



ISSUES RELATING TO FINANCE

COLOMBIA

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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)?**

Mortgage is the usual instrument to create a lien on real estate whereby creditors secure indebtedness.

- 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.**

The cost of executing a mortgage involves notary fees and registration tax. Notary fees range between 0.28% to 0.3% of the value of the indebtedness being secured by the mortgage. Registration tax ranges between 0.5% and 1.5% percentage of the value of the indebtedness secured by the mortgage, depending on the municipality where the mortgage is registered. The rules of the Civil Code also provide for so-called “open mortgages”, which secure any present and future obligations that a debtor owes to a creditor, up to a specified amount. On open-ended mortgages, the rate is levied on the amount disbursed under the first loan agreement.

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

Foreclosure with a mortgage as collateral is a judicial mechanisms governed by the Code of Civil Procedure. This proceeding seeks to enforce an obligation acquired by the debtor in favour of the plaintiff/creditor, which existence is not disputed. It is created for the event in which the debtor does not voluntarily comply with the obligation. Pursuant to Colombian law, in a foreclosure with a mortgage as collateral, the plaintiff/creditor can enforce his rights against the specific real property that secured the indebtedness. The manner in which a lien secured by real property is foreclosed is to

commence a collective proceeding with a mortgage as collateral (proceso ejecutivo hipotecario) in order to sell the mortgaged assets in a public auction to obtain payment of the secured credit with the proceeds resulting from the sale. If there is not a successful bidder in the public auction, the asset is given to the mortgagee, in order to settle the indebtedness.

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

Usually, the most significant cost to foreclosing a lien on real property is represented by attorney's fees. The most significant impediment to foreclosing a lien on real property is the time period to obtain the foreclosure.

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

Although collection proceedings are supposed to be summary, they may be subject to substantial delays. In certain cases, depending on the nature of the defenses raised by the debtor, it may take between one to three years to obtain a judgment. If the judgment were subject to appeal, this may delay matters for another year in order for the appeal to be resolved. The liquidation of the credit and the public auction for sale of the asset would take between 3 to 6 months.

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.

Even though, there are no permissions, approvals or licenses required for foreign banks or other foreign lenders to make real estate loans secured by real property, it is important to take into account that according to Colombian foreign exchange regulations, foreign loans to Colombian residents can only be granted by foreign financial institutions duly registered with the Colombian Central Bank. Pursuant to Article 26 of Regulation No. 8 of the Colombian Central Bank, the Colombian debtor would have to make a deposit with the Colombian Central Bank for an amount equal to forty percent (40%) of the disbursed amount. The deposit can be made in USD or in COP and will be held by the Colombian Central Bank in a non-interest bearing account for a six month period. Notwithstanding the above, the borrower may decide to pay a non-refundable discount, instead of making the mentioned 40% deposit. In this case the debtor would have to pay a 5,72% of the 40% deposit. This amount would be equivalent to 2,29% of the disbursed amount. (Additionally, such payment may be deductible for income tax purposes.) Provided the previous requirements are met, foreign loans must be registered with the Colombian Central Bank by means of Form No. 6. Once the loan has been registered, the borrower would be allowed to receive the funds and make the payments abroad thereof (i.e. repayment of loan). This repayment of the loan must be made through the Colombian foreign exchange market, and any transfer of capital and interests would have to be registered. Under current foreign exchange regulations, Colombian residents are entitled to guarantee obligations in a foreign currency provided that the obligation is subject to a foreign exchange transaction (i.e. foreign loans). These guarantees do not have to be registered before the Central Bank. As long as the guaranty is in relation with the foreign exchange operation, the foreign loan, it is possible to guarantee a foreign loan with a mortgage.

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

Colombian Central Bank sets, from time to time, the maximum rate of interest that can be charged on any loan, including loans secured by real property. Pursuant to Colombian law the legal limit on the amount of default interest is 1.5 times the bank interest rate certified by the Financial

Superintendence. When interest is charged above the permitted limits, the creditors lose all the interest charged in excess.

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

There is no law that restricts the ability to make a borrower or guarantor personally liable for indebtedness secured by real property.