

# **INSCRIPTION OF PRIVILEGES AND MORTGAGES**

Act 73 of 1946 – 1 April 1952

(As at 19<sup>th</sup> November 2011)

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# INSCRIPTION OF PRIVILEGES AND MORTGAGES

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## 1 Short title

This Act may be cited as the Inscription of Privileges and Mortgages Act.

## 1A Interpretation

In this Act –

“applicant” includes a person acting on behalf of the applicant.

## 2 Inscription of privileges and mortgages

The inscription of privileges and mortgages shall be effected in accordance with this Act.

## 3 Procedure for inscription

(1) (a) Subject to paragraph (b), any creditor applying for the inscription of a privilege or mortgage shall produce to the Conservator of Mortgages the original deed or judgment or a certified copy of the judgment giving rise to the privilege or mortgage.

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(b) The production of such original or a certified copy shall not be required in the case of an application for the inscription of a legal mortgage or of the privilege mentioned in article 2160 of the Code Civil Mauricien.

(2) The applicant shall annex to such deed, judgment or certified copy of judgment, a memorandum (*bordereau*) in the form set out in the Schedule, which shall contain and have, with respect to the drawing of the memorandum (*bordereau*) requesting the inscription –

- (a) the typeface “Cambria” in regular style and font size of 12 point, printed on A4 size paper of not less than 90 grams;
- (b) every page consecutively numbered on the bottom-right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth and any annex thereto numbered on the bottom-right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth;
- (c) any date mentioned in format DD/MM/YYYY;
- (d) no abbreviation, interlineation, superscription and any word erased or scratched out has to remain legible;
- (e) on the recto of every sheet, a blank margin of 3 centimetres on the left and one centimetre on the top, right and bottom except that on the first and last sheets, the top margin shall be 10 centimetres;
- (f) on the verso of every sheet, a blank margin of 3 centimetres on the right and one centimetre on the top, left and bottom;
- (g) the marginal entry at the end of the content of the memorandum (*bordereau*);
- (h) all annexes at the end of the original deed and numbered consecutively on the bottom-right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth; and

- (i) where it contains marginal corrections which may be handwritten and words erased or scratched out, a certificate, to which the person filling the original shall affix his signature or his initials, setting out the number of marginal corrections made and the number of words erased or scratched out.

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- (3) The memorandum (*bordereau*) shall be signed by the applicant.

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(4) (a) Where the applicant has not made use of the memorandum (*bordereau*) referred to in subsection (2), the Conservator of Mortgages shall nevertheless take the inscription which shall be valid and effectual, but the Conservator of Mortgages shall require the applicant, by registered letter, to substitute for the irregular memorandum (*bordereau*) a new memorandum (*bordereau*) in accordance with subsection (2) within 15 days of the date of the registered letter

(b) Where a requirement is made under paragraph (a), the applicant shall comply with the requirement.

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(5) Where the applicant fails to comply with subsection (2) or (3) or with the requirement contained in a registered letter sent to him under subsection (4), he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees.

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(6) Notwithstanding this section, the Conservator of Mortgages may, in special circumstances and in his absolute discretion, allow the memorandum (*bordereau*) referred to in subsection (2) to be drawn up on such paper as may be selected by the applicant and a scanned copy shall be saved in the Digital Cadastral Database (DCDB) kept and maintained in electronic form by the Ministry responsible for the subject of land surveys.

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- (7) (a) Subject to paragraph (b), the memorandum (*bordereau*) shall contain –

- (i) in respect of each creditor –

(A) his first name or first names, in small letters, followed by his surname in capital letters, his National Identity Card Number, where available, in format XXXXXXXXXXXXXXXX (14 characters) and, where applicable, a scanned image of a recent passport-sized photograph of him, printed thereon;

- (B) his occupation and the postal address of his residence;
  - (C) his date of birth in format DD/MM/YYYY, with a reference to the registered number of his birth certificate in format Birth Certificate No./Year of Registration of Birth and the Civil Status Office where the birth was registered;
  - (D) where applicable, his date of marriage in format DD/MM/YYYY, with a reference to the registered number of the marriage certificate in format Marriage Certificate No./Year of Marriage, the Civil Status Office where the marriage was registered and the matrimonial regime applicable to him at the time of the transfer;
  - (E) where applicable, his business registration number under the Business Registration Act in format XXXXXXXXXX (9 characters); and
  - (F) where the creditor is a partnership, *société*, company or body corporate, its trade name or corporate name, its principal place of business and the domicile elected by the creditor;
- (ii) in respect of each debtor –
- (A) his first name or first names, in small letters, followed by his surname in capital letters, his National Identity Card Number, where available, in format XXXXXXXXXXXXXXXX (14 characters) and, where applicable, a scanned image of a recent passport-sized photograph of him, printed thereon;
  - (B) his occupation and the postal address of his residence;
  - (C) his date of birth in format DD/MM/YYYY, with a reference to the registered number of his birth certificate in format Birth Certificate No./Year of Birth and the Civil Status Office where the birth was registered;

