

STATUTORY INSTRUMENTS SUPPLEMENT

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S T A T U T O R Y I N S T R U M E N T S

2012 No. 2.

THE MORTGAGE REGULATIONS, 2012

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ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

1. Title
2. Interpretation

PART II—CONDUCT OF MORTGAGE BUSINESS

3. Ascertaining matrimonial status of the applicant
4. Mortgagee not to disclose information about the mortgagor to third parties.
5. Right to tack to be specified in the mortgage instrument.
6. Notices to be sent to address of mortgagor.
7. Mortgagor to notify mortgagee of change in address.

PART III—SALE OF MORTGAGED PROPERTY

8. Sale by mortgagee to be by public auction.
9. Sale by decree of court
10. Sale by private treaty.
11. Valuation of mortgaged property.
12. Mortgagor to give access for valuation and inspection.
13. Adjournment or stoppage of sale.

Regulation

14. Deposit by purchaser and resale on default.
15. Vesting of property after sale.
16. Sale not to be vitiated by irregularity.

PART IV—MORTGAGE FORMS

17. Mortgage instrument.
18. Declaration of marital status
19. Spousal consent
20. Release of mortgage.
21. Transfer of mortgage.
22. Notice of default.
23. Appointment of receiver.
24. Leasing of mortgaged property.
25. Mortgagee's power of sale of mortgaged property.
26. Taking possession of the mortgaged property.
27. Withdrawing from possession.
28. Variation of forms.

SCHEDULES

Schedule 1 Currency point

Schedule 2 Forms

STATUTORY INSTRUMENTS

2012 No. 2.

The Mortgage Regulations, 2012.

(under section 41 of the Mortgage Act, 2009, Act No. 8 of 2009)

IN EXERCISE of the powers conferred upon the Minister responsible for lands by section 41 of the Mortgage Act, 2009 and in consultation with the Central Bank these Regulations are made this 9th day of September, 2011.

PART I—PRELIMINARY

1. Title.

These Regulations may be cited as the Mortgage Regulations, 2012.

2. Interpretation.

(1) In these Regulations, unless the context otherwise requires—

“Act” means the Mortgage Act, 2009;

“agent” means a person appointed by a principal to do any act for that principal or to represent the principal in dealing with a third person;

“currency point” has the value assigned to it in Schedule 1;

“mortgagee” means a person in whose favour a mortgage is created or subsists; and includes any person deriving title under the original mortgagee;

“mortgagor” means a person who has mortgaged land or an interest in land; and includes any person from time to time deriving title under the original mortgagor or entitled to redeem the mortgage according to his or her estate, interest or right in the mortgaged property;

“principal” means a person who appoints an agent to do any act for him or her or to represent him or her in dealing with a third person;

“spouse” means a husband or wife recognized by the laws of Uganda.

(2) A reference in the Act to “officer of Government” shall be taken to mean a public officer on or above the salary scale of U 5.

PART II—CONDUCT OF MORTGAGE BUSINESS

3. Ascertaining marital status of applicant.

(1) For the purpose of sections 5 and 6 of the Act and for the purposes of establishing whether an applicant for a mortgage has a spouse, a mortgagee shall require the applicant to state whether he or she is married and—

- (a) where the applicant for a mortgage states that he or she is married, he or she shall make a statutory declaration to that effect stating the name and address of his or her spouse; or
- (b) where the applicant states that he or she is not married, the applicant shall state so in a statutory declaration.

(2) Where a person applying for a mortgage states that he or she is married, under sub regulation (1) (a) the spouse of that person shall also make a statutory declaration to that effect.

(3) Where a person declares that he or she is married for the purposes of this regulation, that person shall attach a certified copy of the marriage certificate or any other evidence of the marriage to the declaration.

4. Mortgagee not to disclose information about the mortgagor to third parties.

(1) A mortgagee shall not disclose any information about the mortgagor in respect of the mortgage to a third party without the written consent of the mortgagor.

(2) Sub regulation (1) shall not apply to information required to be disclosed by law or court.

(3) Notwithstanding sub-regulation (1) a mortgagee shall disclose information about the mortgagor to—

- (a) a surety of the mortgagor;
- (b) a donor of a powers of attorney;
- (c) an independent person under section 6 of the Act;
- (d) any person with proof of legal or beneficial interest in the property of the mortgagor.

(4) A mortgagee who contravenes sub regulation (1) commits an offence and is liable on conviction to a fine not exceeding seventy two currency points or imprisonment not exceeding three years or both.

5. Right to tack to be clearly specified in mortgage instrument.

(1) Where a mortgage includes a right to tack, the right shall be clearly and prominently specified in the mortgage instrument.

