

**Version No. 002**  
**Rural Finance Corporation of Victoria**  
**Regulations 1998**

**S.R. No. 83/1998**

Version incorporating amendments as at 1 September 2004

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**S.R. No. 83/1998**

Version incorporating amendments as at 1 September 2004

**1. Commencement**

These Regulations come into operation on 3 July 1998.

**2. Objectives**

The objectives of these Regulations are—

- (a) to prescribe forms and certain fees for the purposes of the Act; and
- (b) to make provision for the service of notices by or on the Corporation.

**3. Authorising provision**

These Regulations are made under section 57 of the **Rural Finance Act 1988**.

**4. Revocation**

The Rural Finance Corporation of Victoria Regulations 1988<sup>1</sup> are **revoked**.

**5. Definitions**

In these Regulations—

**"Act"** means the **Rural Finance Act 1988**;

**"Chief Executive Officer"** means the Chief Executive Officer of the Corporation.

**6. Mortgage form**

For the purpose of section 33(2)(b) of the Act the form of the mortgage is the form contained in the Schedule.

**7. Manner of serving notices and documents**

(1) A document required by the Act to be given to or served on a person may be—

- (a) delivered to him or her personally; or
- (b) sent to him or her by post.

\* \* \* \* \*

Reg. 7(2)  
revoked by  
S.R. No.  
103/2004  
reg. 4.

(3) The Chief Executive Officer may accept service of any document on behalf of the Corporation.

**8. Fee for preparation of Crown grant**

The fee payable for preparation and issue of any Crown grant issued pursuant to the Act is the Crown Grant fee prescribed from time to time under the **Land Act 1958** for preparation and issue of any grant of Crown land sold in fee simple.

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## SCHEDULE

Regulation 6

### MORTGAGE OF LAND

#### **Rural Finance Act 1988,** Section 33

The Mortgagor mortgages to the Mortgagee the estate and interest specified in the Land subject to the encumbrances affecting the Land including any created by dealings lodged for registration before the lodging of this Mortgage and agrees with the Mortgagee to be bound by the covenants set out in the Schedule. This Mortgage is given pursuant to section 33 of the **Rural Finance Act 1988** to secure payment of the Principal Sum which is the balance owing to the Mortgagee under a Settlement Purchase Lease of the Land issued under the **Soldier Settlement Act 1958**.

The Mortgagor:

The Mortgagee: Rural Finance Corporation of Victoria (the "Corporation")

Estate and Interest being mortgaged:

Principal Sum:

## SCHEDULE

The Mortgagor covenants with the Corporation as follows—

### **1. Interest**

The Mortgagor shall pay to the Corporation, on the first days of                      in each year interest on the Principal Sum or any part for the time being outstanding at the rate of                      per centum per annum (hereinafter called "the higher rate") (being the rate in force for the purposes of section 33 of the **Rural Finance Act 1988** at the time of the date this mortgage takes effect) computed from the date this mortgage takes effect.

### **2. Payment of the principal sum and interest**

- 2.1 The Mortgagor shall pay to the Corporation on account of the Principal Sum and interest thereon at the higher rate, instalments of \$                      each on the first days of                      in each year with the first instalment payable on                      .

## 2.2 If—

- (a) in accordance with the provisions of section 33 of the **Rural Finance Act 1988**, the land remains in the ownership of the discharged soldier to whom it was allocated for settlement pursuant to section 51 of the **Soldier Settlement Act 1958**, his widow or his child or children; and
- (b) the Corporation is satisfied that the Mortgagor has performed all the covenants under this mortgage or there is reasonable excuse for their not being performed,

the Corporation shall accept interest on the Principal Sum at the lower rate of Two per centum per annum instead of interest at the higher rate and shall accept the instalments of \$                instead of the instalments referred to in clause 2.1 in payment of the moneys owing under this mortgage.

- 2.3 The Mortgagor shall pay to the Corporation on the the balance of the Principal Sum and interest then outstanding.

**3. Additional payments**

If all instalments and interest due and payable under this mortgage have been paid, the Mortgagor may pay additional amounts in reduction of the moneys owing under this mortgage but such payments shall not affect the Mortgagor's obligations under clause 2.1 of this mortgage.

**4. Default in payment of the instalments**

If any instalment due under this mortgage is not paid on the due date for payment or within 30 days of that date, the Mortgagor shall pay interest on the overdue instalment at the rate of Five per centum per annum from the due date for payment until it is paid.

**5. Other consequences of default**

If any instalment due under this mortgage is not paid on the due date for payment or within 30 days of that date or the Mortgagor does not comply with any other obligation under this mortgage, all of the moneys remaining unpaid under this mortgage shall at the option of the Corporation become immediately due payable and recoverable together with interest on those moneys calculated in accordance with this mortgage until payment or recovery of those moneys. The Corporation may exercise its rights under this clause

without limitation to its rights and powers under any other provision of this mortgage.

