



FACULTY OF JURIDICAL SCIENCES

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Lien and Mortgage

What Is Mortgage Lien?

When Anita Agarwal, who bought her house 15 years ago, decided to pre-close her loan, she was told by the credit officer to get the lien on her mortgage withdrawn and to obtain a no-objection certificate (NOC), besides collecting the original property papers.

Agarwal, who was not sure about the process at the beginning, realised that home loan closure must be conducted with due care and attention, so that no complications surface in the future and the property gets free from lien.

What is a mortgage lien?

The term lien stands for a lender's right to keep somebody's property until a debt is repaid. In a home loan, a mortgage lien provides your bank a safety and comfort against a loan, as it can claim the legal right on the property if the debt becomes bad. Since your lender has a righteous legal right on your home, you need to keep up with your monthly obligations or run the risk of losing the property to foreclosure. When you complete your repayment commitment, the lien is removed and the property becomes unrestricted and clear.

Benefits of mortgage lien

When you obtain a home loan, you commit yourself to paying the principal amount and Equal Monthly Instalments (EMIs) over the entire tenure of the loan. A mortgage lien gives the lender the best financial refuge and recourse if you fail to meet your monthly obligations. While a lender can levy late fees for any default on EMIs, for the bank or any financial company, a mortgage lien is a powerful tool to prevent a default by the borrower.

Title of the mortgaged property

While a property/title deed is the formal and legitimate ownership record for your home, a lien is a claim made against the property. When you buy a home, a title firm evaluates the property to determine what outstanding liens need to be resolved so that you can purchase the home with a fresh and fair title. Assets are sometimes sold before the mortgage is paid in full. In such an event, the mortgage lien is usually settled when the seller closes the sale; the sale proceeds are used to pay for the home loan.

Mortgage lien foreclosure-

Foreclosure of a mortgaged property happens in three ways:

- When you repay the debt over the entire tenure of the loan.
- At the time of pre-payment/ sale of the property.
- When the lender forecloses on your property because you fail to make payments.

Foreclosure is a legal process by which a lender acquires a house, based on the terms of your loan contract. A foreclosure process starts only when you miss several EMI payments (that is, when the asset is proclaimed as the special mentioned account, or SMA), and have the final formal written notice from the lender. After that, you either repay the entire loan or the lender claims the property.

Withdrawal of lien

A lien is a formal arrangement registered in the Registrar Office that prevents the salability of the property. If a lien is created, it is important to have it removed, to make the property title clear. At the time of the closure of your home loan, a bank official accompanies you to the Registrar Office to terminate the lien. It should be noted that the property cannot be sold until the lien has been withdrawn. The formal process of closing the home loan is incomplete without removing

the lien on the property. It takes around 10 days for property title change to reflect in the accounts of the Registrar.

MCQS

1. One of the differences between overdraft and cash credit is:

(A) Overdraft is always subject to limit whereas cash credit has no limit (B) Overdraft is allowed on any kinds of account whereas cash credit is allowed on current account.

(C) Overdraft is allowed on current account whereas cash credit is a separate account.

2. Lien, one of the modes of charging securities, is the right to retain:

(A) Goods and securities until debt is satisfied

(B) Property mortgaged to the bank.

(C) Both property and goods and securities.

3. When a manufacturer wants to borrow money on the security of raw materials or stock-in-process which are in the process of being manufactured into finished products, bank prefers:

(A) Lien of goods.

(B) Hypothecation of goods.

(C) Pledge of goods.

4. Contract Act-1872 has defined pledge as:

(A) A charge against property for an amount of debt where neither ownership nor possession is passed on to the creditor.

(B) The right to retain a particular commodity in respect of which the debt arose.

(C) A bailment of goods as security for payment of debt or performance of a promise.

5. Mortgage, a mode of charging security, has been defined in:

(A) Transfer of Property Act-1882.

(B) Sale of Goods Act-1876.

(C) N.I. Act-1876.

6. Will you give loan against a Fixed Deposit Receipt jointly held by two persons with the instructions: payable to either or survivor?

(A) No, because either or survivor clause bars the bank

(B) No, because FDR is in the names of two persons

(C) No, unless necessary documents are signed by both the persons names of whom are appearing on the FDR.