the currency in which it should have been paid; *and*
- after that Secured Party has converted that other currency to the correct currency there is not enough to pay off the full amount then due under the Bank Document,

you must pay that Secured Party the full amount of the shortfall.

3 What you must do

You undertake to the Secured Parties as follows, except to the extent that the Secured Parties consent or as expressly permitted in a Bank Document:

- a) **title** Only you own the Mortgaged Property or will do so on completion of any purchase financed under the mortgage. You must make sure that no other party has any interest in or rights over or to use the Mortgaged Property, except:
- as set out in the mortgage or noted on the Land Transfer Register; and
 - those which the Secured Parties consent to in writing.
- b) **maintenance** You must look after the Mortgaged Property and protect and maintain it in a good state of repair.
- c) **outgoings** You must promptly pay all outgoings relating to the Mortgaged Property.

These include rates and taxes.

d) **insurance** You must make sure that all buildings and improvements which are on the Mortgaged Property or include the Mortgaged Property are insured at all times to the Secured Parties' satisfaction:

- with a New Zealand insurer approved by the Secured Parties;
- against fire, earthquake, flood, weather damage and other risks reasonably required by the Secured Parties;
- for an amount at least equal to their full replacement cost; and
- in your name as owner and in Westpac NZ's name as mortgagee.

You must give the policy or a certificate of currency to the Secured Parties on request.

You must pay the insurance premiums when due and, if requested by the Secured Parties, provide evidence of payment to the Secured Parties.

You must do everything necessary or desirable, in the opinion of the Secured Parties, to enable the Secured Parties to claim under any insurance policy and to collect or recover money due.

You must hold any proceeds of any insurance policy on trust and pay them to a Secured Party (for the benefit of the Secured Parties).

e) **building and alterations** You must make sure all building work and alterations on the Mortgaged Property are completed properly.

f) **law** You must comply with the law with respect to the Mortgaged Property.

g) **no dealings** You must obtain the Secured Parties' written consent to:

- let any of the Mortgaged Property;
- sell or dispose of the Mortgaged Property or any interest in it; or
- give anyone a right over or to use any of the Mortgaged Property.

h) **leases and cross leases** If the Mortgaged Property is leased to you, you must:

- pay the rent and comply with the terms and conditions of the lease;
- make sure that all renewals or extensions of the lease or new leases of the Mortgaged Property are obtained promptly and immediately mortgaged to Westpac NZ for the benefit of the Secured Parties with the same priority as the mortgage; *and*
- not agree to change or waive all or any part of any such lease.

i) **protect security** You must do everything necessary or which Westpac NZ reasonably

asks you to better secure the mortgage and to maintain, preserve and protect:

- the Mortgaged Property and its value; *and*
- your title and Westpac NZ's title.

In particular, if anyone, other than the Secured Parties, lodges a caveat with the Registrar-General of Land you must do everything in your power to remove it.

- j) **information** Subject to the Privacy Act 1993, you must give the Secured Parties promptly any information that the Secured Parties reasonably request.
- k) **full disclosure** You have disclosed to the Secured Parties all facts and circumstances which might adversely affect the decision of a person considering whether or not to lend to you.
- l) **licence to occupy** If the Mortgaged Property is a registered licence to occupy under part VII A of the Land Transfer Act 1952 you must:
- comply with the terms and conditions of the licence to occupy and the constitution of the flat or office owning company;
 - pay all contributions levied by the flat or office owning company when due and, if requested by the Secured Parties, provide evidence of payment to the Secured Parties;
 - deliver to the Secured Parties your copy of the licence to occupy and the share certificate issued for the shares to which the licence relates;
 - obtain the Secured Parties' written consent to sell or dispose of the share to which the licence to occupy relates;
 - not agree to change or waive all or part of the licence to occupy;
 - make sure the licence to occupy is not cancelled, surrendered, revoked, rescinded, or forfeited and that no new licence to occupy is issued without the written consent of the Secured Parties;
 - obtain the Secured Parties' written consent before concurring or agreeing to any dealing with the building or the property of which the Mortgaged Property forms part, or to any amendment to the constitution of the flat or office owning company;
 - not make or permit to be made any material alteration to the Mortgaged Property without the written consent of the Secured Parties;
 - promptly give the Secured Parties a copy

of any notice received from the flat or office owning company;

- grant the Secured Parties the right to attend company meetings as proxy of the mortgagor, and if a Secured Party is present, to vote at those meetings instead of you.

