

# INSCRIPTION OF PRIVILEGES AND MORTGAGES

Act 73 of 1946 – 1 April 1952  
(As at 19<sup>th</sup> December 2009)

## ARRANGEMENT OF SECTIONS

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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 or a certified copy of the deed or of the judgment giving rise to the privilege or mortgage.

(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 copy, two identical memoranda *bordereaux*, in the form set out in the Schedule, which shall be typewritten in indelible ink or printed on paper of size A4 and of not less than 90 gms and shall contain not more than 40 lines per page and not more than 5 characters per linear centimetre, and have –

(a) 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 sheet the top margin shall be 10 centimetres; and

(b) on the verso of every sheet a blank margin of 3 centimetres on the right and one centimetre on the top, left and bottom.

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(3) Both memoranda *bordereaux* shall be signed by the applicant and the applicant or other person shall certify on them that they have been duly collated.

(4) Where the applicant has not made use of the prescribed form, 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 memoranda *bordereaux* new memoranda *bordereaux* on the special form within 15 days of the date of the registered letter, and the applicant shall be bound to comply with such requirement.

(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 100 rupees.

(6) Notwithstanding this section, the Conservator of Mortgages may, in special circumstances of which he shall be the sole judge, allow one of the memoranda *bordereaux* mentioned in subsection (2) to be drawn up on such paper as may be selected by the applicant, where the other memorandum (*bordereau*) which is to be kept in the Mortgage Office is drawn up on the prescribed form.

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

- (i) the names and domicile of the creditor, and his occupation, if any, and where the creditor is a partnership, company or corporate body, its trade name or corporate name and its principal place of business, and the domicile elected by the creditor;
- (ii) the names of the debtor in the order in which they appear on his birth certificate, his domicile, the date and place of his birth, and his occupation, if known, and where the debtor is a partnership, company, or corporate body, its trade name or corporate name, and its principal place of business, and, where the inscription is to be known in respect of the property of a deceased person, such a designation of that person as will enable the Conservator of Mortgages to ascertain who he was;
- (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, 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, and also an indication of the numbers and sections of the cadastral register, if any, and of the title of ownership by reference to transcription volumes.

- (b) (i) Paragraph (a)(v) 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.

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

(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 a memorandum (*bordereau*) as is mentioned in this section.

[Amended 37/90]

#### **4 Duties of Conservator of Mortgages**

(1) The Conservator of Mortgages shall record on the prescribed register the fact that the memoranda *bordereaux* referred to in section 3 have been produced to him, and he shall return to the applicant applying for the inscription the original or the certified copy of the deed or judgment giving rise to the privilege or mortgage as well as one of the memoranda *bordereaux*, at the foot of which he shall record the date on which it was produced to him and the volume in which, and the number under which, the memorandum which is to be kept in the Mortgage Office has been filed.

(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 2 memoranda (*bordereaux*) which shall, unless otherwise provided in any enactment, satisfy section 3(2) and (3).

- (2) Each memorandum (*bordereau*) shall contain –
  - (a) the names, surname, and domicile of the creditor, his occupation, if any, and the domicile elected by or for him;
  - (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 writ-  
ten 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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