



ISSUES RELATING TO FINANCE

BAHAMAS

McKinney, Bancroft & Hughes

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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)?**

Mortgages/charges or debentures are the instruments that secure a lien on real property in The Bahamas.

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

There is a stamp tax payable of 1% of the mortgage amount before recording may be made. Additionally recording fees amount to \$4.50 per page of the mortgage instrument.

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

A mortgagee cannot exercise the power of sale until-

- (1) notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or
- (2) some interest under the mortgage is in arrear and unpaid for two months after becoming due; or

(3) there has been a breach of some provision contained in the mortgage deed or under the Conveyancing Law and Property Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

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

The court, if it thinks fit, may condition the sale upon the deposit in court of a reasonable sum fixed by the court, to meet the expenses of sale and to secure performance of the terms.

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

If there is no prior contractual agreement between the parties legislation states that foreclosure may commence 3 months after default.

6. Are there [national] [state] [territorial] [provincial] or other local 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.

Where a non-Bahamian acquires any land or an interest in land by or reason of that property becoming vested in it by virtue of any order of a court or where a non-Bahamian goes into possession of property as a mortgagee, then it shall make application to the Investments Board to have the acquisition or going into possession registered with the Investments Board and the Secretary to the Investments Board upon receipt of the appropriate fee shall register that acquisition or going into possession and issue a certificate of registration to the applicant.

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

The rate of interest which may be charged by any person on any loan of money shall not directly or indirectly exceed twenty per centum per annum simple interest on loans of more than one hundred dollars, or thirty per centum per annum simple interest on loans of one hundred dollars or any less amount irrespective of the date fixed for repayment of the said loan. This restriction on interest rates is however limited to loans made in Bahamian currency and by private lenders which does not include Banks, Trust Companies or Insurance Companies.

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

Any contract, promissory note, bill of exchange, cheque, receipt or any other document entered into whereby a rate of interest higher than that authorized by the Rate of Interest Act purports to be payable either expressly or by implication in respect of any loan, shall be absolutely null and void, and no proceedings shall be entertained in any court either for the recovery of the loan or of any interest thereon. This does not apply to Banks, Trust Companies or Insurance Companies.