

MORTGAGE

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MORTGAGE



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A mortgage is the transfer of interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt

TERMS

- **transferor** (home owner).... Mortgagor
- **Transferee** Mortgagee
- **mortgage-money** the principal money and interest of which payment is secured for the time being
- **mortgage-deed** the instrument (if any) by which the transfer is effected

DEATH CONTRACT

The word mortgage is a French Law term meaning "death contract", meaning that the pledge ends (dies) when either the obligation is fulfilled or the property is taken through foreclosure.

MORTGAGE

ESSENTIALS

- There must be a transfer of interest
- Specific immovable property
- Transfer to secure the payment of present or future loan

ESSENTIALS

Transfer of Interest

The first thing to note is that a mortgage is a transfer of interest in the specific immovable property. The mortgagor as an owner of the property possesses all the interests in it, and when he mortgages the property to secure a loan, he only parts with a part of the interest in that property in favour of the mortgagee. After mortgage, the interest of the mortgagor is reduced by the interest which has been transferred to the mortgagee. His ownership has become less for the time being by the interest which he has parted with in favour of the mortgagee. If the mortgagor transfers this property, the transferee gets it subject to the right of the mortgagee to recover from it what is due to him i.e., the principal plus interest.

ESSENTIALS

Specific Immovable Property

The second point is that the property must be specifically mentioned in the mortgage deed. Where, for instance, the mortgagor stated “all of my property” in the mortgage deed, it was held by the Court that this was not a mortgage. The reason why the immovable property must be distinctly and specifically mentioned in the mortgage deed is that, in case the mortgagor fails to repay the loan the Court is in a position to grant a decree for the sale of any particular property on a suit by the mortgagee.

ESSENTIALS

To Secure the Payment of a Loan

Another characteristic of a mortgage is that the transaction is for the purpose of securing the payment of a loan or the performance of an obligation which may give rise to pecuniary liability. It may be for the purpose of obtaining a loan, or if a loan has already been granted to secure the repayment of such loan. There is thus a debt and the relationship between the mortgagor and the mortgagee is that of debtor and creditor.

TYPES OF MORTGAGE

- Simple mortgage,
- Conditional mortgage
- Usufructury mortgage
- English mortgage
- Equitable mortgage
- Anomalous mortgage



SIMPLE MORTGAGE

- Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, in the event of his failure to pay according to his contract,
- If the mortgagor fails to repay the loan, the mortgagee has the right to sell the property and recover the loan from the sale amount.
- The transaction is called a simple mortgage

MORTGAGE BY CONDITIONAL SALE

Under such Mortgage, the mortgagor apparently sells the property of the mortgagee on certain conditions –

- On failure to repay the mortgage money before a certain date the sale shall become absolute, or
- On condition that on such repayment of mortgage money the sale shall become invalid, or
- On condition that on such repayment the mortgagee shall retransfer the property.

In such case, the mortgagee is a "mortgagee by conditional sale".

USUFRUCTUARY MORTGAGE

In a usufructuary Mortgage, the possession of the mortgaged property is transferred to the mortgagee. The mortgagee receives the income from the property (rent, profit, interest, etc) until the repayment of the loan. The title deeds remain with the owner.

ENGLISH MORTGAGE

In an English Mortgage –

- The mortgagor binds himself to repay the borrowed money on a certain date.
- The mortgagor transfers the property absolutely to the mortgagee.
- But such transfer is subject to the condition that the mortgagee will retransfer the property on repayment before the agreed date.

EQUITABLE MORTGAGE

In such mortgage, the mortgagor delivers the title document of the property to the mortgagee with an intention to create a security thereon. Such mortgage is valid in towns of Kolkatta, Mumbai and any other town as the State Government may notify by publication in Official Gazatte.

- Mortgage is created by depositing original title deeds to the creditor or to his agent
- **Essential's**
- Delivery of title deeds
- There must be an intention to create a security on them
- Possession need not to be given (according old practice registration is not necessary)

ANOMALOUS MORTGAGE

Anomalous mortgage is a combination of different types of mortgages. A mortgage which does not fall strictly into any of the above mortgages is an anomalous mortgage.

