

THE

MORTGAGE LAW

Simplified



This booklet has been designed to simplify the mortgage law by highlighting the key concepts and information contained in the law. In general, this law enables anyone- individual or legal entities such as companies, associations, NGO's to acquire a mortgage loan from any financial institution using their fixed property as security.



Registration of mortgage is compulsory and it is done by the lender with written approval of the borrower through the Electronic Mortgage Registration System (eMRS). This registration comes with benefits including access to credit from financial institutions.

Registration also helps in reducing on disputes amongst lenders secured by the same property since the law gives priority to the first registered secured lender.

Please note that this booklet provides a simple guide to the mortgage law and only refers to the key concepts. It is not an exhaustive text on the law and should you require detailed information on the law that is not covered here, please visit the Office of the Registrar General at RDB offices or email us @.....

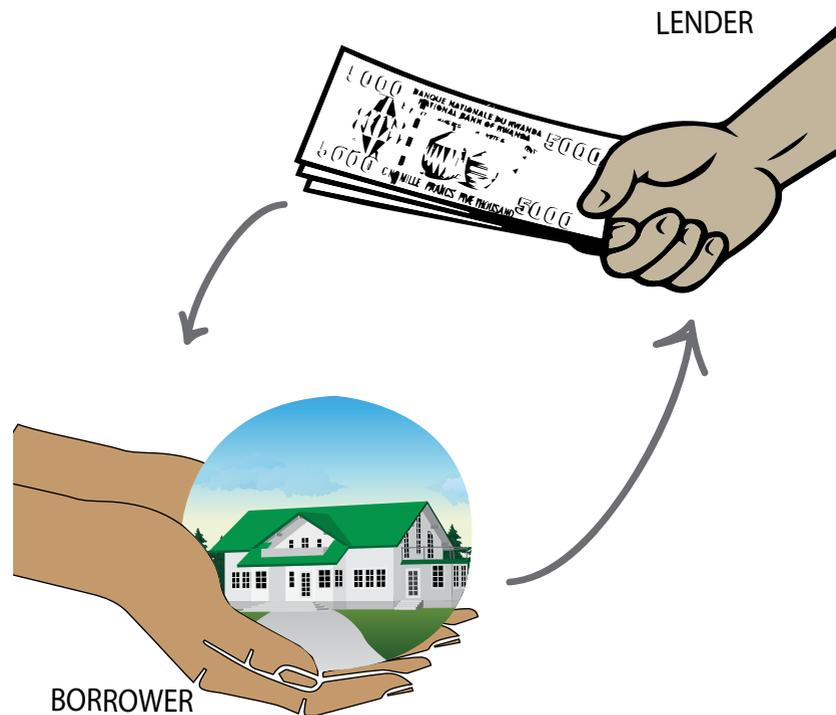
We trust that you will find this guide useful and assure you of our continued commitment to providing you with information on the laws and regulations that affect your business.

Louise Kanyonga

Registrar General

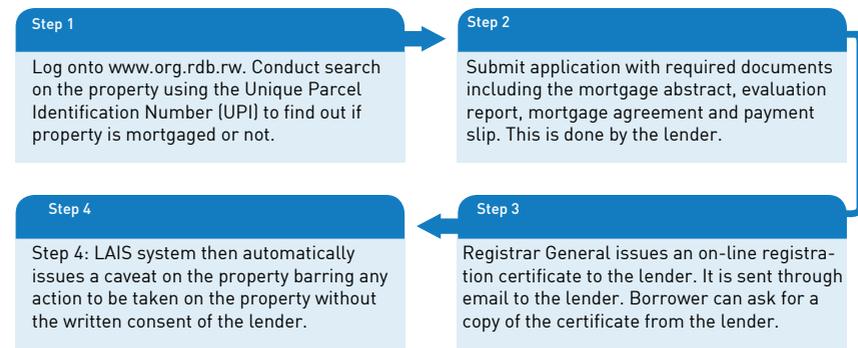
What is a mortgage loan?

