

TRANSCRIPTION AND MORTGAGE ACT

RL 5/489 - 1 October 1982

(As at 19th December 2009)

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1 Short title

This Act may be cited as the Transcription and Mortgage Act.

2 Interpretation

In this Act -

"Conservator: means the Conservator of Mortgages;

"mortgage" means a *hypothèque* established under the Code Civil Mauricien.

3 Documents to be transcribed

There shall be transcribed every -

- (a) deed witnessing -
 - (i) the transfer *inter vivos* of any immovable property;
 - (ii) a declaration in relation to any immovable property;
 - (iii) the renunciation to any right in relation to immovable property; and
 - (iv) any pledge of immovable property (*antichrese*) or any servitude or right of use (*droit d'usage*) or residence (*droit d'habitation*) in any immovable property;
- (b) judgment declaring the existence of any right in immovable property;
- (c) judgment of adjudication;
- (d) deed importing renunciation of any right specified in paragraph (a)(iv);
- (e) judgment declaring the existence of any right specified in paragraph (a) (iv);
- (f) deed witnessing the lease of rural property (*bail a ferme*);
- (g) deed or judgment witnessing the discharge or transfer of rent payable whether in cash or in kind under a rural property lease and not due under the lease at the date of payment;
- (h) deed witnessing the lease of house property (*bail a loyer*) of more than 3 years' duration;
- (i) deed or judgment witnessing the discharge or transfer of rent under a house property lease exceeding one year and not due under the lease at the date of payment;
- (j) affidavit or deed of notoriety setting out the heirs and beneficiaries of deceased owners of immovable property;
- (k) renunciation of a heir to his rights in a succession under article 784 of the Code Civil Mauricien made before the Master and Registrar; and
- (l) retraction of renunciation under article 790 of the Code Civil Mauricien.

(Amended 4/87; 4/99)

4. Transcription of document on death of landowner

(1) When an owner of immovable property dies, any heir, beneficiary or executor appointed *quoad* the succession, or the notary in charge of the succession, shall cause an affidavit or a notarial deed to be drawn up within 6 months from the date of death setting out -

- (a) in respect of the deceased -
 - (i) his full names and surname;
 - (ii) his date of birth and marriage and matrimonial regime with a reference to the registered number of his birth and marriage certificates and the civil status office where the birth and marriage were registered;
 - (iii) the names and surname of the surviving spouse;
 - (iv) in case any previous marriage has been dissolved by divorce or by death, the date of the previous marriage and the names and surname of the previous spouse; and

- (v) his date of death, with a reference to the registered number of his death certificate and the civil status office where the death was registered; and
- (b) in respect of the heirs and beneficiaries -
 - (i) their full names and surname, profession and the postal address of their residence; and
 - (ii) their date and place of birth together with a reference to the registered number of their birth certificate and the civil status office where their birth was registered.

(2) The affidavit or the notarial deed shall be presented to the Conservator within 6 months of the date of death for transcription in the manner provided for under sections 48 and 48A of the Act.

(Amended 4/87)

(3) No affidavit or notarial deed shall be transcribed unless it contains information relating to at least one immovable property owned by the deceased at the time of his death, including the Transcription Volume Number (TV No.). [ACT 20/2009]

4A Penalty

Where the affidavit or notarial deed has not been presented within the time limit prescribed by section 4, the heirs, beneficiaries or executors or the notary in charge of the succession shall jointly and severally be liable to a penalty of Rs 500 payable to the Registrar-General.

(Added 4/87)

4B No fee to be levied

No fee shall be levied for the transcription of the affidavit or notarial deed referred to in section 4.

(Added 4/87).

5 Documents not transcribed

(1) Subject to subsection (2), no right in immovable property under a deed or judgment shall be maintained against a third party whose rights are secured by law over the immovable property to which the deed or judgment applies, unless the deed or judgment has been transcribed.

(2) A right under a lease of house property which has not been transcribed may be maintained against third parties for a period not exceeding 3 years.

