

ACT

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THE HOME MORTGAGE FINANCE ACT, 2009

ARRANGEMENT OF SECTIONS

Section No.

PART I—PRELIMINARY

1. Interpretation.

PART II—GENERAL PROVISIONS

2. Scope of application .
3. Application of Act.
4. Application of the Conveyancing and Law of Property Act, 1881.

PART III—EFFECT OF A MORTGAGE

5. Security for loan.
6. Mortgage evidenced in writing.
7. Disclosure requirements.
8. Stamping and registration.
9. Default in payment.
10. Remedies of Mortgagees on default.
11. Appointment of Receiver upon default.
12. Mortgagee's Right to Possession.
13. Sale of Mortgaged Property upon default.
14. Price of property not to be less than 85% of market value.
15. Insurance.
16. Rates.
17. Mortgagor's right to transfer restricted.
18. Mortgagor's right to create further charges restricted.

PART IV—MISCELLANEOUS

19. Penalty for using loan for unauthorized purpose.
20. Offences by bodies of persons.
21. Action to be brought by way of originating notice of motions.
22. Rules.

Schedules

SIGNED this 4th day of June, 2009

DR. ERNEST BAI KOROMA,
President.



No. 4



Sierra Leone

2009

THE HOME MORTGAGE FINANCE ACT, 2009

Short title.

Being an Act to regulate home mortgage financing and institutions, which carry on home mortgage financing and to provide for other related matters.

[

] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Interpretation. 1. In this Act, unless the context otherwise requires –

“Annual Percentage Rate (APR)” means the total cost of credit that the borrower pays, expressed as a simple annual percentage;

“Banking Institution” or “Bank” means a financial institution licensed by the Bank of Sierra Leone under the Banking Act, 2000 to carry on the business of banking;

Act No. 11
of 2000.

“Borrower” means a person who has taken a loan under this Act and includes any person from time to time deriving title through the original Borrower;

“Certified Valuer” means a member in good standing of the Sierra Leone Institution of Engineers;

“default” means failure to perform or breach of such terms, conditions, covenants or obligation in the mortgage Agreement;

“Demand Note” means a notice to the Mortgagor demanding arrears due;

“dwelling house” means a building that is used mainly for residential purposes;

“Good Faith Estimate” means a good faith estimate of all anticipated costs that will be borne by the Mortgagor in a mortgage transaction;

“loan” includes any credit or other financing granted by a Banking Institution or Non-Banking Financial Institution under this Act;

“mortgage” means an encumbrance on the property charged, and does not, except as provided by this Act, operate so as to change the ownership, right to possession or any other interest, whether present or future in the property charged;

“Mortgage Agreement” means an agreement in writing between a Mortgagor and a Mortgagee granting the Mortgagee a charge over the mortgaged property as security for the loan and setting forth the terms and condition of the loan;

“Mortgagor” means a person who in consideration for a loan granted to him or to a third party or for the performance of an obligation secures the repayment of the loan or the performance of the obligation under this Act with an immovable property and includes any person from time to time deriving title through the original Mortgagor or entitled to redeem a mortgage according to his interest in the mortgaged property;

“Mortgagee” or “Lender” means an institution that grants loans for the purposes specified in section 2 of this Act and includes any person from time to time deriving title through the original Mortgagee;

(Act No. 7
of 2001)

“Non-Banking Financial Institution” means a financial institution, licensed by the Bank of Sierra Leone under the Other Financial Services Act, 2001;

“purchaser” means a purchaser in good faith for valuable consideration and includes a lessee or Mortgagee who acquires an interest for valuable consideration;

“reasonable force” means only that minimum amount of force necessary to evict the Mortgagor or any other person occupying the mortgaged property or force that is reasonable and without undue or excessive violence;

“unauthorized purpose” means any purpose other than the purpose stated in section 2.

PART II – GENERAL PROVISIONS

Scope of application.

2. (1) This Act applies to all Banking Institutions and Non-Banking Financial Institutions engaged in the business of–

- (a) providing mortgage financing for the construction and purchase of dwelling houses by individuals and institutions including the financing of the completion of uncompleted houses and extensions and renovations or improvements to dwelling houses for ownership, sale or rental;
- (b) financing the construction of dwelling houses by organizations engaged in the business of building dwelling houses for sale or rental as well as for the financing of fixtures and chattels relating to dwelling houses; or
- (c) providing loans, advances or bonds and other guarantees to individuals for a specified purpose agreed between the Borrower and the Lender provided the repayment of the loans, advances or bonds and other guarantees is secured by a legal mortgage.

Application of Act .

3. (1) Except where otherwise provided, this Act shall apply only to home finance mortgages created after the commencement of this Act.

(2) Nothing contained in this Act shall affect the validity, rights or obligations of parties to any home mortgage finance created before the commencement of this Act.

Application of Conveyancing, etc. Act.

4. (1) This Act shall be in addition to the Conveyancing and Law of Property Act 1881 and shall not, except as otherwise provided in this Act, derogate from the provisions of the Conveyancing and Law of Property Act 1881.

(2) Where there is a conflict or inconsistency between the Conveyancing and Law of Property Act 1881 and this Act, the provisions of this Act shall prevail in so far as the particular mortgage falls within the scope of this Act.

PART III – EFFECT OF A MORTGAGE

5. (1) Where a financial institution grants a loan under this Act security for the loan shall include a mortgage over the property in respect of which the loan is granted; and Security for loan.

