

ACT

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THE HOME MORTGAGE FINANCE ACT, 2009

ARRANGEMENT OF SECTIONS

Section No.

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SIGNED this 4th day of June, 2009

DR. ERNEST BAI KOROMA,
President.



No. 4



Sierra Leone

2009

THE HOME MORTGAGE FINANCE ACT, 2009

Short title.

Being an Act to regulate home mortgage financing and institutions, which carry on home mortgage financing and to provide for other related matters.

[/] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Interpretation. 1. In this Act, unless the context otherwise requires –

“Annual Percentage Rate (APR)” means the total cost of credit that the borrower pays, expressed as a simple annual percentage;

“Banking Institution” or “Bank” means a financial institution licensed by the Bank of Sierra Leone under the Banking Act, 2000 to carry on the business of banking;

Act No. 11
of 2000.

“Borrower” means a person who has taken a loan under this Act and includes any person from time to time deriving title through the original Borrower;

“Certified Valuer” means a member in good standing of the Sierra Leone Institution of Engineers;

“default” means failure to perform or breach of such terms, conditions, covenants or obligation in the mortgage Agreement;

“Demand Note” means a notice to the Mortgagor demanding arrears due;

“dwelling house” means a building that is used mainly for residential purposes;

“Good Faith Estimate” means a good faith estimate of all anticipated costs that will be borne by the Mortgagor in a mortgage transaction;

“loan” includes any credit or other financing granted by a Banking Institution or Non-Banking Financial Institution under this Act;

“mortgage” means an encumbrance on the property charged, and does not, except as provided by this Act, operate so as to change the ownership, right to possession or any other interest, whether present or future in the property charged;

“Mortgage Agreement” means an agreement in writing between a Mortgagor and a Mortgagee granting the Mortgagee a charge over the mortgaged property as security for the loan and setting forth the terms and condition of the loan;

“Mortgagor” means a person who in consideration for a loan granted to him or to a third party or for the performance of an obligation secures the repayment of the loan or the performance of the obligation under this Act with an immovable property and includes any person from time to time deriving title through the original Mortgagor or entitled to redeem a mortgage according to his interest in the mortgaged property;

“Mortgagee” or “Lender” means an institution that grants loans for the purposes specified in section 2 of this Act and includes any person from time to time deriving title through the original Mortgagee;

(Act No. 7
of 2001)

“Non-Banking Financial Institution” means a financial institution, licensed by the Bank of Sierra Leone under the Other Financial Services Act, 2001;

“purchaser” means a purchaser in good faith for valuable consideration and includes a lessee or Mortgagee who acquires an interest for valuable consideration;

“reasonable force” means only that minimum amount of force necessary to evict the Mortgagor or any other person occupying the mortgaged property or force that is reasonable and without undue or excessive violence;

“unauthorized purpose” means any purpose other than the purpose stated in section 2.

PART II – GENERAL PROVISIONS

Scope of application.

2. (1) This Act applies to all Banking Institutions and Non-Banking Financial Institutions engaged in the business of–

- (a) providing mortgage financing for the construction and purchase of dwelling houses by individuals and institutions including the financing of the completion of uncompleted houses and extensions and renovations or improvements to dwelling houses for ownership, sale or rental;
- (b) financing the construction of dwelling houses by organizations engaged in the business of building dwelling houses for sale or rental as well as for the financing of fixtures and chattels relating to dwelling houses; or
- (c) providing loans, advances or bonds and other guarantees to individuals for a specified purpose agreed between the Borrower and the Lender provided the repayment of the loans, advances or bonds and other guarantees is secured by a legal mortgage.

Application of Act .

3. (1) Except where otherwise provided, this Act shall apply only to home finance mortgages created after the commencement of this Act.

(2) Nothing contained in this Act shall affect the validity, rights or obligations of parties to any home mortgage finance created before the commencement of this Act.

Application of Conveyancing, etc. Act.

4. (1) This Act shall be in addition to the Conveyancing and Law of Property Act 1881 and shall not, except as otherwise provided in this Act, derogate from the provisions of the Conveyancing and Law of Property Act 1881.

(2) Where there is a conflict or inconsistency between the Conveyancing and Law of Property Act 1881 and this Act, the provisions of this Act shall prevail in so far as the particular mortgage falls within the scope of this Act.

PART III – EFFECT OF A MORTGAGE

5. (1) Where a financial institution grants a loan under this Act security for the loan shall include a mortgage over the property in respect of which the loan is granted; and Security for loan.

(2) Unless otherwise agreed by the Mortgagee or the Lender, the title deeds, documents of title or mortgage deeds relating to the property, duly stamped and registered shall be deposited with the financial institution unless the financial institution in its absolute discretion decides otherwise or demands another security in place of the title documents.

6. (1) A mortgage under this Act shall not be enforceable unless it is evidenced in writing and provides for the– Mortgage evidenced in writing.

