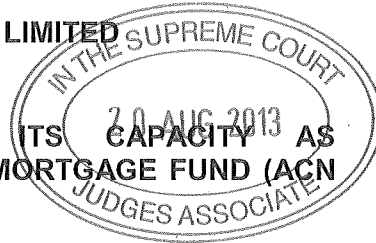


IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

CORPORATIONS LIST
No. S CI 2013 03871

IN THE MATTER OF BANKSIA MORTGAGES LIMITED
(ACN 087 342 238)

BANKSIA MORTGAGES LIMITED IN ITS CAPACITY AS
RESPONSIBLE ENTITY OF THE BANKSIA MORTGAGE FUND (ACN
087 342 238)



Plaintiff

GENERAL FORM OF ORDER

JUDGE OF THE COURT: The Honourable Justice Sifris

DATE MADE: 20 August 2013

ORIGINATING PROCESS: Originating Process made pursuant to r 2.2 of the Supreme Court (Corporations) Rules 2003

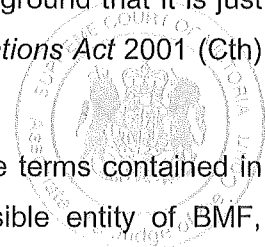
HOW OBTAINED: Return of the Plaintiff's Originating Process in accordance with directions made on 1 August 2013.

ATTENDANCE: W A Harris of senior counsel and M D Rush of counsel for the Plaintiff
P D Crutchfield of senior counsel and O Bigos of counsel for the Receivers and Managers of Banksia Securities Limited (ABN 45 044 736 458) (Receivers and Managers Appointed)

OTHER MATTERS: The Court notes that prior to completion of a Transfer of any Sub-Scheme Loan (as defined in the deed poll annexed to these orders (*Deed Poll*)) the Responsible Entity is required to obtain the approval, direction or advice of the Court that the Responsible Entity is justified in completing such transfer.

THE COURT ORDERS, DECLARES AND DIRECTS:

1. The plaintiff wind up the Banksia Mortgage Fund (*BMF*) on the ground that it is just and equitable to do so pursuant to s 601ND(1)(a) of the *Corporations Act 2001* (Cth) (the *Act*).
2. The plaintiff is justified in amending the BMF constitution on the terms contained in the Deed Poll on the basis that the plaintiff, as the responsible entity of BMF,



reasonably considers that such amendment will not adversely affect the rights of BMF members pursuant to s 601GC(1)(b) of the Act and cl 13.3 of the BMF constitution.

3. There be no order as to costs.
4. There be liberty to apply on 24 hours notice.

DATE AUTHENTICATED: **20 August 2013**




The Hon. Justice Sifris

Banksia Mortgages Limited

Supplemental Deed Poll

Amending the Constitution for the Banksia Mortgage Fund (ARSN 089 852 246)

Draft 28/07/13

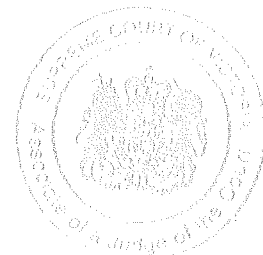
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This Deed is made on

2013

Parties

Banksia Mortgages Limited (ACN 087 342 238) of 157 Fenaughty Street, Kyabram, Victoria
(the *Responsible Entity*).