A mortgage loan is a loan whose performance is secured by real property (fixed property such as a house or land). A registered mortgage gives the lender power to take ownership of the property if the borrower fails to pay back the loan. The lender can sell, lease, manage or acquire the property to recover the loan.



How do I register my mortgage on-line?

All registration of mortgages in Rwanda is done online through the Electronic Mortgage Registration System (eMRS). The on-line mortgage registration process is simple- it is done by the lender with written approval from the borrower, the owner of the property (if different from the borrower) and his/her spouse. Registration takes four simple steps that include:



The online registration system provides you with a mortgage abstract which is basically a simplified form that combines all legal documents into one. It contains information on the land/house, the value of the land or house, the owner of the house or land e.t.c. This abstract is supposed to be signed by both the lender, the borrower and his/her spouse and the owner of the house or land in case he or she is different from the borrower.



It is also worth noting that the on-line mortgage registration system is linked to the Land Administration Information System (LAIS) and the National Identification Agency (NIDA) so you do not need to go to these agencies again for documents such as the title deed and proof of identification respectively.

What benefits do I get when I register my mortgage?

The registration of your mortgage at RDB comes with benefits for the borrower, the lender and the economy. For the borrower, mortgage registration enables you to acquire a loan from a bank or financial institution to either finance your business or purchase your own home.

To the lender, mortgage registration is the only proof of security for any loan given to a borrower and therefore ensures you can recover your loan upon default. It also has other benefits including elimination of disputes among different lenders over the same property as it provides a clear ranking of creditors system. For the overall economy, mortgage registration is a big boost to the private sector since real property is a key factor of production.

Who has a right to mortgage property?

Any owner of a house or land can get a loan against his/her property. In case the property is owned jointly by a husband and wife for example, supporting documents that indicate that both husband and wife have agreed to get the loan must be provided.

When is a mortgage valid?

A mortgage is valid when it is registered at the Office of the Registrar General. This registration is done by the lender upon a written approval of the borrower and owner of the property if he or she is different from the borrower.

If you do not register your mortgage, then this mortgage is not valid and therefore cannot be enforced- that means that if the borrower does not pay back their loan, you cannot sell, lease, acquire or manage the property to recover your loan.

When is a marital home mortgage valid?

A marital home mortgage is valid when all supporting documents are signed by both the husband and wife living in that marital home. If the mortgage agreement is not signed/consented to by a spouse, then the mortgage is not valid and cannot be enforced by the lender. The lender also has the legal responsibility to find out whether a borrower is married and also ensure that their spouse provides consent.

Can the borrower get back property after paying the debt?

Yes, the borrower can get back his or her property after paying off the debt.

What happens when the borrower meets all his or her loan obligations?

Once the borrower meets all his or her loan obligations, the property is removed from the mortgage register at the Office of the Registrar General. The process of mortgage de-registration begins with the bank providing the mortgage waiver that is submitted through the on-line system once the borrower meets all his or her loan obligations. The mortgage is then de-registered and the caveat put on the property by LAIS upon registration is removed and the owner is thereafter free to use the property as he or she pleases.

Can a borrower have more than one mortgage on the same property?

Yes, the borrower can have more than one mortgage on the same property. If



there are two or more mortgages registered on the same property, then they will have priority according to the time of registration.

The first mortgage to be registered shall have priority over all other mortgages on the same property. This means that should there be any default in payment by the borrower, then the lender who registered the mortgage first will have priority in payment. However, lenders may agree to all rank equally on the same property by entering into a pari passu agreement.

It is important to note that where there is more than one lender on the same property, all subsequent lenders must first get consent from the 1st rank lender before entering into a loan agreement with the borrower.

Can a mortgage loan interest rate be changed?

Yes, a mortgage loan interest rate can be changed. However, the lender must inform the borrower of any change in the interest rate as provided in the mortgage contract signed by both parties.

Can a mortgage be transferred to another person?

Yes, a mortgage can be transferred to another person. This can be done by the borrower requesting the lender (in writing) to transfer the mortgage to the selected person named in the request.

