



## **Documentation**


### **CCP CHAPTER 23 MODULE E**

#### **📌 23.1 What Are Documents?**

Documents are the written records of agreements between banks and borrowers, clearly defining their rights and responsibilities. These documents depend on:

- Type of borrower
- Nature of security
- Type of charge
- Type of advance

They safeguard banks during disputes or legal proceedings.

**📌 23.2 Meaning of Document**  According to Section 3, Indian Evidence Act (1872), a "document" refers to any written matter for recording purposes.

**📌 Definition as per Indian Stamp Act (Section 2(14)):** An "Instrument" includes documents creating, transferring, limiting, extending, extinguishing, or recording any right or liability.

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### Delhi High Court Judgment

(Chief Controlling Revenue Authorities v. Satyawadi Sood):

Type	Definition
(i)	Creates or modifies rights/liabilities
(ii)	Records existing rights/liabilities

### 23.3 Importance of Documents

Documents serve the following critical purposes:

No.	Purpose	Real-Time Example
1	Written record of agreements	A joint borrower cannot claim later as only guarantor.
2	Evidence in legal proceedings	Helps in summary suits against defaulters.
3	Identification of borrower/guarantor	Verifies identities during transactions.
4	Security identification	Clearly defines pledged assets (mortgage, hypothecation).
5	Nature of charge identification	Distinguishes bank rights (pledge, mortgage, lien).

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No.	Purpose	Real-Time Example
6	Incorporation of protective clauses	Prevents future disputes.

### 23.4 Types of Documents

Banks typically obtain two main document categories:

#### 1. Personal Liability Documents

##### Examples

Demand Promissory Note

(D.P. Note)

Agreement of Guarantee

Acknowledgment of Debt &

Security

#### 2. Charge Creating Documents

##### Examples

Agreement of

Hypothecation

Agreement of Pledge

Deed of Mortgage

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### Examples

Letter of Lien &

Set-off

### Agreement vs. Bond vs. Deed:

Document Type	Features 	Stamp Duty 
Agreement	No attestation required	Fixed Stamp Duty
Bond	Attested & enforceable	Ad valorem Stamp Duty
Deed	Signed, sealed & contains transactions	Varies by transaction

### 23.5 Requisites of Documentation

Every enforceable document must include:

- Correct identity of borrower/guarantor
- Clear loan purpose and terms
- Proper stamping
- Description of security
- Repayment and interest terms
- Mutually agreed conditions

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- Execution date/place
- Registration, if required

### 23.6 Selection of Documents


Selection criteria include:

- Borrower type (Individual, firm, company)
- Security type (Movable, immovable)
- Charge type (Hypothecation, mortgage)
- Loan type (Demand, term, overdraft)

Banks use standardized, legally vetted documents.

### 23.7 Stamping of Documents

**Types of Stamps:**

Type	Usage 
Judicial	Used in courts only
Non-judicial	Used for banking transactions
Postal	Postal services only

**Non-Judicial Stamp Types:**

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- Adhesive Revenue Stamps
- Special Adhesive/Impressed/Embossed Stamps
- Non-judicial Stamp Papers
- E-stamping (Digital method)

### 23.7.1 Using & Cancelling Stamps

- **Adhesive Revenue Stamps:** Cancelled by executants (signature across stamp).
- **Special Adhesive Stamps:** Cancelled by Treasury/Authorized officers.
- **Non-Judicial Stamp Paper:** No cancellation required.
- **E-stamping:** Preferred to avoid fraud.

### 23.8 Timing of Stamping Instruments

- Documents executed in India: stamped at/before execution.
- Instruments executed abroad: stamped within 3 months upon arrival.
- Bills/Promissory Notes from abroad: stamped & cancelled before payment.

### 23.8.1 Uniform Stamp Duty Across India

Documents with fixed stamp duty nationwide:

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- Promissory Note
- Usance Bills
- Letter of Credit
- Bill of Lading
- Receipts
- Transfer of Shares
- Debentures
- Insurance Policy
- Proxy

### **23.8.2 Stamp Duty for Multiple Matters**

Documents covering multiple distinct matters require combined duty (e.g., Debt Acknowledgment with changing interest).

### **23.8.3 Multi-State Document Execution**

- Executed in first state initially, additional duty affixed if higher in subsequent states.
- Full stamp duty required if executed in J&K later.

### **23.8.4 Consequences of Improper Stamping**


- Unstamped documents can be impounded, penalized, and endorsed by registrars.


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- Unstamped Bills/Promissory Notes are inadmissible but may be validated by paying penalties (up to 10x deficient duty).

### Summary Table

Section	Key Points 
23.1	Purpose & nature of documents
23.2	Legal definition (Evidence & Stamp Acts)
23.3	Importance for legal & transaction clarity
23.4	Types (Personal Liability & Charge Creating)
23.5	Essential requisites for enforceability
23.6	Criteria for selecting appropriate documents
23.7	Types of stamps and cancellation methods
23.8	Timing and importance of correct stamping

 Proper documentation protects banks, ensures clarity, and facilitates smooth legal recourse if needed.

