

GUYANA

No. 4 of 1973.

REGULATIONS

Made Under

THE HOUSING DEVELOPMENT ACT, 1970

(No. 35 of 1970).

UNDER SECTION 12 OF THE HOUSING DEVELOPMENT ACT, 1970, THE FOLLOWING REGULATIONS ARE HEREBY MADE:—

1. These Regulations may be cited as the Housing Development (Mortgage Guarantee) Regulations, 1973.

2. In these regulations, unless the context otherwise requires,—

“approved mortgage” means a mortgage that satisfies the requirements of regulation 8 and is otherwise a form approved by the Minister;

“undertaking” means an undertaking issued under regulation 5.

3. (1) Where the repayment of a proposed loan of a sum of money to a person (hereinafter in these regulations referred to as “the mortgagor”) for the purposes contemplated by section 8 of the Act is to be secured by the execution of a mortgage in favour of an approved mortgagee, the mortgagor and the mortgagee shall, if they desire the overnment to enter into a guarantee to the extent provided by subsection (2) of that section make an application to the Minister for an undertaking in accordance with regulation 4.

(2) For the purpose of effecting a transfer or assignment of an existing mortgage guarantee pursuant to a sale of property by the mortgagor the sum of money subject to the guarantee shall be regarded as a loan to be made to the purchaser of the property.

4. An application for an undertaking shall be made in the form set out as Form 1 and shall be submitted to the Minister together with —

- (a) a fee of two dollars for every thousand dollars or part thereof of the sum proposed to be guaranteed, which fee shall be paid by the mortgagor, one-half thereof to be returned if the application is refused or withdrawn prior to its approval; and
- (b) three copies of the approved plans and specifications of the proposed buildings, where the loan is for the purposes of constructing a house.

5. The Minister shall on approving an application made under regulation 4, issue an undertaking to the effect that the Government will in accordance with the provisions of the Act and these regulations enter into a guarantee to be subject to the said provisions for the sum mentioned in the undertaking, which shall be in form set out as Form 2.

6. An application under regulation 4 shall not be approved —

- (a) where the repayment of any other loan by the mortgagor is the subject of a mortgage guarantee; or
- (b) where there is an undischarged undertaking in respect of any other loan to be made to the mortgagor, unless the parties for whose benefit such undertaking was given shall, by writing under their hand, release the Government from all obligations thereunder; and
- (c) unless the mortgagor establishes to the satisfaction of the Minister,
 - (i) that he has a good credit standing; and
 - (ii) that the periodic payments which he will be required to make under the approved mortgage securing the repayment of the loan referred to

in such application bears a proper relation to his present and anticipated gross income.

7. (1) The guarantee shall be subject to the provisions of the Act and these regulations and shall only be entered into —

- (a) where the loan is to be made for the purpose of purchasing a house, if satisfactory proof of the purchase by the mortgagor of the house and the proposed execution of an approved mortgage by the mortgagor and the mortgage securing the repayment of such loan is given to the Minister; or
- (b) where the loan is to be made for the purpose of constructing a house, if the plans and particulars in respect thereof have been submitted to and approved by the Minister, together with satisfactory proof of the proposed execution by the mortgagor for the purpose of securing the repayment of such loan of an approved mortgage in respect of his interest in the land whereon the building is to be constructed (and including such building),

(2) In determining whether the value of a property, in respect of which a mortgage guarantee is sought, satisfies the requirements of section 8 (2) of the Act, the Minister shall act upon the value of such property as is certified by an officer mentioned in section 3 of the Valuation for Rating Purposes Act, 1969.

