

Home Mortgage Finance Act, 2008 ACT 770

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ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

HOME MORTGAGE FINANCE ACT, 2008 (ACT 770)

AN ACT to regulate home mortgage financing and for related matters.

DATE OF ASSENT: 4TH DECEMBER 2008

ENACTED by the President and Parliament:

Application

Application

1, This Act applies to transactions between financial institutions and their customers for the provision of finance for

(a) the construction or purchase of a residential property, (b) the completion of a residential property;

(c) extension to or renovation of a residential property;

(d) improvement to a residential property for ownership, sale or rental;

(e) construction of residential properties for sale or rental; or (f) purchase of fixtures and chattels related to residential properties.

Application of the Mortgages Act, 1972 (NRCD 96)

2, (1) This Act is in addition to the Mortgages Act, 1972 (NRCD 96) and does not derogate from the provisions of that Act, except as otherwise provided in this Act.

(2) Where there is an inconsistency between the Mortgages Act and this Act, the

provisions of this Act shall prevail.

Security for loan

3. Where a financial institution grants a loan, security for the loan shall include a mortgage over the property for which the loan is granted and the title deeds duly stamped and registered deposited with the mortgagee.

Requirement for mortgage

Mortgage to be evidenced in writing

4. (1) A mortgage is not enforceable unless it is evidenced in writing and provides for the

(a) name and address of the mortgagor and mortgagee; (b) full description of the mortgaged property;

(c) names of persons whose consent is required; if any (d) date of creation of the mortgage;

(e) root of title of the mortgagor;

(f) nature of the mortgagor's interest in the mortgaged property; (g) extent to which the mortgagor's interest is subject to the mortgage

(h) nature of the charge created, in case of a floating charge, the nature of the restriction on the power of the mortgagor to grant further charges that rank in priority or at the same level with the charge created;

(1) amount of the loan;

(j) acknowledgement of receipt of the loan by the mortgagor; (k) right to redeem;

(l) insurance policy related to the property; (m) interest on the principal amount;

(n) due date for payment;

(o) terms and conditions for renewal; (p) covenants and conditions;

(q) events of default;

(r) signatures of the mortgagor and mortgagee; and

(s) signatures of witnesses .

(2) Despite subsection (1), a mortgage agreement is enforceable with regard to form and expression if it is in the form contained in the First Schedule or in similar form or uses expressions of a similar effect.

Disclosure

5. (1) A financial institution shall, at least fourteen days before the disbursement of a loan to the mortgagor, disclose all relevant information in writing to the Mortgagor in accordance with the relevant sections of Borrowers and Lenders Act.

(2) A mortgagor shall acknowledge receipt of the information in writing within seven days.

(3) A financial institution shall provide a mortgagor a minimum period of fourteen days after the date of receipt of the application from the mortgagor to the day of the disbursement of the loan and execution of the mortgage agreement to enable the mortgagor seek legal and financial advice on the documents related to the loan.

(4) A financial institution which contravenes this section is liable to the mortgagor for

(a) actual damages the mortgagor sustains as a result of the contravention; and

(b) any court costs and legal fees.

(5) Without limiting subsection (4), a mortgagee who fails to comply with this section is liable to a fine of not more than one thousand penalty units

(6) A financial institution is not liable under subsection (4) if on discovery of an error made in a disclosure, it notifies the mortgagor of the error and makes the necessary adjustments to the mortgagor's account within sixty days after the discovery of the error.

(7) The Bank of Ghana shall issue notices as it considers necessary for the effective implementation of this section.

Use of loan

6. (1) A person who obtains a loan under this Act shall not use the whole or part of the loan for a purpose other than the purpose for which the loan was obtained.

(2) A person who contravenes subsection (1) is liable to pay the whole of the outstanding amount forthwith.

Stamping and registration

7. (1) A person who obtains a loan under this Act shall stamp and register the title deeds and mortgage deeds related to the property for which the loan was obtained and deposit them with the financial institution.

(2) Without limiting

(a) section 12 of the Stamp Duty Act, 2005 (Act 689) on stamping of instruments after execution,

(b) section 24 of the Land Registry Act, 1962 (Act 122) on registration necessary for validity, and

(c) section 72 of the Land Title Registration Act, 1986

(P.N.D.C.L. 152) on form and effect of mortgages,

an unstamped or an unregistered mortgage made under this Act is valid only between the original parties to the mortgage.

