

# Memorandum of Mortgage

## Form of registrable memorandum

Section 155A, Land Transfer Act 1952

MEMORANDUM NUMBER

2012/4308

BARCODE

### Class of instrument in which provisions intended to be included:

Mortgage

### Person executing Memorandum:

ANZ Bank New Zealand Limited

The following provisions are intended for inclusion in instruments of the above class

*Sample Document for  
testing only*

## 1. About this document

This 'Memorandum of Mortgage' sets out the terms and conditions applying to the mortgage you've given us over your property.

As part of our commitment to you, this document meets the WriteMark Plain English Standard. If you're not sure about anything, you should contact your solicitor. It's important you understand all the terms and conditions you're agreeing to.

## 2. Contents of this document

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## 3. A glossary of the terms we use in this document

### **Breach**

A breach happens when you break or don't comply with a term or condition in an agreement you've entered.

### **Costs**

Costs include any of the following:

- Legal costs, taxes or other costs we or a receiver incur when preparing, taking, changing or discharging this mortgage.
- Costs we or a receiver incur when exercising any of our rights under this mortgage. For example, any costs we or a receiver incur when asking you to repay any money owing. Or, any costs we or a receiver incur when asking you to comply with any terms in this mortgage or any other agreement you have with us.
- Any rates arrears, taxes, insurance premiums or arrears, or other amounts you must pay for your property, or use of your property, that we or a receiver have paid on your behalf.
- Any other money we or a receiver pay because we have an interest in your property under this mortgage.

### **Insolvent**

You're insolvent if any of the following apply:

- You can't pay your debts when they're due.
- You're made bankrupt.

- You go into receivership, administration or liquidation.
- You enter any arrangements with the people you owe money to reduce the amount you have to pay, or to pay it on different terms because of your financial difficulties.

If you're a limited partnership, as well as any of the events above, you're also insolvent if any of the following happen:

- Any of the events set out in section 86 of the Limited Partnerships Act 2008 happen to you.
- You or others end or deregister your limited partnership.
- You don't have a general partner for any reason.
- Your limited partnership agreement has lapsed for any reason.

### **Instrument of Mortgage**

An instrument of mortgage describes the property covered by a mortgage, the names of the mortgagor and mortgagee.

You will be bound when either of the following happen:

- You sign an Instrument of Mortgage.
- You authorise your solicitor or conveyancer to register an electronic Instrument of Mortgage.

### **Money owing**

Money owing is any amount you owe us. It includes the following:

- Amounts you owe us, or owe with others under this mortgage or under other agreements.
- Amounts we lend others when you ask us to, and amounts we pay or owe others on your behalf.
- Amounts we pay when enforcing our rights under this mortgage, and amounts we get in a Court judgment against you.
- Amounts you already owe us, or may owe us in the future.
- Interest on any of those amounts, at the rate we've agreed.
- Default interest on amounts you haven't paid on time at the rate we've agreed.
- Costs we, or a receiver, incur and the fees paid to a receiver.

### **Mortgage**

A mortgage is a type of security over property. It includes an Instrument of Mortgage.

### **Mortgagee**

A mortgagee is the lender under a mortgage. We are the mortgagee.

### **Mortgagor**

A mortgagor is the person giving the security under a mortgage. You are the mortgagor.

### **Property**

The property is the land described in your Instrument of Mortgage. It includes all of the following:

- Rights or interests in the land.
- Structures on the land, like a house.
- Anything attached to the land, or those structures, the law treats as part of the land.

**Receiver**

A receiver is someone appointed to do the following:

- Take control of someone else's assets, or manage their business.
- Sell those assets, or the business itself, to repay money owing.

**Security**

Security is anything we can rely on, or sell, if you breach an agreement with us for any reason and we need to recover any money owing. For example, this mortgage is security, as it gives us the right to sell your property if you don't repay the money owing. If someone gives us a guarantee, which means they promise to pay any money owing as well as, or instead of, you, this is also security. The person giving us a guarantee may also give us a mortgage over property they own as security for that guarantee. This means we can sell that property if they don't pay us any money we ask for under the guarantee.