Recitals

- A The Responsible Entity is the responsible entity of the contributory mortgage scheme known as the Banksia Mortgage Fund (ARSN 089 852 246) (the **Scheme**).
- B The Scheme has been registered pursuant to section 601EB of the *Corporations Act 2001* (Cth) (the **Corporations Act**) as a managed investment scheme.
- C Subsection 601GC(1)(b) of the Corporations Act provides that the Constitution may be modified by the Responsible Entity if the Responsible Entity reasonably considers the change will not adversely affect members' rights.
- D Clause 13.3 of the Constitution also provides that amendment of the Constitution by the Responsible Entity is allowed if the Responsible Entity reasonably considers the change will not adversely affect members' rights.
- E On [insert date], the Responsible Entity applied to the Supreme Court of Victoria (the **Court**) for orders under section 601ND of the Corporations Act directing the Responsible Entity to wind up the Scheme on the grounds that it would be just and equitable to do so. On [insert date], the Court made orders directing the Responsible Entity to wind up the Scheme.
- F Section 601NE of the Corporations Act provides that, if the Court makes an order directing the Responsible Entity to wind up the Scheme, the Responsible Entity must ensure that the Scheme is wound up in accordance with the Constitution and any orders made by the Court.
- G Clauses 10.4 and 10.5 of the Constitution provide that:
- (a) the Scheme will be wound up where the Court makes an order directing the Responsible Entity to wind up the Scheme; and
 - (b) if an order is made to wind up the Scheme, the Responsible Entity will manage the Scheme and all sub-schemes thereunder, and shall take such action as necessary to ensure members' funds are redeemed at the expiry of each sub-scheme and paid to the members with any interest earned and not at that time distributed, or held for re-investment in another scheme if so directed.
- H The Responsible Entity wishes to amend the Constitution to provide additional flexibility to the manner in which the Scheme may be wound up by the Responsible Entity. In particular, the Responsible Entity wishes to introduce provisions that would permit the Scheme to be wound up by way of sale of some or all of the sub-scheme loans prior to their expiry, in accordance with the terms and conditions to be set out in the Constitution.
- I The Responsible Entity considers that the amendments set out in this Supplemental Deed Poll are in the best interests of members of the Scheme and that the amendments will not adversely affect the rights of the members of the Scheme.
- J On [insert date], the Responsible Entity applied to the Court for judicial advice that the Responsible Entity would be justified in making the amendments set out in this Supplemental Deed Poll under subsection 601GC(1)(b) of the Corporations Act by executing this Supplemental

Deed Poll. On [insert date], Justice [*] gave the judicial advice sought.

K The Responsible Entity amends the Constitution to the extent set out in this Supplemental Deed Poll.

L Pursuant to section 601GC(2) of the Corporations Act, the amendments to the Constitution set out in this Supplemental Deed Poll do not take effect until a copy has been lodged with the Australian Securities and Investments Commission (**ASIC**).

It is declared as follows.

1 Definitions and Interpretation

1.1 Definitions

In this Supplemental Deed Poll including, the Recitals, the following definitions apply unless the context otherwise requires.

Constitution means the constitution constituting the Scheme dated 6 April 2000, as amended from time to time.

Effective Time means the date and time on which a copy of this Supplemental Deed Poll is lodged with ASIC under section 601GC(2) of the Corporations Act.

1.2 Interpretation

- (a) Terms used but not defined in this Supplemental Deed Poll have the same meanings given to them in the Constitution.
- (b) The 'Dictionary of Terms' in the Constitution applies to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.

1.3 Benefit of this Supplemental Deed Poll

This Supplemental Deed Poll is made by the Responsible Entity with the intent that the benefit of this Supplemental Deed Poll shall enure to the benefit of Members jointly and severally.

2 Amendment of Constitution

The Responsible Entity amends the Constitution so that, on and from the Effective Time, the Constitution is amended as set out in the schedule.

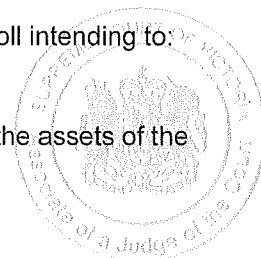
3 No Resettlement

The Responsible Entity confirms that it is not by this Supplemental Deed Poll intending to:

- (a) settle or redeclare any trust declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Scheme in any person.

4 Governing Law and Jurisdiction

This Supplemental Deed Poll is governed by the laws of Victoria. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.



Executed and delivered as a Deed in Melbourne

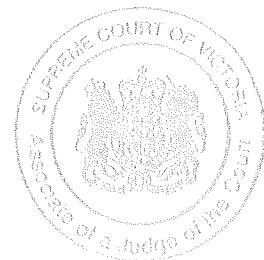
Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Banksia Mortgages Limited**

Director Signature

Director/Secretary Signature

Print Name

Print Name



Schedule**Amendments to Constitution for the Banksia Mortgage Fund**

The Constitution is amended as follows:

- 1 Clause 10 ('Winding up the Scheme') is amended as follows:
- (a) The following bullet points under clause 10.5 ('Winding up by the Responsible Entity') are renumbered as follows:
- (i) bullet point 4 (beginning 'Interests in the Scheme must not be issued...') is renumbered as clause 10.6;
 - (ii) bullet point 5 (beginning 'If BML is the responsible entity after an order or resolution to wind up...') is renumbered as clause 10.7;
 - (iii) bullet point 6 (beginning 'If, on completion of the winding up...') is renumbered as clause 10.8;
 - (iv) bullet point 7 (beginning 'Upon completion of the winding up...') is renumbered as clause 10.9; and
 - (v) bullet point 8 (beginning 'In the event the Scheme is operated at any time while unregistered...') is renumbered as clause 10.10.
- (b) Clause 10.7 (formerly bullet point 5 of clause 10.5) is deleted and replaced with the following clause:
- '10.7 If an order or resolution to wind up the Scheme is made in accordance with the Law or this clause 10, the Responsible Entity will manage the Scheme and all sub-schemes thereunder and must do either of the following in respect of each Sub-Scheme Loan to give effect to the winding up of the Scheme:*
- (a) *take such action as necessary to ensure the relevant Members' funds are redeemed at the expiry of the relevant sub-scheme and paid to the members with any interest earned and not at that time distributed, or held for re-investment in another scheme if so directed; or*
 - (b) *effect a Transfer of the Sub-Scheme Loan under a Portfolio Sale and ensure the Net Proceeds of Sale are distributed to the Members of the relevant sub-scheme (according to any priority arrangements applicable to the relevant sub-scheme, or otherwise on a pro rata basis), and that those Members are taken to have withdrawn from the Scheme, as soon as practicable following completion of the Transfer of the Sub-Scheme Loan, but only if:*
 - (i) *prior to completion of a Transfer of any Sub-Scheme Loan, the Responsible Entity has obtained the approval, direction or advice of the Court that the Responsible Entity is justified in completing such Transfer; and*
 - (ii) *the Transfer of the Sub-Scheme Loan occurs under a Portfolio Sale and in accordance with terms and conditions set out in this Constitution and any orders of the Court.'*

2 A new clause 10A is inserted immediately after clause 10 as follows:

'10A Portfolio Sale

(a) Without limiting the Responsible Entity's other powers under this Constitution, the Responsible Entity has power to do all things necessary or desirable to conduct a Portfolio Sale, including:

- (i) to take any steps, enter into any transactions and exercise any discretions as contemplated by or required to facilitate a Portfolio Sale;
- (ii) to engage advisers, managers and other third parties to assist the Responsible Entity in relation to a Portfolio Sale, including Banksia Securities Limited (receivers and managers appointed) as transaction manager to conduct a Portfolio Sale; and
- (iii) to enter into a contract of sale in relation to a Sub-Scheme Loan and give effect to the Transfer of such Sub-Scheme Loan,

provided any such power is exercised in accordance with this Constitution and any orders of the Court.

(b) Each Member, without the need for any further act by that Member, irrevocably appoints the Responsible Entity as that Member's attorney and as that Member's agent for the purpose of doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of a Portfolio Sale and any resulting Transfer of a Sub-Scheme Loan, including:

- (i) negotiating, agreeing and executing any contract of sale and (subject to this Constitution) any instrument of Transfer in relation to a Sub-Scheme Loan;
- (ii) subject to this Constitution, effecting a valid Transfer or Transfers of Sub-Scheme Loans; and
- (iii) if necessary, amending the terms of any Supplementary Prospectus or part 2 prospectus for a Sub-Scheme, referred to in clause 4 of the Constitution,

and the Responsible Entity accepts such appointment. The Responsible Entity, as attorney and as agent of each Member, may sub-delegate its functions, authorities or powers under this clause to all or any of its directors and officers (jointly, severally or jointly and severally).

3 The Dictionary of Terms is amended by:

- (a) Deleting the definition of 'Law' and replacing it with the following definition of 'Law':
'the Corporations Act 2001 (Cth)'
- (b) Inserting the following new definitions in the appropriate alphabetical order:

| | |
|-----------------------------|--|
| Court | the Supreme Court of Victoria |
| Net Proceeds of Sale | in relation to a Sub-Scheme Loan, the gross amount received from the Transfer of the Sub-Scheme Loan under a Portfolio Sale, less the transaction costs that are to be deducted from the sale proceeds, as determined by the Responsible Entity. |

DRAFT

| | |
|------------------------|---|
| Portfolio Sale | a sale process involving the marketing of each Sub-Scheme Loan that has not been repaid, as at a date to be determined by the Responsible Entity, with a view to Transferring all or some of the Sub-Scheme Loans prior to their scheduled expiry date and distributing the Net Sale Proceeds of such Sub-Scheme Loans to the Members of the relevant Sub-Scheme. |
| Sub-Scheme Loan | each loan comprising a Sub-Scheme, the details of which are set out in the part 2 prospectus for each Sub-Scheme as contemplated by clause 4.7 of this Constitution. |
| Transfer | in relation to a Sub-Scheme Loan, includes the sale, transfer, assignment, disposal, novation, part with the benefit of, or deal with the whole or part of the Sub-Scheme Loan. |