4 What the Secured Parties can do

4.1 Generally

The Secured Parties and any Attorney or Officer may do any one or more of the following at any time at your cost:

- inspect the Mortgaged Property;
- do what you agree to do in this mortgage or another Bank Document, but fail to do;
- pay amounts which they understand to be due under other mortgages, charges, security interests or encumbrances over the Mortgaged Property and other liabilities relating to the Mortgaged Property; and
- notify anyone of the mortgage.

4.2 Powers on default

If:

- a) **payment** You fail to pay any Secured Money when due (time being of the essence); *or*
- b) **obligations under bank documents** You fail to comply with any of your other obligations or are in default under this mortgage or another Bank Document; *or*
- c) **guarantor** A Guarantor:
- fails to comply with any of its obligations or is in default under a Bank Document;
 - gives notice stopping its obligations;
 - being a human guarantor, dies, ceases to be of full legal capacity or commits an act of bankruptcy; *or*
 - being a company, goes into liquidation, receivership, statutory management, administration or becomes subject to reconstruction, striking off or removal from the register, winding up, dissolution, assignment for the benefit of creditors or arrangement or compromise with creditors; *or*
- d) **flat or office owning company** Any step is taken for the liquidation, receivership, statutory management, administration, reconstruction, removal from the register under the Companies Act 1993, arrangement or compromise with creditors of the flat or office owning company which granted the licence to occupy comprising the Mortgaged Property; *or*
- e) **bankrupt** You become bankrupt,

then, subject to the Property Law Act 2007 and any other relevant laws, the Secured Parties may do all or any of the following:

- require you to immediately pay all or any of the Secured Money;
- terminate any obligation they may have under any Bank Document;

and Westpac NZ may do all or any of the following:

- take possession of the Mortgaged Property;
- obtain a valuation of the Mortgaged Property;
- sell the Mortgaged Property in one or more lots or with or without other property;
- do anything you could do in relation to all or part of the Mortgaged Property.

4.3 Power of attorney

You appoint the Secured Parties and each Officer severally your Attorney to do any of the things listed in clauses 4.1 and, at any time after an Event of Default, 4.2 of the mortgage. Each Attorney may also delegate its powers (including delegation). This appointment is made for valuable consideration and you may not revoke it.

4.4 Use of money

To the extent permitted by law, any money received or recovered by the Secured Parties or any Attorney under the mortgage may be used to pay off any part of the Secured Money which the Secured Parties choose.

The Secured Parties may open a separate or new account and credit payments received to that new account so that you will remain liable for the full amount despite that payment.

4.5 Amounts contingently due

If any of the Secured Money is contingently owing to a Secured Party at the time of any application of any amount under clause 4.4, that Secured Party may retain any of that amount.

4.6 Set off and combination

If you have any money in any account with the Secured Parties, then the Secured Parties can use it to pay amounts you owe under the mortgage, but need not do so. If you are in default, the Secured Parties can use money which has not yet matured due, and convert money in your accounts in foreign currencies. To the maximum extent allowed by law, you give up any right to set off any amounts the Secured Parties owe you against the Secured Money including amounts you owe under the mortgage.

4.7 Assignment

Westpac NZ can transfer the mortgage and the Secured Parties can transfer any Bank Document and all or part of the Secured Money to someone else, and may disclose information about you to any potential transferee. If Westpac NZ transfers the mortgage, the mortgage will apply to the transferee as if it were Westpac NZ. If the Secured Parties transfer all or part of the Secured Money, the mortgage and any transferred Bank Document will apply to the transferee as if it were a Secured Party. To the maximum extent allowed by law, any transfer will be free of set off, equity or cross claim which you would have had against Westpac NZ or the Secured Parties, as the case may be, or transferees of any Bank Document but for this clause.

4.8 Consents and opinions

Except where expressly stated, the Secured Parties may give or withhold, or give conditionally, approvals and consents, may be satisfied or unsatisfied, may form opinions and may exercise their Powers, at their absolute discretion.