6 Judgments extinguishing real rights

(1) Every judgment decreeing the cancellation (*resolution*), nullity or rescission, either in whole or in part, of a transcribed deed or judgment shall, within one month of the judgment becoming final, be entered in the margin of the register where the deed or judgment has been transcribed.

(2) (a) The attorney who obtained the judgment, shall under a penalty not exceeding 500 rupees and of damages, cause the entry to be made by transmitting a memorandum (*bordereau*) of it, prepared and signed by him, to the Conservator, who shall give a receipt.

(b) Where an attorney fails to comply with paragraph (a), an interested party may cause the entry to be made by any other attorney.

7 Certificate of transcription

The Conservator shall at the request of any interested person, deliver a certificate of any transcription or entry specified in section 3.

8 Inscription by creditors

(1) Subject to subsection (3), a creditor who has a mortgage or a privilege under articles 2173, 2174 or 2178 of the Code Civil Mauricien and whose title is prior to the date of a document specified in section 3 may, not later than 14 days of the transcription of any such document, cause his rights to be inscribed against the previous owner.

(2) No inscription taken outside the time limit specified in subsection (1) shall be valid.

(3) A vendor or co-partner (*co-partageant*) of immovable property may not more than 45 days from the date of the sale or partition and notwithstanding the transcription of any other deed in the interval, cause the privilege to which he is entitled under articles 2156 and 2158 of the Code Civil Mauricien to be inscribed.

9-10 -

11 Non-renewal of creditor's inscription

(1) In case of sale on forcible ejection, creditors, who have their rights inscribed at the date of the adjudication, may be collocated on the division of the sale price, although their inscriptions have not been renewed within the 10 years prescribed.

(2) In the case of non-renewal, the creditor shall not sue the purchaser by way of (*folle enchere*) and of recourse, (*droit de suite*) against third parties (*tiers acquereurs*).

(3) Subsection (2) shall apply to every sale by order of a Court so far as regards the rights of (*folle enchere*) and of recourse, which rights the creditor shall lose unless he has renewed his inscription within the prescribed 10 years.

12 -

13 Mortgage for credits opened

(1) The owner of immovable property may grant on that property a mortgage for a fixed sum, for a credit opened to him, whether the amount is paid at once or by successive instalments.

(2) The mortgage shall take rank from the date of its inscription, whatever be the dates of each successive payment which may be proved by written vouchers.

(3) Where a credit specified in subsection (1) is opened and is renewable yearly wholly or partly for several consecutive years not exceeding 10 years in all, no fresh mortgage or inscription shall be required after each annual settlement.

(4) The mortgage given and the inscription taken, by virtue of the original deed opening the credit, shall guarantee, up to the amount of the inscription taken, the payment of the definitive balance proved by written vouchers as may be due at the expiry of the credit.

(Amended 15/88)

14. Inscription not null for want of form

The omission of one or more of the formalities prescribed by the Code Civil Mauricien for the inscription of mortgages or privileges shall not *per se* involve the absolute nullity of the inscription, subject to the Court's power to annul the inscription or reduce the force and effect of it where any real prejudice has been caused by the omission.

14A-40 -

41 Inscriptions dispensed from renewal

Notwithstanding article 2196-4 of the Code Civil Mauricien, the inscription taken against a guardian or the husband of a married woman -

- (a) may not be renewed while the guardianship or marriage is in force; and
- (b) must be renewed within one year following the end of the guardianship or the dissolution of the marriage.

42 Inscription after marriage or guardianship

Where a legal mortgage has not been renewed within the year following the end of the guardianship or the dissolution of the marriage, the mortgage inscribed shall, in regard to third parties, bear date only from the date of any inscription which may be taken after that time.

43 Transfers of wife's mortgage

(1) No transfer or renunciation by a wife of her legal mortgage shall be valid unless it is embodied in authentic deed.

(2) A person, in whose favour a transfer is made under subsection (1), shall only be vested with the mortgage as regards third parties from -

- (a) the date of the inscription of the deed witnessing the transfer or renunciation;
or
- (b) in the case of a subrogation, the date on which an entry in respect of the subrogation is made in the margin of the register where the legal mortgage is inscribed.