8. Every mortgage proposed for the purpose of obtaining a guarantee in consequence of an undertaking shall, subject to section 8 of the Act, comply with the following provisions —

- (a) the interest of the mortgagor to be subject to the mortgage shall either be held by the mortgagor by virtue of a transport, a transfer under the Land Registry Ordinance, 1959 or a lease for a term of years absolute, such term not to expire earlier than two years after the date when the last amortised payment of the sum due under the mortgage becomes payable;

- (b) the mortgage shall be a first charge on the mortgage property;
- (c) the mortgage shall bear interest calculated in respect of periods, each not exceeding a year, at a rate approved by the Minister, the aggregate of which, and
 - (i) the rate of the insurance fee prescribed at the date of the execution of the mortgage; and
 - (ii) the maximum rate of the service charge prescribed for the purposes of sub-paragraph (ii) of paragraph (e)

does not exceed an interest rate of ten per centum on the capital sum for the time being outstanding at any time under the mortgage;

- (d) the terms of the mortgage shall to the satisfaction of the Minister provide for —
 - (i) the complete amortisation of the capital sum, interest and other sums, if any, payable under paragraph (e) by monthly payments secured within a period of not more than twenty-five years from the date of the guarantee nor more than three-quarters of the Minister's estimate of the economic life of the building, whichever is the less;
 - (ii) the insurance by the mortgagor of the building against fire and such other hazards as the Minister may stipulate, and in such amount, being not less than the capital sum of the mortgage, and with an insurance company registered under the Insurance Act 1970 (as the Minister may approve);
 - (iii) equal monthly payments by the mortgagor of

- such an amount as will discharge the ground rent, if any, and the estimated amount of all rates, taxes, and other special assessments, if any, and fire and other hazard insurance premiums within a period ending on the interest payment date immediately prior to the date on which such rent, assessments or premiums as the case may be, shall become due and owing;
- (iv) the adjustment of the monthly payments referred to in sub-paragraph (iii) in case the estimated amount of such taxes, assessments and insurance premiums shall prove to be or shall become more or less than the actual amount thereof so paid by the mortgagor;
 - (v) requiring the consent of the Minister, so long as the guarantee exists, to the assignment or conveyance by the mortgagor to a third person of his interest in the mortgaged property;
- (e) in addition to the interest permitted under paragraph (c) the mortgage shall provide —
- (i) for payment by the mortgagor on or before the execution of the approved mortgage of a sum equal to the first annual insurance fee payable by the mortgagee under section 9 of the Act; and thereafter for each and every month during which the guarantee exists a sum equivalent to a month's insurance fee;
 - (ii) for monthly payment by the mortgagor of a service charge at a rate not exceeding the rate of one per centum per annum of the balance of the principal sum for the time being owing under the guarantee;
 - (iii) for such other matters as the Minister may approve;

- (f) the mortgage shall permit for the mortgagor on the expiration of one year after its execution and upon his giving ninety days notice in writing, and paying such additional charges as may be agreed upon between himself and the mortgagee, to discharge the balance for the time being outstanding, or any part thereof amounting to the sum of either four hundred and eighty dollars or five hundred dollars (at the option of the mortgagee) or any multiple thereof, on the day when payment of interest is due.
9. (a) All monthly payments to be made by the mortgagor to the mortgagee under an approved mortgage shall be added together and the aggregate amount thereof paid, on a date to be fixed in the mortgage in a single payment (in this regulation referred to as the "aggregate monthly payment").
- (b) The mortgagee shall apply the aggregate monthly payment towards the discharge of the mortgagor's obligations under the mortgage in the following order:
- (i) the amount payable under the mortgage pursuant to paragraph (e) (i) of regulation 8;
 - (ii) the amount payable under the mortgage pursuant to paragraph (d) (iii) of regulation 8;
 - (iii) the service charge, if any;
 - (iv) interest due under the mortgage;
 - (v) the amortisation of the capital sum of the mortgage, the portion thereof covered by the guarantee being first liquidated.
- (c) For the purposes of section 2 of the Act borrower charges are such expenses as are incurred by an approved mortgagee in accordance with the terms of the mortgage to safeguard the interest of the mortgagee and the Government for —

- (i) insurance premiums for fire and other hazards insured against;
- (ii) taxes and other rates and charges levied against the property which have priority over the mortgage;
- (iii) any premiums in respect of life insurance required to be effected under the mortgage; and
- (iv) such other purposes as may be approved by the Minister in writing.