- (a) name and address of each Mortgagor and Mortgagee;
- (b) full description of mortgaged property;
- (c) names of persons whose consent is required if any;
- (d) date of creation of Mortgage;
- (e) nature of Mortgagor’s interest in the mortgaged property;
- (f) the extent to which the Mortgagor’s interest is subject to the mortgage;
- (g) the nature of the charge created; in case of a floating charge the nature of the restriction on the power of the Mortgagor’s right to grant further charges ranking in priority or *pari passu* with the charge thereby created;

- (h) consideration stating the exact amount in words and figures unless the agreement provides for further advances;
- (i) acknowledgement of receipt of consideration by Mortgagor;
- (j) rights of redemption;
- (k) insurance of property;
- (l) interest on principal amount;
- (m) date on which payment is due;
- (n) terms and conditions of renewal;
- (o) covenants and conditions;
- (p) events of default;
- (q) signatures of parties; and
- (r) signatures of witnesses.

(2) A mortgage agreement shall be sufficient and shall be enforceable with regard to form and expression, if it is in the form contained in the First Schedule or in similar form or using expressions to a similar effect.

Disclosure requirements.

7. (1) A Mortgagee under this Act shall, at least fourteen days before granting a loan to a Mortgagor, provide to the prospective Borrower in writing—

- (a) the estimated Annual Percentage Rate (APR); and
- (b) a good faith estimate of all the charges, fees and costs of the mortgage transaction.

(2) The disclosures required under subsection (1), shall be in the form provided in the Second Schedule and shall be delivered to, and acknowledged in writing by the prospective Borrower.

(3) The Mortgagee shall allow a minimum period of fourteen days from the date of offer of the loan to the day when the mortgage agreement is executed in order to enable a prospective Borrower to seek legal and financial advice on all the documents relating to the loan.

(4) Any Mortgagee who makes inaccurate disclosures under subsection (1) or fails to comply with the provisions of this section shall be liable to the Mortgagor for the total of all of the following damages—

- (a) any actual damages a Mortgagor or Borrower sustained as a result of the violation; and
- (b) court costs and legal fees.

(5) Without prejudice to subsection (4), a Mortgagee who fails to comply with the provisions of this section shall be liable to a fine not less than five million Leones.

(6) A Mortgagee shall not be liable under subsection (4) and (5), if upon discovery of an error made in a disclosure required under subsection (1) he notifies the Mortgagor of the error and makes the necessary adjustments to the Mortgagor's account within sixty days of discovery, so that the Mortgagor or Borrower pays no more than the lesser of the finance charge or the APR actually disclosed.

(7) The Bank of Sierra Leone shall issue such notices as it considers necessary for the purpose of implementing the provisions of this section including guidelines relating to the determination of accuracy tolerance margins for the purposes of subsections (4) and (5).

Stamping and
registration.
Cap 274.
Cap256.

8. Without prejudice to the provisions of section 14 of the Stamp Duty Act, and section 24 of the Registration of Instruments Act, a mortgage created under this Act shall not be void or avoided by reason that it has not been registered or stamped and shall be valid as between the parties to the mortgage:

Provided any interest in the mortgaged property acquired by a third party for valuable consideration and acting in good faith shall not be valid unless that third party registers his interest or the instrument creating the interest under the Stamp Duty Act and the Registration of Instruments Act.

Cap 274.
Cap256.

Default in
payment.

9. (1) Where the Mortgagor fails to make an installment payment within fourteen days after the due date for such payment, the Mortgagee shall notify the Mortgagor in writing of this fact and demand urgent steps to be taken to remedy such default by the Mortgagor.

(2) If no payment is made and the immediately following month's installment also falls into arrears, the Mortgagee shall send to the Mortgagor a Demand Note for the immediate payment of the total amount that has fallen into arrears.

(3) The notice required under subsection (1), and the Demand Note required under subsection (2) shall be delivered either—

- (a) by hand and a receipt acknowledged in writing by the Mortgagor; or
- (b) by leaving it for the Mortgagor with any person apparently over the age of eighteen years at such address and receipt acknowledged in writing by that person; or

- (c) by pasting the notice on a reasonably noticeable part of the mortgaged property; or
- (d) be sent by registered mail or by courier to the address provided by the Mortgagor.

(4) Where registered mail or courier service is used the Demand Note shall be deemed to have been received by the Mortgagor at the time at which it would have been delivered in the ordinary course of post or the courier service.

(5) If a settlement of the arrears is not made after the date of issue of the Demand Note and the Mortgagor does not make a satisfactory arrangement with the Mortgagee for the settlement of the amount outstanding, the Mortgagor shall be deemed to be in default as soon as the third succeeding month's installment also falls into arrears.

(6) Where the Mortgagor is a body corporate or a partnership, the notification required under subsection (1) and the Demand Note shall, when hand delivered, be delivered to the registered or principal place of business and acknowledged in writing by an officer of the company or partnership.

10. Upon the failure of performance of an act or acts secured by the mortgage to which this Act applies, the Mortgagee may do either or both of the following—

Remedies of
Mortgagees
on Default.

- (a) sue the Mortgagor or Borrower on any personal covenant to perform;
- (b) realise the Mortgagor's security in the mortgaged property in any or all of the ways provided in this Act.

Appointment
of receiver
upon default.

11. (1) Upon failure of performance of an act or acts secured by a mortgage to which this Act applies, the Mortgagee may appoint a receiver for the purposes of this section.

(2) In the exercise of his right of appointment of receiver under subsection (1), the Mortgagee under a mortgage to which this Act applies, shall not be obliged to take any court proceedings.