(2) For the purposes of sub regulation (1) the cover or first page of the mortgage instrument shall be clearly marked “mortgage with right to tack”.

(3) The registrar shall when recording the mortgage specify the right to tack in the register.

6. Address of service of mortgagor.

(1) Every notice or any other document required by the Act or these Regulations to be given to a mortgagor shall be sent to the address given by the mortgagor at the time of entering into the mortgage.

(2) Where the mortgagor does not give an address at the time of entering into the mortgage or at any time after, the notice or any other document shall be published in a newspaper of wide circulation in the area where the property is situated.

7. Mortgagor to notify mortgagee of change in address

(1) A mortgagor shall notify the mortgagee in writing of any change in the address of the mortgagor.

(2) An act or proceeding taken by the mortgagee shall not be affected by the mortgagor’s claim of a subsequent change in address that was not notified to the mortgagee.

PART III—SALE OF MORTGAGED PROPERTY.

8. Sale by mortgagee to be by public auction.

(1) A mortgagee exercising a power of sale under the Act shall subject to the Act and these Regulations, sell the mortgaged property by public auction.

(2) After giving the notice required by section 26 of the Act, the mortgagee shall give notice of the public auction by advertising the intended sale in a newspaper of wide circulation.

(3) The advertisement in sub regulation (2) shall include a coloured picture of the mortgaged property and specify—

(a) the time and place of sale; and

(b) the time at which the property may be viewed by the public.

(4) A sale shall not take place before the expiration of twenty one working days from the date of service of the notice as specified in section 26 of the Act.

(5) A person who contravenes this regulation commits an offence and is liable on conviction to a fine not exceeding seventy two currency points or imprisonment not exceeding three years or both.

9. Sale by order of court

Where the court makes an order for sale of mortgaged property, the sale shall be conducted in the manner directed by court.

10. Sale by private treaty

(1) A mortgagee exercising a power of sale under the Act may, with the consent of the mortgagor, sell the mortgaged property by private treaty.

(2) For purposes of sub-regulation (1) consent of the mortgagor shall, subject to section 26 of the Act, be by written notice.

(3) For the avoidance of doubt, a mortgagor's consent shall not be retrospective.

11. Valuation of mortgaged property

(1) The mortgagee shall before selling the property, value the property to ascertain the current market value and the forced sale value of the property.

(2) For the purposes of sub regulation (1), the valuation report shall not be made more than six months before the date of sale.

(3) The valuation report shall contain the current pictures of the property, including—

- (a) the front view of the property;
- (b) the side view of the property; and
- (c) the detailed description of the property.

12. Mortgagor to give access for valuation and inspection.

(1) Where the mortgagor is in possession of the mortgaged property at the time of sale, the mortgagor shall, upon notice, give access to the mortgaged property to—

- (a) the person authorized by the mortgagee to value the property;
- (b) persons inspecting the property after advertisement for the purposes of purchase.

(2) A person inspecting the property for the purposes of purchase shall be accompanied by the mortgagee or his or her representative.

(3) Where the mortgagor refuses to give access to mortgaged property, the mortgagee shall take possession of the property for the purposes of valuation and inspection at the cost of the mortgagor.

13. Adjournment or stoppage of sale.

(1) The court may on the application of the mortgagor, spouse, agent of the mortgagor or any other interested party and for reasonable cause, adjourn a sale by public auction to a specified date and time upon payment of a security deposit of 30% of the forced sale value of the mortgaged property or outstanding amount.

(2) The person conducting the sale may, upon notifying the mortgagor, mortgagee and bidders in writing, adjourn the sale to a specified date and time.

(3) The person conducting the sale shall specify the reason for adjourning the sale under sub regulation (2).

(4) Where a sale is stopped or adjourned at the request of the mortgagor, an agent of the mortgagor, the spouse of the mortgagor or any other interested party, the mortgagor, agent or spouse of the mortgagor or that interested party shall, at the time of stopping or adjourning the sale, pay to the person conducting the sale, a security deposit of 30% of the forced sale value of the mortgaged property or the outstanding amount, whichever is higher.

(5) Where the sale is stopped or adjourned at the request of the mortgagor for the purposes of redemption, the mortgagor shall at the time of stopping or adjourning the sale pay a security deposit of 50% of the outstanding amount.

(6) Notwithstanding sub-regulation (1) where the application is by the spouse of a mortgagor, the court shall determine whether that spouse shall pay the thirty percent security deposit.

(7) Where a sale is adjourned under this regulation for a period longer than fourteen days, a fresh public notice shall be given in accordance with regulation 8 unless the mortgagor consents to waive it.