**Stratum estate**

A stratum estate is a type of land ownership under the Unit Titles Act 2010. A stratum estate often applies to apartments and units. The owner of a stratum estate owns their apartment or unit, and shares ownership of common areas – like garages or gardens.

**We**

When we talk about 'we', 'us' and 'our' we mean ANZ Bank New Zealand Limited.

**You**

When we talk about 'you' we mean the person or people named as the mortgagor on your Instrument of Mortgage.

When more than one person is mortgagor:

- 'You' means each person individually, and any two or more of those people.
- Each person must comply with this mortgage.
- Each person must repay money owing, by themselves, or with the other mortgagors. This includes where the mortgagors are trustees of a trust, or partners of a partnership.
- 'Money owing' means any money owing by you, or by any of those people. We also mean any money owing by two or more of those people.

If you're a limited partnership under the Limited Partnerships Act 2008, then:

- All partners, including the general partner, are bound by this mortgage.
- References to 'you' are also references to the general partner of the limited partnership.

## **4. What we agree to do, and what you agree to do in return**

We've agreed to lend money, and you've agreed to give us security.

We've agreed to lend money or provide other financial products or services to you or to someone else when you ask us to. In return, you agree the following:

- You will comply with this mortgage, and other agreements with us.
- You give us security over your property.
- You give us security over insurance policies over your property.
- You give us security over licences, authorities or consents for your property, or use of your property.
- You give us security over payments you receive when others use your property.
- You give us the rights in this mortgage, and any rights we have at law as mortgagee.

## 5. How we exercise our rights under this mortgage

### **This mortgage remains in place until discharged**

This mortgage remains in place as security for money owing until we sign a discharge of this mortgage. Even if we sign a discharge of this mortgage, your obligation to pay us any money owing remains in place.

### **We'll only discharge this mortgage if we're satisfied our requirements are met**

We'll only discharge this mortgage if we're satisfied all of the requirements below have been met:

- You've repaid any money owing.
- There won't be any money owing in future that we need to keep this mortgage as security for.
- You've complied with this mortgage, or other agreements with us.
- We won't need to repay any amounts you've paid to us, including because you're insolvent.

If we discharge this mortgage, we don't have to return your Instrument of Mortgage to you.

### **We can exercise our rights under this mortgage in any way and in any order we choose**

We can exercise any of our rights under this mortgage in any way and in any order we choose. For example:

- We can exercise any rights with other rights under this mortgage, or under other agreements you have with us.
- We can exercise our rights even if you've repaid some or all of the money owing.
- We don't have to take any action or enforce our rights under this mortgage.
- We can delay acting or enforcing our rights under this mortgage. If we delay acting or enforcing, we can still enforce our rights later, or take action for breaches in future.
- We don't have to give you, or others, notice of this mortgage.
- We don't have to ask you to repay money owing.
- We don't have to account to you, or others, if we take possession of your property as a mortgagee.

### **We can do anything we need to protect our security, or recover the money owing**

We can do anything we believe needs to be done to recover any money owing, protect the security we have, or help us exercise any of our rights under this mortgage.

We can do anything you agree to do under this mortgage, on your behalf, and at your cost.

### **If you ask us to agree to something that affects your property, we can refuse to agree**

We can refuse to agree to something you ask us for if we believe it could put the value of your property at risk.

If we agree, we can choose to impose conditions on our agreement.

## 6. The priority amount for this mortgage

### **A priority amount applies to this mortgage even if one isn't stated on your Instrument of Mortgage**

A priority amount is the maximum amount, plus interest, we can recover before someone else who also has a security over your property can receive and keep payments from you. A priority amount is not the total money owing under a mortgage.

If your Instrument of Mortgage doesn't state a priority amount, then our priority amount is \$100,000,000.00, plus interest.