(3) A receiver appointed under subsection (1), may take possession of the mortgaged property in the manner stated in this section, and collect by demand or action in the name of the Mortgagor or the Mortgagee or otherwise, all income including arrears accruing from the mortgaged property, give valid receipts for all income collected and do any other act necessary or proper to manage the property including making reasonable repairs and improvements to the property to protect its value or to maintain or increase the income from the property.

(4) A receiver appointed under subsection (1), shall be deemed to be the agent of the Mortgagee and the Mortgagee shall be responsible for the receiver's acts or omissions.

(5) A person paying money to the receiver shall not be concerned to enquire whether any event had happened to authorise the receiver to act.

(6) The receiver may at any time be removed and a new one appointed by the Mortgagee in writing.

(7) For the removal of doubt, the fact that a Mortgagee has taken possession of the mortgaged property shall not prevent him from appointing a receiver under this section in respect of that property.

(8) A receiver shall be entitled to retain out of any money received by him for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as a receiver a commission at a rate not exceeding five per centum on the gross amount of all money

received, as is specified in his appointment and where no rate is so specified then at the rate of two and a half per centum of that gross amount.

(9) The receiver shall, if so directed in writing by the Mortgagee, insure the mortgaged property and any property of an insurable nature being part of the mortgage property, to the extent to which the Mortgagor ought to have insured against risks specified in the mortgage agreement.

(10) A receiver appointed under subsection (1), shall apply all money received by him as follows—

- (a) in discharge of all rents, taxes, rates and other outgoings affecting the mortgaged property;
- (b) in payment of all annual sums or interest on all principal sums, due and having priority to the mortgage;
- (c) in payment of his commission and of the premium payable in accordance with the mortgage and cost of effecting necessary repairs;
- (d) in payment of all interest accruing in respect of any principal money due under the mortgage;
- (e) in or towards the discharge of any principal money due under the mortgage if so directed in writing by the Mortgagee,

and shall pay the residue if any, or the moneys received by him to the person who but for the possession of the receiver would have been entitled to receive the income of which he is appointed receiver or who is otherwise entitled to the mortgaged property.

(11) Any person who obstructs a receiver in the discharge of his functions commits an offence and shall be liable on conviction to a fine not less than five million Leones or to imprisonment not exceeding six months or to both fine and imprisonment; and in the case of a continuing offence, to a further fine not exceeding five hundred thousand Leones for each day on which the offence continues.

(12) Paragraph (iii) of subsection (1) of section 19 of the Conveyancing and Law of Property Act, 1881 shall not apply to any mortgage to which this Act applies.

Mortgagee's
right to
possession.

12. (1) Upon failure of performance of an act or acts secured by the mortgage, the Mortgagee shall be entitled, as against the Mortgagor and any person deriving an interest in the mortgaged property through him whose interest is subsequent to that of the Mortgagee, to possession of the mortgaged property.

(2) In the exercise of his right of possession under this section the Mortgagee under a mortgage to which this Act applies shall make an *ex-parte* application to the High court for an order to take possession of the mortgage property.

(3) An order made by the High court under section (2) shall be enforceable by writ of possession.

Sale of
mortgaged
property
upon default.

13. (1) Upon failure of performance of an act or acts secured by the mortgage the Mortgagee may sell or cause the mortgaged property to be sold.

(2) In the exercise of his right of sale under this section the Mortgagee under a mortgage to which this Act applies shall not be required to take any court proceedings.

(3) A sale of any mortgaged property under this section may be by public auction or private contract and shall be subject to such conditions as the Mortgagee may determine.

(4) Where a sale is conducted by a public auction the Auctioneers Act, shall apply except that the auctioneer's fees shall not exceed three per centum of the gross amount of the sale.

(Cap 224)

(5) Except where a sale is conducted by public auction, a Mortgagee who wishes to exercise his power of sale under this section shall give fourteen days notice of the sale to the Mortgagor and every encumbrancer of whom he has notice.

(6) A notice required under subsection 5 shall be deemed to be served on all such encumbrancers if published in a public local newspaper on the fourteenth and seventh day respectively preceding the date of sale.

(7) Where a Mortgagee has in exercise of his power of sale under this section sold or caused to be sold the mortgaged property to another person the title of the purchaser shall not be defeated on the ground that —

- (a) no case has arisen to authorise the sale; or
- (b) the notice required under subsection (5) has not been given; or
- (c) the power of sale was otherwise improperly or irregularly exercised,

but the Mortgagee shall be personally liable for any loss caused by that sale if the sale is carried out in violation of this Act.

(8) Neither the Mortgagor nor any encumbrancer is precluded from purchasing the mortgaged property at a sale under this section subject to the conditions set forth in subsection (3) provided that a Mortgagee at whose instance the sale was made shall not have the right to purchase the mortgaged property except where the sale is carried out at a public auction or subject to the approval of the Mortgagor and all the encumbrancers of whom he has notice where the sale is carried out by private contract.

(9) The Mortgagee exercising his right of sale under this section may convey to the purchaser the whole of the interest of the Mortgagor in the mortgaged property.