### 23.8.5 Remedies for Improperly Stamped Documents

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**(a) Adjudication:** Documents may be presented to Stamp Authorities for adjudication either:

- Before execution, or
- Within one month post-execution.

Authorities collect due stamp duty, deficit duty, and adjudication fees, certifying the document as properly stamped. Such adjudicated documents are considered duly stamped (Section 31, Indian Stamp Act).

**(b) Revalidation by Penalty:** Documents improperly stamped (except Bills of Exchange and Promissory Notes) can be revalidated and admitted as evidence upon payment of deficit duty and penalties (Section 35, Indian Stamp Act).

**(c) Unduly Stamped by Accident:** If documents (excluding Bills of Exchange or Promissory Notes) were improperly stamped by accident, authorities may rectify upon notification within one year of execution, charging applicable duty upon satisfaction of accidental omission.

### **23.9 Compulsory Registration of Documents**

According to Section 17 of the Indian Registration Act (1908), mandatory registration applies to:

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Document Type	Description
Gift Instruments	Gift of immovable property
Non-Testamentary Instruments	Creating rights/interests (₹100+) in immovable property
Receipt Instruments	Acknowledging receipt of consideration for property rights
Lease Agreements	Term exceeding one year
Court Order Transfer	Rights/interests (₹100+) from a court order

**Purpose:** Public notice ensuring irrevocable documents.

### 23.9.1 Time Limit for Document Registration

Section	Situation	Time Limit	Penalty
23	Regular Registration	Within 4 months from execution	-
25	Delayed Registration	Additional 4 months with reason	Fine up to 10 times registration fee
26	Documents executed abroad	Within 4 months upon arrival in India	-

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Section	Situation	Time Limit	Penalty
27	Wills	No time restriction	-

### 23.9.2 Consequences of Non-Registration

Non-registered documents:

- Cannot affect property.
- Inadmissible as evidence of property transactions.

### 23.10 Meaning of Document Execution

Execution involves signing a fully written, understood document (not a blank page). Execution implies consent and obligation by signing parties who have read and comprehended document contents.

### 23.10.1 Documentation Process

Step	Description
1	Drafting
2	Vetting
3	Filling pre-printed formats

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Step	Description
4	Stamping
5	Execution (signing)
6	Post-execution formalities
7	Safeguarding documents

**Who can execute?** Any competent party or authorized representative.

### 23.10.2 Execution by Different Types of Executants

Type	Execution Method
Minor	Guardian executes clearly as guardian for minor's benefit
Individual	Majority, sound mind, no insolvency declaration required (verified via KYC)
Joint Borrowers	Joint signatures; "jointly and severally" mentioned
Sole-Proprietorship	Proprietor signs individually & for firm
Hindu Undivided Family (HUF)	Karta executes; major coparceners as guarantors

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Type	Execution Method
Partnership Firm	All partners ideally sign; managing partner signature binds all
Limited Company	Board Resolution compliance; execution by authorized signatories and common seal per Articles of Association
Illiterate Borrower	Left thumb impression witnessed; explanation letter countersigned by witness
Left-Hand Signature	Footnote clarifying left-hand signature for future verification

### 🎯 Summary of Execution Methods:

Executant Type	Authorized Signatories & Execution
Minor	Guardian (for minor's benefit)
Individual	Self (verified through KYC)
Joint Borrowers	Joint signatures, "jointly and severally liable"
Sole Proprietor	Proprietor individually and firm
HUF	Karta; coparceners as guarantors

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Executant Type	Authorized Signatories & Execution
Partnership	All partners or managing partner clearly authorized
Limited Company	Board-authorized signatories & company seal per Articles
Illiterate	Thumb impression with witness
Left-Handed	Signature clarification & specimen for verification

 **Proper execution ensures enforceability and legal clarity.** 

### **23.10.3 Execution of Guarantee**

**Partnership Firm as Guarantor:** All partners must sign the guarantee, as a partner's implied authority does not automatically include guaranteeing debts.

#### **Limited Company as Guarantor:**

- Empowered explicitly through Memorandum and Articles of Association.
- Requires resolutions from both guaranteeing and beneficiary companies.

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- Signed by board-authorized individuals.
- Comply with Section 186, Companies Act, 2013.

**Non-Applicability of Section 186 (Companies Act, 2013):** Exemptions apply to banking companies, insurance companies, housing finance companies, NBFCs, and companies whose primary business involves financing or infrastructure.

### 23.10.4 Digital Execution of Loan Documents

#### **RBI Guidelines (Dt. 02-09-2022):**

- Digitally signed documents (e.g., KFS, sanction letters, account statements) must be automatically delivered to borrowers via verified email/SMS.
- Digital signatures compliant with IT Act mandatory for lenders, even when using fintech platforms.
- Secure Digital Consent or digital signatures with audit trails are required.