(8) A sale shall be stopped where before the lot is called—

- (a) the mortgagor pays to the person conducting the auction, all the money owing to the mortgagee, including the costs of the sale; or

- (b) where the person conducting the sale is satisfied that all the money owing to the mortgagee, including the costs of the sale has been paid into the court which ordered the sale.

14. Deposit by purchaser and resale on default.

(1) At the fall of the hammer, the person declared purchaser shall within one working day, pay a deposit of at least thirty percent of the purchase amount to the officer conducting the sale.

(2) Where the purchaser defaults in paying the deposit, the property shall be resold.

(3) A purchaser who pays the deposit in accordance with this regulation shall pay the balance to the officer who conducted the sale within twenty one working days.

(4) Where the balance is not paid within the time specified in sub regulation (3), the property may be sold to the second highest bidder or re-advertised in accordance with these Regulations.

(5) Where the purchaser does not pay the balance in accordance with this regulation, the deposit shall be refunded to him or her less the costs incurred by the officer who conducted the sale.

15. Transfer of property after sale.

After the payment of the full purchase price, the mortgagee shall execute instruments of transfer of the property in name of the purchaser or the person named by the purchaser.

16. Sale not to be vitiated by irregularity.

(1) An irregularity in conducting a sale by public auction shall not vitiate the sale, but any person suffering loss or injury as a result of the irregularity may bring an action for damages or compensation against the mortgagee or the person who conducted the sale.

(2) Where a person suffering loss or injury as a result of irregularity in conducting a sale by public auction is the purchaser, that person may bring an action for declaration of ownership.

(3) Any person suffering loss as a result of irregularity by private treaty may sue the mortgagee for breach of contract.

PART IV—MORTGAGE FORMS

17. Mortgage instrument

The mortgage instrument shall be in Form 1 in Schedule 2.

18. Declaration of marital status

The declaration of marital status required by regulation 3 shall conform to the Statutory Declarations Act and shall contain a declaration regarding the following particulars—

- (a) sex, citizenship and age;
- (b) marital status
- (c) if married, the nature and type of marriage;
- (d) if married, the name, age, citizenship and address of the spouse;
- (e) date, month and year of marriage; and
- (f) number and age of children with the spouse, if any.

19. Spousal consent for mortgage of a matrimonial home or customary land

Subject to sections 5 and 7(6) of the Act, before granting a mortgage the mortgagee shall require the consent of the spouse and the children in Form 2 in Schedule 2.

20. Release of mortgage

A release or discharge of a mortgage by the mortgagee shall be in Form 3 in Schedule 2.

21. Transfer of mortgage.

(1) A transfer of a mortgage under the Act shall be in Form 4 in Schedule 2.

(2) A transfer of mortgaged land by a mortgagee to a purchaser after exercising the power of sale in accordance with section 28 (3) of the Act shall be in Form 5 in Schedule 2.

22. Notice of default.

A notice of default to the mortgagor shall be in Form 6 in Schedule 2.

23. Notice of appointment of receiver.

The notice to the mortgagor for the appointment of a receiver shall be in Form 7 in Schedule 2.

24. Leasing of mortgaged property.

A mortgagee shall, before leasing mortgaged property in accordance with the Act, give notice to the mortgagor in Form 8 in Schedule 2.

25. Mortgagee's power of sale of mortgaged property.

Before exercising the power to sale under section 26 of the Act, the mortgagee shall give notice to the mortgagor in Form 9 in Schedule 2.

26. Taking possession of the mortgaged land

Before taking possession of the mortgaged land under section 24 of the Act, the mortgagee shall give notice to the mortgagor in Form 10 in Schedule 2.

27. Withdrawing from possession

The notice by the mortgagee to withdraw from possession of the mortgaged land shall be in Form 11 in Schedule 2.

28. Variation of forms.

(1) A form, instrument or document under the Act or these Regulations may be modified or altered to suit the circumstances of each case.

(2) A form, instrument or document under the Act or these Regulations is not invalidated by a deviation or modification which does not affect the substance of the form, instrument or document.

SCHEDULE 1

Currency point

s.2, Reg .2

One currency point is equivalent to twenty thousand shillings.

SCHEDULE 2

FORMS

Form 1

Mortgage Instrument

s.3, Reg 17

THE REPUBLIC OF UGANDA

**THE MORTGAGE ACT, 2009 (ACT No.8 of 2009)
THE MORTGAGE REGULATIONS, 2012**

Mortgage Instrument.

