



ISSUES RELATING TO FINANCE

SOUTH AFRICA Bowman Gilfillan

CONTACT INFORMATION:

Bobby Bertrand

Bowman Gilfillan

P.O. Box 248 Cape Town 8000, South Africa

7214807948

b.bertrand@bowman.co.za

www.bowman.co.za

- 1. What instruments are used to create a lien on real estate to secure an indebtedness (e.g., a mortgage or deed of trust)?**

A mortgage bond has to be registered against the real estate in the deeds office to create a lien to secure an indebtedness in preference to third parties. That real estate may not be transferred to anyone else without the consent of the bondholder who normally only consents if repaid in full or is given other security. On liquidation or insolvency of the real estate owner, the holder of the mortgage bond ranks prior to most other creditors as regards the proceeds of the sale of the mortgaged real estate.

- 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.**

There are no taxes payable on making a loan, registering a mortgage bond or perfecting a lien in South Africa when the bond is registered. There is a small registration charge levied by the deeds office depending on the amount of the bond.

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

An application has to be made to a court to judicially attach real property and to declare it to be executable. The sheriff of the court will formally attach the real property which may then be sold by judicial auction.

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

The costs of the court application can be recovered from the debtor or from the proceeds of the sale of the real property in execution.

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

Usually formal foreclosure proceedings do not begin before the repayments are at least three months in arrears but warning notices are normally sent to the borrower as soon as they are in arrears. A court order is required to judicially attach real property and declare it executable. If the foreclosure procedure is uncontested, the judicial auction could be held within three months of commencing the procedure.

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.

Foreign banks wanting to open branches in South Africa have to obtain approval from the Registrar of Banks. Once off transactions must be approved by Exchange Control Authorities if the money loaned comes into the country.

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

The National Credit Act No.34 of 2005 imposes limits on what individuals may be charged but loans to companies are exempt from the interest limits imposed in terms of the act.

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

Provisions of the National Credit Act restrict the ability to enforce liability of a natural person as borrower or guarantor for indebtedness secured by their own real property. These provisions have to be complied with when making the loan and when enforcing repayment.