**6. Warranty as to title**

- 6.1 The Mortgagor warrants that he has an indefeasible title under the **Transfer of Land Act 1958** to the land subject only to any encumbrance affecting the land registered prior to the registration of this mortgage.
- 6.2 The Corporation is entitled to retain the Crown Grant or Certificate of Title to the land in its custody during the continuance of this Mortgage.

**7. Further assurances**

- 7.1 The Mortgagor must do whatever the Corporation requires—
  - (a) to secure more satisfactorily to the Corporation the payment of the moneys secured by this mortgage; or
  - (b) to enable the Corporation to better exercise its rights under this mortgage.
- 7.2 Clause 7.1 includes executing any documents or doing anything necessary to obtain registration of this mortgage or any other dealings including anything necessary to comply with any requisitions of the Registrar of Titles.

**8. Costs and charges**

- 8.1 The Mortgagor shall pay to the Corporation any costs charges and payments which the Corporation has incurred or makes or will incur or make in connection with—
  - (a) exercising, trying to exercise or not exercising its rights under statute or under this mortgage; or
  - (b) any breach of this mortgage by the Mortgagor.
- 8.2 Such costs charges and payments shall be added to and treated as forming part of the principal moneys owing under this mortgage from the date they are incurred and shall be payable upon demand together with interest from that date calculated and payable in accordance with the provisions of this mortgage.

**9. The mortgagor's other obligations**

## 9.1 The Mortgagor shall—

- (a) punctually pay all taxes, rates, charges, impositions and assessments payable in respect of the land;
- (b) comply with all obligations affecting the land (for example, obligations arising under legislation and from the requirements of any government agencies particularly those relating to vermin, noxious weeds or diseases of vines or other vegetation);
- (c) use and manage the land properly;
- (d) keep all buildings and other improvements on the land in good repair and condition;
- (e) keep open all ditches, drains, cuts, channels and water courses and works on the land; and
- (f) permit a representative authorized by the Corporation to enter the land at any time as may be reasonably required. The Corporation may enter onto the land to inspect the state of repair of the buildings and improvements on the land or to ascertain whether the land is being used and managed properly or to do any necessary works to remedy a default under this mortgage.

## 9.2 The Mortgagor shall not without the Corporation's prior written consent—

- (a) cut or destroy or dispose of any trees, vines, fruit trees or saleable timber on the land;
- (b) lease or subdivide the land or enter into a sharefarming agreement in respect of the land; or
- (c) transfer the land and, except where the land is transferred to the widow or a child or the children of the discharged soldier to whom it was allocated for settlement pursuant to section 51 of the **Soldier Settlement Act 1958**, it shall be a condition of the Corporation's consent to the transfer that interest shall be payable at the higher rate as from the date of registration of the transfer.

## 9.3 If the Mortgagor does not comply with an obligation under this mortgage, the Corporation may do anything which, in the opinion of the Corporation, is necessary to remedy the breach.

**10. Insurance**

- 10.1 The Mortgagor must keep all buildings and fences on the land insured on a replacement and re-instatement basis.

The insurance must—

- (a) be effected with the Corporation or with any insurance company approved by the Corporation and in that event include the Corporation as an insured party for its interest as mortgagee; and
  - (b) cover loss or damage by fire storm and tempest and any other risks that the Corporation requires for an amount fixed by the Corporation.
- 10.2 The Corporation may apply money that it receives under an insurance policy taken out under this mortgage to payment of the moneys secured by this mortgage or, as it chooses, to repairing or rebuilding under the supervision of a person approved by the Corporation the improvements destroyed or damaged.

**11. Amount owing**

The statement in the books of the Corporation of the amount owing to the Corporation by the Mortgagor shall be prima facie evidence of the amount which is secured under this mortgage.

**12. Moneys payable on sale or by way of compensation**

Any money which may become payable by way of purchase money, compensation or otherwise in respect of the land shall be paid to the Corporation and may be applied by the Corporation towards payment of the moneys hereby secured whether or not those moneys are then due and payable.

**13. Powers of the corporation upon default**

- 13.1 The following provisions shall apply to the Corporation's power of sale—
- (a) The period of notice or lapse of time required under sections 76 and 77 of the **Transfer of Land Act 1958** before the Corporation can exercise its power of sale is fourteen days.
  - (b) The Corporation may exercise its power of sale at any time and will not be taken to have given up or waived a right or a notice under this Mortgage simply because it does not exercise, or delays in exercising, a right or serve a notice under this mortgage.