Insurance

8. (1) A mortgagor or mortgagee shall insure a mortgaged property against loss or damage by theft, fire, earthquake or other natural disaster.

(2) Where the mortgagor covenants to insure all or part of the mortgaged property and fails to do so, the mortgagee may insure and keep insured the mortgaged property after giving notice in writing to the mortgagor and the premiums paid by the mortgagee for the insurance shall be secured with the same priority as the mortgage.

(3) Unless a contrary intention appears expressly or by necessary implication, where the mortgagee secures payment of money on behalf of the mortgagor, the money shall be added to the principal sum with interest at the same rate as on the principal sum.

(4) Unless a contrary intention appears expressly or by necessary implication, where the mortgagor covenants to insure all or part of the mortgaged property and the insurance has been effected by the mortgagor or on behalf of the mortgagor by the mortgagee, the money received from insurance shall be applied to make good the loss or damage for which the money is received unless the mortgagor elects to apply all or part of the money toward the performance of the act or acts secured by the mortgage.

Rates

9. (1) Despite the mortgage of property, a mortgagor shall pay property rates on the mortgaged property.

(2) Where a mortgagor fails to pay property rates due in respect of the mortgaged property, the mortgagee may pay the rates and money paid is secured with the same priority as the mortgage and is added to the principal sum with interest at the same rate as on the principal sum.

Transfer of interest or creation of further charges 10.

(1) A mortgagor shall not

(a) transfer an interest, or

(b) create further charges or interests

in the mortgaged property without the prior written consent of the mortgagee.

(2) A mortgagee shall not unreasonably withhold the consent required under subsection (1).

Default and remedies

Default in payment

11. (1) Where a mortgagor fails to make an installment payment within fourteen days after the due date for the payment, the mortgagee shall notify the mortgagor in writing of this fact and request the mortgagor to take urgent steps to pay the amount due as agreed by the

parties.

(2) Where the mortgagor fails to make the payment and defaults in the payment of the monthly instalment immediately following, the mortgagee shall issue a demand note in the form in the Second Schedule to the mortgagor and request for the immediate payment of the aggregate or total outstanding arrears.

(3) The mortgagee may deliver the notice and the demand note to the address provided by the mortgagor

(a) by hand and receipt acknowledged in writing by the mortgagor;

(b) through a person apparently above the age of eighteen years at the mortgagor's address and receipt acknowledged in writing by that person; or

(c) by registered mail or by courier.

(4) In the case of a body corporate or a partnership, the mortgagee may deliver the notice or note to the registered or principal place of business and receipt of the notice or note shall be acknowledged in writing by an officer of the company or partnership.

(5) Where a note is delivered by registered mail or courier service, the demand note is considered to have been received by the mortgagor at the time at which the note would have been delivered in the ordinary course of post or the courier service.

(6) Where a settlement of the arrears is not made and the mortgagor has not made a satisfactory arrangement with the mortgagee for the settlement of the outstanding amount after the date of issue of the demand note, the mortgagor is considered to be in default as soon as the third succeeding month's instalment also falls into arrears.

Mortgagee's remedies on default

12. Where a mortgagor fails to perform an act secured by the mortgage, the mortgagee may

(a) sue the mortgagor on any personal covenant to perform; or

(b) realise the security in the mortgaged property or by any of the processes provided under this Act.

Mortgagee's right to possession

13. (1) Where a mortgagor fails to perform an act secured by the mortgage, the mortgagee is entitled to possession of the mortgaged property as against the mortgagor and any person who has an interest in the mortgaged property through the mortgagor and whose interest is subsequent to that of the mortgagee.

(2) In the exercise of the right of possession, the mortgagee is not obliged to take court proceedings and may take possession peaceably.

(3) Where a mortgagee is unable to enforce a right of possession in a peaceable manner the mortgagee may use the services of the police to evict the mortgagor or other person in possession pursuant to a warrant issued by a court.

Appointment of receiver on default

14. (1) Where a mortgagor fails to perform an act secured by a mortgage, the mortgagee may appoint a receiver to manage the mortgaged property.

(2) In the exercise of a right of appointment of a receiver, the mortgagee is not obliged to take court proceedings.

(3) The receiver is the agent of the mortgagee.

(4) The mortgagee may revoke the appointment of the receiver in writing to the receiver.