(3) No renunciation of a legal mortgage shall be inscribed except where the renunciation constitutes a subrogation.

(4) Where a legal mortgage is on different days transferred to more than one person, the rights of those persons to the mortgage shall be determined by the dates of those inscriptions or entries.

44 - 45 -

46 Inscription of conditional deed of loan

A mortgage granted under a conditional deed of loan shall rank from the date of inscription irrespective of the date of payment.

47 Forcible ejectment

(1) An adjudication made pursuant to a sale under the Sale of Immovable Property Act shall clear all legal mortgages not inscribed on the properties so sold.

(2) Notwithstanding subsection (1), a guardian or subguardian may produce claims at the order for the distribution of the price of the immovable property sold in accordance with section 11(1).

48 Authentic deeds and judgments

(1) Authentic deeds and judgments shall be transcribed by filing with the Conservator -

- (a) subject to paragraph (b), the original deed or the original judgment, as the case may be, together with a copy of it, certified in accordance with subsection (5); or
- (b) where the original judgment is not available, 2 identical copies of it certified in accordance with subsection (5).

(2) (a) The original deed, or the original judgment or one of the certified copies, as the case may be, shall be returned to the person who filed the deed, judgment, or certified copy, after the Conservator has endorsed on it a memorial to the effect that the deed or judgment has been transcribed.

(b) The certified copy of the deed or judgment, or one of the certified copies of the judgment, as the case may be, shall be kept in the Mortgage Office.

(3) A copy of a deed or judgment required to be transcribed shall -

- (a) subject to subsection (5), be typewritten in indelible ink or printed on paper of size A4 of not less than 90 gms;
- (b) contain no abbreviation, interlineations, superscription or words scratched out;
- (c) have the certificate of registration of the original deed or judgment, or of the other certified copy of the judgment as the case may be, reproduced on it;
and
- (d) have -

- (i) 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 5 centimetres; and
- (ii) on the verso of every sheet a blank margin of 3 centimetres on the right and one centimetre on the top, left and bottom.
(Amended 37/90)

(4) -

(5) The copy which is to be kept in the Mortgage Office under subsection (2) shall be certified, by the person who files it, to have been duly collated with, and to be an exact copy of, the original, and the certificate shall set out the number of marginal corrections which may be handwritten, and words erased, to which the person filling the copy has affixed his signature or initials.

(6) The Conservator may reject any copy which does not satisfy any of the requirements of subsection (3) or (5).
(Amended 37/90)

48A Transcription of private deeds

(1) The transcription of a deed under private signatures shall be effected by filling 2 originals of the deed in the Mortgage Office.

(2) (a) One of the documents filed under subsection (1) shall be returned to the person who filed it after the Conservator has endorsed on it a memorial to the effect that the deed has been transcribed.

(b) The other original shall be kept in the Mortgage Office.

(3) The original kept in the Mortgage Office under subsection (2)(b) shall -

(a) satisfy the requirements of section 48(3)(a), (b), (c) and (d) and (5);

(b) contain not more than 35 lines on each page and not more than 5 characters per linear centimeter; and

(c) contain the certificate of registration of the other original reproduced on it.

(4) The Conservator may reject any form of original which does not satisfy any of the requirements of subsection (3).

(Amended 37/90)

48B Transcription of deeds executed abroad

The transcription of deeds executed or judgments obtained outside Mauritius shall be effected by filling in the Mortgage Office the original, or a certified copy, or a verbatim extract, of the deed or judgment which shall then be transcribed on the form set out in the Second Schedule and returned to the person who filed it after endorsement by the Conservator of the transcription.

49 Transcription of deed of renunciation and retraction

(1) The transcription of a deed of renunciation or retraction shall be effected within 7 days of the renunciation or retraction, by filling in the Mortgage Office, 2 certified copies of the renunciation or retraction.

(2) (a) One of the certified copies filed under subsection (1) shall be returned to the person who filed it after the Conservator has endorsed on it a memorial to the effect that a certified copy has been transcribed.