Freehold Register Vol. _____ Fol. _____
Leasehold Vol. _____ Fol. _____
Mailo Block _____ Plot _____
Customary _____ PIN _____

I,being the registered proprietor of the land described above, in consideration of the sum of shs. this day lent to me by....., (in this Instrument called the mortgagee) agree with the mortgagee as follows:

- (1) to pay to the mortgagee or his or her transferees the principal sum of shs..... on theday of....., 20
- (2) to pay to the mortgagee or his or her transferees so long as the principal sum or any part of it remains unpaid, interest on the sum or on so much of it as shall for the time being remains unpaid at the rate of per cent per year by equal payments on the day ofand on the day of in every year.
- (3) to insure the property in the name of the mortgagee.
- (4) *(here set forth any special covenants relating to the property mortgaged)*.....
.....
.....

And to secure the payment of the principal sum and interest, I mortgage to the mortgagee all my property and interest in the land described in this Instrument.

Dated this _____ day of _____, 20 ____.

Signed by Mortgagor

In the presence of

Name

Name.....

Address.....

Address.....

Signature.....

Signature

Signed by Mortgagee

In the presence of

Name

Name.....

Address.....

Address.....

Signature.....

Signature

Form 2

Consent of spouse or child

s.5 , 7(6), Reg 19

THE REPUBLIC OF UGANDA

The Mortgage Act, 2009 (Act No.8 of 2009)
The Mortgage Regulations, 2012

CONSENT BY THE SPOUSE/ CHILD*

1. Location of land subject to consent:
 - a) Village/Zone.....
 - b) Parish/Ward.....
 - c) Sub-county/Town.....
 - d) County/Division.....
 - e) District.....

2. Approximate area (ha).....

3. Where the land is registered, state
 - a) Freehold Register Vol. _____ Fol. _____
 - b) Leasehold Vol. _____ Fol. _____
 - c) Mailo Block _____ Plot _____
 - d) Customary _____ PIN _____

4. Use or occupation of land (e.g.farming, housing).....
.....
.....

5. State the nature of the transaction.....

6. I/We being the spouse(s) /child(ren)* of the owner of the land described in this Instrument, and forming part of family land which is subject to section 39 of the Land Act grant consent/do not grant consent to the transaction.*

7. Reasons for refusal.....
.....

Signed by Spouse(s) /Child(ren) of the mortgagor*

Name

Address.....

Signature.....

In the presence of

Name..... (Witness)

Designation.....

Address.....

Signature.....

*delete whichever is not applicable

Form 3

Release of mortgage

s.15, Reg 20

THE REPUBLIC OF UGANDA

The Mortgage Act, 2009 (Act No.8 of 2009)
The Mortgage Regulations, 2012

RELEASE OF MORTGAGE

Freehold Register Vol. _____ Fol. _____
Leasehold Vol. _____ Fol. _____
Mailo Block _____ Plot _____
Customary _____ PIN _____

I, of P.O. Box
..... being the mortgagee of property comprised in
....., the mortgage registered on the
..... day of 20....., under
instrument No. release and discharge the
registered proprietor and the land described in this instrument from the
obligations or conditions under the mortgage.

Dated this.....day of20.....

Signed by Mortgagee

Name

Address.....

Signature.....

Form 4

Transfer of mortgage.

s.17, Reg.21

THE REPUBLIC OF UGANDA

The Mortgage Act, 2009 (Act No.8 of 2009)
The Mortgage Regulations, 2012

TRANSFER OF MORTGAGE

Freehold Register Vol. _____ Fol. _____
Leasehold Vol. _____ Fol. _____
Mailo Block _____ Plot _____
Customary _____ PIN _____

I, of P.O. Box being the mortgagee of land described in this instrument and registered under instrument No....., transfer the mortgage and all my interests, rights and obligations under the mortgage toof P. O. Box..... in consideration of the sum of receipt of which I acknowledge.

Dated this.....day of20.....

Signed by Mortgagee

Name

Address.....

Signature.....

Form 5

Transfer of mortgaged land.

s.17, Reg.21

THE REPUBLIC OF UGANDA

The Mortgage Act, 2009 (Act No.8 of 2009)
The Mortgage Regulations, 2012

TRANSFER OF MORTGAGED LAND
(Under section 28 (3))

To
The Registrar/Recorder

Freehold Register Vol. _____ Fol. _____
Leasehold Vol. _____ Fol. _____
Mailo Block _____ Plot _____
Customary _____ PIN _____

In accordance with section 28(3) of the Mortgage Act, 2009, I,
....., of P.O. Box
being the mortgagee of land described in this instrument and registered under
instrument No....., **transfer** the land described
in this instrument and all my interests, rights and obligations under that land to
.....of P.O.Box.....
in consideration of the sum of receipt of
which I acknowledge.