10. On or before the execution of the approved mortgage, the mortgagor shall pay to the mortgagee such a sum as will be sufficient to discharge —

- (a) the ground rent, if any, and the estimated amount of all rates, taxes, special assessments and fire and other hazard insurance premiums for the period beginning on the date up to which such ground rent, rates, taxes, assessments and fire and other hazard insurance premiums were last paid and ending on the date on which the next monthly payment is due under the mortgage; and
- (b) the insurance fee mentioned in paragraph (e) (i) of regulation 8.

11. (a) The mortgagor or mortgagee, as the case may be, of an approved mortgage shall obtain the approval of the Minister before making any deviation from the plans and particulars mentioned in regulation 7 (b) or effecting any alterations to a house constructed in accordance with such plans.
- (b) If any mortgagee acts in contravention of paragraph (a), he shall be liable on summary conviction to a fine of one hundred dollars.

- (c) In this regulation, "mortgagor" and "mortgagee" include the assignee of, or the successor in title to, the interest of the mortgagor or mortgagee, as the case may be, in the house.
12. (a) At the end of each month an approved mortgagee shall notify the Minister in the form set out as Form No. 3 of all mortgagors who have failed to make any payment or to perform any other covenants or obligations under mortgage guarantees to which the mortgagee is a party.
- (b) if after the making of a report under this regulation a mortgagor shall perform the covenant or obligation occasioning such report, the mortgagee shall notify the Minister accordingly.
13. It shall be a condition of every guarantee that the interest of the mortgagor in the mortgaged property is not less than it is represented to be in the mortgage deed securing the repayment of the loan in respect of which such guarantee was entered.
14. (a) So long as the Government is liable under the guarantee, the mortgagee with whom such guarantee was entered into shall not exercise his power of sale —
- (i) at any time without giving fourteen days' prior notice in writing to the Minister of his intention so to do;
- (ii) within one month from the date on which such right shall have become exercisable under the mortgage, except with the written consent of the Minister;
- (iii) without giving the Minister the option, on the exercise of such power, of purchasing the property which is the subject of the mortgage;
- (iv) by private contract if the Minister shall request a sale by public auction.

- (b) Without prejudice to the provisions of paragraph (a) when a mortgagee's power of sale becomes exercisable, such mortgagee shall exercise such power within such time and in such manner as the Minister may direct.
- (c) Notwithstanding paragraphs (a) and (b), the mortgagee may at any time after a mortgagor has twice in one year been in default give seven days' notice in writing to the Minister of his intention to foreclose or exercise his power of sale and if the Minister does not within twenty-one days after the expiration of the notice exercise an option to purchase the property, it shall be regarded that the Minister has indicated that the mortgagee shall be at liberty to foreclose or exercise the power of sale and any such sale may be by public auction or private contract in the discretion of the mortgagee.

15. If the mortgagee shall fail to observe any of the mortgagee's covenants under the mortgage or any of the obligations imposed by regulations 11, 12 (a) or 14 the Government's liability under the respective guarantee shall, unless the Minister otherwise determines, cease and the guarantee shall thereafter be of no effect.

16. (a) Where an approved mortgagee transfers or assigns a mortgage guarantee to another person in accordance with the provisions of the Deeds Registry Ordinance the Government's liability under the guarantee shall cease and the guarantee shall be void, unless —
- (i) the assignment was made to an approved mortgagee; or
 - (ii) the person to whom the assignment was made permits the mortgage to be serviced, subject to such terms as the Minister may think fit, by an approved mortgagee.

- (b) Regulation 15 shall apply in the case of any transfer

or assignment as if the expression "the mortgagee" contained therein included a reference to the transferee or assignee of the interest of the mortgagee.

