



ISSUES RELATING TO FINANCE

POLAND Wardynski & Partners

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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)?**

All that is available is a mortgage that is registered in the land and mortgage register that is maintained by a relevant court. Note that there is no institution of a lien on real estate in Poland. The creditor who has a mortgage over the real estate cannot take possession of the encumbered property, but can enforce a debt from the sale of proceeds of the real estate.

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.**

A mortgage is taxed by a civil law transaction tax of 0.1% of the value of the existing debt, or by PLN 19 for a ceiling mortgage that secures future debt. A mortgagor must pay the tax within 14 days of the date when a statement to establish mortgage is made, unless the mortgage is in a notarial deed, when a notary collects and pays it. A mortgagor paying the tax must also file a tax return, for the tax.

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

The general rule is that foreclosure is by order of a court (Polish law also provides other form of debt affirmation, e.g., voluntary submission to debt recovery enforcement in a notarial deed, or a bank enforcement order issued by a Polish bank in accordance with Polish banking law). A creditor must apply to court for an enforcement clause to be added to a final court order, notarial deed, or bank enforcement order. The creditor must then provide the

enforcement title to a court-order enforcement officer, indicate the real property belonging to the debtor, or mortgaged to the creditor, and demand that foreclosure commence. The court-order enforcement officer gives the debtor notice to pay the debt within 14 days and at the same time registers the notice in the land and mortgage register maintained for the indicated real estate. From the date of filing the notice, the property is deemed to have been seized by the officer. Transfer of title of a mortgaged property after the seizure does not hinder foreclosure proceedings, which can continue. After expiry of the 14 days, the officer prepares, at the request of the creditor, a description of the real estate, and appoints a valuer. That allows the property to be sold by public auction. A mortgagee is paid from the proceeds of sale of the real estate before other creditors, except for costs of enforcement, alimony, employee salaries – to a fixed amount, or compensation for diseases, incapacity to work, disability or death. Payment to mortgagees is under the priority of registration of mortgages, unless the mortgagees agree otherwise.

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

The court fee on court proceedings to affirm the debt by a court order is 5% of the value of the debt, but not more than PLN 100,000, and is usually included in the amount recovered by sale, together with other costs incurred by the court-order enforcement officer. The court officer collects the fees due to the officer from the debtor, but the creditor must pay for valuation of the real estate.

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

It depends on the complexity of a matter, however, court proceedings to affirm the debt by a court order and enforcement proceedings usually take at least a few months.

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.

No.

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

Legislation prevents an annual charge that is more than four-times the Lombard rate published by National Bank of Poland. The current Lombard rate is 7.5%.

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 restricting the borrower's, or guarantor's, personal liability. If, however, a borrower sells mortgaged property, such real estate can still be subject to enforcement, but the purchaser is not personally liable for the debt.