4.9 Disclosure of information

You authorise the Secured Parties to collect, use and disclose information about you for any purpose related to your association with the Secured Parties and you authorise any other person to disclose information to the Secured Parties for that purpose. The Secured Parties do not need to get your consent each time they collect, use or disclose information about you.

4.10 Rights and powers separate

The Secured Parties can, but need not, do anything under this mortgage at once or after a time or more than once. The Secured Parties can exercise all other rights and powers that they have under law even if they overlap with the above. If the Secured Parties do not do something when they are able, that does not mean they are giving up that right and cannot do it later.

5 General

5.1 Secured Parties' enquiries and inspections

You agree that if the Secured Parties or their representatives inspect any building work on the Mortgaged Property, they are doing so for themselves and not you. You should not rely on that inspection.

The Secured Parties and their representatives

are not responsible to you if the building work has not been properly done, even if a Secured Party or a representative has said it is satisfied as to the work, and provides finance against the work.

The same applies to any search, enquiry, inspection or valuation which is checked, carried out or obtained by the Secured Parties or their representatives with respect to any other aspect of the Mortgaged Property. In particular, if you are buying the Mortgaged Property, you or your lawyer (if any) are responsible for making sure you get good title. You should not rely on the Secured Parties or their representatives.

5.2 Notices

Any Officer can sign a demand, certificate or other document for a Secured Party.

A Secured Party can:

- deliver the document personally;
- send it through the post to the place where you live or work, or to the Mortgaged Property, or the place most recently known to the person signing the document as such a place;
- leave it at any one of those places; *or*
- send it by facsimile to your last known facsimile number.

If the document is sent through the post, it is to be regarded as having arrived on the third business day after posting, even if it never arrived.

If it is sent by facsimile, it is to be regarded as having arrived when the sending machine receives a confirmation that it has been sent in its entirety.

You can give notice to a Secured Party by delivering, posting, leaving or faxing it to the branch of the Secured Party where you maintain your accounts or any other address which the Secured Parties may have given you.

A notice given, or required to be given, under the mortgage to, or by, the Secured Parties is validly given if it is given to, or by, one Secured Party only.

You are entitled to rely on such notice given by one Secured Party as being authorised by both the Secured Parties and will have no obligation to enquire as to whether any instructions have been given to that Secured Party or as to the terms of any such instruction.

5.3 Certificate of amount of money

You agree that a certificate from the Secured Parties setting out the amount which you owe

them under the mortgage is proof that you owe the amount stated, unless you prove to the contrary.

5.4 Survival of indemnities

Each indemnity and reimbursement obligation in the mortgage will survive discharge of the mortgage.

5.5 Protection of officers

To the extent permitted by law, neither Secured Party nor any Officer or Attorney will be liable in respect of any conduct, omission, delay, negligence or breach of duty in the exercise of or failure to exercise a Power or for any loss (including consequential loss) which results. However, such party will be liable where liability arises from its, his or her own fraud or wilful misconduct.

5.6 More than one mortgagor

If you sign, or otherwise consent to or authorise the registration of the mortgage with one or more others, its terms apply to each of you individually and to all or any number of you as a group.

Each of you is individually liable for the full amount of the Secured Money. The Secured Parties can make a claim or demand on any one or more of you.

You are still bound by the mortgage, even if anyone in the group – or anyone you thought was going to be in the group – does not sign, or otherwise consent to, the mortgage, or is not bound by it or is released from part or all of its obligations under it.

5.7 Trustee

This clause only applies if you are a trustee and sign, or otherwise consent to or authorise the registration of the mortgage as trustee of that trust.

The mortgage will bind you as trustee of the trust. It will also bind you personally unless you are an independent trustee.

In the mortgage, the expression “Secured Moneys” includes all money owed by you in your capacity as a trustee of the trust (whether or not actually within your powers or properly authorised) as well as by any former, present or future trustee of the trust.

You confirm:

- you have the power to enter into the mortgage either under the terms of the trust document or under the powers given to you by the Trustee Act 1956;
- you have properly signed, or otherwise consented to, the mortgage in accordance

with the terms of the trust.