Once the bank approves the transfer, the Registrar General must be informed and the subsequent changes made in the mortgage register at RDB.

What is the effect of mortgage registration?

Once a house or land has been used to get a loan from a lender and the property has been registered in the mortgage register at RDB, the owner of the property cannot transfer, sell, lease or donate the property to any other person without the prior approval of the lender. The lender also has the right to possess, lease, manage or sell the property in the event that the borrower fails to pay back the loan.



Are mortgages entered into prior to the 2009 law valid?

All mortgage contracts entered into prior to the commencement of the 2009 law are valid until their expiration. However all these contracts were to be registered with the Office of the Registrar General by 2011 to ensure their continued validity.

How long does the process of mortgage registration take?

The process takes a maximum of 24 hours upon submission of an application to the Registrar General and all necessary documents.

What is the duration of mortgage registration?

The duration of mortgage registration corresponds to the duration of the

contract entered into between the lender and the borrower. However, the lender and borrower may decide to extend or reduce the duration at any time through a written amendment.

If the borrower clears the loan before the due date, they should ensure that they inform the Registrar General of this so that the property is removed from the register.

In general, the Registrar General must be informed at all times of any changes made to the contract.

What are the requirements to register a Mortgage?

There are various requirements for registering a mortgage for both an individual and a company. The table below shows the various requirements.

For an individual

- Notarized abstract of the mortgage agreement signed by the lender, borrower and his or her spouse, the property owner and his or her spouse if he or she is different from the borrower
- Evaluation report made by a certified valuer.
- Payments slip of registration fee of 20,000rwf for new registration and 10,000rwf for any registration of amendment and transfer of mortgage.

For a legal entity

- The same requirements for an individual where applicable.
- Submit a notarized board resolution authorizing the company to secure a loan.
- A copy of the registration certificate for legal entities other than companies registered with the Office of the Registrar General.

NB: The cost of mortgage registration is subject to change from time to time.

What are the obligations of a Borrower?

The borrower has to honor all obligations as specified in the mortgage contract otherwise the property will be taken by the lender.

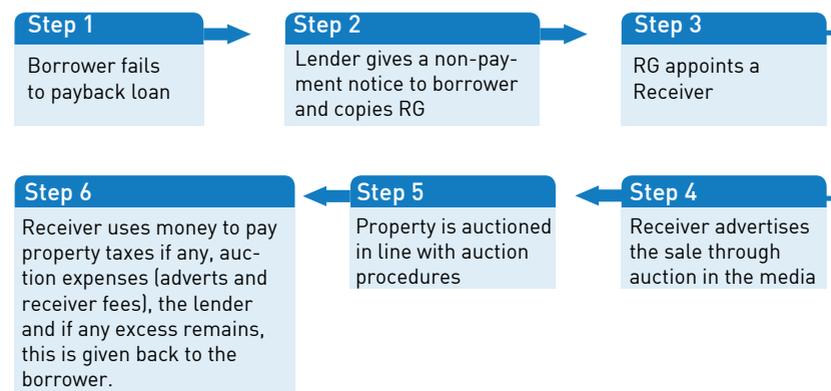
Some of these obligations include:

- Pay-off the debt in the agreed installments
- Inform the lender of any changes
- Inform the Registrar General of any changes to the mortgage.

What happens when the borrower fails to pay back the loan?

When a borrower fails to pay back the loan, the lender is supposed to give a failure-to-pay notice to the borrower and copy the Registrar General. The last notice gives the borrower 30 working days to clear the loan before the lender can take further action on the property as indicated in the mortgage agreement.

The following is the summary of the procedure when the borrower fails to pay back the loan even after the notice is issued. Please also note that this procedure is for the recovery option of sale which is the most popular option taken by lenders:



Who is a receiver?

A receiver is a person appointed by the Registrar General to take charge of a property which a lender has chosen to sale in order to recover their loan. A receiver has the responsibility of selling the property at market value.

What is the role of a receiver?

