



## ISSUES RELATING TO FINANCE

### PORTUGAL

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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)?**

In accordance with our Civil Code, when the object of the security is an immovable asset (a property), security is granted in the form of a mortgage. The voluntary mortgage upon real estate requires a notarial deed and must be registered in the Land Registry Office. The effects of the mortgage depend on its registration. Such registration is constitutive, i.e., without it the security is not valid.

The mortgage does not prevent the debtor and owner of the property from selling or charging such asset, as the usual effect of the mortgage registration is its validity against subsequent purchasers of the asset from the owner. Nevertheless, it is possible to agree that the mortgage credit is due the moment the property is sold or charged. The priority of registered mortgages ranks according to the date of registration and, if registered on the same day, they rank equally. The mortgagee does not have the right to take possession of the property in the event of default in payment of the secured obligation, but only the right to cause the judicial sale of the property and be paid with the proceeds of such sale. Another security foreseen in the Portuguese Civil Code is the assignment of rentals (“consignação de rendimentos”) which correspond to the assignment of all credits arising from the property. This security cannot exceed 15 years. The assignment of rentals shall be executed by notarial deed and must be registered in the Land Registry Office. Portugal does not favor fiduciary ownership. Trusts do not exist, except in the context of the legislation of Free Trade Zone of Madeira.

**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.**

In Portugal there are three different kinds of expenses related to making a loan secured by real estate:

- (i) Notary fees: fees to the notary for the execution of the mortgage deed amount to €137;
- (ii) Registry fee: the registration of the mortgage at the Land Registry has a fixed fee of €250;
- (iii) Stamp duty: - for the deed: €25;  
- for the loan agreement: stamp duty is due at a rate of 0,04%, 0,05% or 0,06% over the loaned amount, depending on the loan being granted for one year one and to five years or more than five years, respectively;  
- securities – stamp duty is charged on the issuance of any security (unless ancillary to a contract already subject to stamp duty – i.e. so long as they are granted at the same time as the loan and secure the amount of the loan), 0,04% per month or 0,5% or 0,6% on the amount involved, depending on whether the term for prepayment is less than 1 year, less than 5 years and 5 or more years respectively.

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

In relation to mortgages, the normal procedure is the enforcement of the mortgage by means of attachment, i.e. the judicial apprehension of the asset given as guarantee of the obligation. Such procedure deprives the debtor of the right of use of asset. The judicial apprehension procedure is made by electronic communication to the competent Registry Office, this procedure being equivalent to a formal presentation to register, being the property delivered to a custodian, normally an enforcement agent. The attachment confers the creditor the right to be paid with the product of the sale of such assets, with preference over other creditors, provided that there is no prior security in rem over the attached assets.

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

Like mentioned before, the attachment of the assets object of the mortgage confers the creditor the right to be paid with the product of the respective sale with preference over other creditors. However, there are two exceptions to this rule: the mortgagee will not be paid with preference to: (i) another creditor secured by prior registered mortgage over the same real property; and (ii) another creditor with specific statutory right of preference on the same real property.

The costs depend on the type of enforcement acts to be performed which are usually performed by the enforcement solicitor.

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

In the absence of statutory rules establishing terms, the time period for foreclosing a lien on real property depends on several factors, like the complexity of the procedure or the existence of other creditors of the same debtor. But we may say that such procedure does not take less than 1 year to 2 years.

The mortgage may lapse:

- i) if the secured credit is extinguished;

- ii) by prescription, on behalf of a third purchaser of the mortgaged real estate, elapsed twenty years over the acquisition registry and five years over the repayment date of the mortgage;
- iii) by perishing of the object of mortgage;
- iv) if the creditor waives the security.

**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.**

There are no kind of national or local governmental permissions, approvals or licenses required for foreign banks or other foreign lenders to make real estate loans secured by real property.

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

According to article 693<sup>o</sup> of the Civil Code, a mortgage is limited in the amount it may secure. In fact, the mortgage may secure the principal amount of the credit, general expenses (for a fixed amount) and three years of interest. It is considered usury the loan agreement in which annual interest that exceeds the legal interests, accrued of 3% or 5%, depending on whether real guarantee is agreed or not. It is also considered as usury the penalty clause that establishes as due indemnity for the loan return failure, in relation to the period of delay, more than the correspondent to 7% or 9% above the legal interests, depending on whether a real guarantee is agreed or not. There are no legal limits to the amount of interest that may be charged on loans made by banks or other financial institutions, secured by real property or by any other mean. Interests charged on loans made by other entities, when secured by real property, have the current limit of 9% rate.

**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 legal rules that restrict the ability to make the borrower or guarantor personally liable for indebtedness secured by real property.