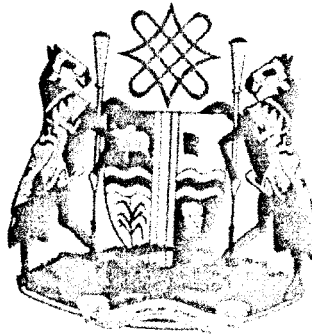


**A LAW TO ESTABLISH THE KADUNA STATE MORTGAGES AND FORECLOSURE
AUTHORITY TO REGULATE MORTGAGES, FORECLOSURE AND ENFORCEMENT
OF REAL PROPERTY AND CONNECTED PURPOSES, 2017**



Kaduna State of Nigeria

Law No. 10 2017

(15th June 2017)

Date of Commencement

BE IT ENACTED by the House of Assembly of Kaduna State as follows:

**PART I
PRELIMINARY**

1. This Law may be cited as the Kaduna State Mortgages and Foreclosure Law, 2017. Short Title
2. This Law shall come into operation on the 15th day of June 2017. Commencement

3. In this Law, unless the context otherwise requires: Interpretation

“Authority” means the Kaduna State Mortgages Authority as established by Section 4 of this Law;

“Laws” means mortgages within the State;

“Board” means the Governing Board of Mortgages Authority as established under Section 5 of this Law;

“Business Days” means a day, other than a Saturday, Sunday or a public holiday for which banks are opened for business in the State;

“Common Property” – Unless the Scheme Plan provides otherwise includes:

- (a) a wall, floor or other partition that constitutes a boundary of a Unit,
- (b) any structural member or load bearing part of a building not being a wall of a building,

- (c) any pipes, wires, cables or ducts that are not for the exclusive enjoyment of one Unit and a structure enclosing any such pipes, wires, cables or ducts,
- (d) the land upon which the building is constructed including the common areas (easements) leading up to the respective Units as well as the common areas available for use by all Unit Owners therein,

shall, except for its surface within a section, be part of the common property;

“Court” includes the High Court of the State;

“Customary Right of Occupancy” means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a local government under the Land Use Act and all deemed rights granted in accordance with the provisions of the Land Use Act;

“Director-General” means the Director-General of the Department of Lands, Surveys and Country Planning;

“Demise” means a mortgage of the unexpired term of interest held by the Mortgagor in land;

“Equitable Mortgage” means a mortgage created under section 32 of this Law;

“Governor” means the Governor of the State;

“Land” means real property which may include improvements to such land;

“Land Registry” means the applicable registry within the State for registration of a Registrable Interest;

“Legal Mortgage” means a mortgage created under section 31 of this Law;

“Ledgers Appraised Value” means an evaluation of the mortgage property’s value performed by a professional appraiser engaged by the Lender;

“Local Government Area” means each of the administrative areas of the State established pursuant to the Constitution;

“Management Entity” means any legal entity established or appointed in this Law;

“Mortgage” means a transfer of or charge on an interest in specific movable or immovable property for the purpose of securing the discharge of an

obligation or payment of money advanced or to be advanced by way of loan, an existing future debt or the performance of an engagement which may give rise to pecuniary liability and it includes any charge or lien on any property for securing money or money's worth;

"Mortgage Debt" means the amount owed on a mortgage;

"Mortgage Finance Application" means an application for the financing of the acquisition of a Registrable Interest in property through a mortgage;

"Mortgagee" means an entity or person that lends money to a Mortgagor in a mortgage transaction;

"Mortgagor" means a person or entity who has borrowed money and pledged his real property as security to the Mortgagee for a mortgage loan;

"Mortgage Registrar" means the registrar of the Mortgage Registry;

"Mortgage Registry" means the mortgage registry of the State and Local Government Areas within the State;

"Plan" means a set of the drawings, rules, regulations, contracts and other documentation describing a Scheme;

"Registrar of Deeds" means an official charged with the authority of establishing ownership of real property through the issuance of an official certificate indicating the name of the individual in whom such ownership is vested within the State;

"Registrable Interests" means Interests as defined under Section 28 of this Law;

"Rent" includes an annual or periodical payment in money or money's worth, reserved or issuing out of land, but does not include interest on a mortgage;

"Scheme" includes any scheme for the development or operation of multiple-unit dwellings on landed property, whether the property be divided vertically into plots, terrace town houses or standalone buildings or otherwise or horizontally into floors, maisonettes, penthouses, flats, apartments or otherwise;

"Scheme Title" means a certificate issued pursuant to this Law for an estate in a right of occupancy in a Unit;

"State" means Kaduna State of Nigeria;

"Statutory Right of Occupancy" means a right of occupancy granted by the

Governor under the Land Use Act and all deemed rights granted in accordance with the said Act;

“Surveyor General” means the Surveyor General of the State;

“Sub-Demise” means a mortgage of the unexpired term of interest held by the Mortgagor in land less an agreed period;

“Tacking” includes the attachment of a junior charge to a first or other prior charge to acquire priority over an intermediate charge;

“Title holder” includes a registered holder of title to land and any person who has a deemed grant under the Land Use Act;

“Unit Owners” means any holder of a Scheme Title;

“Unit” means every subdivision of property subject to a Scheme that the Scheme contemplates as being a sub-division to be occupied by the same owner.

4. This Law shall apply to all Registrable Interests within the State.

Application

PART II

ESTABLISHMENT OF THE AUTHORITY AND THE GOVERNING BOARD

5. (1) There is established an Authority to be known as the Kaduna State Mortgages and Foreclosure Authority.

Establishment of the Mortgage Authority

(2) The Authority shall be:

(a) a body corporate with perpetual succession and a common seal;

(b) can sue and be sued in its corporate name;

(c) can hold and acquire any movable and immovable property.

6. There shall be established for the Authority, a Governing Board which shall consist of the following:

Establishment of the Board

(1) a Chairman, who shall be a person knowledgeable in finance, mortgage matters, law, real property, or banking to be appointed by the Governor.

(2) The Attorney General and Commissioner of Justice of the State;

- (3) The Commissioners for the time being charged with the responsibility for matters relating to:
 - (i) Finance;
 - (ii) Housing;
 - (iii) Local Governments;
- (4) The Director-General of Kaduna State Geographic Information Service (KADGIS);
- (5) four (4) members from the private sector with a minimum of ten (10) years cognate experience in mortgage, finance, law or real Property, one of whom shall be a woman to be appointed by the Governor;
- (6) the Secretary of the Board shall be the Mortgage Registrar.

7. The tenure of office for members of the Board shall be as follows:

Tenure of Office of
members of the Board

- (1) members other than Ex-officio shall hold office for a period of four (4) years, and may be re-appointed for another term of four (4) years.
- (2) The Governor may remove any member of the Board from office in the public interest.
- (3) Any vacancy shall be filled in the same manner as the original appointment for the remainder of the term.

8. Meetings of the Board shall be subject to the following rules:

Meetings and Quorum

- (1) The Board shall meet at least once every quarter of the year or as may be expedient for transaction of business and such meetings shall be held at such places and times as the Board may determine.
- (2) At every meeting of the Board, the Chairman shall preside, and in his absence, any member proposed and agreed by the members shall serve as the Chairman, only for that meeting.
- (3) Where the Chairman is unable or refuses to call a meeting for any reason, the Executive Secretary shall have the power to call a meeting on the directive of a simple majority of members of the Board and any decision taken at such meeting is deemed to have been taken by the Board.
- (4) The Executive Secretary shall be responsible for issuing notices of meetings to all members.

- (5) The quorum for a meeting of the Board shall be at least five (5) members of the Board with at least one member from the private sector and the Executive Secretary in attendance.

PART III
FUNCTIONS AND POWERS OF THE BOARD AND THE AUTHORITY

9. The functions of the Board shall be to:

Functions of the Board

- (1) create a conducive environment for accessible and affordable mortgages for the benefit of residents of the State;
- (2) advise the Governor on the funding, administration and structure of the State mortgage finance programme or policy for the benefit of the indigenes and civil servants of the State;
- (3) harmonise any mortgage scheme or policy which the State has or may put in place from time to time in connection with the making, processing, placing, registering or administration of mortgages;
- (4) implement and honour on behalf of the State all obligations in any agreement made between the State and other parties with regards to any mortgage scheme for the provision of funds for land ownership or development of real estate in the State;
- (5) encourage, promote and co-ordinate all forms of research concerned with the mortgage lending industry as it relates to economic well-being of the State and its residents, the stamping and registration system relating to mortgages in the State, the mode of application for Governor's consent or the consent of the appropriate Local Government Chairman relating to mortgage transactions, and generally to disseminate same to the State government and the public;
- (6) encourage and actively promote the use of modern information and communication technology within the State for purposes connected with the implementation of this Law, including digitization of the interface between the Land Registry and the Mortgage Registry, and the processes leading up to the perfection of mortgages;
- (7) ensure the effective management and operation of the Mortgage registry;
- (8) advise the State on the adoption of standards and policies under which mortgages should be provided;
- (9) advise the State on the mortgage lending industry;
- (10) advise the State on maintaining a central database of mortgages and transactions secured on real property in the State;
- (11) where applicable, act as an intermediary between the State, its

residents and mortgage brokers and lenders; and

- (12) perform such other functions as may from time to time be referred to it by the Governor.
- (13) formulate policies and rules on matters concerning the validation and registration of mortgages in the State.