(10) The purchaser of the mortgaged property shall take title to the mortgaged property free of all interests to which the mortgage of the Mortgagee who requested the sale has priority, and free of that mortgage, but subject to all interests which have priority to that mortgage, and shall be entitled as against any person to all title documents relating exclusively to the mortgaged property other than those title documents held by a person with an interest having priority to the mortgage of the Mortgagee who requested the sale.

Cap 256

(11) Without prejudice to section 14 of the Registration of Instruments Act—

- (a) a certificate of purchase executed by the Mortgagor, the auctioneer and the purchaser pursuant to an auction sale of the mortgaged property; or
- (b) where the sale is by private contract, a statutory declaration by a Mortgagee evidencing the fact of a mortgage, default by the Mortgagor under the terms and conditions of the mortgage and a sale of the mortgaged property pursuant to such default,

shall be sufficient for the purposes of establishing the title of the purchaser to the mortgaged property and for registration under the Registration of Instruments Act.

Cap 256

(12) The proceeds from a sale under this section shall be held in trust for distribution by the Mortgagee who caused the sale.

(13) Proceeds from a sale under this section shall be distributed as follows:

- (a) in payment of all expenses properly incurred as incident to the sale or any prior attempted sale;

- (b) in payment of all sums secured by the mortgage or with the same priority as the mortgage; and
- (c) in payment in the order of priority of any encumbrances subsequent to that of the mortgagee who requested the sale and the remainder to the mortgagee or his successors in title.

(14) For the removal of doubt it is hereby declared that a Mortgagee on whom a right of sale is conferred by this section shall not be deemed to be a trustee of the Mortgagor in respect of that right.

14. (1) Before the sale of the mortgaged property, the mortgage property shall be valued by a Certified Valuer agreed upon by the parties and where the parties are unable to reach an agreement, the Mortgagee shall appoint the valuer. Price of property not to be less than 85% of market value.

(2) Where there is a dispute over the valuation of the mortgaged property, the party disputing the valuation shall apply to the Sierra Leone Institute of Surveyors for an appointment of an independent Valuer and the decision of the Valuer appointed by the Sierra Leone Institution of Engineers shall be final.

(3) The price obtained from the sale of a mortgaged property under this Act shall not be less than eighty five per cent of the appraised market value of the property.

(4) Where there is no sale at eighty five per cent of the appraised market value as provided under subsection (3) after two attempts at sale, the property may be sold at a price less than eighty five percent of the appraised market value and neither the Mortgagee nor an affiliated party of the Mortgagee shall be precluded from purchasing the mortgaged property at such subsequent sale.

(5) A Mortgagee who contravenes subsections (3) and (4) shall not be entitled to bring an action against the Mortgagor to claim the remainder of any amounts still owed.

(6) Failure of the Mortgagee to comply with subsections (3) and (4) shall however not render a sale under this Act invalid.

Insurance.

15. (1) Both the Mortgagor and the Mortgagee have an insurable interest in the mortgaged property.

(2) Unless a contrary intention appears expressly or by necessary implication, where the Mortgagor has covenanted to insure all or any part of the mortgaged property and fails to do so as required by the terms of the mortgage, the Mortgagee shall be entitled, after giving notice in writing to the Mortgagor, to insure and keep insured the mortgaged property against loss or damage by theft, fire, earthquake or other natural disaster; and the premiums paid by the Mortgagee for any such insurance shall be secured with the same priority as the mortgage and, where the mortgage secures payment of money, shall be added to the principal sum with interest at the same rate as on the principal sum.

(3) Unless a contrary intention appears expressly or by necessary implication, where the Mortgagor has covenanted to insure all or any part of the mortgaged property and the insurance has been effected by the Mortgagor, or on behalf of the Mortgagor by the Mortgagee, all money received on such insurance shall be applied in making good the loss or damage in respect of which the money is received unless the Mortgagor elects to apply all or part of it toward the performance of the act or acts secured by the mortgage.

Rates.

16. Where any Mortgagor under a mortgage to which this Act applies fails to pay any property rates due in respect of the mortgaged property the Mortgagee may pay the rates and moneys so paid shall be secured with the same priority as the mortgage and shall be added to the principal sum with interest at the same rate as on the principal sum.

17. A Mortgagor under a mortgage to which this Act applies shall not transfer any interest in the mortgaged property without the consent in writing of the Mortgagee.

Mortgagor's right to transfer restricted.

18. (1) A Mortgagor under a mortgage to which this Act applies shall not create further charges on any interest in the mortgaged property without the consent in writing of the Mortgagee.

Mortgagor's right to create further charges restricted.

(2) A charge created in contravention of subsection (1) shall be void in so far as the Mortgagor's obligation under the prior mortgage agreement has not been fully discharged.

PART IV – MISCELLANEOUS

19. Subject to paragraph (c) of subsection (1) of Section 2, any person who, being a person to whom a loan is granted under this Act, uses the whole or part of the proceeds of the loan for any purpose other than the purpose for which the loan is granted, the loan and any interest thereon shall immediately become payable and that person commits an offence and shall, on summary conviction, be liable to a fine not exceeding two million Leones or to a term of imprisonment not exceeding twelve months or both fine and imprisonment.

Penalty for using loan for unauthorised purpose.

20. Where an offence under this Act or under any rules made thereunder is committed by a body of persons then—

Offences by bodies of persons.