## 7. The money you must pay under this mortgage

### **You must only use the money for the purposes we've agreed to**

You must make sure the money we lend is only used for the purposes we've agreed to. The same applies to other financial products or services we've agreed to provide you or to someone else when you ask us to.

### **You must repay us the money owing**

You must repay us any money owing on the terms we've agreed to, or immediately if we've made demand. You must repay the money owing in full, in the same currency as the money owing, and without exercising any right of set-off you may have. Set-off is a right that may arise if you owe us money and we also owe you money, or you have a claim against us. In some situations, set-off could result in the money one party owes the other being reduced.

You must repay us any costs we, or a receiver, incur immediately if we've made demand for those costs.

### **We can use any amounts in your accounts to repay money owing**

We can transfer amounts from any of your accounts to pay any money owing, including any costs we've made demand for.

We can refuse to pay you any amounts we may owe you until you repay any money owing, including any costs we've made demand for.

### **We can add any money owing to any loans you have**

As well as the rights above, we can choose to do either of the following:

- We can add any costs we or a receiver incur to any existing loans you have with us.
- We can set up a new loan account for you and deduct any costs we or a receiver incur from it.

## 8. Your responsibility to insure your property

### **You must keep your property insured**

You must always keep your property insured, for its full replacement value.

If your property is a stratum estate, you must make sure the body corporate insures your property for its full replacement value.

The insurance must cover losses and damage caused by fire, flooding, earthquake, and any other risks covered by standard comprehensive property insurance policies.

Unless we've agreed in writing, you must not agree to any non-standard restrictions or exclusions being included in your insurance policy. We can ask you to get 'top up' insurance from another insurer if your insurance has restrictions or exclusions we don't agree to.

We can also ask you to get other types of insurance. For example, cover for loss of rental payments if you're leasing your property to others.

You agree that clauses 3(2) and 8(2) of part 1 of Schedule 2 of the Property Law Act 2007 don't apply to this mortgage. Clause 3(2) sets out what happens to the money owing when we are paid any insurance money. Clause 8(2) sets out what your obligations are to insure your property if another mortgage is already over your property.

### **Your insurer must meet our criteria**

You can choose who will insure your property, as long as the insurer meets the criteria we set. We can change the criteria. The financial strength of the insurer will always be important to us.

**You must not cancel your insurance unless we've agreed**

You must not cancel or change your insurance unless we've agreed to this in writing.

**You must provide information about your insurance**

You must give us information about your insurer and the insurance over your property when we ask you for it.

**We will receive any insurance money**

We must be recorded on your insurance policy as having a mortgage over your property. If we ask you to, you must arrange for us to be named as jointly insured with you on your insurance policy.

Your insurer, or other parties, must pay us any insurance money for loss or damage to your property. We can use this money to repay any money owing.

You agree to assign, or transfer, to us any rights you have under your insurance policy as security for any money owing.

**What happens if your property is damaged**

You must tell us immediately if any loss or damage to your property could result in an insurance claim.

You must put in claims with your insurer, or any other party – like the Earthquake Commission, for any loss or damage as soon as possible.

You must not accept any offer from your insurer, or any other party, to settle any insurance claims you have for loss or damage to your property unless we've agreed to this in writing.

We have the right to decide whether to rebuild or repair your property if it's damaged.

**We have the right to do things to keep your property insured**

We can choose to pay your insurance premiums or any insurance arrears you may have. If we do pay your insurance premiums or insurance arrears we don't have to keep doing this. If we do, then any amounts we've paid become part of the money owing. We can, however, choose to ask you to repay us these amounts immediately.

We can choose to get our own insurance over your property but it always remains your responsibility to insure your property.

## **9. Your responsibility to maintain your property**

**You must keep your property in good condition**

You must do everything reasonable to make sure the value of your property does not decrease. This includes the following:

- You must keep your property in good condition.
- You must repair any loss or damage to your property as soon as possible.
- You must make sure any building work meets any building codes.
- You must not add or remove any structures on your property, unless we've agreed to this in writing.