10. The Authority shall, subject to the approval of the Governor, have the power to:
- Powers of the Authority
- (1) borrow, deposit with or accept any money from any person or corporation in respect of its functions;
 - (2) let or grant rights over the undertaking or any property of the Board for cash or for shares or any security of any company or for other consideration;
 - (3) appoint appropriate skilled personnel to advise the Board on the management and the implementation of any mortgage scheme;
 - (4) oversee the management of the Mortgage Registry, and provide supervisory guidelines from time to time on the effective operation of the Mortgage Registry.

PART IV STAFF OF THE AUTHORITY

11. The Authority may, subject to the approval of the Governor, appoint such number of persons as it may consider necessary as employees either from the public or private sector upon such terms and conditions as may be approved by the Executive Council:
- Staff of the Authority
12. Staff employed by the Authority shall in respect of their service be entitled to such pensions, and other retirement benefits as prescribed under the Pension Law.
- Pensions
13. (1) The Authority shall establish and maintain a fund ("the Fund") to cater for any expenditure incurred by it.
- Funding of the Authority
- (2) The Fund shall be credited with:
- (a) all such monies as may, from time to time be approved or appropriated by the State House of Assembly;
 - (b) all monies raised for the benefit of the Authority by way of gift, loan, debenture, grant-in-aid, or otherwise; and
 - (c) all fees and charges for services rendered by the Authority.

(3) The Fund shall be managed in accordance with the rules made by the Authority which shall, in particular, contain the following provisions:

(a) the manner in which the Fund is to be held and the mode of payment into and out of the Fund;

(b) the keeping of proper accounts and records for the purposes of the Fund in such form as may be specified in the rules;

(c) periodic audit of the Fund accounts by an auditor approved by the State Auditor-General; and

(d) requiring copies of the accounts and of the auditor's report thereon to be furnished to the Executive Council within three (3) months after the end of the period to which the accounts relate.

14. No action for damages shall lie against any member or employee of the Authority for any act done in pursuance of, or execution of this Law. Enforcement

15. (1) The Authority shall prepare and submit to Commissioner of Finance as soon as possible after the end of each financial year but not later than three (3) months thereafter, a report in such form as the Commissioner of Finance may direct on the activities of the Authority during the immediate preceding financial year and such report shall include a copy of the financial statements of the Authority audited by an auditor as may be approved and appointed by the State Auditor-General. Annual Report

(2) The Commissioner shall present a copy of the report submitted to him or her under the provision of this section to the Executive Council.

PART V
ESTABLISHMENT AND FUNCTIONS OF THE MORTGAGE REGISTRY

16. (1) (a) There shall be a Mortgage Registry established by the Authority within the State for registration of mortgages on areas designated as urban and rural areas . Establishment of a Mortgage Registry
- (b) The Authority shall establish a Mortgage Registry in each of The Local Government headquarters to ensure accessibility by the Citizens within the State.
- (2) There shall be a Common Seal to all Mortgage Registries.
- (3) The Mortgage Registrar shall have custody of the Common Seal of all Mortgage registries.
17. (1) There shall be appointed by the Board, a Mortgage Registrar, and other assistants as may be considered necessary. Registrar and Assistants
- (2) The Mortgage Registrar shall appoint such other grades of assistants as he may consider necessary for the enforcement of the provisions of this Law.
18. The applicable Mortgage Registry where the land is situated shall: Duties and Functions of the Mortgage Registry
- (1) receive and process applications for consent of the Governor or the appropriate Local Government Area to mortgage transactions;
- (2) receive and process applications for the registration and release of mortgages;
- (3) keep and maintain a register of mortgages;
- (4) provide a reliable record of information about interests in mortgages in the State to the Authority;
- (5) interact with third parties concerned with property and mortgages; and
- (6) receive and process applications for mortgage related searches.

19. All mortgages shall be registered at the Mortgage Registry subject to obtaining the consent of the Governor or the appropriate Local Government Chairman in accordance with the provisions of this Law on the request of:
- (1) an owner of a Registrable Interest or such persons' legal representative; or
 - (2) a Mortgagee.
20. All mortgages to be registered at the Mortgage Registry shall be stamped and shall include the following:
- (1) names and addresses of the parties to the transaction;
 - (2) location and full description of the mortgaged property;
 - (3) particulars of the underlying lending transaction backing the mortgage;
 - (4) particulars of the Mortgagor's title to the mortgaged property;
 - (5) survey plan of the mortgaged property; and
 - (6) such other information that may be necessary for the mortgage Transaction.
21. The process for the conduct of searches for information kept in any of the files, documents or registers in the Mortgage Registry shall be as follows:
- (a) information required or sought for pertaining to any mortgage transaction shall be obtained from the Mortgage Registry as prescribed in the Schedule to this Law;
 - (b) such information shall be obtained upon payment of The prescribed fees.
22. (1) The consent of the Governor or appropriate Local Government Chairmen shall be given within thirty (30) days upon submission of the documents by the Mortgage Registrar.
- (2) The Governor may delegate his power and authority to grant and execute consent to mortgage transactions in accordance with the relevant provisions of the Land Use Act.

Minimum information to be provided

Searches

Consent to mortgages

23. (1) For the purpose of obtaining consent to Mortgage Finance Double consent regime for
Mortgage finance Application
- (a) all documents required for the time being by the Registrar of Titles for obtaining consent to any Registrable Interest; and
 - (b) all documents required under this Law for obtaining consent to mortgages shall be attached to the application
- (2) Upon submission by an applicant to the Mortgage Registry of all such documents and information required, the Mortgage-Registrar shall ensure that the consent of the Governor or the appropriate Local Government Chairman is simultaneously processed and obtained for:
- (a) the underlying transfer, alienation, sale and or assignment of the mortgage property to the Mortgagor; and
 - (b) the mortgage transaction between the Mortgagor and the Mortgagee. Provided that the Mortgage-Registrar shall ensure that the consent of the Governor or the appropriate Local Government Chairman is obtained for the above transactions Within thirty (30) days of submission of all such documents and Information.
24. The Registrar of Titles shall deploy such number of personnel and resources from the Land Registry to be seconded to the Mortgage Registry for the purpose of ensuring that the consent for Mortgage Finance Applications is obtained in accordance with this Law or any other relevant law of the State and also procuring the registration of the Registrable Interest at the relevant Land Registry with the approval of the Director-General of the Kaduna State Geographic Information Service (KADGIS). Interconnectivity with the
Land Registry
25. (1) Upon obtaining the consent of the Governor or the appropriate Local Government Chairman to the mortgage transaction or Mortgage Finance Application in pursuant to the provision of this Law, the Mortgage Registrar shall issue evidence of registration of the mortgage deed within ten (10) Business Days. Registration of Mortgages
- (2) In the event that the mortgage deed for which consent has been obtained has not been registered after the period specified under subsection (1) of this section, the Mortgage Registrar shall cause to be published a list of applicants stating reasons why they are not registered where such requirement have been subsequently fulfilled they shall be registered within five (5) days.
 - (3) The Mortgage-Registrar shall only be entitled to deem applicants who have, fully or substantially complied with this Law and other regulations as may be issued by the Mortgage Registry,

from time to time, in relation to registration of mortgages, provided that the Mortgage Registrar may request for more information or documents to complete the registration process and have not been registered within five (5) days, at the expiration of ten (10) days, they shall be deemed to be registered.

- 4) For the purpose of priority, the relevant date shall be the date of final registration of the mortgage deed as provided in Section 90 of this Law and not the date of deeming an application registered.

PROVIDED that, nothing in this section shall affect the right of the State to refuse to register a mortgage deed or the right of the Governor or the appropriate Local Government Chairman to deny or refuse to grant his consent to a mortgage transaction that had been hitherto deemed registered under this section.

