



ISSUES RELATING TO FINANCE

ARGENTINA

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- 1. What instruments are used to create a lien on real estate to secure an indebtedness (e.g., a mortgage or deed of trust)?**

A deed of mortgage is the instrument that secures a lien on real property in Argentina.

- 2. Describe national or local mortgage recording or other similar taxes payable on making a loan secured by real estate or perfecting a lien on real property.**

A deed of mortgage is the instrument that secures a lien on real property. Stamp tax may be applicable in most jurisdictions (provinces) other than the City of Buenos Aires, it averages 1-1,5% of the amount of the transaction. In the City of Buenos Aires in order to register the mortgage deed in the Real Property Register, the 0.2% of the amount of the mortgage shall be paid. In Argentina.

- 3. Describe manner in which a lien secured by real property is foreclosed.**

A lien may be foreclosed either by a judicial or a non-judicial foreclosure. Non-judicial. To begin this process, the borrower needs to be in default of payment for at least 60 days. The lender will then notify the default and request the borrower to pay any owed amount within 15 days as from the date of notification. If no payment is made within the specified period, the lender may submit the credit documentation before the relevant court and request that the property be inspected to verify if it is occupied, in which case, the lender may request the judge to order the eviction of any occupant. The judge will order notice of the complaint to the borrower of the complaint filed by the lender so the borrower may interpose within 5 days any available exception (i.e. payment). Judicial. No request of payment is required in this case, unless the agreement states otherwise. The lender shall file in court a complaint for lack of payment, and a judicial officer will serve the borrower with an auction notice and payment warning. Even though both proceedings are similar, in the judicial foreclosure the

borrower may interpose more defenses than in the non-judicial. In both types of foreclosure the lender may request the Real Property Registry a report on the property to verify the existence of any lien or encumbrance on the property by a third party. Once verified the conditions of the property, the lender requests the judge the appointment of an auctioneer to conduct the property sale in a public auction. At the public auction, the Lender may set off any amount owed with an offer to purchase the property. Once the sale is approved by the judge, the purchaser at the auction has to deposit the balance of the purchase price with the judge, who will then order registration of title in the name of the purchaser. Any difference between the debt and the sale price, once the Lender is repaid, and any applicable fees and taxes are paid, if any, will go to the Borrower.

4. Describe any significant costs of or impediments to foreclosing a lien on real property.

A court tax of 3% of the amount claimed, plus an additional 3% of the amount of such court tax in connection with enforcement proceedings brought before any court sitting in the City of Buenos Aires applies.

5. What is the customary time period for foreclosing a lien on real property?

Technically, the non-judicial notification may take between 20 and 25 days, while the judicial notification may take between 30 and 45 days. In both judicial and non-judicial, the judgment process may take between 60 and 90 days. If the decision is appealed, it could get extended up to 180 days, approximately. Finally the process of collecting on the defaulting loan in both types of foreclosure may take between 60 and 90 days. In practice, the whole proceeding may take approximately 3 years.

6. Are there national or other governmental permissions, approvals or licenses required for foreign banks or other foreign lenders to make real estate loans secured by real property? If so, please describe.

No. There are no restrictions on foreign banks or other lenders to make real estate loans secured by real property in Argentina.

7. What legal limits are imposed on the amount of interest which may be charged on a loan secured by real property?

Under Argentine laws there is no “bright line” or “safe harbour” as to what constitutes usury interest rates in loan agreements. However, some judicial decisions have provided guidelines as to maximum interest that lenders can charge. In such sense, Chamber C of the Commercial Court of Appeals sitting in the City of Buenos Aires has recently said that “the maximum admissible interest is twice the interest rate charged by the Banco de la Nación Argentina for its ordinary discount transactions”, while Chamber D of the same court has established such maximum in “two and a half times the [interest] rate charged by the Banco de la Nación Argentina for its 30-day discount transactions”. Currently, such interest rate is 1.55% per month. Also, certain precedents from other courts within Argentina that we have found set up the maximum interest rate at 24% per year.

8. Describe any laws that restrict the ability to make a borrower or guarantor personally liable for indebtedness secured by real property.

None.