**You must allow us to access your property**

You must allow us reasonable access to your property at any time, free of charge. For example, you must give us access if we tell you we want to inspect the condition of your property.

**You must comply with any laws or rules affecting your property**

You must comply with any law, or any rules, affecting your property, or use of your property. This includes the following:

- You must pay all taxes, rates, body corporate fees, rental or other charges on time.
- You must comply with any body corporate rules.
- You must carry on any business on your property lawfully and following best practice. You must get any licences, authorities or consents you need to carry on business in that way.

**We may need to pay rates arrears on your property if you do not**

If a local government organisation demands we do so, we must pay any rates arrears you may have. We'll have to pay the rates arrears even if you believe you have a good reason not to pay them. If we pay your rates arrears, these amounts become part of the money owing. We can, however, choose to ask you to repay us these amounts immediately.

**You must tell us if anything could affect your use of your property**

You must tell us if anything happens that could affect your use of your property:

- You must tell us if claims are made against you or about use of your property.
- You must tell us if changes that affect your property's zoning or use happen.
- You must tell us if anything else happens that could negatively affect your property, or your property's use or value.

If any of these things happen, you agree to respond in the way we ask you to.

**You must not sell or lease your property unless we've agreed**

Unless we've agreed to it in writing, you must not do any of the following:

- You must not sell your property, lease it, or allow others to use it.
- You must not allow someone else to register a security, or any other rights, over your property.
- You must not sell, give security over, or let others use any licences, authorities or consents you need to use your property.
- You must not change the use of your property.

If you die, our agreement is needed before your property is transferred to someone else, unless you owned your property with them jointly.

**You must do certain things if you are leasing your property from others**

If you are leasing your property from someone, you must do the following:

- You must comply with the lease, including paying rent on time.
- You must do everything reasonable to renew or extend the lease.
- You must do anything or sign anything we believe is needed to give us security over the lease.

You must also do everything reasonable to make sure your landlord complies with the lease.

**You must do certain things if you are leasing your property to others**

If we've agreed you can lease your property to others, you must make sure they comply with the lease.

You must promptly collect all rental and other payments from those you've leased your property to. We can ask you to pay us these amounts or have the person you've leased your property to pay us these directly.

### **You must vote as we ask you to if your property is a stratum estate**

If your property is a stratum estate, you must also allow us to exercise any voting rights you have under the Unit Titles Act 2010 if we ask you to.

If we ask you to, you must cast your vote in the way we ask you to.

Unless we've agreed in writing, you must not do either of the following:

- You must not vote on resolutions that must be passed by a majority of 75% or more.
- You must not appoint a proxy to vote on your behalf.

If we agree you can appoint a proxy, you must do everything reasonable to make sure your proxy is bound by the same responsibilities you have under this mortgage.

## **10. You appoint us as your attorney**

### **You appoint us as your attorney**

An attorney is someone you appoint who has the right to act for you. For example, an attorney can sign documents or enter agreements for you.

You appoint us your attorney, including in return for us agreeing to lend money or provide other financial products or services to you or to someone else when you ask us to. You can't revoke this appointment – neither can anyone else.

As your attorney we can do anything you agree to do under this mortgage.

We can also do anything we believe needs to be done to protect your property, the security we have, or to enforce any of our rights under this mortgage. For example, we can sign documents or enter contracts on your behalf.

We don't have to act, even though you've appointed us your attorney.

We're not responsible for damage or loss you or others suffer because of our actions as your attorney, or if we don't act.

When we act as your attorney, you must immediately confirm any actions we've taken. If we ask you to, you must also immediately pay the costs we incur when we act as your attorney.

## **11. What happens if you don't comply with this mortgage**

### **It's important you comply with this mortgage**

It's important that you comply with this mortgage.

If you breach this mortgage, the consequences for you can be very serious. For example, we can use our rights under this mortgage to sell your property.

Talk to us immediately if you believe you're having any difficulties complying with this mortgage. We may be able to work with you, or provide support and information that could help you get back on track.