The following are the roles of the receiver:

- Demand and recover all outstanding debts on behalf of the lender
- Use funds received from auction to pay all expenses incurred in management of the mortgaged property
- Return to the borrower any balance (if any) after payment of all expenses (including all debts and the receivers fees) have been completed.

What are the rights and obligations of the Purchaser of the property under auction?

The purchaser of the property is supposed to pay for the property on the spot. He or she also has the same rights as the original owner of the land or house before it was sold. The new buyer is also free of all liabilities related to the mortgaged property.

Can the original borrower buy back the property during auction?

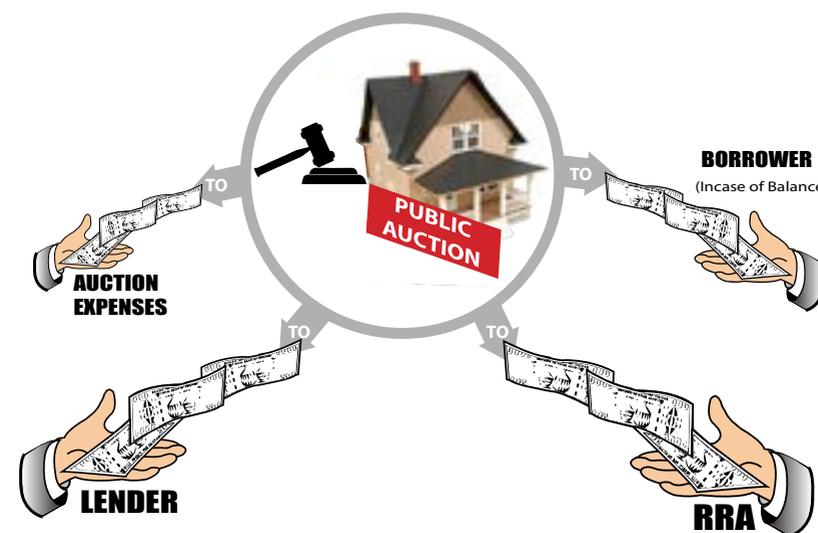
No, the borrower does not have the right to buy the property during public auction however he or she has the right to pay all outstanding debts on the property before the auction is concluded. Once the borrower pays off the outstanding loan, the public auction process is immediately ended.

The lender has the right to buy the property during public auction as long as his or her offer is equivalent to that of other bidders.

How is money from the sale of mortgaged property used?

The money from the sale of a mortgage is distributed in the following order of priority:

- Payment of any interests, rents, taxes, charges or other amounts due on the property
- Payments of all expenses incurred during the receivership process including the receiver's fees.
- Payment of the loan to the lender
- If any excess remains, it is given back to the borrower.



Who has the right to access information on mortgaged property?

Everyone has the right to access information on mortgaged property. To access information, you log onto the org website at www.org.rdb.rw which will direct you to the eMRS. You then enter the UPI of the real property and conduct your search. There are different access levels of this right to information:

- The first level applies to those who do not have a direct interest or right in the mortgaged property. These persons will only receive



confirmation as to whether a property is mortgaged or not.

- The second level of access applies to those who have direct interest/ rights in the mortgaged property. This is usually the lender, the borrower, the property owner (if different from the borrower) and the spouse. These will have access to all the information on that particular mortgaged property as registered in eMRS.
- The third level of access lies with the Office of the Registrar General, the Land Administration System (LAIS), the National ID Agency and any other person as specified by the Registrar General.

Conclusion:

It is important to note that mortgage registration is done purely online at www.org.rdb.rw. This registration is done by the lender upon approval of the borrower. All required documents are also scanned and sent online so there is no need to come physically to RDB. It is also advisable to get a copy of the mortgage registration certificate from your lender.

Should you require any further information on mortgage which is not included in this booklet, please refer to Law no. 10/2009 of 14/05/2009 on mortgages and Law no. 13/2010 of 07/05/2010 modifying and complementing law no.10/2009 of 14/05/2009 on mortgages.

We are confident that this booklet will help you understand the mortgage law better and also make your mortgage registration experience more efficient and timely.