Duties of a receiver

15. (1) The receiver may take possession of the mortgaged property in the manner specified in this Act.

(2) The receiver

(a) may collect by demand or take action in the name of the mortgagor or mortgagee for the income including arrears which accrue from the mortgaged property,

(b) shall give valid receipts for income collected, and

(c) may take any action that is necessary to manage the property.

(3) The receiver may make reasonable repairs and improvements to the property to

(a) protect its value, or

(b) maintain or increase the income from the property.

(4) The mortgagee may direct the receiver in writing to insure the mortgaged property and remedy any defects of insurable nature in the mortgage to the extent, if any, which the mortgagor ought to have insured and kept insured.

(5) The receiver shall apply money received to

(a) discharge rents, taxes, rates and other outgoings that affect the mortgaged property;

(b) pay sums or interest on the principal sums that are due and have priority to the mortgage;

(c) pay the commission and the premium to be paid in accordance with the mortgage and cost of necessary repairs; (d) pay the interest accruing in respect of the principal money due under the mortgage~;

(e) discharge the principal amount due under the mortgage as determined

and pay the residue if any, or the money received to the person who but for the possession of the receiver would have been entitled to receive the income for which the receiver is appointed or who is otherwise entitled to the mortgaged property.

Remuneration of a receiver

16. (1) A receiver is entitled to retain a commission at a rate

(a) of not more than five per centum of the gross amount of money received as specified in the letter of appointment, and

(b) where no rate is specified, then at the rate of two and a half per centum of the gross amount;

out of the money received, for the receiver's remuneration and in satisfaction of the costs, charges and expenses incurred as receiver.

Obstruction of receiver

17. (1) A person shall not obstruct a receiver in the discharge of duties under this Act.

(2) A person who obstructs a receiver commits an offence and is liable on summary conviction

(a) to a fine of not more than two hundred penalty units or to a term of imprisonment of not more than twelve months or to both, and

(b) in the case of a continuing offence, to a further fine of not more than ten penalty units for each day on which the offence continues.

Valuation of mortgaged property

18. (1) Where a mortgagee intends to sell a mortgaged property, the mortgagor and mortgagee shall cause the property to be valued by a certified valuer agreed on by them.

(2) Where the mortgagor and mortgagee fail to agree on a certified valuer, the mortgagee shall appoint a valuer.

(3) Where there is a dispute over the value of the mortgaged property the party disputing the value shall apply to the Ghana Institution of Surveyors to appoint an independent valuer.

(4) The decision of the valuer appointed by the Ghana Institution of Surveyors is final as to the value.

Reserved price of mortgaged property

19. (1) A mortgagee shall not sell a mortgaged property for less than eighty-five per cent of the appraised market value of the property.

(2) Where there is no sale at eighty five per cent of the appraised market value after two attempts at sale, the property may be sold at a price less than eighty-five percent of the appraised market value.

Sale of mortgaged property on default

20. (1) Where a mortgagor fails to carry on an act or acts secured by the mortgage, the mortgagee may sell the mortgaged property.

(2) A mortgagee may exercise the right of sale without recourse to court.

(3) The sale of mortgaged property may be by public auction or private contract.

(4) Where a sale is conducted by a public auction, the Auction Sales Act, 1989 (P.N.D.C.L. 230) shall apply except that the Auctioneer's fees shall not exceed three per centum of the gross amount realised from the sale.

(5) Except where a sale is conducted by public auction, a mortgagee who intends to exercise the power of sale shall give fourteen days notice of the sale to the mortgagor and each person of whom the mortgagee has notice to have an interest in the property.

(6) The notice required is considered to be served on the interested persons if published in a public local newspaper on the seventh and fourteenth day before the date of the sale.

(7) A mortgagee is liable for loss caused by a sale carried out in contravention of this Act.

(8) A mortgagor or a person who has an interest in the mortgaged property may purchase the property at the sale subject to the conditions in subsection (3).

Purchaser's interest in the sale of mortgaged property

21. (1) A mortgagee at whose instance sale is made shall not purchase the mortgaged property except where the sale is carried out at a public auction or subject to the approval of the mortgagor and all the persons known to the mortgagee to have an interest in the property where the sale is carried out by private contract.

(2) A mortgagee who exercises a right of sale may convey to the purchaser the whole of the mortgagor's interest in the mortgaged property.

