



ISSUES RELATING TO FINANCE

BARBADOS Clarke Gittens Farmer

CONTACT INFORMATION

Savitri St. John

Clarke Gittens Farmer
Parker House,
Willey Business Park,
St. Michael, BB14006, Barbados
1-246-436-6297
ssj@clarkes.com.bb
www.clarkes.com.bb

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

For land still under the common law system the following are used to create a lien on real estate to secure an indebtedness:

- (1) Deed of Charge by way of Legal Mortgage;
- (2) Equitable Mortgage or Memorandum of Deed Deposit;
- (3) Debenture;
- (4) Vendor's Lien raised in a Conveyance.
- (5) Charging Order

For land in respect of which title has been declared under the registered system the following are used to create a lien on real estate to secure an indebtedness:

- (1) Charge;
- (2) Caution.

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.**

For unregistered land there is a recording cost of US\$2 dollars for every printed page including the recording page placed on the document by the Land Registry.

For Registered Land the registration fee for any instrument effecting a dealing with the parcel is calculated on a sliding scale of fees using the Land Tax value of the property as a reference. The maximum fee payable under this scale is US\$150.00.

For both registered and unregistered land the following Stamp Duty is Payable:

- (1) Deed of Charge by way of Legal Mortgage, Debenture and Charge-
 - (a) where the sum secured does not exceed US\$250.00 the Stamp Duty payable is US\$2.50
 - (b) where the sum secured exceeds US\$250.00, the Stamp Duty payable is US\$1.50 for every US\$250.00 or part thereof of the sum secured.
- (2) Equitable Mortgage or Memorandum of Deed Deposit- the Stamp Duty payable is US\$0.50 for every US\$250.00 or part thereof of the sum secured.
- (3) Vendor's Lien- As the Vendor's Lien is usually contained in the Deed of Conveyance which transfers the property from the vendor to the purchaser there is no additional Stamp Duty payable in respect of the Vendor's Lien beyond the Stamp Duty payable on the Conveyance.

(Please note that for ease of reference the sums above have been quoted in US currency. However, all sums are payable in Barbados dollars and the exchange rate is approximately 1 US dollar = 2 Barbados dollars.)

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

In Barbados the remedy of foreclosure by judicial sale is no longer used to enforce a lien/charge over property. Under the Property Act, and under the provisions of most modern mortgages and debentures, mortgagees are granted a power of sale to sell the mortgaged property once default has been made in the repayment of the mortgage or interest thereon or if there is a breach of some provision contained in the mortgage deed or under the Act.

Before a mortgagee can exercise its power of sale the Act requires:

- (1) that default or breach must occur for a continuous period of one (1) month; and
- (2) that the mortgagee serve a notice in writing on the mortgagor giving the mortgagor an additional one (1) month to pay the money owed or perform or observe the provision.

However, it must be noted that these requirements can be and usually are altered by the provisions of the mortgage.

Where the property is occupied it is advisable that an application to the High Court for an order for possession of the property be made before the lender exercises its power of sale.



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

The costs incurred for mortgage enforcement are usually limited to Attorney's fees, the court costs associated with the application for possession and the transactional costs associated with the conveyance of the property. All such costs are borne by the borrower by deduction from the sale proceeds.

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

Where an order of the court is required to obtain vacant possession before the mortgagee can exercise his power of sale, the customary time period for obtaining the order is 3-6 months. However, this is subject to the vagaries of the court.

The time period for the sale of the property under the mortgagee's power of sale is dependent on how long it takes the mortgagee to find a purchaser and complete the sale.

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.

To carry on banking business in Barbados foreign lenders must be licensed under the Financial Institutions Act. Applications for a license are made to the Minister Responsible for Financial Institutions. A license is only issued to a foreign bank if it:

- (a) has a principal place of business in Barbados; and
- (b) names an authorized agent in Barbados; and
- (c) names an alternate person to act as agent in the absence of the agent or his/her inability of to act.

A single loan by a foreign lender to a borrower secured by real estate in Barbados will not be considered carrying on banking business and no license is required for such a transaction under the Financial Institutions Act.

Exchange Control permission is required for foreign lenders to make loans secured by real property in Barbados. The request for permission is usually made by letter to the Exchange Control Authority setting out the particulars of the loan. Foreign lenders will not easily get permission to make loans secured by real estate in Barbados. If they do get permission, they will have to show the foreign currency for the loan came into Barbados. Repatriation of this foreign currency may be subject to a capital appreciation formula even in an enforcement situation. In addition, a local borrower will also require permission from the Exchange Control Authority to repay the loan in a foreign currency.

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

There are no legal limits imposed on the amount of interest which may be charged on a loan secured by real property. However, in practice the Central Bank of Barbados is in the habit of



lowering its own rates on discounts, rediscounts, advances, loans and overdrafts to encourage commercial banks and lending institutions to do the same.

Commercial banks and other lending institutions generally lower or raise are in the habit of lower their rates to fall within the recommendations of the Central Bank.

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

There are no laws that restrict the ability to make a borrower or guarantor personally liable for indebtedness secured by real property.