26. The Board shall provide any chargeable interest or fee for the perfection of any registerable interest. Consent fees and Registration charges

PART VI CREATION OF MORTGAGES

27. The interests in land which are capable of being the subject of a mortgage under this Law are: Registrable Interests
 - (1) A Statutory Right of Occupancy issued in accordance with the Land Use Act.
 - (2) A Customary Right of Occupancy issued in accordance with the Land Use Act.
 - (3) Registered ownership of sub divided Units in a Scheme evidenced by a Scheme Title issued in accordance with Part VIII of this Law.
 - 4) Leasehold interest for a term of years validly created. Power to create mortgages
28.
 - (1) A holder of a Registrable Interest may, by an instrument in the prescribed form, mortgage such interest or a part thereof.
 - (2) The power conferred under this section includes the power to create third party mortgages, second or subsequent mortgages and sub mortgages.
 - (3) The power to create mortgages shall be exercisable subject to:
 - (a) any prohibition or limitation imposed by this Law;
 - (b) any restriction in regulations made under this Law;
 - (c) any restriction made under any written law; or
 - (d) any restriction contained in an instrument creating or

affecting an interest in land which is to be the subject of a mortgage.

29. A Mortgagee and Mortgagor shall act in good faith with each other and in particular, disclose all relevant information relating to the mortgage or land to be mortgaged. Duty to act in good faith and disclose information
30. (1) A legal mortgage of a Registrable Interest may be created under this Law in the following manners: Creation of legal mortgages
- (a) by demise subject to a provision for cesser on redemption;
 - (b) by sub demise subject to a provision for cesser on Redemption;
 - (c) by a charge expressed to be by way of a legal mortgage;
Or
 - (d) by way of a mortgage created by execution of Form MR 02 annexed to this Law as Schedule I.
- (2) Any purported assignment of a Registrable Interest by way of a mortgage made after commencement of this Law shall operate as a demise of the Registrable Interest to the Mortgagee for a term of years absolute subject to a right of redemption.
31. An equitable mortgage may be created by deposit of a certificate of title or any instrument creating a Registrable Interest or any document evidencing or constituting proprietary interest in land. Creation of equitable
32. The Mortgagor in all Mortgage transaction shall contain covenants as agreed by the parties: Covenants of the Mortgagor
- (1) pay the principal sum borrowed at the times appointed in the mortgage deed, and, so long as the principal money or any part of it remains unpaid, to pay interest on it or on so much of it as for the time being remains unpaid at the rate and at the times and in the manner specified in the mortgage deed;
 - (2) pay all rates, charges, rent, taxes and other outgoings which are at all times payable in respect of the mortgaged property;
 - (3) repair and keep in a reasonable state of repair all buildings and other improvements upon the mortgaged property and to permit the Mortgagee or his or her agent at all reasonable times until the mortgage is discharged and after reasonable notice to the Mortgagor to enter the mortgaged property to examine its state and condition;
 - (4) provide adequate insurance to make good any loss or damage caused by fire, tornado, windstorm, flood, earthquake and lightning and such other related risks to all buildings on the mortgaged property, and, where insurance is taken out, it is done in the name of the Mortgagor with insurers approved by the

Mortgagee acting reasonably and to the full replacement value of all the buildings on the mortgaged property. Provided that such insurances shall note the Mortgagee as the first loss payee;

- (5) use the mortgaged property in a sustainable manner and to comply with all written laws, regulations and lawful orders applicable to the use of the land;
- (6) restrain from transferring or assigning the mortgaged property or any part of it in a manner that would render the subsisting mortgagenugatory;
- (7) in the case of a mortgage of a leasehold interest or rights under a certificate of occupancy, during the continuance of the mortgage, to pay, perform and observe the covenants and conditions contained and implied in the lease or the certificate of occupancy, on the part of the lessee or holder to be performed and observed and to keep the Mortgagee indemnified against all proceedings, expenses and claims on account of non-payment of the rent or part of it or the breach or non-observance of the covenants and conditions or any of them, and, if the lessee or holder has an enforceable right to renew the lease or certificate of occupancy, to renew it;
- (8) where the mortgage is a second or subsequent mortgage, to pay the interest from time to time accruing on each prior mortgage (not being a third party mortgage) when it becomes due and at the due times repay the principal money due on such prior mortgage;
- (9) where the Mortgagor fails to comply with any of the covenants implied by this section that the Mortgagee may spend such money as is reasonably necessary or desirable to remedy the breach and may add the amount so spent to the principal money and that amount shall be deemed for all purposes to be a part of the principal money secured by the mortgage.

33. (1) Subject to the occurrence of any default under the mortgage deed, a Mortgagor shall have the right to keep the mortgaged property in his or her possession and take the income yielded by the mortgaged property;

Rights of the Mortgagor

(2) The Mortgagor as long as his right to redeem subsists, shall be entitled to request and at his own cost to inspect or make copies or extracts from documents of title relating to the mortgaged property which are in the custody or power of the Mortgagee.

34. Subject to the provisions of this Law, before the rights under a mortgage were assigned or transferred in the exercise of the Mortgagee's power of sale or before the making of a foreclosure order or appointment of a Receiver, where a Mortgagor pays all monies due under the mortgage, the Mortgagor shall be entitled to redeem the interest mortgaged, and any agreement or provision which purports to deprive the Mortgagor of the right of redemption shall be void.

Rights of Redemption

35. The Mortgagor shall:

Duties of the Mortgagor

- (1) maintain the mortgaged property as expected of a diligent title holder and in a manner such that his acts or omissions will not diminish the value of the mortgaged property;
- (2) insure the mortgaged property against damages through negligence, willful acts, fire, tornado, windstorm, flood, earthquake and lightning, and all such other related risks;
- (3) provide the Mortgagee with access to inspect the mortgaged property, provided that the Mortgagee gives reasonable prior notice thereof.

36. Notwithstanding the provisions of any law, the Court shall, in granting an application for an injunction, stay of execution order or any such Court orders seeking to restrain the exercise of any of the powers conferred on the Mortgagee by this Law, require the Mortgagor as a condition precedent to such an application to deposit a bond in favor of the Mortgagee from a licensed financial institution to the Court for the value of the lower amount between:

Grant of injunction in relation to
Mortgage Property

- (a) 25% of the principal loan sum under the mortgage transaction; and
- (b) The outstanding sum owed under the mortgage transaction.

PROVIDED that, in the event that the outstanding sum owed is in any manner under dispute the provisions of subsection 38 (a) shall apply.

37. The Mortgagee shall have the right to apply to Court for an order of injunction restraining or prohibiting a Mortgagor or the person in possession of a mortgaged property from taking or continuing to take certain actions that:

Prohibition against damage to
Mortgaged Property

- (1) diminish the value of the mortgaged property; or
- (2) may likely diminish or adversely affect the value of the mortgaged property.

38. Where at any time a mortgagor desire desire to repay the money secured by a mortgage in favour of a morgagee who cannot be found, the morgagor may, pursuant to an order of the Court pay tha amount due under the mortgage to the official of the Court designated for such purpose under the Court Order for the credit of the morgagee and upon application in writing signed by the mortgagor and production of a cerified true copy of the relevant court order and a valid receipt for payment into court of the total money due, the mortgage shall be discharged and released and the mortgage registrar shall record the fact of such release and discharge in the mortgage register.

Deposit of mortgage money in
Court in lieu of redemption
(where Mortgage is
unavailable)

39. (1) It shall be an implied contractual term in every mortgage contract that a Mortgagor intending to commence or defend an action in a Court in respect of the mortgaged property against any third party shall by notice in writing notify the Mortgagee(s) of its intention to do so and the nature of the action as soon as reasonably practicable but in any event not later than seven (7) days after filing same in Court.

Action by Mortgagor/ Mortgagee

(2) A Mortgagee may, on receipt of the notice referred to in subsection (1) of this section, either:

(a) require the Mortgagor at his expense, to join the Mortgagee in the action; or

(b) take no action.

(3) Where as a result of any agreement or order of a Court arising out of any action taken by the Mortgagor under this Law, any sum of money becomes payable to the Mortgagor by way of damages on account of some damage or injury caused to the mortgaged property by the defendant, a Mortgagee may apply to Court for an order that such sum or such proportion of it as the Court thinks fit be paid to the Mortgagee in reduction or discharge of the mortgage.

40. (1) All matters arising from, or connected with a mortgage transaction may be resolved by arbitration or any other alternative dispute resolution mechanism.

Alternative Dispute Resolution
in Mortgage Matters

(2) Where there is no agreement between parties to resolve the dispute by means of any alternative dispute resolution mechanism, the Court may refer all or part of the issues arising for determination in a proceeding before it relating to mortgages under this Law to the arbitration mechanism operational in the State.