(3) A purchaser of a mortgaged property shall take

(a) title to the mortgaged property free of interests to which the mortgagee who requested the sale has priority but subject to interests which have priority to that mortgage, and

(b) title documents related to the mortgaged property other than title documents held by a person with an interest of priority to the mortgage of the mortgagee who requested the sale.

(4) Without limiting the provisions of section 24 of the Lands Registry Act 1962, (Act 122) and the provisions of Part IV of the Land Title Registration Act, 1986 (P.N.D.C.L. 152)

(a) a certificate of purchase executed by the mortgagor, the auctioneer and the purchaser pursuant to an auction sale of . the mortgaged property; or

(b) where the sale is by private contract, a statutory declaration by a mortgagee as proof of a mortgage, default by the mortgagor under the terms and conditions of the mortgage and a sale of the mortgaged property pursuant to the default

is sufficient to establish the title of the purchaser to the mortgaged property and for registration under the Land Title Registration Act, 1986 (P.N.D.C.L. 152) or the Lands Registry Act, 1962 (Act 122).

Proceeds from sale of mortgaged property

22. (1) The proceeds from a sale of mortgaged property shall be held in trust for distribution by the mortgagee who caused the sale.

(2) Proceeds from the sale shall be used

(a) first in payment of expenses properly incurred as incidental to the sale or any prior attempted sale,

(b) secondly in payment of the sums secured by the mortgage or with the same priority as the mortgage, and

(c) thirdly in payment in the order of priority of any encumbrances subsequent to that of the mortgagee who requested the sale.

(3) The residue of the amount shall be paid to the mortgagor or the mortgagor's successor in interest.

(4) A mortgagee on whom a right of trustee of *sale* is conferred by this section is not a mortgagor in respect of that right.

Miscellaneous

Offences by bodies of persons

23. (1) Where an offence under this Act or under any rules made under this Act is committed by a body of persons,

(a) in the case of a body corporate, each director and officer of the body corporate is considered to have committed the offence; and

(b) in the case of a partnership, each partner or officer of the body is considered to have committed the offence.

(2) Despite subsection (1), a person is not liable if that person proves that the offence was committed without that person's knowledge or that the person exercised due diligence to prevent the commission of the offence having regard to the circumstances.

Action by motion on notice

24. Except as otherwise provided in this Act, an action brought under this Act shall be by motion on notice under order 19 of the High Court (Civil Procedure) Rules 2004 (C. 1. 47).

Regulations

25. The Minister may, by legislative instrument, make regulations on

(a) matters to be disclosed,

(b) the contents of a statutory declaration required under this Act,

(c) sale of mortgaged property on default, and

(d) generally for the effective implementation of this Act.

Interpretation

26. In this Act unless the context otherwise requires:

"Annual percentage rate (APR)" means the total cost of credit that the mortgagor pays, expressed as a simple annual percentage;

"certified valuer" means a member of the Ghana Institution of Surveyors who is in good standing;

"demand note" means a notice to the mortgagor for the demand of the arrears due;

"estimate" means a sum .total of anticipated costs that will be borne by the mortgagor in the mortgage transaction; "financial institution" includes a bank and non-bank entity licensed by the Bank of Ghana to carry on the business of banking;

"floating charge" means an equitable charge over the whole or specified part of the company's undertaking and assets both present and future;

"guidelines" means instructions drawn up in furtherance of this Act or regulations made pursuant to this Act;

"loan" includes any credit or other financial assistance granted by a financial institution;

"mortgage" means an encumbrance on the property charged; "mortgage agreement" means an agreement between a Mortgagor and a mortgagee which grants the mortgagee a charge over the mortgaged property as security for the loan which sets out the terms and condition of the loan;

"Mortgages Act" means the Mortgages Act, 1972 (NRCD 96); "mortgagor" includes a person who has taken a loan and any person who derives title through the original mortgagor or entitled to redeem a mortgage according to an interest in the mortgaged property.

"mortgagee" includes an institution that grants loans for the purpose specified in section 1 and any person who derives title through the original mortgagee;

"purchaser" includes a person who buys property in good faith for valuable consideration, a lessee or mortgagor.

Repeals

27. (1) The Home Mortgage Finance Act, 1993 (P.N.D.C.L. 329)

is repealed.

