



ISSUES RELATING TO FINANCE

GREECE

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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)?**

The instruments used to create a lien on real estate are mortgages and prenotations of mortgage. Mortgages are granted by virtue of a title which subsequently must be registered with the competent Land Registry or Cadastre. Such title can be acquired by virtue of: (i) a provision of law, e.g. in favour of the Greek State which can obtain a mortgage over real estate property of its tax debtors; (ii) final court decisions that adjudicate money claims; and (iii) private agreements executed which must be vested the form of a Notarial Deed. It must be noted that mortgages are registered over a specific property for a certain amount of money; both features must be indicated in detail in at the Land Registry/Cadastre, since mortgages are considered as validly existing from the moment they are lawfully registered with the Land Registry/Cadastre. A prenotation of mortgage is a sort of provisional mortgage which can be turned into a full stricto sensu mortgage when the claim of the holder of the prenotation right is recognized finally by virtue of a court decision. Prenotations are granted only by virtue of a court decision and constitute the most usual means to secure a bank loan. The prenotations of mortgage provide the beneficiary only with the preferential right to acquire a full mortgage thereafter. To this end, their special nature as prenotations, as opposed to full mortgages, must be specifically stated in the registration act. The main benefit of the prenotation is that it may be turned into a full mortgage only if and when the debtor of the secured claim defaults on his obligations. In this case the holder of the prenotation right will seek the judicial recognition of his claim (something that he would be obliged to do even if he had registered a full mortgage) and once this is finally recognized, he will register a full mortgage the order of priority (ranking) of which will date back to the time of registration of the prenotation of

mortgage.

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 mortgage/prenotation of mortgage registration fees with the Land Registry and the Cadastre amount to approximately 0.8% and 0.9% respectively on the amount of the mortgage/prenotation of mortgage. In case a mortgage is registered by virtue of a Notarial Deed, the following additional expenses apply: (a) legal fees, which vary from a few hundred to many thousand Euros considerably depending on the amount of legal work required; (b) notarial fees amounting to approximately Euro 200 . Also, an amount of 1.2% and 1.3% of the amount of the mortgage is payable to the Notaries Association and to the Jurists Fund respectively. The legal and judicial fees for the issuance of a Court decision, by virtue of which a prenotation of mortgage securing a loan is placed upon an asset, amount to approximately Euro 1,000 depending on the amount of time and effort expended. Subject to certain exemptions, mortgage is in principle subject to stamp tax at the rate of 3,6%. As a general rule, in case the principle loan agreement secured by mortgage is exempt (e.g. in case of Bank loans) or has already been subject to stamp tax at the rate of 3,6%, no further stamp tax liability exists. In the event the mortgage is agreed in the loan agreement and no exemption from stamp tax is applicable, then stamp tax is imposed at the rate of 3,6% calculated on the amount of the loan. In case a mortgage is placed by means of a separate agreement and provided that the loan agreement is either exempt or has already been subject to stamp tax at the rate of 3,6%, then no further stamp tax liability exists. In case however the loan agreement is subject to stamp tax at the rate of 2,4%, which has been paid to the State, the separate agreement shall be subject to stamp tax at the rate of 1,2%, which is calculated on the amount of the loan. On the other hand a prenotation of mortgage is not subject to stamp tax. Stamp tax is only due at the time the prenotation is turned into a mortgage.

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

At the time the claim becomes mature and outstanding namely once the creditor has obtained a final court judgment adjudicating the claim which is secured by the mortgage, the creditor may proceed to the compulsory enforcement of such judgment by proceeding to a seizure of the real estate burdened with the mortgage and subsequent auctioning. The proceeds will serve for the satisfaction of the creditor. The prenotations of mortgage provide the beneficiary only with the preferential right to acquire a full mortgage thereafter. Thus, in case the beneficiary's claim is finalised by virtue of a court decision, the prenotation must be turned into a full mortgage, whose date of effect is considered to be the day of the initial registration, thus having retroactive effect. Then the procedure described above applies.

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

It should be noted that the most significant issue when opting to enforce a lien, is to assess in advance whether there are chances to recover the claim since under Greek law it is permissible to register multiple mortgages/prenotations of mortgage on a single asset. Note, that the general rule is that the beneficiary who has the earliest (by way of registration mortgage/prenotation of mortgage) is satisfied first by the proceeds of the auction. The remaining beneficiaries shall be satisfied by way of order of registration if there are any remaining proceeds. However it also be noted that there are certain categories of claims (claims of the Greek State, claims of the Social Security Funds, claims of workers etc) that are ranked first in terms of satisfaction by the proceeds of the sale. Conclusively, the enforcement procedure may incur costs which may range from a few hundreds of Euro to many thousands and it could lead to lengthy litigation if the debtor files oppositions against the enforcement procedure.

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

There is no customary time for foreclosing a lien on real property. Foreclosing of a lien may take place only after the secured debt becomes outstanding and is adjudicated by virtue of a final court judgment.

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.

Any natural or legal person either Greek or foreign may be the beneficiary of a lien. However, there are certain restrictions on foreign legal entities against the acquisition of real rights (including mortgages/prenotations of mortgage) in case the burdened asset is situated on r areas which are characterized by law, as “border areas” of Greece. In such areas, as regards legal entities established within the EU such prohibition may be waived by virtue of a decision of a Special Regional Committee, following the filing of a relevant application. Regarding legal entities established outside the EU such prohibition may be waived by virtue of a decision of the Minister of National Defence, following the filing of a relevant application.

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

The interest rates imposed on loans do not depend on the nature of the security provided. The level of interest rates is freely determined by the credit institutions and agreed upon with the debtor. However, it must be noted that in case such interest rates are deemed by a court of law to be exceedingly high and thus abusive, they may be declared as null and void.

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 such restriction. Security over real property is in addition to the personal liability of the debtor. The creditor has the right, not the obligation, to enforce the lien, in the sense that if there are other means available for easier satisfaction of his/her claim e.g. confiscation of bank accounts, the creditor may opt not to enforce the real estate lien.