(3) All arbitration proceedings conducted pursuant to the provisions of this Law or any other Arbitration Law applicable in the State shall be concluded within a period not exceeding thirty (30) Business Days by which time the arbitration panel must deliver an award.

(4) The arbitration provisions under this Law shall be read in conjunction with the Arbitration Laws of the State.

**PART VII
SCHEME TITLING**

41. This part of the Law is to: Scope of this provisions
- (1) provide for the registration of the division whether vertically or horizontally or both, of property, whether of buildings or plots or both into Units and Common Property;
 - (2) provide for the acquisition of separate titles in the Units or plots and tenancies in common; and
 - (3) provide for the establishment of a Management Entity to control and manage the Common Property.
42. Any Scheme shall be capable of being subdivided into Units and Common Property to be held under Scheme Titles. Property capable of being Subdivided
43. All property developments to be held under Scheme Titles must have a Scheme Plan. The Scheme Plan:
- (1) must define the Units to be created by the Plan in a manner that allows the boundaries of each Unit to be ascertained;
 - (2) must assign to each Unit distinguishing alphanumeric identification;
 - (3) may relate to one or more properties, whether of plots, buildings or structures or a combination of any of them situate, to be erected or being erected on the same parcel of land, or on two or more contiguous parcels of land registered or legally owned (under the Land Use Act);
 - (4) must have annexed to it a schedule of Unit entitlements in relation to the Units;
 - (5) show the floor area of each Unit correct to the nearest square metre, and the total floor areas of all the Units;
 - (6) must stipulate rules, terms and conditions for the use, operation, enjoyment, enforcement, maintenance, upkeep and improvement of the Units and Common Property, and for the revision of those rules, terms and conditions from time to time.
 - (7) must comply with any other requirements as may be stipulated by the -Registrar of titles from time to time.
44. The Authority may issue Scheme Titles specific to each Unit covered by a Scheme Plan
- (1) A Scheme Title must not reference more than one Unit of the subdivided property.

- (2) Every Scheme Title that is issued pursuant to this Law is for an estate in a Statutory Right of Occupancy or Customary Right of Occupancy in the Unit to which the title refers.
- (3) After a Scheme Title is issued pursuant to this Part, the title may be assigned, sold, mortgaged, leased, let, encumbered, transferred by way of gift or disposed of by any other means.
- (4) Provided that nothing done pursuant to this Part shall be interpreted to detract from or add to the provisions of the Land Use Act in relation to interests in land in a manner that contravenes the Land Use Act or otherwise include, confer or affect any interest in mines and minerals within, on or under the

- 45. A developer who holds a Statutory Right of Occupancy or Customary Right of Occupancy and who intends to establish a Scheme shall make an application in accordance with the provisions of sections 48 and 50 of this Law. Application for Scheme Title

- 46. The holder of a Statutory Right of Occupancy or Customary Right of Occupancy on any land on which there is a developed Scheme shall, within six (6) months from completion of such Scheme, apply in accordance with this Law for the subdivision of the Scheme in accordance with section 50 The provisions of this section shall only apply to vertical developments for which the title holder has sold or agreed to sell 10 Units of the total Units within the Scheme to any person or persons. Compulsory application

- 47. (1) Any application for the approval of the subdivision of any property, registrations of a Scheme Plan and issuance of Scheme Titles shall be made in writing to the Governor or such authority as may be designated by the Governor and shall be accompanied by: Requirements for application
 - (a) such fee as may be prescribed by the Governor or a designated authority as may be appointed by the Governor;
 - (b) the building plans approved by the planning authority;
 - (c) a proposed Scheme Plan;
 - (d) the existing certificate of occupancy or any other instrument evidencing title covering the areas comprised in the Scheme Plan; Nature of Scheme Title
 - (e) any mortgage to which the land may be subject, together with the consent of the Mortgagee to make the application for Scheme Title; and
 - (f) such other documents and particulars as may be prescribed.

- 2) The Registrar of Deeds shall not be responsible for investigating the correctness or accuracy of any document submitted for registration.

48. The Governor shall not approve the subdivision of any Scheme in accordance with this Law unless the following conditions are satisfied:

Conditions for approval

- (1) that it has been certified by a land surveyor that the Scheme is situated wholly within the boundaries of the property of the applicant;
- (2) that, it has been certified by a duly registered architect or engineer that the Scheme was constructed in accordance with the approved building plans issued by the planning authority;
- (3) that the subdivision would not contravene any interest to which the land is for the time being subject;
- (4) that the subdivision would not be contrary to the provisions of any planning and zoning laws, the building control laws and any regulations made thereon for the time being in force;
- (5) that no land revenue is outstanding in respect of the land or a waiver of such land revenue has been granted by the appropriate authority;
- (6) that consent in writing to the making of the application has been obtained from every person who at the time when approval was applied for, was entitled to the benefit of:
 - (a) a lease of the whole or any part thereof; or
 - (b) a charge or lien over any part thereof.
- (7) that each of the proposed Units has adequate means of access not passing through another Unit;

49. No officer or employee in the service of the State shall be liable for any defective measurement or work performed by any land surveyor, architect or engineer notwithstanding the fact that the Scheme Plan relating to such measurement or work has been registered by the Registrar of Titles unless it is proved that such defect was intentional or done in bad faith. Liability of Surveyors
50. An application for registration of a Scheme Plan and issuance of Scheme Titles may be withdrawn only where the withdrawal is not, or will not be, detrimental to the interests of any person who has purchased or agreed to purchase any Unit of the property in question in reliance on the application having been made.
51. (1) Upon approval of an application for registration of a Scheme Plan and issuance of Scheme Titles in accordance with this Part and Registration of Scheme Plan and issue of Scheme Title
- (a) keep by means of hard printed copies and a computer or in any other electronic means registers containing particulars which are necessary for the purpose of complying with the provisions of this Part and for maintaining an efficient system of registration to ensure security of title and easy reference to any title;
 - (b) issue to an applicant a certificate of registered Scheme Title in respect of each Unit and the certificate in respect of the Common Property to the management entity; and
 - (c) make the necessary endorsements on the title deed, any mortgage bond or other document in his records.
- (2) The developer shall be the title holder of any Units in respect of which the title is not held by any other person, and the quota of such Units shall determine the share of the developer in the Common Property.
52. A Unit Owner may, with the approval of the Governor: Division and Amalgamation
- (1) divide his Unit into two or more new Units, each to be held by him under a separate Scheme Title; or
 - (2) where he holds two or more contiguous Units, amalgamate them to form one Unit to be held by him under a single Scheme Title.
53. (1) Upon the registration of a Scheme Plan, the property, whether of and the land shown thereon shall, subject to the provisions of this Part, be deemed to be divided into Units and Common Property as shown on the Scheme Plan. Effect of Registration of Scheme Plan
- (2) A Scheme Plan shall upon registration be deemed to be part of plots, buildings or structures or a combination of any of them the certificate evidencing the Scheme Title. A holder of a Scheme Title shall be subject to all rights or conditions which burden or

benefit the land within which the Scheme exists.

(3) A Unit Owner shall have:

- (a) in relation to his Unit, the powers to assign, sell, mortgage, lease, let, encumber, transfer by way of gift or will or on intestacy or dispose of by any other means, his Scheme Title in relation to his Unit;
 - (b) in relation to the Common Property, the right of user which he would have if he and the other Unit Owners were joint tenants thereof and
 - (c) in relation to either his unit or the Common Property the right to enforce the rules, terms and conditions propounded pursuant to section 46 (6) where the management entity fails or delays to do so under section 61 (1).
- (4) No rights in the Common Property shall be disposed of by a Unit Owner except as rights appurtenant to a Unit; and any disposition of a Unit by a Unit Owner shall without express reference include a like disposition of the rights in the Common Property which are appurtenant to the Unit.
- (5) In a Scheme, both negative and positive covenants that are reasonably necessary or reasonably desirable for the enjoyment of the Units by the Unit Owners shall run with each Scheme Unit Title notwithstanding the absence of privity of contract among any two or more Unit Owners *interse* or with the management entity.

54. Prior to the opening of the Scheme Title register in respect of a subdivided property, a management entity shall be established as:

(1) An entity duly incorporated under the provisions of the Companies and Allied Matters Act with terms that:

(a) empower every Unit Owner to be a member or shareholder of the management entity where same is incorporated as limited liability company or company limited by guarantee with restrictions on its capacity to conduct business;

(b) empower the Incorporated trustees to represent all the Unit Owners where the entity is an Incorporated Trustee.