Dated this.....day of20.....

Signed by Mortgagee

Name

Address.....

Signature.....

Notice of default.

s.19, Reg 22.

THE REPUBLIC OF UGANDA

The Mortgage Act, 2009 (Act No.8 of 2009)
The Mortgage Regulations, 2012

NOTICE OF DEFAULT

To

(insert full address of mortgagor)

TAKE NOTICE that you have defaulted on your obligations under the Mortgage executed on theday of.....20.. as follows:
(state the nature of default)

.....
.....

TAKE FURTHER NOTICE that in accordance with the Mortgage you are required:

(a) to pay the sum of.....
(insert amount owing) or

(b) to.....
(state action required of mortgagor)

Within 21 working days from the date of this notice in order to rectify the default.

TAKE FURTHER NOTICE that if the default is not remedied within the time stated in this notice, the mortgagee shall be entitled and will proceed to exercise any of the following remedies;

- (a) appointing a receiver of the mortgaged land;

- (b) leasing/subleasing the mortgaged land;
- (c) entering into possession of the mortgaged land; or
- (d) Selling the mortgaged land.

Dated this day of20.....

Name of Mortgagee

Address.....

Signature.....

Form 7

Notice of intention to appoint a receiver.

s.22, Reg23

THE REPUBLIC OF UGANDA

The Mortgage Act, 2009 (Act No.8 of 2009)
Mortgage Regulations, 2012

NOTICE OF APPOINTMENT OF A RECEIVER

To

.....

.....

(insert full address of the Mortgagor)

TAKE NOTICE that in accordance with section 22 of the Mortgage Act, 2009, the Mortgagee shall after 15 days from the date of receipt of this notice, appoint a receiver in respect of the mortgaged property comprised inunless the sum ofis paid in full to the Mortgagee within that time.

Dated this day of20.....

Name

Address.....

Signature.....

Form 8

Notice of intention to lease the mortgaged property.

s.23 Reg24

THE REPUBLIC OF UGANDA

The Mortgage Act, 2009 (Act No.8 of 2009)
THE MORTGAGE REGULATIONS, 2012

NOTICE OF LEASE OF MORTGAGED PROPERTY

To

.....

.....

(insert full address of the mortgagor)

TAKE NOTICE that in accordance with section 23 of the Mortgage Act, 2009, the Mortgagee shall after 15 days from the date of receipt of this notice, proceed to lease the mortgaged property comprised inunless the sum of is paid in full to the Mortgagee within that time.

Dated this day of20.....

Name

Address.....

Signature.....

Form 9

Sale of mortgaged property.

S.26, Reg 25

THE REPUBLIC OF UGANDA

The Mortgage Act, 2009 (Act No.8 of 2009)
THE MORTGAGE REGULATIONS, 2012

NOTICE OF SALE OF MORTGAGED PROPERTY

To

.....

.....

(insert full address of the Mortgagor)

TAKE NOTICE that in accordance with section 26 of the Mortgage Act, 2009, the Mortgagee shall after 21 working days from the date of receipt of this notice, proceed to sell the mortgaged property comprised in*(Insert the description of land and mortgage instrument)* unless the sum ofis paid in full to the Mortgagee within that time.

Dated this day of20.....

Name

Address.....

Signature.....

Form 10

Taking possession

s.24 Reg 26

THE REPUBLIC OF UGANDA

The Mortgage Act, 2009 (Act No.8 of 2009)
THE MORTGAGE REGULATIONS, 2012

NOTICE BY A MORTGAGEE TO TAKE POSSESSION

To

.....

.....

(insert full address of the Mortgagor)

TAKE NOTICE that(insert name of mortgagee) shall after five working days from the date of this notice, proceed to exercise the mortgagee's power to take possession of the mortgaged property comprised in in accordance with section 24 of the Mortgage Act, 2009

Dated this day of20.....

Name of Mortgagee

Address.....

Signature.....

Form 11

Withdrawing from possession

s.25, Reg. 27.

THE REPUBLIC OF UGANDA

The Mortgage Act, 2009 (Act No.8 of 2009)
THE MORTGAGE REGULATIONS, 2012

NOTICE BY THE MORTGAGEE TO WITHDRAW FROM POSSESSION

To

.....

.....

(insert full address of the Mortgagor)

TAKE NOTICE that shall on,
withdraw from possession of the mortgaged property comprised in
....., in accordance with section 25 of the Mortgage
Act, 2009.

Dated at this day of20.....

Name

Address.....

Signature.....

DAUDI MIGEREKO,
Minister of Lands, Housing and Urban Development.