(a) in the case of a body corporate, every director and officer of the body corporate shall be deemed to have committed the offence; and

(b) in the case of a partnership, every partner or officer of the body shall be deemed to have committed the offence:

Provided that no such person shall be deemed to have committed the offence if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence having regard to all the circumstances.

Action by
Originating
Notice of
Motion.

21. An action brought under this Act shall be by way of Originating Notice of Motion, and the proceedings shall be governed by Order 8 of the High Court Rules, 2007.

Rules.

22. The Minister may, by statutory instrument, make rules necessary for the efficient implementation of, and otherwise for giving full effect to, the provisions of this Act.

SCHEDULES

FIRST SCHEDULE

Section 6

Form of Mortgage Agreement

This Mortgage is made theday ofTwo Thousand and

(200...) BETWEEN (name and address of Mortgagor) (hereinafter referred to as the "Mortgagor")

which expression shall where the context so admits or requires include his heirs personal representatives successors and assigns) of the one part

And

(name of financial institution) a company incorporated under the laws of Sierra Leone and having its registered office at (address) (hereinafter referred to as the Mortgagee") of the other part.

WHEREAS:

(Recitals)

root of Title

persons whose consent and/or concurrence is required.

Mortgagor's need for the loan and

Mortgagees willingness to grant the Loan

1 Consideration and Personal Covenant to Pay

In consideration of the loan of (amount) which the Mortgagee has given to the Mortgagor (receipt of which the Mortgagor acknowledges), the Mortgagor covenants with the Mortgagee to

duly and punctually repay the said loan together with interest at (percentage of interest) within (term of loan) and (additional charges under disclosure requirements) (according to the payment schedule in Schedule 2 hereto) or (Clause 3 of this Agreement).

2 Mortgage

The Mortgagor as Beneficial Owner hereby mortgages the (description of property) which property is particularly described in Schedule 1 hereto (hereinafter referred to as the "Property") together with all fittings and fixtures attached thereto now or to be attached hereafter to the Mortgagee to secure the repayment of the loan, interest and other money hereby covenanted to be paid by the Mortgagor.

3. Payment of principal, interests and other costs

3.1 The Mortgagor covenants with the Mortgagee to repay the Loans as follows:

(a) The Loan shall be repaid at the interest rate in [No. of installments] equal monthly installments of(amount) each within [term of loan] years, the first installment to be made on(date) and the subsequent payments to be made not later than the first day each month in arrears.

(b) In the event that the 1st day of the month falls on a weekend or a public holiday, the payment shall be made not later than the next business day.

(c) In the event of a delay on the payment of any installment, the delayed installment shall attract an interest of ()% per annum.

3.2 Where the Mortgagor makes a payment over and above the required monthly installment, such payment would be treated as an advance payment and applied to future repayments of any payments payable under this Agreement unless the Mortgagor indicates that the extra amount should be regarded as a prepayment.

3. Where the Mortgagor makes a prepayment of ()% or more of the Loan at any time during the mortgage, such a prepayment shall attract a penalty of () of the amount prepaid.

3.4 In the event of any prepayment, the monthly installment of the Loan shall be adjusted accordingly to take effect from the second month following the month in which the prepayment was made.

3.5 The Mortgagor shall pay an estimated Annual Percentage Rate of () in addition to the principal and interest payable [mode of payment]

3.6 The Mortgagor shall also pay the additional charges provided in Schedule 2 hereto as Good Faith Estimates of the charges, fees and costs of this mortgage agreement.

4 Insurance

4.1 The Mortgagor shall insure and keep insured, at his own expense during the subsistence of this mortgage, the Property together with all fittings and fixtures attached thereto now or to be attached hereafter, against loss or damage by burglary, fire, earthquake, flooding or other natural disaster (and such other risks as the Mortgagee may from time to time in writing direct) with a reputable insurance company to be mutually agreed on between the parties, (in the names of both the Mortgagor and the Mortgagee) (and shall name the Mortgagee as the sole beneficiary and in accordance with the Mortgagee's right to assign its rights under clause () of this Agreement).

4.2 The Mortgagor shall be required to pay yearly insurance premiums in full prior at the commencement of the Mortgage and thereafter not later than fourteen (14) days before the expiry of such insurance cover.

4.3 The Mortgagor shall duly and punctually pay all premiums and money necessary for effecting and maintaining that insurance and the Mortgagor shall deposit evidence of such payments with the Mortgagee and at any time at the request of the Mortgagee produce the insurance policy and the premium payment receipts for the inspection of the Mortgagee or its duly authorised agent.

4.4 Where the Mortgagor fails to insure all or any part of the Property according to clause 4.1 of this Agreement, the Mortgagee shall be entitled to insure and keep insured the mortgaged property.

4.5 Where premiums are paid by the Mortgagee on behalf of the Mortgagor under clause 4.4 of this Agreement such premiums shall attract an annual interest rate of () % and a default interest () % and shall be payable as additional loan in [No. of installments] equal monthly installments from the date of payment of such premiums.

4.6 Any money received under any policy of insurance effected or maintained by the Mortgagor or on behalf of the Mortgagor by the Mortgagee, whether or not pursuant to the Mortgagor's obligation under clause 3.4 shall be applied in making good the loss or damage in respect of which the money is received.