(2) A legal entity with the capacity to act as a trustee and hold legal title to the Common Property on behalf of all Unit Owners via a deed of trust.

55. The management entity shall, on coming into existence, become the owner of the Common Property and be the custodian of the title document to the land on which the Units have been developed pursuant to a transfer instrument which shall be entered into between the holder of a certificate of occupancy over the land or its assignee and the management entity.

Ownership of common property

56. Without the consent of 80% of the Unit Owners, the management entity shall not have the power to transfer any portion of the Common Property which forms part of the Scheme.

57. The duties of the management entity include the following:

Duties of the Management entity

(1) to manage and properly maintain the Common Property and keep it in a state of good and serviceable repair;

(2) to insure in its name and keep insured the subdivided building to the replacement value thereof against fire, flood, earthquakes and other related risks;

(3) to apply insurance monies received by it in respect of damage to the subdivided building in rebuilding and reinstating it in so far as it may be lawful to do so;

(4) to pay premiums on any insurance effected by it;

- (5) to comply with any notices or orders given or made by any competent public or statutory authorities requiring the abatement of any nuisance on the Common Property, or ordering repairs or other work to be done in respect of the Common Property or any building or other improvements on the land;
- (6) to comply with any such notices or orders as are referred to in subsection (5) of this section given or made in respect to any of the Units, if the Unit Owner fails to do so within a reasonable time;
- (7) to enter into contracts for the general maintenance and servicing of the Common Property;
- (8) defend or take out Court action to ensure compliance with or enforce any of the rules, directives and resolutions made by its members against an erring Unit Owner or a service provider or further to any contract to which it is a party
- (9) to pay any rent payable on the land within which the Scheme is located;
- (10) levy facility management fees on Unit Owners for the purpose of managing the subdivided property and for carrying out its duties hereunder and other duties that may be agreed by the Unitowners from time to time: and
- (11) to do all things incidental to or required to be done to enable it effectively carry-out any of the above duties.

58. The powers of the management entity which shall be exercisable upon the approval of a simple majority of the Unit Owners shall include:

Powers of the Management
entity

- (1) to recover from any Unit Owner any sum expended by the management entity in respect of that Unit Owner's unit in complying with any such notices or orders as are referred to in section 60(6) and otherwise to enforce the rules, terms and conditions set out in section 46(6);
- (2) to purchase, hire or otherwise acquire movable or immovable properties for use by the Unit Owners in connection with their enjoyment of the Common Property;
- (3) to borrow monies or obtain maintenance or other services from third parties on credit as long as same is required by it in the exercise of its powers or the performance of its duties;

- (4) For the purpose of establishing and maintaining the management fund, the management entity may determine from time to time the amount to be raised and increase the amounts so determined by levying contributions on the Unit Owners in proportion to their Unit holding.
- (5) The Failure by a Unit Owner to pay the service charges levied by the Management Entity within a period of 90 days from when such levy is imposed will amount to an event of default of the grant for such Scheme Title and the management entity shall be entitled to apply to the Court for an order of foreclosure on such Unit Owners Unit in accordance with this Law.

**PART VIII
ENFORCEMENT OF MORTGAGES**

59. Unless otherwise stated in the mortgage deed or any underlying contract, thereof, a mortgagor shall be in default under a mortgage after a period of ninety (90) Business Days has elapsed subsequent to the Mortgagor failing to meet any obligations under a mortgage deed or fulfill any covenant or condition, express or implied in any mortgage deed or any underlying contracts. Default of mortgages
60. (1) Where the Mortgagor is in default in accordance with provisions of This Law, the Mortgagee shall be entitled to serve on the Mortgagor a notice of default within thirty (30) Business Days. Notice of default
- (2) The notice required under this section shall adequately inform the Mortgagor of:
- (a) the nature and extent of the Mortgagor's default under the mortgage deed;
 - (b) where the default consists of the non-payment of any monies due under the mortgage deed, the amount that must be paid to rectify the default;
 - (c) where the default consists of the failure to perform or observe any covenant, express or implied, in the mortgage, the action the Mortgagor must take or desist from taking so as to rectify the default;
 - (d) that if the default is not rectified within the time specified in the notice, the Mortgagee will proceed to exercise any of the remedies referred to in section 65 in accordance with the procedures provided for in this Part. Remedies available to Mortgagee
61. (1) Where the Mortgagor is in default and does not comply with the notice served on him or her under section 64, the Mortgagee may:
- (a) sue the Mortgagor to pay all monies owing on the mortgage;
 - (b) appoint a Receiver of the income of the mortgaged property only in cases where the Mortgagor's default comprises nonpayment of the monies due under any mortgage deed;
 - (c) enter into possession of the mortgaged property;
 - (d) exercise its power to sell the mortgaged property only in cases where the Mortgagor's default comprises nonpayment of the monies due under the mortgage; or

(e) exercise its power to foreclose the Mortgagor's interest in the mortgaged property only in cases where the Mortgagor's default comprises nonpayment of any monies due under the mortgage.

(2) Provided that the Mortgagee's powers of enforcement pursuant to this section shall be exercised subject to the Mortgagor's right to arbitration or legal redress in accordance with this Law and any enforcement processes may only be instituted by the Mortgagee upon the determination of such arbitration proceedings.

62. Where the Mortgagor's right of redemption is existing (and subject to the terms upon which such right of redemption may be exercised) the Mortgagor shall subject to the consent of the Mortgagee be entitled to have the mortgage debt and the mortgaged property assigned to any third party the Mortgagor nominates. Transfer of title in lieu of redemption

63. (1) The Mortgagee has a right to sue for the amount secured by the mortgage deed where: Right to sue for principal and interest

(a) the Mortgagor binds himself to repay the such amounts; or

(b) the Mortgagee is deprived of the whole or a part of his or her security or the security is rendered insufficient through or in consequence of the wrongful act or default of the Mortgagor.

(2) An action shall not be commenced under subsection (1) of this section until the time for complying with a notice served has expired.

64. (1) A Mortgagee may, after the end of the period specified in this Law and after serving a notice of not less than ten[10] Business Days of his intention to do so, enter into possession of the whole or a part of the mortgaged property. Right of possession

(2) A Mortgagee may exercise the power of entering into possession of the mortgaged property by:

(a) asserting management or control over the land, with the assistance of the Police if need be, after serving a notice requiring any lessee of the Mortgagor or any other occupier of the mortgaged property to pay to the Mortgagee any rent or profits which would otherwise be payable to the Mortgagor; or

(b) an order of Court.

(3) The Mortgagee shall be regarded as being in possession on the date:

(a) on which he or she enters into possession in accordance with subsection (2) (a) or (b) of this section; or

(b) on which he or she first receives any rent or profit in respect of the mortgaged property.

- (4) A Mortgagee who has entered into possession may remain in possession, without prejudice to his or her right to withdraw from possession, so long as the mortgaged property continues to be subject to any liability under the mortgage.
- (5) A Mortgagee in possession of any mortgaged property:
 - (a) by occupation, shall be entitled to manage the mortgaged property and take all the profits thereon, but is liable to the Mortgagor for any act or omission by which the value of the mortgaged property, or other permanent improvement or appurtenances thereto is impaired or the Mortgagor otherwise suffers loss;
 - (b) whether by occupation or by receipt of rents and profits shall be accountable to the Mortgagor not only for the sums actually received by him, but also for any additional sums which he might reasonably have been expected to receive by the prudent exercise of his powers;
 - (c) where the mortgaged property is leased, is liable to the Mortgagor to observe and perform all the covenants and conditions contained or implied by any rule of law or custom or any lease subject to which the mortgaged property is leased.
- 6) A Mortgagee in possession shall apply all the monies received in the same order as a Receiver and as set out in section 64 of this Law; except that a Mortgagee in possession is not entitled to receive any remuneration.

65. (1) A Mortgagee in possession shall be taken to have withdrawn from possession of all or a part of the mortgaged property:

Withdrawal from Possession

- (a) when the Court makes an order to that effect;
- (b) when a receiver has been appointed in accordance with this Law;
- (c) when the Mortgagee serves a notice of withdrawal on all persons served with a notice under this Law;
- (d) when the purchaser of the mortgaged property enters into occupation of that land pursuant to an exercise of the Mortgagees power of sale under this Law; or
- (e) when the Mortgagor obtains a discharge of the mortgage.

(2) A Mortgagee who has withdrawn from possession of mortgaged property may not again enter into possession of that property, otherwise than by complying with provisions of this Law.