17. (a) An approved mortgagee shall exercise reasonable care and prudence in the administration of a mortgage guarantee and the collection and repayment of sums due thereunder and the approved mortgagee shall be deemed not to be negligent if the mortgagee follows the practice and procedure which pertain to the mortgagee's general practice.
- (b) For the purposes of this regulation reasonable care and prudence consist of —
- (i) the keeping of an updated account in respect of the mortgage debt;
 - (ii) prompt despatch of notices to the mortgagor of any arrears outstanding, copies of which should be sent to the guarantor;
 - (iii) prompt recourse to law in respect of persistent mortgage defaulters;
 - (iv) the taking of reasonable measures to ensure that the mortgaged property is not dealt with in such a manner as may prejudice the interests of the mortgagee or the guarantor;
 - (v) prompt notices to a mortgagor requiring him to remedy immediately any breach of his obligations under the mortgage deed, particularly with regard to the payment of rates and fire insurance in respect of the mortgaged property;
 - (vi) ensuring that the mortgaged property is effectively covered with fire insurance.
- (c) If an approved mortgagee is negligent in the administration of a mortgage guarantee or the protection of

the security therefor, then the Minister may deduct from any sum payable under the guarantee the amount of damages sustained by the Government as a result of such negligence.

- (d) If the Minister and the approved mortgagee are unable to agree on the extent of such negligence or of the damages arising therefrom, then the matter shall be referred for arbitration to a sole arbitrator acceptable to the Minister and the approved mortgagee or if no sole arbitrator is acceptable to both parties, then to two arbitrators, one of whom shall be chosen by each party and an umpire to be chosen by the two arbitrators. The costs of the arbitration shall be borne as agreed between the parties or in default of such agreement as shall be determined in the arbitration award.

18. For the purposes of section 9 of the Act the rate of the insurance fee payable is half per centum.

SCHEDULE**FORM No. 1****HOUSING DEVELOPMENT (MORTGAGE GUARANTEE) REGULATIONS, 1973.****Application for Undertaking**

To: The Minister of Housing.

Pursuant to the provisions of regulation 3 of the Housing Development (Mortgage Guarantee) Regulations, 1973 application is hereby made for an undertaking that the Government will enter into a guarantee with the parties hereto in respect of the repayment of the sum of \$..... being a portion of the sum of \$..... to be lent by the mortgagee to the mortgagor for the purpose of purchasing/constructing the house particulars of which are set out hereunder.

The loan of \$..... is to bear interest at the rate of per centum per annum and will be repayable in years by equal monthly instalments of \$..... covering principal and interest, and will be secured by an approved mortgage.

The applicants agree to furnish the Ministry with such other information as the Minister may require for the purpose of this application.

The application fee of \$..... is submitted herewith.

Particulars

*To be filled in where loan is for purchasing house.

Situation of House.....

Form of title to land

Present Owner.....

Purchase price

*To be filled in where loan is for constructing house.

Location of construction site

Form of Title to construction site Estimated cost of construction

.....

Estimated cost of site improvement, if any.....

Builder

NOTE:

(a) Plans and Specifications in triplicate to be submitted herewith.

(b) Plans and Specifications will be returned if applications rejected. Two copies will be returned if application approved.

Dated this day of

.....
Mortgagor

Address

*delete whichever is inapplicable

.....
Approved Mortgagee

Address

FORM No. 2

**HOUSING DEVELOPMENT (MORTGAGE GUARANTEE) REGULATIONS
1973.**

Undertaking to Guarantee

Name and Address of Approved Mortgagee	File Number	Description of Property

Your application for an undertaking to guarantee dated.....
.....has been considered and the Minister hereby undertakes to enter into a guarantee on behalf of the Government in accordance with the Housing Development Act, 1970 and the Housing Development (Mortgage Guarantee) Regulations 1973 in the sum of \$.....in respect of a mortgage loan of \$.....on the property described in the aforesaid application, the said guarantee being subject to the said Act and regulations.

Construction shall conform to the approved plans and specifications submitted with your application or previously approved by the Minister. In the case of non-compliance, the Minister in his sole discretion may vary the amount of guarantee.

The application fee unless previously remitted is now payable in the amount of \$.....

The following terms and conditions are to apply to the mortgage to be made with respect to the referenced guarantee. Any variation in these terms and conditions not approved in writing by the Minister may result in withdrawal of the guarantee :—

- Interest Rate% Ground rent: \$.....per month.
- Service charge.....% Amortisation rate:\$.....per month
- Guarantee Fee.....% Amortisation terms:Years

This undertaking is issued subject to the compliance by you and the mortgagor with the requirements of the abovementioned Act and Regulations.

Dated Signed
Minister.