The above are warranties, which means that the Secured Parties can sue you if either are incorrect. The Secured Parties' rights against you will be limited only if you are an independent trustee. In that case, the Secured Parties will only be entitled to recover Secured Money from any of your personal assets if they are not able to recover the Secured Money from the Mortgaged Property because the warranties you gave above were incorrect. The Secured Parties will only be entitled to recover from your personal assets the amount they would have recovered from the trust assets had those warranties been correct. If you are not an independent trustee, the Secured Parties may seek to recover any Secured Money from your personal assets as well as from trust assets. You are an "independent trustee" for the purposes of this clause unless you have any right to or interest in any of the assets of the trust except in your capacity as trustee of the trust.

For example, if you are a beneficiary of the trust then you are not an "independent trustee". For the purposes of Section 128 of the Land Transfer Act 1952, none of the terms set out in this clause applicable to trustees are to be, or are to be construed as, notice of any trust.

5.8 Governing law

The law of New Zealand applies to the mortgage. You accept the non-exclusive jurisdiction of its courts.

5.9 Continuing security

The mortgage is a continuing security until a final discharge has been given by Westpac NZ despite any payment or anything else.

You will not be entitled to a final discharge of the mortgage until the Secured Parties are satisfied that all Secured Money has been repaid in full and that no payment may be voided, voidable or required to be repaid by the Secured Parties under any law. In any event you acknowledge that (subject to any law to the contrary) any request for a discharge must give the Secured Parties 15 Banking Days' notice.

If any payment or other transaction under the mortgage is void, voidable, or required to be repaid by any law, that payment or other transaction will be deemed not to have affected your liability to the Secured Parties even if the mortgage has already been released. In those circumstances, the Secured Parties will be

restored to the position they had been in prior to that release, payment or other transaction. If that happens, you must do all things and sign all documents as may be necessary to restore the Secured Parties to that position.

6 Reading the mortgage

6.1 Definitions

The following definitions apply unless the context requires otherwise.

Attorney means a person appointed as attorney under the mortgage.

Bank Document means a document or agreement:

- to which the Secured Parties and any one or more of you and/or any Guarantor are or become parties or purport to be or become parties; or
- under which obligations arise or are intended to arise from any one or more of you and/or any Guarantor to the Secured Parties, in each case whether or not other parties are involved or it arises as a result of an assignment or transfer. It includes the mortgage.

Banking Day means any day (other than a Saturday or Sunday) on which registered banks within the meaning of the Reserve Bank of New Zealand Act 1989 are open for business in Auckland and Wellington for the transaction of general banking business.

Event of Default means any of the events described in clause 4.2.

Guarantor means anyone who provides any guarantee or other security in relation to all or any part of the Secured Money.

Mortgaged Property means the property mortgaged by the mortgage.

It includes:

- the land described in the mortgage;
- all buildings, fixtures and improvements on that land; and
- all rights attaching to that land.

Officer includes an employee of a Secured Party whose title includes the word "Manager", or occupying an office whose title includes the word "Manager" or "Legal Counsel" or any person (who need not be an employee) authorised by a Secured Party.

Power means a power, right, authority, discretion or remedy which is conferred on the Secured Parties, an Officer or an Attorney by a Bank Document or by law in relation to a Bank Document.

Secured Money has the meaning given in

clause 1.

Secured Parties means, subject to clause 4.7, Westpac NZ and Westpac Banking Corporation ABN 33 007 457 141, incorporated in Australia or, as the context requires, either of them.

Westpac NZ means, subject to clause 4.7, Westpac New Zealand Limited, company incorporation number 1763882.

6.2 General

Headings are for convenience only. They do not affect interpretation.

The following rules apply unless the context requires otherwise:

- singular includes the plural and converse;
- a gender includes all genders;
- reference to *law* includes present or future common or customary law and any statute, statutory instrument, subordinate legislation, regulation, bylaw, order or other legislative measure or any judgment or judicial or administrative order or determination or decision, in any jurisdiction;
- reference to a *person* includes a natural person, company, corporation, trust, partnership, firm, joint venture or governmental agency, in each case whether or not having separate legal personality, and any association of entities.

6.3 No statutory implied terms

Schedule 2 of the Property Law Act 2007 does not apply to the mortgage.