66. (1) It is an implied condition in every mortgage that the Mortgagee has the power to appoint a Receiver of the income of the mortgaged property.

Appointment of a receiver

(2) The appointment of a Receiver shall be in writing signed by the Mortgagee.

(3) A Receiver may be removed at any time and a new Receiver appointed in writing signed by the Mortgagee.

67. (1) Subject to the provisions of the mortgage deed, a Receiver appointed under section 65 shall be deemed to be the agent of the Mortgagee for the purposes for which he is appointed, and the Mortgagee shall accordingly be solely responsible for the acts and defaults of the Receiver.

Powers and duties of a Receiver

2) The Receiver shall have the power to demand and recover all the income in respect to which he or she is appointed Receiver, by action or otherwise, in the name of the Mortgagor, and to give valid receipts for it.

3) Subject to section 67 of this Law the Receiver is entitled to retain out of any money received by him, all costs, charges and expenses reasonably incurred by him as Receiver, and, for his remuneration, such amounts as is specified in its terms of engagement.

68. The Receiver shall apply all monies received by him or her in the following order of priority:

Use of proceeds from receivership

(1) in the payment of all rents, rates, charges, taxes and other outgoings required to be paid in respect of the mortgaged property;

(2) in paying down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in respect of which he or she is the Receiver;

(3) in payment of his or her remuneration and expenses;

(4) in payment of all reasonable expenses incurred in the doing of such things which a Receiver is required or entitled to do in respect of the mortgaged property;

(5) in payment of the interest accruing and due in respect of any principal sum secured by the mortgage in respect of which he or she is the Receiver;

(6) in and towards the discharge of the principal sum secured by the mortgage in respect of which he or she is the Receiver, and

(7) shall pay the residue, if any, to the Mortgagor or other person entitled to receive the income from the mortgaged property.

69. Any third party dealing in good faith with a Receiver shall be valid and the act of possession or control on, or over the property shall constitute prima facie evidence of such Receiver's due appointment. Accordingly, no third party shall be required to inquire as to whether any incident as occurred between the parties to warrant the Receiver exercising his powers. Receivers dealings with third parties

70. (1) Where a Mortgagor is in default of a repayment obligation under a mortgage and remains in default at the expiry of the time provided for the rectification of that default in the notice served on him under section 64 (1), a Mortgagee may exercise his power to sell the mortgaged property. Provided such sale is made at the prevailing market price and in accordance with this Law. Power of Sale

(2) Notwithstanding the provision of this Law or any other law in relation to auctions, before exercising the power to sell the mortgaged property, the Mortgagee shall serve a notice to sell on the Mortgagor and shall not proceed to complete any contract for the sale of the mortgaged property until fifteen (15) (Business Days have lapsed from the date of the service of the notice to sell.

(3) A copy of the notice to sell served in accordance with subsection (2) of this section shall be served on the Mortgagor or one of two or more Mortgagors or any surety for the mortgagor.

(4) A Mortgagee exercising the power of sale shall have power to assign the mortgaged property subject only to such interests and rights which have priority over the mortgage property.

(5) At any time after the power of sale conferred by this Law has become exercisable, the Mortgagee may demand and recover from any person (other than a person having an interest in priority to the mortgage) all the deeds and documents relating to the mortgaged property.

(6) The Mortgagee shall not be liable for any loss which occurs as a result of the exercise of the power of sale conferred by this Law.

(7) Where a Mortgagee becomes entitled to exercise the power of sale, that sale may be:

(a) of the whole or a part of the mortgaged property;

(b) subject to any mortgage or other encumbrance having priority to the Mortgagee's mortgage;

(c) by way of subdivision or otherwise;

- (d) by auction in accordance with section 75 or negotiated sale in accordance with section 76;
 - (e) with or without reserve; and
 - (f) subject to such other conditions as the Mortgagee may determine acting reasonably and in good faith.
- (8) At any time before an agreement is reached between the Mortgagee and any purchaser for the sale to that purchaser of the mortgaged property the Mortgagor or any other person who is entitled to discharge the mortgage may discharge the mortgage in whole or in part by paying to the Mortgagee all monies secured by the mortgaged property at the time of discharge.
- (9) Where payment is made under subsection (8) of this section, the Mortgagee shall deliver to the Mortgagor:
- (a) a deed of release and discharge of the mortgage in the prescribed form over the whole or that part of the mortgaged property to which the payment relates; and
 - (b) all instruments and documents of title held by the Mortgagee in connection with the mortgaged property.
71. (1) A Mortgagee that elects to exercise his power of sale by auction sale shall obtain evidence of title to the mortgaged property and make it available upon request to the bidders at the sale. Sale by Auction
- (2) The auction sale shall be conducted by a person professionally engaged in these matters.
- (3) In addition to the notices issued under section 64 and subject to the laws governing auctions within the State, the Mortgagee shall advertise (at least once per week for three [3] weeks), with the last publication not less than seven (7) days prior to the date of auction by placing an advertisement in at least two (2) newspapers having general circulation in the area where the mortgaged property is located. The announcement shall include the following:
- (a) description of the mortgaged property;
 - (b) Mortgagee's name and surname or registered name;
 - (c) mode of communication with the Mortgagee;
 - (d) opening price at auction;
 - (e) time and place of auction; and
 - (f) any other information that the Mortgagee might deem important.

- (4) The Mortgagee shall also send to the Mortgagor, the mortgaged property owner and third parties having rights to the mortgaged property, the information about the announcement covering the following:
 - (a) all elements of the announcement; and
 - (b) a statement indicating the terms on which the whole debt may be paid in order to avoid the sale.
 - (5) The opening price at auction may not be less than seventy-five per cent (75%) of the open market value of the mortgaged property valued by a Professional Valuer. If the first auction fails, the opening price at the second auction may not be less than sixty percent (60%) of the estimated value of the mortgaged property.
 - (6) Notwithstanding the provisions of subsection 6 of this section Law, the Mortgagee and the owner or Mortgagor may enter into a written agreement to make arrangements for the staging of auction, whereby the mortgaged property involved may be sold for less than seventy-five percent (75%) and sixty percent (60%) of the estimated value as the case may be.
 - (7) Immediately after the sale is completed, the successful bidder must pay a deposit of at least thirty percent [30] % of the amount of the bid or such lower amount as the advertisement for sale allows to a bank account designated by the person conducting the sale.
 - (8) The successful bidder shall pay the remainder of the bid within thirty (30) Business Days after the date of auction. If payment of the balance of the bid is not timely made, the Mortgagee may cancel the sale and reschedule the auction or terminate the process.
 - (9) Upon a cancellation, the deposit of a bidder who declines to complete the sale and purchase as stated above may be forfeited and distributed in the same manner as the proceeds of sale under section (80).
 - (10) Upon payment by the successful bidder of the full balance of the bid, the Mortgagee shall record and deliver a deed and such other documents as may be necessary to transfer the mortgaged property to or as may be directed by the successful bidder.
72. (1) The Mortgagee may sell by way of negotiated sale directly to a third-party at the open market value of the mortgaged property valued by a Professional Valuer. Negotiated Sale
- (2) The Mortgagee shall sell the mortgaged property with the aid of a professional real estate agent. Where the sale is made by a professional, the usual commission or fee of the professional for the services rendered may be included in the sales price.

(3) At least fifteen (15) days before closing the mortgaged property sales contract, the Mortgagee shall give notice of the sale to the Mortgagor or the owner of the mortgaged property which notification shall include the following:

- (a) amount of the whole debt;
- (b) estimated value of the mortgaged property;
- (c) The purchase price which must not be less than [60%] of the estimated value of the property unless otherwise agreed in writing between the Mortgagee and the owner;
- (d) expected date of conclusion of the sales contract;
- (e) mode of distribution of the sales proceeds of sale;
- (f) date on which the mortgaged property is to be vacated; and
- (g) a statement concerning the terms on which the whole debt can be paid in order to avoid the sale of the mortgaged property involved.

(4) Upon payment by the purchaser and compliance with any contract for sale, the Mortgagee shall execute and deliver a deed and such other documents as may be necessary to transfer the mortgaged property to or as directed by the purchaser.

73. (1) A purchaser in a sale effected by a Mortgagee acquires good title except in a case of fraud, misrepresentation or other dishonest conduct on the part of the Mortgagee of which the purchaser has actual knowledge or had no actual knowledge of owing only to its willful default or gross negligence.

(2) A purchaser is not:

- (a) answerable for the loss, misapplication or non-application of the purchase price paid for the mortgaged property;
- (b) obliged to see to the adequacy or application of the purchase price; or
- (c) obliged to inquire whether there has been a default by the Mortgagor or whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper or regular.