5 Restriction on transfer

The Mortgagor shall not without the prior written consent of the Mortgagee at any time during the subsistence of this mortgage sell, lease let, part with possession or transfer all or any part of his interest in the property.

6 Mortgagor's covenants

The Mortgagor covenants with the Mortgagee as follows:

(a) That the Mortgagor alone, or with the consent or concurrence of all other persons whose consent or concurrence is required, has full power to mortgage the property expressed to be mortgaged by him in the manner in which it is expressed to be mortgaged;

(b) That if either or both the Mortgagee and persons deriving title through the Mortgagee enter into possession of the mortgaged property, the Mortgagor and every person concurring in the mortgage by his direction and every person deriving title through the Mortgagor (other than a person having an interest to which the mortgage is expressly made subject) shall not interfere with, interrupt or disturb the possession of such person in possession;

(c) That the mortgaged property is freed and discharged from, or otherwise by the Mortgagor sufficiently indemnified against, all interests, encumbrances, claims and demands whatsoever, other than those to which the mortgage is expressly made subject;

(d) That the Mortgagor and every person concurring in the mortgage by his direction, and every person deriving title through any of them, and every other person having or rightfully claiming any interest in the mortgaged property other than an interest to which the mortgage is expressly made subject will, from time to time and at all times on the request of the Mortgagee or any person deriving title through him, execute and do all such assurances and things for further or more perfectly assuring the title to the security interest as such person may reasonably request, the expenses in respect of this covenant to be borne by the Mortgagor during the life of the mortgage and thereafter by the person making the request;

(e) That the Mortgagor and every person deriving an interest through the Mortgagor, other than a person having an interest to which the mortgage is expressly made subject, will at all times during the life of the mortgage preserve, protect, repair and maintain the mortgaged property so as not to diminish its value below what is reasonably required as security for the performance of any act secured by the mortgage but which has yet to be performed;

(f) That the lease is at the date of the mortgage a good, valid and effectual lease of the mortgaged property and is in full force, unforfeited and unsurrendered, and has not become void or voidable. (1 Ibid as provided in Schedule 2 (f-h only applicable when the mortgaged property includes a leasehold.);

(g) That all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease and to be paid, observed or performed by the Mortgagor and persons deriving title through him have been paid, observed and performed up to the time of the mortgage;

(h) That the Mortgagor, or the person deriving title through him, will at all times during the continuance in force of the mortgage pay, observe and perform or cause to be paid, observed and performed, all rents reserved by the lease and all covenants, conditions and agreements contained in the lease, which he or they are bound to pay, observe and perform.

7 Mortgagee's covenants

7.1 The Mortgagee covenants with the Mortgagor that:

The Security hereby made shall be discharged when the Mortgagor performs all his obligations under this Agreement and undertakes to issue a written discharge to the Mortgagor in in the Form set out in Schedule 5 to the Home mortgage Finance Act, 2007, as soon as the Mortgagor has duly fulfilled all his obligations under this mortgage.

7.2 The Mortgagee shall furnish or deliver to the Mortgagor a (monthly/ quarterly/ annual) Statement of Account on the Loan payments on or before the [] day of (Month) of (period) and the Mortgagor may raise any queries on the statement if any and in the event that the Mortgagor raises any queries the Parties shall reconcile the accounts.

8 Mortgagee's rights and powers

8.1 The Mortgagee shall hold all title documents relating exclusively to the Property and shall keep same whole, uncanceled and undefaced.

8.2 The Mortgagee acknowledges the right of the Mortgagor to the production of the tile documents and to the supply of copies of same.

8.3 The Mortgagee shall upon receiving a (duration of notice) notice permit the Mortgagor or its representative to inspect the title documents.

8.4 The parties agree that the Mortgagee has the right to irrevocably assign any of its rights under this Agreement to any third party without prior notice to the Mortgagor.

9 Events of default

9.1 Any breach of this Agreement shall amount to an Event of Default in addition to the following:

- (a) Where the Mortgagee is deemed to be in default under section 9 of the Home Mortgage Finance Act, 2007;
- (b) Where the Mortgagor dies, becomes bankrupt or makes any arrangement with his creditors generally or takes or suffers any similar action as a result of the debt;
- (c) Where any execution is levied upon the Mortgagor's property;
- (d) Where the Mortgagor becomes of unsound mind;
- (e) Where the Mortgagor fails to comply with any of the terms, conditions covenants or obligations under this Agreement; or
- (f) Where any representation or warranty given by the Mortgagor to the Mortgagee is found out to be false.

10 Rights of Mortgagee upon default

In the event of the occurrence of an Event of Default, the Mortgagee shall exercise any one or more his rights in accordance with the Home Mortgage Finance Act, 2007.

10.2 The parties agree that the Mortgagee's right upon default by the Mortgagor may be exercised in the Mortgagee's behalf by a trustee or any beneficiary to whom the Mortgagee's rights might have accrued.

11 Termination

This Agreement shall remain valid and may only terminate after the Mortgage is discharged and the Mortgagee has issued the written discharge required under clause () of this Agreement.