### **If you breach this mortgage, we can ask you to repay any money owing**

If you breach this mortgage, we can write to you, asking you to repay any money owing immediately, or to comply with any term of your mortgage, or any other agreement you've breached. We have this right even if some money owing isn't yet due.

We can do anything you can do to or with your property:

- We can sell or manage your property.
- We can lease your property, change the terms of any lease, or cancel any existing leases you have.
- We can enter any arrangements we believe will help us to recover any money owing.

- We can perform your obligations under this mortgage, or arranging for others to do this on our behalf.
- We can do anything we believe is reasonable to improve your property before we try to sell or lease it.
- We can do anything a mortgagee can do at law.

We will give you and others notice if we enforce our rights under this mortgage.

If we decide to sell your property, the law requires us to get the best price we reasonably can for your property at the time we sell it. What your property sells for might be less than you or a valuer believe it's worth:

- We can choose to sell it quickly. We don't have to wait for a better time to sell it.
- We can choose the way it is sold. For example, we can auction your property or put it to tender.
- We can choose the way it is marketed and we can advertise we're selling as a mortgagee.

**You'll breach this mortgage if you don't comply with this mortgage, or if we can't enforce it for any reason**

You'll breach this mortgage if any of the following happen:

- You don't comply with this mortgage, or other agreements with us. For example, you don't do one of the things you agree to do or you do one of the things you agree not to do.
- You don't pay money owing when due or once we've written to you asking you to pay it.
- We believe any information you've given us is untrue or incorrect, or you've not given us all the information we've asked you for.
- This mortgage becomes invalid or we wouldn't be allowed to enforce it, for any reason.

**You'll breach this mortgage if someone else takes legal action against you**

You'll breach this mortgage if any of the following happen:

- Someone takes legal action against you – other than any legal action we're satisfied is immaterial or not justified.
- Someone else enforces any security they have over any of your assets.
- Any Court judgment is issued against you – other than any Court judgment we're satisfied is immaterial.

**You'll breach this mortgage if your financial position changes for the worse**

You'll breach this mortgage if any of the following apply:

- You become insolvent.
- If you're not an individual, how you're owned changes for any reason – unless we've agreed to the change, or you're a company registered on a public stock exchange.
- Your financial position or business is materially affected for any reason and we believe you can't or won't pay us the money owing.
- The financial position of anyone else who owes or guarantees any money owing is materially affected and we believe they can't or won't be able to pay us the money owing.

**You'll breach this mortgage if your stratum estate is affected in certain ways**

You'll breach this mortgage if your property is a stratum estate and any of the following happen:

- You can't live in or use your property because it's damaged.
- Someone applies to cancel or redevelop the unit scheme covering your property.
- The body corporate becomes insolvent.

**We can appoint a receiver for your property**

We can appoint a receiver for your property, and for any income or other amounts you receive from your property:

- The receiver will be your agent and not ours. You'll be responsible for any of the receiver's actions.
- We'll appoint the receiver in writing, on the terms we decide.

- If we appoint more than one receiver, they can act together, or alone.
- Only we can remove a receiver we've appointed, and if we choose to we can appoint a replacement receiver.
- We'll decide what to pay the receiver – but you'll need to meet this cost. We can add any amounts we pay the receiver to the money owing.
- The receiver can do anything we can under this mortgage and anything a receiver can do at law.

**You promise to protect us from any claims against us when we enforce this mortgage**

You promise to protect us from any claims made against us or a receiver because you've breached this mortgage. This is called indemnifying us. You also promise to protect us from any claims made against us because we've exercised, or we've chosen not to exercise, our rights under this mortgage.

You promise to protect our officers, employees and agents in the same way.

We're not responsible for any damage or losses you or others suffer because we enforce our rights under this mortgage, or if we don't enforce them.

## 12. Our right to transfer this mortgage

**We can transfer our rights or obligations under this mortgage**

We can assign, or transfer, any of our rights and obligations under this mortgage to anyone we choose. We don't have to tell you if we do any of these things, and you agree not to object.