74. The following person(s) and or entities shall not be permitted to purchase the mortgaged property without the leave of Court:

- (1) a Mortgagee;
- (2) an employee, director, officer or representative of the Mortgagee or an immediate member of his or her family;
- (3) an affiliate, associate or related person or company to the Mortgagee;
- (4) an agent of the Mortgagee or an immediate member of his or her family;
- (5) any person in a position to influence the purchase directly or indirectly; or
- 6) a person in position of any other privileged information with regard to the transaction.

75. 1) Where the Mortgagee sells the mortgaged property in contravention of this Law, the sale shall be voidable at the option of the Mortgagor. Remedy against the wrongful sale
- 2) A purchaser prejudiced by unauthorized, improper or irregular exercise of the power of sale shall have a remedy in damages against the Mortgagee exercising that power.
76. (1) The purchase price received by a Mortgagee who has exercised his or her power of sale shall be applied in the following order of priority:
- (a) in payment of any rates, rents, taxes, charges or other sums owing on the mortgaged property;
 - (b) in discharge of any prior mortgage or other encumbrance subject to which the sale was made;
 - (c) in payment of all costs and reasonable expenses properly incurred and incidental to the sale or any attempted sale;
 - (d) in discharge of the principal sum advanced under the mortgage pursuant to which a power of sale was exercised or so much of it as remains outstanding, accrued interest, costs and all other monies due under the said mortgage;
 - (e) in payment of any subsequent mortgages in order of their priority; and
 - (f) the residue, if any, of the purchase price received shall be paid to any person who, immediately before the sale, was entitled to the discharge of the mortgage.

(2) Where a mortgagee holding the proceeds of sale entrusted under this Section is in doubt as to the proper distribution of all or part those proceeds, he may apply to the Court for direction and may, if the Court so order, deposit the proceeds as may be directed by the Court and the cost of any such proceedings shall rank in priority as if they were part of the expenses of the sale.

77. (1) Where any party seeks to enforce any rights or obtain any order or relief from the Court arising from the operation of this Law, the Court shall ensure that the proceedings are heard and disputes determined within a period of 180 days.

Judicial action for orders or reliefs

(2) Any party who is found by the Court to have deliberately delayed any proceedings to enforce a mortgage transaction under this Law shall indemnify the other party or parties for any losses suffered as a result of such delay. Provided that any matter whose hearing and determination exceeds 180 days shall remain valid where it does not occasion a miscarriage of justice.

78. (1) Subject to the provisions of this Law, where the Mortgagor is in default and does not comply with the notice served on him, the Mortgagee may make an application to the Court requesting an order for foreclosure.

Order for foreclosure by Court

(2) An application under this section shall state that:

(a) the Mortgagor has been in default for the period stated under section 64;

(b) the nature of the default;

(c) notice in writing of the intention of the Mortgagee to make the application has been served on:

a. the Mortgagor,

b. all other registered Mortgagees which have less priority than that of the applicant.

(3) Where an application is made in accordance with this section for an order for foreclosure, the Court may:

(a) issue an interim order for foreclosure which will subsist for a period of 6 months within which the Mortgagor is permitted to rectify any existing default under the mortgage. Upon expiry of the above period, the Court shall grant an order absolute for foreclosure to the applicant where the Mortgagor has not rectified such default;

- (b) order the sale of the mortgaged property in accordance with this Law;
- (c) refuse the order; or
- (d) make such other or further orders as may be required in the circumstances of the case.

(4) An order for foreclosure issued by the Court shall vest in the Mortgagee all the estate and interest of the Mortgagor in the mortgaged property, such interest being :

- (a) free from any right of a Mortgagee under a registered mortgage which has less priority than that of the applicant; and
- (b) free from any right and equity of redemption of the Mortgagor or any person claiming through or under the Mortgagor.

79. Where there has been a default, the Mortgagor may voluntarily surrender the mortgaged property by signing a deed in lieu of foreclosure in favor of the Mortgagee. By this instrument, the Mortgagor shall convey all interest in the mortgaged property to the Mortgagee in order to fully satisfy and discharge the loan that is in default and avoid foreclosure proceedings.

**PART IX
GENERAL AND MISCELLANEOUS PROVISIONS**

80. (1) Subject to the payment of all monies and the performance of all other conditions and obligations secured by a mortgage, and for the payment of any costs and expenses incurred by the Mortgagee in exercising any of his rights under the mortgage, the Mortgagee shall promptly take steps to release and discharge any Registered Interest from the register and any agreement or provision in the mortgage deed or otherwise which:

- (a) seeks to fetter the exercise of that right;
- (b) purports to deprive the Mortgagor of that right; or
- (c) stipulates for a collateral advantage which is unfair and unconscionable and inconsistent with the right to discharge.

shall be void.

81. (1) Upon the presentation for registration of a form or deed for the release and discharge of a mortgage signed by the Mortgagee and discharging wholly or in part the land or any portion of the land from the mortgage, the Registrar shall and upon payment of the prescribed fees, make an entry of the release upon the original and duplicate certificate of title or any other instrument constituting proprietary interest in the mortgaged property evidencing the time and date of the registration.

(2) Upon the entry being made under subsection (1) of this section, the land affected by the release shall cease to be subject to the mortgage to the extent stated in the release.

82. (1) No person shall give and no person shall accept any fee, gifts, kickback, Prohibition against graft understanding, oral or otherwise, in respect of any referral or a part of a mortgage settlement service involving the State or Federal Government of Nigeria related mortgage loan.
- (2) No person shall give and no person shall accept any portion, split or percentage of any charge made or received for the rendering of any mortgage settlement service in connection with a transaction involving a State or Federal Government of Nigeria related mortgage loan other than for services actually performed.
- (3) Nothing in this section shall be construed as prohibiting:
- (a) The payment of a fee:
- i. to all professionals for services rendered;
 - ii. by a mortgage institution to its duly appointed agent for services actually performed in the issuance of a policy of property insurance;
 - iii. by a mortgage institution to its duly appointed agents or brokers for services actually performed in the creation of a loan;
- (b) The payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.
- (c) Payments pursuant to brokerage and referral arrangements or agreements between real estate agents and brokers.
83. No mortgage deed shall contain a requirement imposing an obligation on a Mortgagor to purchase other financial products including insurance from the same mortgage lender or other lenders. The provision of this section shall not preclude a mortgage lender from marketing such financial products to potential Mortgagors. Prohibition against collateral contracts
84. 1) No mortgage deed may contain a payment schedule with regular periodic payments that cause or may cause the principal balance to increase. Negative amortisations
- 2) A loan is considered to have such a schedule if the Mortgagor is given the option to make regular periodic payments that cause the principal balance to increase, even if the borrower is also given the option to make regular periodic payments that does not cause the principal balance to increase.

3) This section shall not prohibit negative amortization as a result of a temporary forbearance sought by a Mortgagor.

85. (1) Subject to this section, a Mortgagee may make provision in the mortgage deed to give further advances or give credit to the Mortgagor on a current or continuing basis. Further Advances and Tacking
- (2) A further advance referred to in subsection (1) of this section shall not rank in priority to any subsequent mortgage unless:
- (a) the provision for further advances is specifically noted in the register in which the mortgage is registered; or
- (b) the subsequent Mortgagee has consented in writing to the priority of the further advance.
- (3) Except as provided for in this section, there is no right to tack.
- (4) Where a mortgage deed provides for the payment of a principal sum by way of installments, the payment of those installments shall not be taken to be a further advance and such payment shall rank in priority to all subsequent mortgages.
86. Every mortgage affecting a legal interest in land made after the commencement of this Law whether legal or equitable shall rank according to its date of registration. Priority of mortgages
87. (1) A Mortgagor of land while in possession shall as against every encumbrancer, have power to lease out the mortgaged property. Right of party in possession to lease the mortgaged property
- (2) A Mortgagee of land while in possession shall as against all prior encumbrances, if any, and as against the mortgagor have power to make from time to time any such lease as aforesaid.
- (3) Every person making a lease under this section may execute and constitute a Management Entity, against prior encumbrances have power and all assurances to do all things necessary or proper in that behalf.
- (4) Every such lease shall be made to take effect in possession not later than twelve (12) months after its date.
- (5) Every such lease shall reserve the best rent that can reasonably be obtained, with regard to the circumstances of the case, but without any fine being taken.
- (6) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty (30) days.