(b) The other certified copy shall be kept in the Mortgage Office.

(3) The certified copy kept in the Mortgage Office under subsection (2) (b) shall -

(a) satisfy the requirements of section 48(3)(a), (b) and (d) and (5); and

(b) contain the certificate of registration of the other certified copy reproduced on it.

(4) The Conservator may reject any copy which does not satisfy any of the requirements of subsection (3).

(Amended 4/99)

50 Transcription of other documents

The transcription of seizures under the Sale of Immovable Property Act shall be effected in the manner specified in section 48 by filling in the Mortgage Office the original memorandum of seizure or deed, together with a certified copy of it.

(Amended 37/90)

51-52 -

53 Defences of creditors of possessor

Where the possessor of immovable property under the operation of the laws of prescription renounces his rights under those laws, his creditors or any person claiming under him, may sustain those rights of prescription.

54 Exemption from proportional duty

No proportional duty shall be levied by the Conservator on inscriptions of legal mortgage taken for or on behalf of married women or against a guardian.

55 Preservation of mortgages

The preservation of mortgages (*la conservation des hypothèques*) implies the performance of all formalities required by law for regularizing, transcribing, giving effect to, or otherwise maintaining the validity of mortgage deeds.

56 Duties of Conservator

(1) The preservation of all mortgages is vested in the Conservator.

(2) In addition to the preservation of mortgages, the Conservator shall transcribe transfers of property and any other deeds required or allowed by law to be transcribed, and levy the fees and other payments accruing to the Consolidated Fund in connection with his duties.

(3) Registered sales of immovables by “sous-seing prive” may be transcribed.

(4) The Conservator shall make available for collection any deed or document within 15 working days of the date of payment of any fees or other payment on the deed or document.

[Amended 18/2008][GN 70/2008]

57 -

58 Domicile of Conservator

(1) The domicile (*domicile de droit*) of the Conservator shall be at the office of the Conservator and that domicile shall continue as long as the responsibility lasts, even after he has ceased to hold office.

(2) Where the Conservator resigns, the resignation shall not be accepted until his successor has assumed office.

59 Repertoire to be kept by Conservator

In addition to the registers specified in articles 2196 to 2203 of the Code Civil Mauricien, the Conservator shall keep a register called the *Repertoire*, in which he shall enter in order of deposit, and under a special account opened in the name of every party affected by any deed, a summary of all inscriptions or other transactions concerning immovable property, together with a reference to the volume and number of the register in which the deeds have been copied or noted.

60 Fees, dues and charges

All fees, dues and charges shall be paid in advance, and the Conservator's receipt for them shall be written in words and figures on the deed in respect of which they are levied.

61 Duration of Inscriptions

(1) Subject to section 41, an inscription shall be valid for a period of 10 years from its date.

(2) An inscription may be renewed within the period specified in subsection (1) and such renewal shall be made in the form set out in the Fifth Schedule and shall have the same legal effect as an inscription.
[ACT 20/2009]

(3) Subsections (1) and (2) shall apply to inscriptions made *ex officio* by the Conservator.

62 Fees, dues and Charges

(1) Subject to section 63(2) and subsection (2), the Conservator shall levy -

- (a) the fees, dues and other charges set out in the Third Schedule; and
- (b) where he delivers any document specified in the Third Schedule the fee specified in the Fourth Schedule.

(2) The Government shall be exempt from payment of the fee mentioned in subsection 1(b).

(3) For the purposes of the Third Schedule, a folio shall consist of 90 words.

(Amended 28/82)

63 Fees for searches

- (1) The fees for searches in the mortgage or transcription books shall be those set out in the Third Schedule.
- (2) Searches made on behalf of the Government shall be free or charge.
- (3) Subject to subsection (4), no search in the books shall be made without the written authority of the Conservator.
- (4) A person to whom authority is refused under subsection (3) shall, on prepayment of the fees prescribed in the Third Schedule, be given by the Conservator such information as may be required by him from the books.
- (5) This section shall be in addition to, and not in derogation from, articles 2196 to 2203 of the Code Civil Mauricien.
- (6) Subject to subsections (4) and (7), the payment of the search fee, whether by the day or month, shall entitle the person paying it to make the search either by himself or by his duly authorized agent or clerk.
- (7) An authority under subsection (3) may, in case of misconduct by the person searching, be withdrawn by the Conservator.
- (8) A person aggrieved by a decision of the Conservator in refusing or withdrawing an authority under this section may appeal to the Minister against such refusal or withdrawal, as the case may be.

