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Lender's Appraisal Procedure

📃 Mortgage in Home Loan Transactions 🏦 🏠

- A mortgage is a transfer of interest in immovable property as security for a loan, ensuring repayment to the lender.
- It plays a critical role in home loan transactions, giving banks the right to recover dues in case of default.

🔹 Definition of Mortgage (Section 58(a), Transfer of Property Act, 1882)

📌 A mortgage is a transfer of interest in a specific immovable property to secure the payment of money advanced as a loan or an existing or future debt.

✅ Key Elements of a Mortgage

✔ Transfer of interest in property – The borrower (mortgagor) provides the lender (mortgagee) legal rights over the property.

✔ Purpose is security – Ensures repayment of a loan or financial obligation.

✔ Immovable Property – Mortgages only apply to land, buildings, or real estate assets.

🔹 Types of Mortgages in India

🔹 1 Simple (Registered) Mortgage

- Simple registered mortgage is when the mortgagor personally binds themselves to pay the mortgage money and allows the mortgagee to sell the property if they fail to pay.
- In this type of mortgage, title deeds of a property remains with the borrower, but a legal charge is created on the property in Favor of the lender
- The Deed of Mortgage must be registered with the sub-Registrar/Registrar of assurances where the property is situated within four months, with applicable stamp duty and registration charges paid.
- Property can only be sold with court intervention.
- Registered mortgage involves preparing the mortgage deed with two witnesses, paying stamp duty, and registration, making it costly.

🔹 2 Equitable Mortgage (Mortgage by Deposit of Title Deeds)
Equitable mortgage is created by the borrower in favour of the lender by deposit of title deed of immovable property as security to a lender until the loan is fully repaid.

📌 **Essential Requirements for Equitable Mortgage**
✔ Existing or future debt must be present.
✔ Title Deeds must be deposited in a notified city.
✔ The deposit must be voluntary and intended to create a mortgage.
✔ A Letter of Intent should be obtained from the borrower.
✔ Proper entry must be made in the lender’s document register.

🔹 **Key Differences Between Simple & Equitable Mortgage**

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🏦 Feature	Simple (Registered) Mortgage 📜	Equitable Mortgage 📄
Registration Requirement	Mandatory	Not Required
Stamp Duty & Fees	High (Ad-Valorem Stamp Duty & Registration Charges)	Lower Cost (No Stamp Duty)
Possession Transfer	No	No
Court Intervention for Sale	Yes (Court Order Needed)	No (Can be Sold Under SARFAESI Act)
Mortgage Creation Process	Requires a Registered Mortgage Deed	Only Title Deed Deposit Required

📜 Mortgagee Rights & SARFAESI Enforcement in Equitable and Simple Mortgages 🏦 📑

A mortgagee (lender) holds security interest in a mortgaged property and has rights to recover the loan in case of default. These rights differ based on whether the mortgage is Equitable or Simple Registered.

🔹 Validity of Equitable Mortgage & Handling Title Deeds

📌 An Equitable Mortgage remains valid as long as the lender (bank) retains the title deeds.

✅ Key Considerations for Maintaining Mortgage Validity

✔️ If the mortgagee (lender) parts with title deeds, the mortgage is extinguished.

✔️ If the title deeds are shared for verification purposes, the mortgage remains valid.

✔️ If a second mortgage is created, the first equitable mortgage remains superior if explicitly agreed.

✅ **2 SARFAESI Act Enforcement (Faster Recovery Without Court Intervention)**

- SARFAESI Act stands for Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act.
- This Act was enacted to address the problem of Non-Performing Assets (NPAs) in the banking sector.
- It allows banks and other financial institutions for taking possession and auctioning commercial or residential properties to recover a loan when a borrower fails to repay the loan amount without going court.

Conditions

- Loan account must have been classified as NPA, backed by security other than Agriculture land.
- Outstanding in the account including the interest accrued/applied should be more than One lakh.
- Outstanding dues should be 20% or above of the principal and interest.
- In case of multiple lenders/consortium advances, ensure lenders having a minimum of 60% of dues outstanding are agreeable to initiating action under SARFAESI Act 2002.

📜 **Right of Foreclosure, Priority of Charge & Mortgage Valuation in Home Loans** 🏦 🏡

A mortgagee (lender) has specific rights in case of borrower default, including the Right of Foreclosure and priority of charge over multiple mortgages. Banks also conduct valuation & legal verification of property before mortgage creation.

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◇ 1 Right of Foreclosure (Section 67, Transfer of Property Act, 1882)

📌 The Right of Foreclosure is the legal right of a mortgagee (lender) to recover their loan by forcing the sale of the mortgaged property if the mortgagor (borrower) defaults on repayment.