12 Renewal of mortgage

If the Mortgagor shall duly and punctually repay the principal money, interest and other money he has covenanted to pay to the Mortgagee in accordance with clause 3 of this Agreement then, if he so desires, the security hereby made shall be used to secure further advances not exceeding, in aggregate (amount) the Mortgagee shall give him at the original interest rate and priority and that the Mortgagor shall give at least (length of notice) months' notice, in writing to the Mortgagee of his intention to take advantage of this provision.

13 Notice

Any notice required to be served under this mortgage shall be sufficiently served on the Mortgagee if delivered either by hand and a receipt acknowledged in writing by the Mortgagor; or by leaving it for the Mortgagor with some person apparently over the age of eighteen years at such address and acknowledged in writing by such a person; or by pasting the notice on a reasonably noticeable part of the mortgaged premises; or sent by registered mail or by courier or to last known the address provided by the Mortgagor.

14 Stamping and registration

The Mortgagor shall immediately after the execution of this Agreement, Cap 274 Register this Agreement in accordance with section 21 of the Registration of Instruments Act (cap 256).

15 Waiver

Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed or deemed to be a waiver of their rights under this Agreement nor shall it prejudice either party's right to take subsequent action.

16 Severability

If any provision of this agreement is held invalid or unenforceable by a court or other competent judicial authority, then such provision shall be deleted from this Agreement and the remaining provisions shall continue to have full force and effect.

17 Entire agreement

This Agreement constitutes the entire and only agreement between the parties and supersedes all previous understandings, commitments and agreements whether oral or written relating to the Agreement.

18 Amendments

Any term condition or provision contained in this Agreement may be amended upon the mutual consent of both parties and any such agreed amendment shall be in writing, executed by both parties and annexed to this Agreement.

19 Governing Law

This Agreement is governed and shall be construed in accordance with the laws of Sierra Leone.

20 Jurat (applicable when Mortgagor is illiterate and/or blind)

I.....(name and position of employee or representative of Mortgagee) declares that on.... day of.....(month/year) I read and explained the contents of this Agreement to the Mortgagor herein, who is illiterate and/or blind in the...(language) language and he seemed perfectly to understand and approve of the contents before executing it.

IN WITNESS WHEREOF the Mortgagor has set his hand and the Mortgagee has caused its hand and seal to be hereunto affixed on the month and year first above written.

**Schedule
(Detailed description of property and site plan)**

Signed by the within named Mortgagor In the presence of

.....
Name:
Address:
Occupation:

.....
Name:
Address:
Occupation:

Signed on behalf of Mortgagee acting under the authority of the company In the presence of

.....
Name:
Address:
Occupation:

.....
Name:
Address:
Occupation:

**SECONDSCHEDULE
Section 6**

Disclosure Requirements

GOOD FAITH ESTIMATE

Lender	Sales Price
Address	Base Loan Amount
	Total Loan Amount
Applicant(s)	Interest Rate:
Property Address	Preparation Date
	Type of Loan:
	Loan Number
<p>The Information provided below reflects estimates of the charges, which you are likely to incur at the settlement of your loan. The fees listed are estimates – actual charges may be more or less. Your transaction may not involved a fee of every item listed.</p>	

<i>A. Items Payable In Connection with Loan</i>	<i>D. Title Charges</i>
1. Origination Fee @ % + Le. Le.	1. Closing or Escrow Fee Le.
2. Discount Fee @ % + Le Le	2. Abstract or Title Search Le
3. Appraisal Fee Le.	3. Title Examination Le
4. Credit Report Le.	4. Document Preparation Fee Le
5. Lender's Inspection Fee Le.	5. Notary Fee Le
6. Mortgage Insurance Application Fee Le.	6. Legal Fee Le
7. Assumption Fee Le.	7. Title Insurance Le

A. Items Payable In Connection with Loan		D. Title Charges	
8. Mortgage Broker Fee	Le. _____		Le. _____
9. Tax Related Service Fee	Le. _____		Le. _____
10. Application Fee	Le. _____		Le. _____
11. Commitment Fee	Le. _____		Le. _____
12. Processing Fee	Le. _____		Le. _____
13. Underwriting Fee	Le. _____		Le. _____
14. Wire Transfer Fee	Le. _____	E. STAMPING AND REGISTRATION CHARGES:	
		1. Stamp Duty	Le. _____
		2. Deeds Registration Fee	Le. _____
		3. Land Title Registration Fees	Charge Le. _____
		4. Registration	Le. _____

B. Items Required By Lender to be Paid in Advance		F. Additional Settlement Charges	
1. Interest for day @ Le /day	Le _____	1. Survey	Le _____
2. Mortgage Insurance Premium	Le _____		Le. _____
3. Hazard Insurance Premium	Le _____		Le. _____
4. Property Taxes/Rates	_____		_____
5. Flood Insurance	Le _____		Le. _____
	Le. _____		Le. _____

