

TOPIC OVERVIEW

1	EQUITABLE INTERESTS ARISING BY OPERATION OF LAW Includes resulting trusts, constructive trusts and estoppel
2	MORTGAGES The main focus is on the remedies available to registered Torrens System mortgagees upon default
3	AN INTRODUCTION TO THE ENFORCEMENT OF PROPRIETARY INTERESTS AND THE TORRENS SYSTEM Includes a brief overview of priority disputes under the general law, the deeds registration system and an introduction to the Torrens System
4	THE PRINCIPLE OF INDEFEASIBILITY OF TITLE Defines the principle of indefeasibility and delineates its scope
5	EXCEPTIONS TO INDEFEASIBILITY OF TITLE Includes fraud, in personam and other exceptions
6	UNREGISTERED INTERESTS UNDER THE TORRENS SYSTEM Includes the basis for recognition of equitable interests under the Torrens system; the caveat system and priority disputes between unregistered interests
7	CO-OWNERSHIP Includes joint tenancy and tenancy in common, rights and duties of co-owners, severance and termination of co-ownership

TOPIC 1- EQUITABLE INTERESTS ARISING BY OPERATION OF LAW

NO LEGISLATION IN READING GUIDE

TOPIC 2 – MORTGAGES

THE NATURE AND TYPES OF MORTGAGES

SECTION	SUMMARY	APPLICATION
TLA s.74	1) by instrument in the approved form, the RP of any land may a) mortgage the land 2) any such mortgage shall when registered have effects as a security and be an interest in land, but shall not operate as a transfer of land 3) a mortgage held by the mortgagee must be retained by the mortgagee until the mortgage is discharged	Description of a Torrens Mortgage

NATIONAL CREDIT CODE

SECTION	SUMMARY	APPLICATION
s. 3	Credit is provided if under a contract: - Payment of debt owed by one person to another is deferred; or - One person incurs a deferred debt to another - Amount of credit is the debt actually deferred, and doesn't include any interest or fees	Meaning of credit
NCC s. 3	Credit is provided if under a contract: - Payment of debt owed by one person to another is deferred; or - One person incurs a deferred debt to another - Amount of credit is the debt actually deferred, and doesn't include any interest or fees	Meaning of credit = payment of a debt from one person to another is deferred
NCC s.4	For the purposes of this code, a CC is a contract under which credit is or may be provided, being the provision of credit which this code applies	Meaning of credit contract = a contract under which credit is provided
NCC s.5	(1) This Code applies to the provision of credit (and to the credit contract and related matters) if when the credit contract is entered into or (in the case of precontractual obligations) is proposed to be entered into: (a) the debtor is a natural person or a strata corporation ; and (b) the credit is provided or intended to be provided wholly or predominantly: (i) for personal , domestic or household purposes; or	Provision of credit to which this code applies: - only if debtor is a natural person or strata corporation The credit is wholly or predominantly for PDH uses (predominant = more than half)

	<p>(ii) to purchase, renovate or improve residential property for investment purposes; or</p> <p>(iii) to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes; and</p>	
NCC s.6	Does not apply to short term credit (if the credit is limited to a total period that does not exceed 62 days)	Provisions of credit to which this code does not apply = short term
s. 7	<p>(1) This Code applies to a mortgage if:</p> <p>(a) it secures obligations under a credit contract or a related guarantee; and</p> <p>(b) the mortgagor is a natural person or a strata corporation.</p> <p>(2) If any such mortgage also secures other obligations, this Code applies to the mortgage to the extent only that it secures obligations under the credit contract or related guarantee.</p> <p>(3) The regulations may exclude, from the application of all or any provisions of this Code, a mortgage of a class specified in the regulations.</p>	Mortgages to which this code applies – must be a CC and mortgagor is a natural person or strata
s. 13	<p>(1) In any proceedings (whether brought under this Code or not) in which a party claims that a credit contract, mortgage or guarantee is one to which this Code applies, it is presumed to be such unless the contrary is established.</p> <p>(2) It is presumed for the purposes of this Code that credit is not provided or intended to be provided under a contract wholly or predominantly for any or all of the following purposes (a Code purpose):</p> <p>(a) for personal, domestic or household purposes;</p> <p>(b) to purchase, renovate or improve residential property for investment purposes;</p> <p>(c) to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes;</p> <p>(d) if the debtor declares, before entering the contract, that the credit is to be applied wholly or predominantly for a purpose that is not a Code purpose, unless the contrary is established.</p>	<p>Presumptions relating to application of the code</p> <p>- presumes the code applies to the mortgage (onus of proof on the party alleging that the NCC does not apply)</p> <p>-presumes that the credit was provided wholly or predominantly to PDH (the credit will be presumed to be applicable to a code purpose unless the contrary is established)</p>
s. 14	A credit contract must be in the form of a written contract document signed by the debtor and the credit provider	Credit contract to be in the form of a written & signed document

s. 17	Must contain: the credit providers name, the amount of credit, interest details, repayments, fees and charges etc.	Matters that must be in the contractual document
s. 42	<p>1) A mortgage must be in the form of a written mortgage document that is signed by the mortgagor</p> <p>2) it is sufficient compliance with subsection 1 if</p> <ul style="list-style-type: none"> ○ The mortgage is contained in a credit contract signed by the mortgagor; or ○ One of the documents comprising the mortgage document is signed by the mortgagor (and the other documents are referred to in the signed document) <p>4) a mortgage is not enforceable unless it complies with this section</p>	Form of mortgage
s. 191	<p>1) 'a provision of a contract or other instrument by which a person seeks to avoid or modify the effect of this Code is void'</p> <p>2) 'a provision of a contract or other instrument by which a person seeks to have the debtor or mortgagor indemnify the credit provider for any loss or liability arising under this Code is void'</p>	The code cannot be avoided or modified by contract
s. 88(2) – (8)	<p>(2) A credit provider must not begin enforcement proceedings against a mortgagor to recover payment of money due or take possession of, sell, appoint a receiver for or foreclose in relation to property subject to a mortgage, unless:</p> <p>(a) the mortgagor is in default under the mortgage; and</p> <p>(b) the credit provider has given the mortgagor a default notice, complying with this section, allowing the mortgagor a period of at least 30 days from the date of the notice to remedy the default; and</p> <p>(c) the default has not been remedied within</p> <p>Criminal penalty: 50 penalty units</p> <p>3) a default notice must contain a prominent heading at its top stating that it is a default notice and specify:</p> <p>A) the default; and</p> <p>B) the action necessary to remedy the default; and</p> <p>C) a period for remedying the default; and</p> <p>D) – j) etc</p> <p>5) a credit provider is not required to give a default notice or to wait until the period specified in the default notice has elapsed, before beginning proceedings; if;</p> <p>A) the credit provider reasonably believes that it was induced by fraud on the part of the mortgagor to enter into the mortgage; or</p> <p>B) the credit provider has made reasonable attempts to locate the mortgagor without success; or</p> <p>C) the court authorises the credit provider to begin proceedings</p>	30 days' notice of default before they can exercise POS

	<p>(6) If the credit provider reasonably believes that a default is not capable of being remedied:</p> <p>(a) the default notice need only specify the default; and</p> <p>(b) the credit provider may begin the enforcement proceedings after the period of 30 days from the date of the notice.</p>	
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