(2) The National Mortgage Financing and Guarantee Scheme Act, 1976 (S.M.C.D. 23) is repealed.

(3) Despite sub sections (1) and (2), regulations, orders, directions, notifications, exemptions, approvals, decisions and other executive or administrative acts made, given or done under the repealed Acts shall upon commencement of this Act continue in force until

amended or repealed in accordance with this Act.

SCHEDULES

FIRST SCHEDULE (*Section 4* (2))

Form of Mortgage Agreement

Two
of
This Mortgage is made the day of
Thousand and (200 ..) BETWEEN [Name and Address
Mortgagor] (hereinafter referred to as the "Mortgagor" which
expression shall where the context so admits or requires include the
personal representatives successors and assigns of the mortgagor)
of the one part

AND

[Name of Bank/Financial Institution] a limited liability company
incorporated under the laws of Ghana and having its registered
office situate [address] (hereinafter referred to as the Mortgagee") of
the other part.

WHEREAS:

[Recitals]

- * Root of Title
- * Person(s) whose consent and/or concurrence is required.
- * Mortgagor's need for the loan and
- * Mortgagees willingness to grant the Loan

1 . Consideration and personal covenant to pay

In consideration of the loan of [amount] granted to the Mortgagor by the Mortgagee (receipt of which the Mortgagor acknowledges), the mortgagor covenants with the mortgagee to duly and punctually repay the said loan together with interest at [*percentage of interest % within [term of loan] and [additional charges under disclosure requirements] [according to the payment schedule in the second schedule.*

2. Mortgage

The Mortgagor as beneficial owner hereby mortgages the [*description of property*] which property is particularly described in the first schedules hereto (hereinafter referred to as the

"Property") together with all fittings and fixtures attached thereto now or to be attached hereafter to the Mortgagee to secure the repayment of the loan, interest and other money hereby covenanted to be paid by the Mortgagor.

3. Payment of principal, interests and other costs

1. The Mortgagor covenants with the Mortgagee to repay the loan as follows:

(a) at the interest rate in [no. of instalments] equal monthly instalments of [amount] each within [term of loan] years, the first instalment to be made on [date] and the subsequent payments to be made not later than the first day of each month in arrears.

(b) In the event of a delay on the payment of any installment, the delayed instalment shall attract an interest of []%per annum.

2. Where a mortgagor makes a payment over and above the required monthly installment, that payment would be treated as an advance payment and applied to future repayments of any payments payable under this agreement unless the Mortgagor indicates that the extra amount should be regarded as a prepayment.

3. Where the Mortgagor makes a prepayment of []% or more of the Loan at any time during the mortgage, that prepayment shall attract a penalty of [] of the amount prepaid.

4. In the event of prepayment, the monthly instalment of the Loan shall be adjusted accordingly to take effect from the second month following the month in which the prepayment was made.

5. The Mortgagor shall pay an estimated Annual Percentage Rate of] in addition to the principal payable [mode of payment]

6. The Mortgagor shall pay the additional charges provided in the Second Schedule as good faith estimates of the charges, fees and costs of this mortgage agreement.

4. Insurance

1. The Mortgagor shall insure and keep insured, at the mortgagor's own expense during the subsistence of this mortgage, the property together with all fittings and fixtures attached thereto now or to be attached hereafter, against loss or damage, with a reputable insurance company to be mutually agreed on between the parties, [in the names of both the Mortgagor and the Mortgagee.

(2) The Mortgagor is required to pay yearly insurance premiums in full prior to the commencement of the Mortgage and thereafter not later than fourteen days before the expiry of such insurance cover.

(3) The Mortgagor shall duly and punctually pay all premiums and money necessary for effecting and maintaining that insurance and deposit evidence of such payments with the Mortgagee.

(4) A mortgagor shall at any time at the request of the Mortgagee produce the insurance policy and the premium payment receipts for the inspection of the Mortgagee or its duly authorised agents.

5. Where the Mortgagor fails to insure all or any part of the property in accordance with this Agreement, the Mortgagee is entitled to insure and keep insured the mortgaged property.

6. Where premiums are paid by the Mortgagee on behalf of the Mortgagor under of this Agreement the premiums shall attract an annual interest rate of [] % and a default interest [] % and is payable as additional loan in [no. of installments] equal monthly installments from the date of payment of such premiums.