- (D) where applicable, his date of marriage in format DD/MM/YYYY, with a reference to the registered number of the marriage certificate in format Marriage Certificate No./Year of Marriage, the Civil Status Office where the marriage was registered and the matrimonial regime applicable to him at the time of the transfer;
  - (E) where applicable, his business registration number under the Business Registration Act in format XXXXXXXXX (9 characters);
  - (F) where the inscription is to be known in respect of the property of a deceased person, such designation of that person as will enable the Conservator of Mortgages to ascertain who he was; and
  - (G) where the debtor is a partnership, *société*, company or body corporate, its trade name or corporate name, and its principal place of business;
- (iii) the date and nature of the title deed giving rise to the privilege or mortgage, or, where the applicant is exempted by law from the obligation of producing a title deed, the ground and nature of the claim;
  - (iv) the amount of the claim in principal and accessories, in format Rs X, and the date when it becomes due, and unless the applicant is exempted by law, an estimate of the annuities, charges and undetermined rights, and where the rights are contingent or conditional, a brief indication of the event or the condition upon which the claim depends; and
  - (v) an indication of the nature and situation of the property over which the applicant intends maintaining his privilege or mortgage –
    - (A) the address of the property, the Parcel Identification Number (PIN) where available;
    - (B) the area of land mortgaged or charged in format Xm<sup>2</sup> up to 2 decimal places and the nature and description of the building, if any, on it; and

(C) the title of ownership of the property mortgaged or charged.

(b) (i) Paragraph (a)(i)(E) shall not apply in the case of a legal mortgage.

(ii) Unless there is an agreement to the contrary, a legal mortgage, when inscribed, shall comprise, and apply to, all the immovable property of the debtor.

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(8) (a) An inscription shall not be null and void by reason only of the omission from the memorandum (*bordereau*) of any particulars specified in subsection (7) or in section 6 unless third parties have been prejudiced by such omission. **ACT 19/2011 – GN 100/2011**

(b) No person other than a person who may be prejudiced by such omission shall move that the inscription be set aside, and, on any such motion, the Court may set aside the inscription or restrict its effect, according to the nature and extent of the prejudice.

(9) The reference in articles 2196 to 2203 of the Code Civil Mauricien to the registers of the Conservator of Mortgages shall be construed as a reference to the memorandum (*bordereau*) as is mentioned in this section.

[Amended 37/90, **ACT 19/2011 – GN 100/2011**]

**4 Duties of Conservator of Mortgages**

(1) The Conservator of Mortgages shall record, on the prescribed register, the fact that the memorandum (*bordereau*) referred to in section 3 has been produced to him and he shall return to the applicant applying for the inscription the original deed or judgment or certified copy of the deed or judgment giving rise to the privilege or mortgage, together with the memorandum (*bordereau*) on which he shall record the date it was produced to him and the volume in which, and the number under which, the memorandum (*bordereau*) has been filed at the Mortgages Office, scanned and saved in the Digital Cadastral Database (DCDB) kept and maintained in electronic form by the Ministry responsible for the subject of land surveys. **[Repealed and Replaced ACT 19/2011 – GN 100/2011]**

(1A) The memorandum (*bordereau*) shall be filed at the Mortgages Office, scanned and saved in the DCDB referred to in subsection (1).

(1B) The Conservator shall be responsible for the filing of every memorandum (*bordereau*) in the manner specified in subsection (1A).

**[Added ACT 19/2011 – GN 100/2011]**

(2) The date recorded under subsection (1) shall be deemed to be the date of inscription.

## 5 Change of domicile

An applicant or his representatives, or his assigns by authentic deed, may change, at the Mortgage Office, the domicile elected by him in such inscription, subject to his or their selecting and indicating another domicile.

## 6 Inscription of legal mortgages

(1) A legal mortgage shall be inscribed on the production to the Conservator of Mortgages of a memorandum (*bordereau*) which shall, unless otherwise provided in any enactment, satisfy section 3(2) and (3). **[ACT 19/2011 – GN 100/2011]**

(2) Each memorandum (*bordereau*) shall contain –

(a) the first name or first names of the creditor in small letters followed by his surname in capital letters, his occupation and domicile and the domicile elected by him or for him, if any, drawn up in the manner described in section 3(7)(a)(i);

**[Repealed and Replaced ACT 19/2011 – GN 100/2011]**

(b) a description of the debtor in the manner described in section 3(7)(a)(ii);

(c) particulars of the nature of the rights to be preserved and the amount of their value as respects matters which have been determined, without it being necessary to fix such value as respects things which are conditional, eventual, or undetermined.

(3) Any memorandum ('*bordereau*') which does not satisfy a requirement of this section may be rejected by the Conservator of Mortgages.

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**SCHEDULE**  
(section 3)

FORM OF MEMORANDUM OF INSCRIPTION  
(FRONT)

Volume No .....  
Date .....  
Number of Register .....  
Number of pages .....  
Repertory No .....

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Margin not to be written upon      Contents of memorandum      (Margin reserved for Conservator)  
(Applicant shall not, under any circumstances, write in this margin)

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(BACK)  
Contents of  
memorandum

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I, the undersigned  
.....  
(names, surname, profession,  
domicile) certify that the 2  
copies of the Schedule have  
been duly collated.

Signature  
.....

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