64 Regulations and remission

- (1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
 - (2) The Minister may, if he thinks fit, remit the whole or part of any fee, due or charge payable under this Act.
- (Amended 28/82; 15/88)

65 Recovery of fees, dues and charges

- (1) The recovery of fees, dues and charges leviable under this Act shall be by way of summons to show cause before a Judge in Chambers who shall decide the matter summarily.
- (2) No costs shall be awarded against the unsuccessful party other than the disbursements for stamps and for the issuing and service of the summons and execution of the order.
- (3) Where the claim is less than 50 rupees, the proceedings in connection with it shall be exempt from stamp and registration dues, and from all court fees.
- (4) No appeal shall lie against the order except by leave of the Judge, and such order shall be a sufficient authority to the Registrar to issue a writ of execution on it.

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**FIRST SCHEDULE  
(Repealed by Act 8 of 1983)**

**SECOND SCHEDULE**

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THIRD SCHEDULE
(Sections 62, 63 and 64)

TARIFF OF FEES, DUES AND CHARGES

	Rupees
1 For transcribing a document	200
1A For transcribing a document witnessing the transfer of property by a bank or leasing company to a person pursuant to an arrangement entered into between the bank or leasing company and the person whereby the bank or leasing company initially purchased the property with a view to selling or transferring the same to that person. [18/2008][GN 70/2008, ACT 20/2009]	NIL
2 For inscribing -	
(a) a mortgage or a privilege	200
(b) a fixed or floating charge (<i>surete fixe ou flottante</i>) in accordance with article 2202-10 or 2203-6 of the Code Civil Mauricien	200
(c) a pledge (<i>gage sans déplacement</i>) in accordance with articles 2112 to 2119 of the Code Civil Mauricien	200
3 For the renewal of an inscription of mortgage or privilege	200
4 For every entry in the margin of a transcription or an inscription	200
5 For final or partial erasure of a transcription or an inscription	200
6 For a certificate -	
(a) on a memorandum of seizure showing the day and hour at which it is presented	100
(b) of refusal to transcribe a seizure on account of previous seizure	100

(c)	of transcription or non transcription of a document	100
(d)	of an entry in respect of a transcription or inscription	100
(e)	of erasure of a transcription or of an inscription	100
(f)	showing whether a property is burdened or not with any inscription-	
	(i) for every person specified	100
	(ii) for every sheet of the certificate	100
	(iii) for every sheet of the copy of the inscription	100
7.	For making searches in the records in the custody of the Conservator of Mortgages per person -	
	(a) per day or fraction of a day	100
	(b) per month	1,000
8.	Storage fee for non-collection of notarial deed after the date specified in the written notification by the Conservator	1,000 per deed, per month or part of the month
9.	For transcribing a lease agreement in respect of State land for industrial or commercial purposes on production of a certificate from the Ministry responsible for the subject of lands certifying that the lessee has opted for a new lease pursuant to section 6(1E) of the State Lands Act. <i>[GN 7/2009]</i>	NIL

FOURTH SCHEDULE
(section 62 {Act 15 of 7 August 2006})

FEE

For every sheet of a certified photocopy or printout issued	50 rupees
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FIFTH SCHEDULE
[Section 61(2)]

FORM FOR RENEWAL OF INSCRIPTION

This form is submitted for the renewal of the inscription of the mortgage/conventional/fixed

charge/floating charge/privilege* taken in the Office of the Conservator of Mortgages
on.....in Volume.....No.....in favour of
against
for securing the principal amount ofand accessories amounting
to.....

Date:

Signature

** Delete whichever is not applicable*

ADDED ACT 20/2009