



## ISSUES RELATING TO FINANCE

### FINLAND

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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)?**

Under Finnish law, a security interest over a real property is created by way of registering a mortgage and pledging the same as security for a debt. A mortgage may be registered on (i) a registered unit of freehold property, (ii) a fixed share of a unit, (iii) a parcel of land, (iv) transferable leaseholds and (v) certain usufructs. The creation of the security interest takes place in two stages. First, the owner of the real property requests the District Court of the district where the property is located to register mortgage(s) on such property. As evidence of this mortgage the District Court issues real estate mortgage notes to the owner in the number and amount requested by the applicant. These real estate mortgage notes alone, however, do not evidence an actual debt. A debt is generally evidenced by a loan agreement and the security interest is created by the owner pledging the real estate mortgage notes as security for such debt. The security interest is perfected by the delivery of the mortgage notes into the exclusive physical possession of the pledgee (or a third party sufficiently remote from the pledgor). Additionally, it is required that such possession is retained by the pledgee throughout the security period. Real properties in Finland are often owned indirectly through an ownership of shares in a limited liability company, the purpose of which is to own (or lease) and manage a property and the building erected thereon. The shares of such real estate company entitle the owners to possess specific premises in the building. Without restricting the right of the company to create mortgage and pledge the real property it owns, a security interest may also be created by the owner pledging the shares of the real estate company.

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.**

The making of a loan, creation of a mortgage and perfection of the security interest do not entail any stamp duty, capital duty or other similar tax consequences. There is, however, a minor administrative fee payable upon the registration of the mortgage.

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

A creditor cannot generally take the possession of the property or sell it privately when enforcing the security. The enforcement of a real estate mortgage always requires a judgment (or arbitral award), and the enforcement is carried out by a district bailiff. The need for an expedient enforcement of a security is recognized by the Code of Judicial Procedure which allows for a summary procedure for undisputed claims. The procedure also allows the District Court to immediately declare a mortgaged property foreclosed. After receiving a judgment, the creditor has to apply for the enforcement of the judgment, which typically means the execution of the borrower's real property carried out by the district bailiff, who also has discretion on which assets to foreclose. During the enforcement proceedings, the priority of the mortgages and other possible third party rights attaching to the real property will be investigated and taken into account. The property will be sold to the highest bidder unless the bailiff deems that the highest bid is significantly lower than the market value of the property. If the claim of the creditor (whether secured or unsecured) who initiated the public auction would not be paid in full by accepting the highest bid, the creditor has the right to decide whether that bid will be accepted or not. A private sale of a mortgaged property is also possible under Finnish law, provided however that the owner of the real property and all the mortgage holders give their consent to such sale.

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

There are minor official costs relating to the enforcement of the mortgage. In a public auction the property is, unless otherwise notified, sold unencumbered. The discharge of a real estate mortgage must be recorded in a public register maintained by the relevant district court. The registration fee for this is EUR 25 per property. The cost of the public auction process varies between EUR 500 and 1200 in total. All costs relating to the enforcement proceedings, including e.g. the costs for the public auction, are first paid out of the proceeds received from the sale of the real property. If the auction fails and the real property is not sold, the creditor applying for the auction will be in charge of the related costs.

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

The duration of the enforcement proceedings varies significantly depending on whether the debt-or contests the claim and accordingly, whether full scale court proceedings are required. In its simplest form, the enforcement proceedings do not necessarily take more than 1-2 months. Enforcement involving full scale court proceedings for the purpose of establishing the existence of a secured claim and the validity and enforceability of the mortgage in turn, may take up to 1-2 years.

**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.**

Generally, lending and obtaining a security interest over a real property do not require a permission, approval by any local administration or governmental body or a license (other than business license applicable to banks generally).

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

Generally, under Finnish law the parties are free to agree on the terms and conditions of a loan agreement including the level of the interest rate. However, a contractual provision may pursuant to the Finnish Contracts Act in some situations be adjusted or set aside if the term is deemed unreasonable or if it would lead to an unreasonable outcome. There are no clearly defined limits on which the level of interest rate is considered unreasonable, and therefore this would have to be assessed on a case by case basis taking into account, inter alia, the collateral securing the loan. Additionally, adverse tax consequences may be imposed pursuant to Finnish tax law if the interest rate is not set at arm's length level. Further, the Finnish Penal Code imposes a penalty on anyone exploiting the distressed position of another to obtain a disproportionate compensation.

**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 specific legislation to this effect, and the borrower is in practice always personally liable for its own debt. The circumstances in which a guarantor becomes liable for a third party obligation may also be fairly freely agreed upon unless the guarantor is a private person. The Finnish Companies Act restricts the granting of security (including guarantees) by limited liability companies. First, the financial assistance provisions prohibit the granting of a loan or security for the purpose of acquiring shares in the company itself or in its parent. Further, the granting of a security must be within the purpose of the company, and the company must benefit from granting such security (overall group benefit is not sufficient). If the security is granted in violation of these provisions and the beneficiary of such security was (or should have been) aware of such illegality, the security must be returned.