A mortgage which is not a simple mortgage, a mortgage by conditional sale an usufructuary mortgage, an English mortgage or a mortgage by deposit of title deeds within the meaning of section 58 is called an anomalous mortgage.

Ex: 'A' borrowed money from 'B' and agreed to repay within 35 years and he also agreed to hand over possession of property and allow 'B' to enjoy till repayment. Mortgagor failed to deliver possession. Mortgagee filed to suit for sale. Here if it is simple mortgage it is premature.

In case of usufructuary mortgage suit for sale is permitted.

Partly usufructuary & partly simple mortgage

RIGHTS OF MORTGAGOR

- Right to redeem (Sec 60)
- Right to partial redemption is available if mortgagee himself acquired property.
- Obligation to transfer to third party instead of retransfer to mortgagor. (60A)
- Right to inspection (Sec 60-B)
- Right to redeem separately and simultaneously (Sec 61)
- Right to recover possession (Sec 62)
- Right to accession, right to improvements (Sec 63)
- Right to renewal of mortgaged lease(64)



REDEMPTION

- The right to take back the property – once the loan has been paid
- It is an important statutory right of mortgagor
- At any time after the principal money has become due the mortgagor has right of redemption
- Once a mortgage is always a mortgage.

(It is an exception to the rule 'the agreement of the parties overrides the law').

In the mortgage contract any condition which prevents the mortgagor from getting back his property after the mortgage debt has been paid will be invalid



PARTIAL REDEMPTION

General rule partial redemption is not permitted

Eg : if A,B,C, were the joint owners of land .The land is mortgaged by them jointly to X for Rs 40,000/- Latter A by making payment of Rs 10,000/- cannot redeem separately

CLOG ON REDEMPTION

Clog means any clause which restricts the mortgagor from receiving the property back from the mortgagee..

Any condition which prevents the mortgagee from receiving the property is void

Any restriction on
the right of
redemption is void

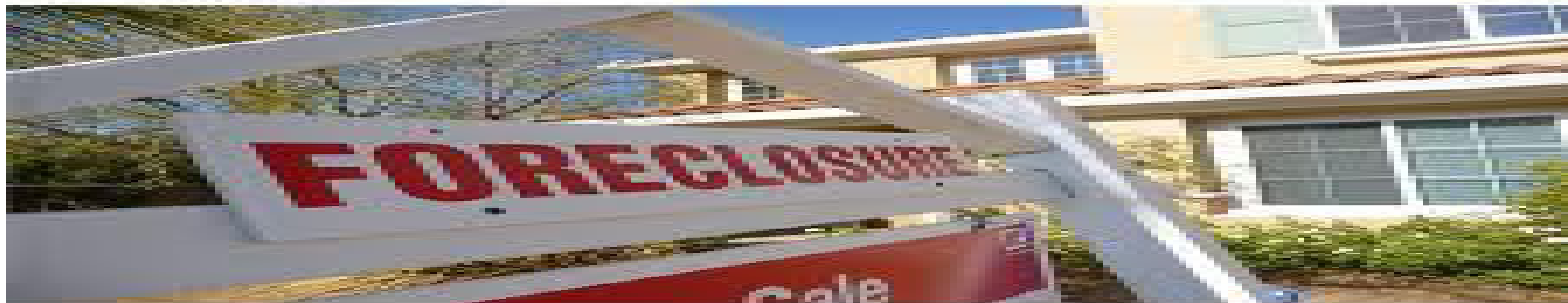
RIGHTS OF MORTGAGEE

- Right to foreclosure
- Right to sue for mortgage money
- Right to exercise power of sale
- Right to have receiver appointed
- Right to accession
- Right to the benefit of renewed lease
- Right to spend money in certain case
- Right to proceeds of revenue sale



Foreclosure can be effected by the order of the court

- The decree of foreclosure extinguishes the mortgagors right to redeem
- This right is subject to contract to contrary
- **Remedies**
- Simple mortgage – Suit for sale
- Usufructuary mortgage – no right of foreclosure
- Conditional mortgage- foreclosure
- English mortgage – sale
- Equitable mortgage suit for sale



Thank

You