B. Items Required By Lender to be Paid in Advance		F. Additional Settlement Charges	
_____	Le. _____	Total Estimated Settlement Charges Le. _____	
_____	Le. _____		
C. Reserves Deposited with Lender:			
1. Hazard Ins. Mo. @ Le Per Mo.		Le. _____	
2. Mortgage Ins. Mo. @ Le Per Mo.		Le. _____	
3. Tax and Assmt. Mo. @ Le Per. Mo.		Le. _____	
4. Flood Insurance		Le. _____	
		Le. _____	
‘S’/B” designates those costs to be paid by Seller/Broker		“A” designates those costs affecting APR	
Total Estimated Monthly Payment:		Total Estimated Funds Needed to Close	
Principal and Interest	Le. _____	Benefit Payment	Le _____
Real Estate Taxes	Le _____	Estimated Closing Costs	Le _____
Hazard Insurance	Le. _____	Estimated Prepared items/Reserves	Le. _____
Flood Insurance Mortgage Insurance	Le. _____	Total Paid Items (Substract)	Le _____
Other	Le. _____	Other	
Total Monthly Payment	Le. _____	Cash from Borrower	Le _____
<p>THIS SECTION IS COMPLETED ONLY IF A PARTICULAR PROVIDER OF SERVICES IS REQUIRED:</p> <p>Listed below are providers of service which we required you to use. The charges indicated in the Good Faith Estimate above are based upon the corresponding charge of the below designated providers.</p>			

<i>Item No.</i>	<i>Name and Address of Provider</i>	<i>Telephone No.</i>	<i>Nature of Relationship</i>
These estimates are provided to the Home Mortgage Finance Act.			
Applicant	Date	Applicant	Date
Applicant	Date	Applicant	Date

THIRDSCHEDULE**Section 9****Demand Notice**

(On Mortgagee's Letterhead)

Dear Sir/Madam,

MORTGAGE DEMAND NOTE

We refer to:

1. The [Mortgage Agreement) dated () entered into between () and the () for total amount of () in respect of which there is a current outstanding indebtedness of () plus interest of () making a total of ()
2. The notification of default dated [] Notwithstanding the above, as at [date] the amount outstanding remains unpaid. We hereby issue this demand, in accordance with section 9(1) of the Home Mortgage Finance Act, 2007 and Clause () of the Mortgage Agreement] for the immediate payment of the amount outstanding plus interest, from you as primary obligor, within seven (7) days of the date of this letter.

Please note that if a settlement of the arrears is not made within the stipulated time and no arrangement is entered with (the financial institution] for the settlement of the amount outstanding, we shall be entitled to exercise our rights against you in accordance with sections 10-12 of the Home Mortgage Finance Act, 2007.

Please be advised accordingly.

Signed:

.....

Date

FOURTH SCHEDULE**Section 12****Statutory Declaration**

**IN THE HIGH COURT OF SIERRA LEONE
IN THE MATTER OF THE STATUTORY
DECLARATIONS ACT, 1835**

STATUTORY DECLARATION

BY

(NAME OF DECLARANT)

I, (NAME) of (RESIDENTIAL ADDRESS), in the Republic of Sierra Leone Solemnly and sincerely declare as follows:

1. That I am the declarant herein.
2. That I am a (position of declarant in mortgage institution) and have the authority of the institution to make this declaration.
3. That on (date of mortgage) the (name of Mortgage institution) granted the (name of Mortgage) a loan of (amount)
4. installments) equal monthly installments of(amount) each within (term of loan) years, the first installment to be made on the () day of each month in arrears.
5. That on (date of 1st Default) the Mortgageor defaulted in the payments of his monthly installments
6. That on (date) the mortgagee institution sent a demand notice pursuant to section () of the Home Mortgage Finance Act, 2007 demanding the immediate payment of the outstanding amount
7. That the Mortgageor has failed to pay the said amount and is deemed to be in default pursuant to section () of the Home Mortgage Finance Act, 2007.

- 8. That the Mortgagee pursuant to section () of the Home Mortgage Finance Act intends to exercise its right to possession .
- 9. That the Mortgagor needs the services of the police to assist it in the exercise of its rights under the Section () of the Home Mortgage Finance Act.
- 10. That the Mortgagee shall indemnify the Police Service from any liabilities arising from the eviction in the absence the absence of fraud, willful misconduct or gross negligence on the part of the Police.

AND I MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY
 BELIEVING IT TO BE TRUE IN ACCORDANCE WITH THE STATUTORY
 DECLARATIONS 1835

Declared at

this day of.....)

200) Name of Declarant

BEFORE ME

.....

(Name)

NOTARY PUBLIC

FIFTH SCHEDULE

FORM OF DISCHARGE OF MORTGAGE

THIS DISCHARGE OF MORTGAGE is made the ...day of, 200...
 by (Name and address of financial institution)

- 1. This Discharge is supplemental to a mortgage made the ... day of, 200.. between (name and address of Mortgagor) and (Name of financial institution) (registered number) upon the property known as (description of mortgaged property), and to a transfer of the said mortgage made the ... day of, 200... between the aforesaid (name and address of Mortgagor) and (Name of financial institution) (registered number)
- 2. I, (Name of financial institution) hereby acknowledge that I have this ... day of, 200.. received the sum of (amount in words and figures) representing the balance remaining owing in respect of the principal money secured by the said mortgage together with all interest and cost.
- 3. The property is accordingly discharged from the said mortgagee.

Signed by (Name of financial institution)

In the presence of:

Passed in Parliament this *23rd* day of *April*, in the year of our Lord two thousand and Nine.

VICTOR A. KAMARA,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

VICTOR A. KAMARA,
Clerk of Parliament.