- (7) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.
- (8) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, or otherwise in writing by the parties to the mortgage transaction, and has effect subject to the terms of the mortgage deed or of any such writing and to the provisions contained in this Law.
- (9) The Mortgagor and Mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve to or confer on the Mortgagor or the Mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Law, and with all the like incidents, effects and consequence:

PROVIDED that, the powers so reserved or conferred shall not prejudicially affect the rights of any Mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that Mortgagee joins in or adopts the agreement.

- (10) Nothing in this Law shall be considered to enable a Mortgagor or Mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the Mortgagor, with the concurrence of all the encumbrancers, if this Law had not been passed:

Provided that, in the case of a mortgage of leasehold land, a lease granted under this section shall reserve a reversion of not less than one day.

- (11) The provisions of this section referring to a lease shall be construed to extend and apply as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.
- 12) The powers of leasing conferred by this section shall, after a Receiver of the income of the mortgaged property or any part of it has been appointed by a Mortgagee under his statutory power, and so long as the Receiver acts, be exercisable by such Mortgagee instead of the Mortgagor, with respect to any land affected by the relationship, in like manner as if such Mortgagee were in possession of the land, and the Mortgagee may, by writing, delegate any of such powers to the Receiver.

88. (1) The Mortgagor has the duty to insure, at his own expense and at full cost, the mortgaged property.

Insurance of Mortgaged
Property

- (2) Subject to the agreement of the parties, should the Mortgagor fail to insure within twenty [20] Business Days following the execution of the mortgage deed or any other time reasonably agreed between the parties, the Mortgagee shall have the power to insure and keep insured the mortgaged property against loss or damage or any event of an insurable nature; and the premiums paid for any insurance shall be charged on the mortgaged property in addition to the mortgage debt and with the same priority and interest at the same rate as the mortgage debt.
- (3) Where an event of claim takes place, the Mortgagee will have priority over the Mortgagor for reimbursement of claims from the sum of insurance compensation.
- (4) All proceeds received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Law, or any enactment replaced by this Law, or on an insurance for the maintenance of which the Mortgagor is liable under the mortgage deed, shall, if the Mortgagee so requires, be applied by the Mortgagor in making good the loss or damage in respect of which the money is received except in the case of insurance compensation received in respect of a mortgaged property subject to Scheme Title under Part VIII of this Law.
- 5) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a Mortgagee may require that all monies received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Law, or any enactment replaced by this Law, or on an insurance for the maintenance of which the Mortgagor is liable under the mortgage deed, be applied in or towards the discharge of the mortgage debt except in the case of insurance compensation received in respect of a mortgaged property subject to Scheme Title under Part VIII of this Law.

89. (1) Unless there is an express provision to the contrary in the mortgage deed: Consolidation and Marshaling
of Mortgages
- (a) where a Mortgagor has more than one mortgage from a single Mortgagee; or
 - (b) where the Mortgagee has lent money or money's worth to a single Mortgagor on two or more securities, the Mortgagor may discharge any or some of the mortgages or securities without having to redeem all the mortgages or securities.
- (2) Save as aforesaid, nothing in this section in reference to mortgages shall affect or operate to displace the marshaling right of a subsequent Mortgagee or any right of consolidation or renders inoperative any stipulation in relation to any mortgage made before or after the commencement of this Law, reserving a right to consolidate.
90. The Mortgagee may at any time transfer the mortgage and/or the beneficial interest in the cash flow therefrom with or without notice of the transfer to the Mortgagor. The Mortgagee will transfer to the transferee: Transfer of Mortgage
rights
- 1) the right to demand, sue for, recover and give receipts for the mortgage money or the unpaid part of it, and the interest then due, if any, and subsequently to become due on it;
 - 2) the benefit of all securities for the same and the benefit of and the right to sue on all covenants with the Mortgagee, and the right to exercise all powers of the Mortgagee; and
 - 3) all the estate and interest in the mortgaged property then vested in the Mortgagee subject to redemption or cesser but as to such estate and interest subject to the right of redemption then subsisting.
91. Any person or persons who, in violation of the provisions of this Law, transfers, confers, or extinguishes any right or title without consent or approvals, commits an offence and shall on conviction be liable to a fine of not less than N100,000 or a term of imprisonment of not less than one (1) year or both. Offences and Penalties
92. The Authority may, with the approval of the Governor, make Regulations for the purpose of implementing the provisions of this Law.
93. (1) The provisions of the Applicable Mortgage Laws with respect to mortgages shall be invalid to the extent of any inconsistencies with this Law. Savings and Repeals
- (2) Nothing in this Law shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed or agreement made, proceedings taken, instrument issued or thing done under the enactments of the Applicable Mortgage Laws hereby repealed

;but any such order, rule, regulation, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing if in force, and so far as it could have been made, given, taken, issued, or done under this Law shall have effect as if so made, given, taken, issued or done.

- (3) In this Section, Applicable Mortgage Laws hereby repealed includes any enactment repealed or replaced by the relevant applicable Mortgage Law.

MORTGAGE REGISTRY

SCHEDULE 1-FORM MR 01- Application to Mortgage Registrar for search

SECTION 22(1) (a)

1.	Local Government Area where the land is situate:.....	
2.	Title number:	
3.	Registered proprietor/Applicant for first registration SURNAME(S) OR COMPANY NAME:	
4.	Application and fee	
	Application	Fee paid (₦)
	Fee payment method	
	<input type="checkbox"/> cheque made payable to 'Mortgage Registry'	
	<input type="checkbox"/> direct debit, under an agreement with the Mortgage Registry	
5.	This application is sent to the Mortgage Registry by	
	Name:	
	Address:	
	Email address:	
	Reference:	
	Phone no:	Fax no:
6.	Property to be searched:	
	<input type="checkbox"/> - Search of whole	
	<input type="checkbox"/> - Search of part	
	(a) Where a Scheme Title Plan has been approved	
	(i) The plot number(s) is/are <input style="width: 150px;" type="text"/>	
	(ii) The date of approval of Scheme Title Plan is	
	<input style="width: 150px;" type="text"/>	
	OR	
	(b) The property is shown <input style="width: 150px;" type="text"/>	

on the attached plan

OR

(c) The property is shown as, or

on the title plan of

7. The name of the Applicant conducting the search:

8. Application and search from

I apply for a search of the individual register of a registered title to ascertain whether any adverse entry has been made in the register since

I apply for a search in relation to a pending application for first registration to ascertain whether any adverse entry has been made since the date of the pending first registration application.

9. Signature of Applicant:

Date:

MORTGAGE REGISTRY USE ONLY

Record of fees paid

Particulars of payments

Reference number

SCHEDULE 1

**FORM MR 02
Form of Statutory Mortgage**

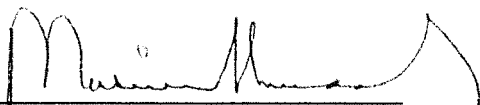
SECTION 31 (1) (d)

1. This Mortgage is duly executed in accordance with Section 29 of the Kaduna State Mortgages and Foreclosure Law (hereinafter referred to as 'the Mortgages Law'), and has the force and effect of Law, for the use of the Mortgagee and the Mortgagee's heirs, assigns and successors, with the Mortgage Covenants and upon the Statutory Conditions as defined in Sections 20 and 26 and all other relevant provisions of the Mortgages Law, to secure the payment of the money or the performance of any obligation or Statutory Conditions specified in the Mortgage Deed.
2. The Statutory Condition is understood by the Mortgagee and the Mortgagor to mean that, if the Mortgagor pays the Principal and interest secured by this Mortgage, performs the other obligations stipulated therein and fulfills the conditions of any prior Mortgage, pays all the taxes and assessments, maintains insurance against fire and other hazards, complies with all the provisions of the Mortgages Law, and does not commit or suffer waste, then this Mortgage shall be void.
3. The Mortgagor hereby releases to the Mortgagee all rights and interests in the real property known as, and situate at free from any encumbrances.

Executed this day of 20

Effective this day of 20

DATED AT KADUNA this 15th day of June 2017.



Malam Nasir Ahmad el-Rufa'i,
Governor, Kaduna State.

EXPLANATORY NOTE

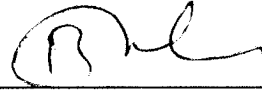
(This Note is not part of this Law and has no Legal effect)

The purpose of this Law is to establish an Authority to regulate Mortgage transactions, transfer of legal or equitable interests in land in Kaduna State.

This printed impression has been carefully compared with the Bill which has passed the Kaduna State House of Assembly and found to be true and correctly printed copy of the said Bill.



HON. AMINU ABDULLAHI SHAGALI
(Speaker)



BELLO ZUBAIRU IDRIS Esq.
(Clerk to the Legislature)