7. Any money received under any policy of insurance effected or maintained by the Mortgagor or on behalf of the Mortgagor by the Mortgagee, whether or not pursuant to the Mortgagor's obligation under this Agreement shall be applied to make good the loss or damage in respect of which the money is received.

8. Restriction on transfer

Mortgagor shall not without the prior written consent of the mortgagee during the subsistence of this mortgage sell, lease, or part with possession or transfer all or part of the interest in the property.

9. Mortgagor's covenants

1. The Mortgagor covenants with the mortgagee as follows:

(a) that the Mortgagor or with the consent or concurrence of all other persons whose consent or concurrence is required, has full power to mortgage the property expressed to be mortgaged by the mortgagor in the manner in which it is expressed to be mortgaged,

(b) that if either or both the Mortgagee and persons deriving title through the Mortgagee enter into possession of the mortgaged property, the Mortgagor and every person concurring in the mortgage by his direction and every person deriving title through the Mortgagor (other than a person having an interest to which the mortgage is expressly made subject) shall not interfere with, interrupt or disturb the possession of such person in possession,

(c) that the mortgaged property is freed and discharged from, or otherwise by the Mortgagor sufficiently indemnified against, all interests, encumbrances, claims and demands whatsoever, other than those to which the mortgage is expressly made subject,

(d) that the Mortgagor and every person concurring in the mortgage by the Mortgagor's direction, and every person deriving title through any of them, and every other person having or rightfully claiming any interest in the mortgaged property other than an interest to which the mortgage is expressly made subject will, from time to time and at all times on the request of the Mortgagee or any person deriving title through him, execute and do all such assurances and things for further or more perfectly assuring the title to the security interest as such person may reasonably request, the expenses in respect of this covenant to be borne by the Mortgagor during the life of the mortgage and thereafter by the person making the request,

(e) that the Mortgagor and every person deriving an interest through the Mortgagor, other than a person having an interest to which the mortgage is expressly made subject, will at all times during the life of the mortgage preserve, protect, repair and maintain the mortgaged property so as not to diminish its value below what is reasonably required as security for the performance of any act secured by the mortgage but which has yet to be performed,

(f) that the lease is at the date of the mortgage a, valid lease of the mortgaged property.

(g) that all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease and to be paid, observed or performed by the Mortgagor and persons deriving title through him have been paid, observed and performed up to the time of the mortgage,

(h) that the Mortgagor, or the person deriving title through the Mortgagor during the subsistence of the Agreement, observe and perform or cause to be paid, observed and performed, all rents reserved by the lease and all covenants, conditions and agreements contained in the lease, which he or they are bound to pay, observe and perform.

10. Mortgagee's covenants

1. The mortgage made is discharged when the Mortgagor performs all the obligations under this Agreement and undertakes to issue a written discharge to the Mortgagee as soon as the Mortgagor has duly fulfilled all obligations under this mortgage.

2. The Mortgagee shall furnish or deliver to the Mortgagor a [monthly / quarterly / annual] statement of Account on the Loan payments on or before the [] day of [Month] of [period] and the Mortgagor may raise any queries on the statement if any. In the event that the Mortgagor raises any queries the Parties shall reconcile the accounts.

11. Mortgagee's rights and powers

1. The Mortgagee shall hold all title documents relating exclusively to the Property and shall keep same whole, uncancelled and undefaced.

2. The Mortgagee acknowledges the right of the Mortgagor to the production of the title documents and to the supply of copies of same.

3. The Mortgagee shall upon receiving a [duration of notice] notice permit the Mortgagor or its representative to inspect the title documents.

4. The parties agree that the Mortgagee has the right to irrevocably assign any of its rights under this Agreement to any third party without prior notice to the Mortgagor.

12. Events of default

1. Any breach of this Agreement shall amount to an Event of Default in addition to the following:

(a) where the Mortgagee is considered to be in default under section 6 of the Home Mortgage Finance Act,

(b) where the Mortgagor dies, becomes bankrupt or makes any arrangement with creditors generally or takes or suffers similar action as a result of the debt,

(c) where an execution is levied upon the Mortgagor's property,

(d) where the Mortgagor becomes of unsound mind,

(e) where the Mortgagor fails to comply with any of the terms, conditions covenants or obligations under this Agreement; or

(f) where an representation or warranty given by the Mortgagor to the Mortgagee is found out to be false.