### 23.11 Limitation of Documents

The Limitation Act sets the period for enforcing rights under loan documents in courts:

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<b>Instrument Type</b>	<b>Limitation Period</b>
Demand Promissory Note	3 years from execution
Bill of Exchange	3 years from due date
Term Loan Agreements	3 years from default
Mortgage (money)	12 years from due date
Mortgage (property possession)	12 years from entitlement
Letter of Guarantee	3 years from guarantee determination
Foreclosure by Mortgagee	30 years from due date
Execution of Decree	12 years from decree
Fraud Recovery	3 years from detection
Appeal (High Court)	90 days from decree
Appeal (Other Courts)	30 days from decree
Money Paid by Mistake	3 years from discovery

### 23.11.1 Limitation for Guarantors

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- Usually, a 3-year period from refusal or guarantee termination.
- Advisable to obtain guarantor acknowledgments.
- Guarantor's liability is co-extensive with borrowers.

### 23.11.2 Extension of Limitation Period

Methods to extend limitation:

- **Acknowledgement of Debt:** Written acknowledgment before limitation expires extends the period.
- **Part Payment:** Payment acknowledgment extends limitation.
- **Fresh Promise to Pay:** Fresh DP Note and Revival letter extend limitation for 3 years.
- **Balance Sheet Acknowledgment:** Debt acknowledgment in company balance sheet extends limitation from its date.

### 23.11.3 Exclusion from Limitation Period

Cases when limitation can be excluded:

- Legal disabilities (imprisonment)
- Court closures
- Disability among multiple parties
- Fraud or mistake
- Defendant abroad

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### 23.11.4 Borrower Signing for Guarantor

If explicitly authorized by power of attorney, a borrower signing acknowledgment or revival letters on behalf of a guarantor extends the limitation period against the guarantor.

### 23.11.5 Legal Remedy Barred by Limitation

Section 18 of Limitation Act bars legal remedy but does not eliminate creditor's set-off rights (e.g., pledged gold or bank deposits).

### Summary Table:

Section	Key Takeaways
23.10.3	Guarantee requires explicit authorization/resolutions
23.10.4	Mandatory digital signing per RBI guidelines
23.11	Prescribed limitation periods for documents
23.11.1	Guarantor limitation guidelines
23.11.2	Methods of extending limitation
23.11.3	Situations for exclusion from limitation

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Section	Key Takeaways
23.11.4	Borrower authorized to acknowledge for guarantor
23.11.5	Limitation affects legal remedy, not set-off rights

✓ Proper awareness and documentation extend enforceability, protecting lender interests.

### 23.12 Enforcement of Documents

#### 23.12.1 Death of Borrower

Upon the borrower's death:

- Immediately freeze the account to ascertain liabilities.
- Further transactions should be through a split account.
- Legal heirs are liable only up to the value of assets inherited, not personally.
- Obtain an acknowledgment of debt from heirs/guarantors to extend the limitation period (restricted to inherited assets).
- Personal liability of heirs requires specific, legally vetted documents.

#### 23.12.2 Death of Guarantor

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In case of a guarantor's death:

- Split the running account (C/C or O/D).
- Review the account; obtain fresh guarantees to continue the facility.
- If discontinuing, recall the advance and pursue legal action within 3 years against heirs, unless the guarantee was already terminated.

### Guarantor Discharged When:

- Terms modified without guarantor's consent.
- Borrower released by bank.
- Extension granted without guarantor's approval.

### Guarantee Ends When:

- Guarantor's death occurs.
- Guarantee explicitly revoked by guarantor.
- Bank recalls the loan.
- Guarantor declared insolvent.

### 23.13 Document Scrutiny at Execution

Important checkpoints for execution:

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- Use fully completed pre-printed document formats.
- Fill blanks neatly with uniform handwriting and ink.
- Authenticate all alterations.
- Execute documents in the presence of responsible bank officer, verifying borrower identity.
- Consistent handwriting and signature style across documents.
- Full signatures (no initials), each page signed separately.
- For illiterate borrowers or language barriers, explain document contents clearly in the borrower's language with a countersigned declaration.
- Avoid unnecessary attestation to prevent documents from becoming bonds attracting higher stamp duty.
- Clearly mention execution date and place; match execution date with initial disbursement.
- Register Power of Attorney documents with relevant authorities, if applicable.
- Properly record all executed documents in the security/document register.
- Avoid writing the word 'only' after amounts.
- Attorney holders should generally not execute documents, except under special circumstances.


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- Ideally, execute all documents at the bank premises, in one sitting, within official hours, by prior appointment.
- Document any execution conducted on different dates/places clearly in the register, verifying executant identity properly.

### Summary Table:

Section	Key Highlights
23.12.1	Borrower's death freezes account; heirs liable to inherited asset limits.
23.12.2	Guarantor's death requires fresh guarantees or legal action within 3 years.
23.13	Ensure complete, accurate, uniform, and verified execution of documents.

 Careful scrutiny and timely actions ensure enforceability and protection of the bank's rights.

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