

CHAPTER-26

MORTGAGE PERMISSION

Mortgage is a transfer of an interest in an immovable property for securing loans. Therefore, in restricted leases, i.e. where the lease deed provides for prior permission of the lessor for transfer or assignment of lease hold rights, it shall be obligatory for the lessee to obtain prior permission of the lessor before mortgaging the premises. Failure to do so shall amount to breach of lease terms of which the property can be re-entered.

2. APPLICATION FOR GRANT OF MORTGAGE PERMISSION:

A lessee may himself apply for mortgage permission. An agent of the lessee can also apply for mortgage permission provided he or she holds a registered Power of Attorney Deed and furnishes an attested copy of the same alongwith the application.

3. PROCEDURE FOR GRANT OF MORTGAGE PERMISSION:

On receipt of an application for the grant of mortgage permission, the concerned section shall check up whether there are any breaches of the terms of lease deed already in the knowledge and if so no action on the application shall be taken to the breaches are removed. Where the lessee is unable to remove the breaches but pays damages upto ensuing 14th January or 14th July, whichever is earlier and also furnishes an undertaking to get the breaches regularised on payment of charges till they removed, the application shall be processed further.

4. PURPOSE OF MORTGAGE:

A lessee or a duly authorised agent can seek mortgage permission for the following purposes:-

- (i) for raising loan for construction of additions and alterations to the building; or
- (ii) for raising loans for some other purposes like business.

5. MORTGAGE PERMISSION FOR RAISING LOANS FOR CONSTRUCTION/ ADDITIONS AND ALTERATION OF THE BUILDING:

If the demised premises is proposed to be mortgaged for raising a loan for construction or additions and alterations on the leased land, the applicant shall furnish the original construction plans duly approved by the local body concerned, alongwith one copy thereof duly attested by the local body, In case there are breaches of terms of lease deed already in the knowledge of the office, the plans shall be examined by the Technical Section under the terms of the lease in order to ascertain:-

- (i) Whether any additional ground rent is involved; and
- (ii) If the additional ground rent is involved, upto what period the same has been paid.

In case the premises are free from breaches as per records of the Land & Development Office, the sanctioned plans shall be got examined by the Technical Section after issue of the mortgage permission. The original set of plans shall be returned to the applicant duly sanctioned under the terms of the lease and the other copies shall be retained in the records of the Land & Development Office. *After the plans are sanctioned under the lease, and the breaches if any removed or regularised, the applicant shall be asked to deposit a sum of Rs. 30/- towards the cost of forms and preparation of a tripartite agreement. This amount can be paid through Indian postal Order or Bank Pay Order drawn in favour of Land & Development Office, payable at New Delhi.

*This is only for subsequent lessees.

6. TRIPARTITE AGREEMENT:

A tripartite agreement shall be required in case of mortgage permission in favour of LIC or Banks etc. The tripartite agreement shall be prepared by the Land & Development Office in quadruplicate and send to the applicant for execution both by himself or herself and the mortgagee. The lessee shall, after execution both by himself and the mortgagee, return all the four copies to the Land & Development Office for execution by the Authorised Officer on behalf of the lessor. Thereafter all the four copies of the agreement shall be sent back to the lessee for getting the same registered with the Sub-Registrar

in whose jurisdiction the leased land is situated. The registration shall be got done within 30 days of the receipt of the documents by the lessee. At the time of registration, the lessee shall apply to the Sub-Registrar for an attested copy of the agreement showing details of registration, to the Land & Development Office within 15 days of the receipt of the copy from the Sub-Registrar. On receipt of this copy a formal letter of grant of mortgage permission shall be issued by the Land & Development Office.

The lessee shall then proceed to executed the mortgage deed with the mortgagee, have it registered with the Sub-Registrar and furnish a copy of the deed to the Land & Development Office within one month of the date of its execution and registration.

It shall not be necessary to execute a Tripartite Agreement in a case of a mortgage with a Department of the Government of India or Delhi Administration or where a property leased by the Regional Settlement Commissioner is still in the hands of the original lessee. In such cases mortgage permission shall be issued in the prescribed format immediately after the plans are sanctioned under the lease.

7. MORTGAGE WITHOUT PERMISSION:

Mortgage is a transfer of the demised premises and hence where the lease deed provided that permission of the lessor shall be obtained before any assignment or transfer of the property, it shall be incumbent upon the lessee to obtain prior permission of the lessor to mortgage the premises. Mortgage without the lessor's permission in restricted leases shall be a breach of the terms of the lease. Such breach of terms may be regularised by:-

(i) payment of penalty at the following rates:-

Area of the Plot	Amount of penalty	
	For a delay upto 2 years in intimating the breach.	For a delay over 2 years in intimating The breach.
a) Less than 200 sq. yds.	Rs. 100/-	Rs. 150/-
b) 200 sq. yds. & above but less than 400 sq. yds.	Rs. 150/-	Rs. 200/-
c) 400 sq. yds. and above but less than 800 sq. yds.	Rs. 200/-	Rs. 250/-
d) 800 sq. yds. and above	Rs. 250/-	Rs. 300/-

(ii) Execution of a tripartite agreement providing for the recovery of unearned increase etc. in the event of fore-closure of the mortgage.

Where a mortgage comes to notice only after the fore closure thereof, penalty for sale without permission shall also be recovered. The period for the purpose of sale without permission shall be counted from the date of sale or fore-closure to the date on which intimation had been sent to the Land & Development Office.