(2) Unless otherwise agreed by the Mortgagee or the Lender, the title deeds, documents of title or mortgage deeds relating to the property, duly stamped and registered shall be deposited with the financial institution unless the financial institution in its absolute discretion decides otherwise or demands another security in place of the title documents.

6. (1) A mortgage under this Act shall not be enforceable unless it is evidenced in writing and provides for the– Mortgage evidenced in writing.

- (a) name and address of each Mortgagor and Mortgagee;
- (b) full description of mortgaged property;
- (c) names of persons whose consent is required if any;
- (d) date of creation of Mortgagor;
- (e) nature of Mortgagor’s interest in the mortgaged property;
- (f) the extent to which the Mortgagor’s interest is subject to the mortgage;
- (g) the nature of the charge created; in case of a floating charge the nature of the restriction on the power of the Mortgagor’s right to grant further charges ranking in priority or *pari passu* with the charge thereby created;

- (h) consideration stating the exact amount in words and figures unless the agreement provides for further advances;
- (i) acknowledgement of receipt of consideration by Mortgagor;
- (j) rights of redemption;
- (k) insurance of property;
- (l) interest on principal amount;
- (m) date on which payment is due;
- (n) terms and conditions of renewal;
- (o) covenants and conditions;
- (p) events of default;
- (q) signatures of parties; and
- (r) signatures of witnesses.

(2) A mortgage agreement shall be sufficient and shall be enforceable with regard to form and expression, if it is in the form contained in the First Schedule or in similar form or using expressions to a similar effect.

Disclosure requirements.

7. (1) A Mortgagee under this Act shall, at least fourteen days before granting a loan to a Mortgagor, provide to the prospective Borrower in writing—

- (a) the estimated Annual Percentage Rate (APR); and
- (b) a good faith estimate of all the charges, fees and costs of the mortgage transaction.

(2) The disclosures required under subsection (1), shall be in the form provided in the Second Schedule and shall be delivered to, and acknowledged in writing by the prospective Borrower.

(3) The Mortgagee shall allow a minimum period of fourteen days from the date of offer of the loan to the day when the mortgage agreement is executed in order to enable a prospective Borrower to seek legal and financial advice on all the documents relating to the loan.

(4) Any Mortgagee who makes inaccurate disclosures under subsection (1) or fails to comply with the provisions of this section shall be liable to the Mortgagor for the total of all of the following damages—

- (a) any actual damages a Mortgagor or Borrower sustained as a result of the violation; and
- (b) court costs and legal fees.

(5) Without prejudice to subsection (4), a Mortgagee who fails to comply with the provisions of this section shall be liable to a fine not less than five million Leones.

(6) A Mortgagee shall not be liable under subsection (4) and (5), if upon discovery of an error made in a disclosure required under subsection (1) he notifies the Mortgagor of the error and makes the necessary adjustments to the Mortgagor's account within sixty days of discovery, so that the Mortgagor or Borrower pays no more than the lesser of the finance charge or the APR actually disclosed.

(7) The Bank of Sierra Leone shall issue such notices as it considers necessary for the purpose of implementing the provisions of this section including guidelines relating to the determination of accuracy tolerance margins for the purposes of subsections (4) and (5).

Stamping and
registration.
Cap 274.
Cap256.

8. Without prejudice to the provisions of section 14 of the Stamp Duty Act, and section 24 of the Registration of Instruments Act, a mortgage created under this Act shall not be void or avoided by reason that it has not been registered or stamped and shall be valid as between the parties to the mortgage:

Cap 274.
Cap256.

Provided any interest in the mortgaged property acquired by a third party for valuable consideration and acting in good faith shall not be valid unless that third party registers his interest or the instrument creating the interest under the Stamp Duty Act and the Registration of Instruments Act.

Default in
payment.

9. (1) Where the Mortgagor fails to make an installment payment within fourteen days after the due date for such payment, the Mortgagee shall notify the Mortgagor in writing of this fact and demand urgent steps to be taken to remedy such default by the Mortgagor.

(2) If no payment is made and the immediately following month's installment also falls into arrears, the Mortgagee shall send to the Mortgagor a Demand Note for the immediate payment of the total amount that has fallen into arrears.

(3) The notice required under subsection (1), and the Demand Note required under subsection (2) shall be delivered either—

- (a) by hand and a receipt acknowledged in writing by the Mortgagor; or
- (b) by leaving it for the Mortgagor with any person apparently over the age of eighteen years at such address and receipt acknowledged in writing by that person; or

- (c) by pasting the notice on a reasonably noticeable part of the mortgaged property; or
- (d) be sent by registered mail or by courier to the address provided by the Mortgagor.

(4) Where registered mail or courier service is used the Demand Note shall be deemed to have been received by the Mortgagor at the time at which it would have been delivered in the ordinary course of post or the courier service.

(5) If a settlement of the arrears is not made after the date of issue of the Demand Note and the Mortgagor does not make a satisfactory arrangement with the Mortgagee for the settlement of the amount outstanding, the Mortgagor shall be deemed to be in default as soon as the third succeeding month's installment also falls into arrears.

(6) Where the Mortgagor is a body corporate or a partnership, the notification required under subsection (1) and the Demand Note shall, when hand delivered, be delivered to the registered or principal place of business and acknowledged in writing by an officer of the company or partnership.

10. Upon the failure of performance of an act or acts secured by the mortgage to which this Act applies, the Mortgagee may do either or both of the following—

Remedies of
Mortgagees
on Default.

- (a) sue the Mortgagor or Borrower on any personal covenant to perform;
- (b) realise the Mortgagor's security in the mortgaged property in any or all of the ways provided in this Act.