The person we've assigned or transferred your mortgage to can exercise those rights and perform those obligations under this mortgage.

To allow these things to happen, you agree we can share information we have about you, your property, this mortgage, or other agreements with us.

**You can't transfer this mortgage**

You must not transfer or assign your rights or obligations under this mortgage, unless we've agreed in writing.

## 13. General matters applying to this mortgage

**We may agree to restrict the liability of particular trustees**

When we talk about 'liability' in the clauses below, we mean the responsibility someone has to pay any money owing.

If your property is owned by trustees of a trust, we may agree to restrict the liability of a particular trustee. For example, we may agree to restrict the liability of a trustee who is independent because they are not a beneficiary of the trust. If we agree to restrict the liability of a particular trustee, then if we enforce this mortgage we won't recover money owing from that trustee personally if your property sells for less than the amount of the money owing.

However, we can recover any money owing from that trustee personally if we suffer a loss because that trustee acted deliberately, or dishonestly, in breach of their duties as trustee.

**This mortgage replaces any previous mortgages we had**

Unless we've told you otherwise in writing, this mortgage replaces any previous mortgages we had over your property.

**We can give you information electronically**

If we have a legal obligation to give you certain information in writing, you agree we can send you this information electronically. For example, we can send any documents or information we have to give you under the Credit Contracts and Consumer Finance Act 2003 electronically.

**Some warranties or guarantees imposed by law won't apply to us**

To the extent the law allows it, you agree none of the warranties or guarantees imposed on us by custom or law will apply to us.

The Consumer Guarantees Act 1993 doesn't apply if this mortgage is security for money owing solely in connection with a business.

**New Zealand law applies to this mortgage**

New Zealand law applies to this mortgage.

You agree you won't use any rights or legal defences you have to avoid us enforcing this mortgage after you've breached it.

**The terms of this mortgage can be changed if these are unlawful for any reason**

You agree any terms in this mortgage that are unlawful, or don't meet compulsory duties we have at law, are changed, as needed, to be lawful or to comply with the law. Our rights under this clause don't affect the agreement you've given us in the clause headed 'Some warranties or guarantees imposed by law won't apply to us'.

**We can decide which terms should apply if another agreement is inconsistent with this mortgage**

We'll decide which term applies if the terms of this mortgage are inconsistent with other agreements you have with us. We'll also decide which term applies if the terms of this mortgage are inconsistent with terms applying because of legislation like the Property Law Act 2007.

**We can collect and use information about you**

If we believe we need to, to exercise any of the rights we have under this mortgage, we can collect from you or anyone else and use any information or documents about you, your property, or the use of your property.

We can share this information with anyone we believe we need to — including anyone who guarantees this mortgage, credit reporters, or debt recovery agencies.

If you're a company, or limited partnership, you must get the consent of directors or partners. This consent must let us collect and use information about them in the same way we can collect, use and share information about you.

**How we'll contact you about this mortgage**

If we need to contact you about this mortgage, we'll give you a letter or notice, or send it by post or email to the address we have for you.

You're considered to have received any letters or notices from us on the day it was given to you, posted to you or sent by email.

If more than one person is named as mortgagor, we can give or send a letter or notice to only one of those people. If we do send a notice to only one person, every other mortgagor will be considered to have received it also.

Errors or omissions in any letters or notices we give or send you won't affect whether we can enforce them or this mortgage.

**We refer to New Zealand legislation in this mortgage**

In this mortgage we refer to New Zealand legislation. The references include any replacements or amendments to that legislation.

Dated this **29<sup>th</sup> day of October 2012**

Signed by **David Hisco**, Chief Executive Officer, for and on behalf of **ANZ Bank New Zealand Limited**

**Memorandum number:** 2012/4308

**Land Transfer Act 1952**

**MORTGAGE**

**Registered pursuant to Section 155A**

**Land Transfer Act 1952**

**Registrar-General of Land**

**Land Registry**

(Abstract number / date ..... *UNKNOWN* *19/09/01* .....)