✅ **Key Features of Foreclosure Rights**

✔ The lender must file a foreclosure suit in court.

✔ The foreclosure suit must be filed within 30 years from when the loan becomes due.

✔ If the suit is successful, the borrower loses all rights to recover the property.

◇ 2 Priority of Charge in Mortgages

📌 When multiple mortgages exist on the same property, the priority of charge determines which lender has first claim.

✅ Rules for Priority of Charge

🏦 Scenario	📌 Priority of Charge
Multiple Equitable Mortgages 🏠	The lender who created the first mortgage has priority.
Multiple Registered Mortgages 📜	The earliest executed & registered mortgage takes priority.
Equitable Mortgage vs. Registered Mortgage ⚖️	The mortgage executed first (deposit of title deeds or registered deed) has priority.

◇ 4 Property Valuation for Mortgage

📌 Banks must assess the market value of a property before accepting it as mortgage security.

✅ Factors Considered in Valuation

✔️ Current market trends & price comparisons.

✔️ Land tenure type (Freehold, Leasehold, or State-Owned).

✔️ Forced-sale value considerations (since distressed sales may fetch lower prices).

✔️ Independent valuation by bank-approved valuers.

✅ Methods for Determining Property Value

🏗️ Valuation Method	📌 Description
Personal Inspection 🏡	The bank official physically inspects the property.
Comparative Market Analysis 📊	The property's price is compared with recent sales in the area.
Expert Opinion from Local Property Experts 🏗️	The bank seeks valuation reports from market experts.

📜 Registration of Mortgage & Property Documents in Home Loans 🏛️ 📄

Property and mortgage documents must be registered under the applicable Stamp Acts & Registration Acts of each state. Registration ensures legal validity, proof of ownership, and prevents fraud.

🔸 1 Importance of Document Registration

📌 Why is Registration Necessary?

✅ Provides legal evidence of ownership & title.

✅ Prevents fraudulent transactions & multiple sales of the same property.

✅ Enables the bank to enforce mortgage rights in case of default.
✅ Helps prospective buyers verify encumbrances on the property.

📜 Registration Fees, Time Limits & Procedure for Property Documents 🏛️ 📝

FEES FOR REGISTRATION OF A DOCUMENT

- State governments can fix the registration fees for documents.
- In Maharashtra, registration fees are approximately 1% of the document's consideration with a maximum limit of 30,000.
- Fees for immovable property transactions such as conveyance, exchange, gift, partition, transfer of lease, sale, settlement, power of attorney, and authorizing attorney to sell are based on the property's market value.
- For leases, registration fees depend on the premium, sum payable, or period/periods of the lease.
- Documents for registration must be presented by the concerned person or their authorized representative/agent.
- The language used in the document for registration should be commonly used in the district, and the Registering Officer can refuse registration if it's not the case.

Time frame for Registration of a Document

- Section 23 of The Registration Act, 1908 requires any document (excluding wills) to be presented for registration within 4 months from the date of its execution. Execution means to the signing of the agreement.
- All agreements for the transfer of immovable property must be stamped under the Bombay Stamp Act before registration.
- If a document is not registered within 4 months, parties can apply to the Registrar within a subsequent 4-month period by paying a fine not exceeding ten times the registration fee.

- If the delay goes beyond this additional 4-month period, parties can execute a Deed of Confirmation confirming the validity and binding nature of the main deed.

Verification of the Title of the Property

- When purchasing a property, the buyer must ensure the seller has a clear and marketable title.
- Copies of documents lodged with the Sub-Registrar by the seller can also be obtained.
- Objections to the title can be verified after taking the search, such as if the property has been mortgaged and registered with the Sub-Registrar of Assurances.
- Once satisfied with the title, the transaction can proceed.
- Checking the CERSAI website can also help determine if any encumbrances exist in the property's title.

◇ 2 Registration of Charges with CERSAI

- 📌 The Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI) was set up under the SARFAESI Act, 2002 to track financial charges on property.
- CERSAI is a centralized online registry in India that keeps records of mortgages and security interests created on properties.
- It helps prevent fraudulent loans by ensuring that a property is not used as security for multiple loans without disclosure.

FEATURES

- CERSAI was established on 31st March 2011 under the SARFAESI Act.
- The objective is to maintain and operate a registration system for securitization, asset reconstruction, and security interest transactions.

- Anyone can search and inspect the records maintained by CERSAI by paying a fee.
- Equitable mortgage registration must be made within 30 days, but charges filed between 30-60 days can be registered with a fine.
- A delay beyond 60 days requires condonation from the Central Government.
- Non-registration within the stipulated time is treated as a default and can attract a fine of up to ₹5,000 per day under the SARFAESI Act.

