

Mortgage comprehensive review

Mortgage

A mortgage is a method of using property (real or personal) as security for the payment of a debt. The term mortgage (from Law French, lit. dead pledge) refers to the legal device used for this purpose, but it is also commonly used to refer to the debt secured by the mortgage, the mortgage loan. In most jurisdictions mortgages are strongly associated with loans secured on real estate rather than other property (such as ships) and in some cases only land may be mortgaged. Arranging a mortgage is seen as the standard method by which individuals and businesses can purchase residential and commercial real estate without the need to pay the full value immediately. See mortgage loan for residential mortgage lending, and commercial mortgage for lending against commercial property. In many countries it is normal for home purchases to be funded by a mortgage. In countries where the demand for home ownership is highest, strong domestic markets have developed, notably in Spain, the United Kingdom and the United States.

Participants and variant terminology

Legal systems tend to share certain concepts but vary in the terminology and jargon used. In general terms the main participants in a mortgage are:

Creditor

The creditor has legal rights to the debt or other obligation secured by the mortgage. That debt is often the obligation to repay the loan by the creditor (or its predecessor lender) who provided the purchase money to acquire the property mortgaged. Typically, creditors are banks, insurers or other financial institutions who make loans available for the purpose of real estate purchase. A creditor is sometimes referred to as the mortgagee or lender.

Debtor

The debtor is the person or entity who owes the obligation secured by the mortgage, and may be multiple parties. Generally, the debtor must meet the conditions of the underlying loan or other obligation and the conditions of the mortgage. Otherwise, the debtor usually runs the risk of foreclosure of the mortgage by the creditor to recover the debt. Typically the debtors will be the individual home-owners, landlords or businesses who are purchasing their property by way of a loan. A debtor is sometimes referred to as the mortgagor, borrower, or obligor.

Other participants

Due to the complicated legal exchange, or conveyance, of the property, one or both of the main participants are likely to require legal representation. The terminology varies with legal jurisdiction; see lawyer, solicitor and conveyancer. Because of the complex nature of many markets the debtor may approach a mortgage broker or financial adviser to help them source an appropriate creditor, typically by finding the most competitive loan. The debt is, in civil law jurisdictions, referred to as hypothecation, which may make use of the services of a hypothecary to assist in the hypothecation.

Mortgage by legal charge

In a mortgage by legal charge, the debtor remains the legal owner of the property, but the creditor gains sufficient rights over it to enable them to enforce their security, such as a right to take possession of the property or sell it. To protect the lender, a mortgage by legal charge is usually recorded in a public register. Since mortgage debt is often the largest debt owed by the debtor, banks and other mortgage lenders run title searches of the real property to make certain that there are no mortgages already registered on the debtor's property which might have higher priority. Tax liens, in some cases, will come ahead of mortgages. For this reason, if a borrower has delinquent property taxes, the bank will often pay them to prevent the lienholder from foreclosing and wiping out the mortgage. This type of mortgage is common in the United States and, since 1925, it has been the usual form of mortgage in England and Wales (it is now the only form - see above). In Scotland, the mortgage by legal charge is also known as standard security.

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