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Mortgagee Sales, Disclaimer and Escheat – A Suggested Statutory Solution – *William Dixon, Sharon Christensen and WD Duncan*

The process by which a registered mortgagee may exercise power of sale following default by a mortgagor is well understood. However, where the mortgaged property has been disclaimed as being onerous property by a trustee in bankruptcy or a liquidator, the case law reveals that there is uncertainty concerning the manner in which the mortgaged property may escheat to the State. Faced with this dilemma, mortgagees are increasingly seeking vesting orders and joining the State as a party in order to facilitate the sale process. This article examines the unsatisfactory state of the present case law and suggests a statutory solution consistent with a mortgagee sale largely remaining a non-curial process. 61

A Blind Spot in the Test for Solvency? Reconsidering the Exclusion of Unliquidated Damages Claims – *Annita Stucken*

Unliquidated damages claims continue to linger beyond the scope of s 95A of the *Corporations Act 2001* (Cth), affording directors "blind spot" vision as they assess a company's financial affairs. This article examines the exclusion of unliquidated claims under the standing authority of Box Valley, and questions whether it remains justified as directors navigate the opaque boundary of insolvent trading liability or consider taking refuge in the new "safe harbour". In particular, the article re-examines the orthodox exclusion in light of the rising "corporate rescue" policy objective and the "commercial realities" of financial affairs, a hallmark of the s 95A solvency assessment. Ultimately, the article proposes a subtle refinement to the orthodox exclusion in order to capture those claims that are both "reasonably temporally proximate" to the solvency assessment and "reasonably ascertainable" to a prudent business person. This refinement would reconcile the traditional insolvent trading policy objectives with the rising call to encourage corporate rescue. Perhaps more importantly, it would erase the blind spot that currently sanctions a imprudent assessment of a company's financial affairs. 73

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