FEE PAYABLE FOR CREATION AND MODIFICATION OF CHARGE

Nature of transaction to be registered	Form No.	Amount of fee payable (ST extra)
Particulars of creation or modification of security interest by way of mortgage by deposit of title deeds.	FORM 1	Rs. 100 (for loan > 5 Lakh) Rs. 50 (for loan ≤ 5 Lakh)
Satisfaction of any existing security interest	FORM II	Free (CERSAI circular dated 01.02.2016)
Particulars of securitization or reconstruction of financial assets	FORM III	500
Particulars of satisfaction of securitization or reconstruction transactions	FORM IV	50 (CERSAI circular dated 01.02.2016)
Any application for information recorded/maintained in the Register		10 (CERSAI circular dated 01.02.2016)
Any application for condonation of delay upto 30 days		Not exceeding 10 times of the basic fee as applicable

MONITORING

- Monitoring is a post-sanction activity that ensures proper use of funds.
- It involves proper documentation, disbursement, periodical inspection, follow-up of recovery, and loan restructuring.
- The credit administration department is responsible for monitoring.

INSPECTION

- Inspection should be conducted as stipulated in the sanction. A record of the inspection must be kept in the files.
- The inspection report must carry noting on the condition of the property, verification of payment of tax dues, and details of any other encumbrance noted.
- Annually/ Periodically, a fresh encumbrance certificate must be obtained.
- Any change in the condition of the property should trigger a full-scale review.

RECOVERY

- Check that EMI payments are coming in on due dates or that the post-dated cheques are being honoured on presentation.
- If the bank's accounts have been "computerized' " there will be a detailed compute generated daily exception report on the defaulting accounts.

RESTRUCTURING

- Home loans may need to be restructured when delays turn into defaults, and the borrower's ability to repay the loan is impaired.
- Restructuring is considered when the borrower's integrity is not in doubt and willingness to repay is established.
- Restructuring may be considered in case of unforeseen events, major illness, delayed completion of housing projects, or death/disability of the borrower.

- Wilful defaulters should not be covered under restructuring programs.

CLOSURE OF ACCOUNT

- Upon repayment of the scheduled EMI or outstanding loan amount, along with interest due, processing/servicing/documentation fees, if any, the loan account is closed.
- If the borrower has no other outstanding or contingent liability to the financing institution, the charge created in favour of the lender can be closed.
- The documents of title to the property can be returned under acknowledgement of receipt.

HOME LOAN FRAUDS

FABRICATION OF INCOME DOCUMENTS

Borrowers provide fake income-related documents like income tax returns, salary slips, or balance sheets to exaggerate their financial capabilities and qualify for higher loan amounts.

Mitigation

- Verify salary slips with the employer to ensure the accuracy of income details.
- Compare income details with bank statements to confirm consistency.
- Cross-verify income claims with Income Tax assessment orders.

LOAN AMOUNT ENCASHED BY THIRD PARTY

Loan disbursements made through checks or demand drafts are encashed by third parties or agents instead of the intended beneficiaries.

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Mitigation

- Credit loan amounts directly to the legitimate beneficiary's account.
- Confirm the correctness of the beneficiary's account information before disbursement.

FORGERY OF TITLE DOCUMENTS

Borrowers or builders submit forged or counterfeit title documents to create fake mortgages and secure loans based on these fake assets.

Mitigation

- Obtain a certificate from a panel lawyer to validate the authenticity of submitted documents.
- Verify property's past mortgages and encumbrances using CERSAI or other appropriate databases.

OVER-VALUATION OF PROPERTY

Borrowers and builders collude to overstate the value of a property to secure larger loans than justified by the property's actual worth.

Mitigation

- Conduct physical property visits to assess the market or forced sale value.
- Rely on local inquiries to gain accurate insight into property values.

SALE OF PROPERTY WITH EXISTING LOAN

Borrowers sell a property that has an outstanding loan without clearing the loan, often using duplicate or fake title deeds.

Mitigation

- Thoroughly verify the clearance of existing loans before transferring ownership.
- Ensure proper due diligence to avoid accepting fake title deeds.

MISREPRESENTATION OF END USE OF LOAN

Borrowers misuse loan funds by falsely claiming they will be used for a specific purpose, such as construction or purchase, but then divert the funds elsewhere.

Mitigation

- Direct payments to sellers or builders to ensure funds are used for the intended purpose.
- Regular inspection and verification of the loan's intended use at each stage of the project.