- (c) The Corporation has complete discretion about preparing the land for sale and about the way in which it sells the land. For example, it can include a condition in the contract of sale for obtaining or allowing compensation for any errors in the description of the property or sell it on any terms.
  - (d) A purchaser of the land from the Corporation—
    - (i) does not have to enquire whether the Mortgagor has defaulted, or is in default of, his obligations to the Corporation under this mortgage or whether the Corporation has acted properly; and
    - (ii) will not be taken to have notice (whether actual or implied) that the Corporation has acted improperly.
  - (e) The Corporation will apply any money it receives from a sale of the land firstly in payment of the Corporation's costs charges and expenses in exercising or trying to exercise its rights under this mortgage and, as to the balance, in accordance with the provisions of the **Transfer of Land Act 1958**.
- 13.2 The Corporation may upon becoming entitled to exercise its power of sale lease the land upon such terms and conditions as the Corporation thinks expedient and, where appropriate, enter into agreements for agistment of the land or share farming agreements.
- 13.3 The Corporation is not liable for anything done or not done by the Corporation in exercising any powers under this mortgage or under the **Rural Finance Act 1988** or the **Transfer of Land Act 1958** or any consequences from an act or failure to act. Any liability that the Corporation would otherwise have had apart from this clause as a mortgagee in possession is excluded.

#### **14. Powers of any receiver appointed by the corporation**

- 14.1 In addition to the powers conferred on a receiver of the income of land by the **Property Law Act 1958**, any such receiver appointed by the Corporation shall have power—
- (a) to supervise and direct the carrying on of any business carried on by the Mortgagor on the land and to continue and carry on the business as agent of the Mortgagor and treat the net proceeds of the business as income of the land;

- (b) where appropriate, to make agreements of agistment and share-farming agreements and receive all moneys payable under such agreements whether made by the receiver or not; and
- (c) to lease the land upon such terms and conditions as the receiver determines and to accept surrenders of any lease of the land whether entered into by the receiver or not.

14.2 For valuable consideration the Mortgagor irrevocably appoints every receiver appointed by the Corporation the attorney of the Mortgagor to exercise all of the above powers.

14.3 Sections 109 and 110 of the **Property Law Act 1958** shall apply to the powers exercisable by a receiver appointed by the Corporation and to anything which the receiver does or does not do in exercising those powers. The receiver must use money the receiver receives in accordance with the provisions of that Act.

#### **15. Power of attorney**

15.1 The Mortgagor appoints the Corporation as the Mortgagor's attorney—

- (a) to do anything that the Corporation can do under this mortgage or by law; or
- (b) to do anything that the Mortgagor can do or should have done under this mortgage.

The attorney may execute any deed, sign any document and do any other thing that the attorney thinks is necessary or desirable for these purposes.

15.2 The power of attorney created under this clause is irrevocable, is granted for valuable consideration and secures performance of the Mortgagor's obligations under this mortgage.

15.3 The attorney may do things in the attorney's name, the Mortgagor's name or the Corporation's name.

#### **16. Statutory powers**

The provisions of this mortgage shall not prejudice or limit the rights conferred on the Corporation by the **Rural Finance Act 1988** or the **Transfer of Land Act 1958**.

The Corporation may exercise those rights in addition to the rights conferred on it by this mortgage.

**17. Definitions and interpretation**

17.1 In this mortgage unless a contrary intention appears—

- (a) the "Mortgagor" means the Mortgagor and the executor administrator successors and transferees of that person;
- (b) the "land" means the land intended to be mortgaged by this mortgage and any part thereof; and
- (c) a word indicating the singular also includes the plural and vice versa and a word indicating any gender also indicates each other gender.

17.2 Where there is more than one Mortgagor a reference to the Mortgagor includes each of the Mortgagors and the provisions of this mortgage apply to and are binding upon all of them jointly and each of them severally.

17.3 A reference in this mortgage to particular legislation or to a particular provision of legislation is a reference to that legislation or provision and any legislation which replaces any of them as in force for the time being.

17.4 Headings are for convenience only and do not affect the interpretation of this mortgage.

17.5 When the words "for example" are used the meaning of the words to which the example relates are not limited in any way by the example given.

17.6 If this mortgage says the Mortgagor must not do something then the Mortgagor must ensure that no one else does the thing which the Mortgagor must not do.

**18. Date upon which the mortgage takes effect**

This mortgage is effective from the  
whether or not the Mortgage is executed before, on or after  
this date.

DATED:

SIGNED SEALED AND DELIVERED by  
the Mortgagor in the presence of

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## ENDNOTES

### 1. General Information

The Rural Finance Corporation of Victoria Regulations 1998, S.R. No. 83/1998 were made on 30 June 1998 by the Governor in Council under section 57 of the **Rural Finance Act 1988**, No. 44/1988 and came into operation on 3 July 1998: regulation 1.

The Rural Finance Corporation of Victoria Regulations 1998 will sunset 10 years after the day of making on 30 June 2008 (See section 5 of the **Subordinate Legislation Act 1994**).

## **2. Table of Amendments**

This Version incorporates amendments made to the Rural Finance Corporation of Victoria Regulations 1998 by statutory rules, subordinate instruments and Acts.

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Rural Finance Corporation of Victoria (Amendment) Regulations 2004,  
S.R. No. 103/2004

<i>Date of Making:</i>	3.8.04
<i>Date of Commencement:</i>	1.9.04: reg. 3

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### **3. Explanatory Details**

<sup>1</sup> Reg. 4: S.R. No. 278/1988.