13. Rights of mortgagee upon default

1. In the event of the occurrence of an Event of Default, the Mortgagee shall exercise anyone or more of the Mortgagee's rights in accordance with the Home Mortgage Finance

Act, 2008 (Act.).

2. The parties agree that the Mortgagee's right upon default by the Mortgagor may be exercised in the Mortgagee's behalf by a trustee or any beneficiary to whom the Mortgagee's rights might have accrued .

14. Termination

This Agreement shall remain valid and may terminate after the Mortgage is discharged and the Mortgagee has issued the written discharge required under section[] of this Agreement.

15. Renewal of mortgage

If the Mortgagor shall duly and punctually repay the principal money, interest and other money the Mortgagor has covenanted to pay to the Mortgagee in accordance with section 3 of this Agreement then, if the Mortgagor so desires, the security hereby made is used to secure further advances not exceeding, in aggregate of *[amount]* the Mortgagee shall give the Mortgagor at the original interest rate and priority. The Mortgagor shall give at least *[length of notice]* months' notice, in writing to the Mortgagee of the Mortgagor's intention to enforce this provision.

16. Notice

Any notice required to be served under this mortgage is sufficiently served on the Mortgagee if its delivered either by hand and a receipt acknowledged in writing by the Mortgagor; or by leaving it for the Mortgagor with a person apparently over the age of eighteen years at the Mortgagor's address and acknowledged in writing by that person; or by pasting the notice on a reasonably noticeable part of the mortgaged premises; or sent by registered mail or by courier or to the last known address provided by the Mortgagor.

17. Stamping and registration

1. The Mortgagor shall immediately after the execution of this Agreement

* Stamp this Agreement in accordance with section 12 of the Stamp Duty Act 2005 Act 689.

* Register this Agreement in accordance with section 24 of the Lands Registry Act 1962, (Act 122) and the provisions under Part IV of the Land Title Registration Act 1986 (PN.D.C.L. 152).

18. Waiver

Failure or neglect by either party to enforce a provision of this Agreement shall not be construed or considered to be a waiver of rights of the whole or part of this Agreement.

19. Entire agreement

This Agreement constitutes the entire and only agreement between the parties and supercedes all previous understandings, commitments and agreements whether oral or written relating to this Agreement.

20. Amendments

Any term condition or provision contained in this Agreement may be amended on the mutual consent of both parties and any agreed amendment is in writing, executed by both parties and annexed to this Agreement.

21. Jurat [applicable when Mortgagor is illiterate and/or blind]

1..... (name and position of employee or representative of
Mortgagee) declares that on day of (day/month/year)

I read and explained the contents of this Agreement to the Mortgagor herein, who is illiterate and/or blind in the ... [language] language and seemed perfectly to understand and approve of the contents before executing it.

IN WITNESS WHEREOF the Mortgagor has set his/her hand and the Mortgagee has caused its hand and seal to be hereunto affixed on the day, month and year first above written.

[Detailed description of property and site plan]

Signed by the within named Mortgagor Name:

Address:
Fax Tel:
Email

In the presence of

Name:
Address:
Fax Tel:
Email

Signed by or on behalf of the Mortgagee

Name:
Address:
Fax Tel:
Email

In the presence of

Name:
Address:
Fax Tel:

Second Schedule

Section 11 (2)

Demand Notice

[On Mortgagee's Letterhead]

Dear Sir/Madam,

MORTGAGE DEMAND NOTE

We refer to:

1. The [Mortgage Agreement] dated [] entered into between [] and the [] for a total amount of [] in respect of which there is a current outstanding indebtedness of [] plus interest of [] making a total of []

2. The notification of default dated []

Despite the above, as at [date] the amount outstanding remains unpaid. We hereby issue this demand, in accordance with section 11 (2) of the Home Mortgage Finance Act and Section [] of the [Mortgage Agreement] for the immediate payment of the amount outstanding plus interest, from you as primary obligor, within seven (7) days of the date of this letter.

Please note that if a settlement of the arrears is not made within the stipulated time and no arrangement is entered with [the financial institution] for the settlement of the amount outstanding, we are entitled to exercise our rights against you in accordance with sections 11-17 of the Home Mortgage Finance Act, 2008 (Act.).

Please be advised accordingly.

Signed:

..... Date:

Date of *Gazette* notification: