



LEGAL POLICY

STAR HFL

VERSION 1.0

Legal Policy

PREPARED BY:
RECOMMENDED BY:
APPROVED BY:
BOARD OF DIRECTORS
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Title	Star Legal Policy
Date of Latest Release	
Version	1.0

Legal Policy

I. Objective of Standard Operating Procedure:

- To devise uniform processes and specifications for carrying out the Legal Appraisals of the property documents and Documentation.
- To define legal function & the policy/norms
- Defines role of legal function
- Define various precautions, restrictions and conditional approvals
- Legal Compliances to be carried out before disbursement
- Define the Approval Authority for legal deviations for all locations
- To Advise the type of Security/mortgage to be created to secure the Loan

II. Scope of Legal Function:

Legal function is a core, service oriented and control based function. Importance of Legal as a function is brought by the increasing incidences of frauds in the industry which affects not only the profitability but also the security against which the loan is disbursed.

In light of various innovative modus operandi being adopted by the fraudsters, a high level of care and alertness is required during legal/property appraisal. There is an imperative need to initiate control measures for timely prevention and detection of frauds before disbursement.

Legal/Property Appraisal means the scrutiny and analysis of the required property papers in terms of flow of title, legal ownership, legal compliances, no encumbrance, ownership in the Government records etc. to establish clear, marketable, unencumbered and enforceable title to the property.

III. Important Acts / Laws:

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| ▪ Transfer of Property Act, 1882 | ▪ Rent Control Act & Ownership Flats Act of Various States |
| ▪ The Indian Registration Act, 1908 | ▪ SARAFESI Act, 2002 |
| ▪ Indian Stamp Act, 1899 | ▪ Land Acquisition Act |
| ▪ Stamp Acts of Various States | ▪ Income Tax Act, 1961 |
| ▪ Land Revenue Code of Various States | ▪ Limitation Act, 1963 |
| ▪ Societies Registration Acts of Various States | ▪ Co-Operative Housing Societies Act of Various States |
| ▪ Specific Relief Act, 1963 | ▪ Indian Penal Code, 1860 |
| ▪ Urban Land (Ceiling & Regulation) Act, 1976 | ▪ Apartment Ownership Act of Various States |
| ▪ Criminal Procedure Code, 1973 | ▪ Arbitration & Conciliation Act, 1996 |
| ▪ Civil Procedure Code, 1908 | ▪ Indian Contract Act, 1872 |
| ▪ Negotiable Instrument Act, 1881 | ▪ The Companies Act, 1956 & 2013 |

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IV. Legal Terminology:

Some terms used during the course of ordinary business and process is defined hereunder:

Title Deed: It is a legal instrument evidencing ownership of the property. Title Deeds are: Conveyance Deed or Sale Deed, Gift Deed, Release Deed, Partition Deed, Exchange Deed, Lease Deed, Sale Certificate.

Conveyance Deed: It is a document by which the title of a property is conveyed by the seller to the purchaser. Conveyance is the act of transferring ownership of a property from a seller to the buyer.

Encumbrance: A burden on a property, which affects the ability to transfer title or one which affects the condition of the property.

Search Report (SR) / Encumbrance Certificate (EC): Search Report is a report prepared by Advocate after conducting search of the title of the property, in the Sub-Registrar Office. Where the borrower is a limited company, additional search is taken in the office of the concerned Registrar of Companies. In some States, the Sub-Registrars issue Encumbrance Certificate (EC) certifying the transactions made during a particular period, for a particular property.

Search Report or Encumbrance certificate, thus, would state if the property is encumbered i.e. there is any existing mortgage, litigation, condition or claim, which is likely to affect the title adversely. The search on the title of the property is taken for a period of the last 30 years.

Lien: A charge or claim upon someone's property as security for a debt. A lien does not confer title. The law recognizes the right to have a debt satisfied out of someone's property.

Mortgage: A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a Mortgagor, the transferee a Mortgagee, the principal money and interest of which payment is secured for the time being are called the Mortgage Money, and the instrument (if any), by which the transfer is effected is called a Mortgage Deed. Types of mortgage are described in subsequent chapter.

Mutation: mutation means the process of legally recording a change in the ownership of land by making appropriate entries in the government records. It results in an updated Record of Rights, the backbone of the Indian land record system.

Encroachment: To gain unlawfully or infringe on the property of another.

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Covenant: A stipulation, a promise to do or not do something.

Intestate: Having no will. If someone dies intestate, the court appoints an administrator to settle the estate.

Development Agreement: It is entered into by the developer with the land owner. It contains details regarding the terms and conditions on which the landowner has permitted development of his property. This is where the landowner engages a third party (i.e. the developer/contractor) to develop and build on their plot of land. This agreement is generally accompanied by a Power of Attorney in favour of the developer.

Construction Agreement is generally between the builder/contractor and the customer wherein the builder/contractor constructs the property.

Katha Certificate, Tax Paid receipts, Encumbrance Certificate, Revenue Records and Village Records, allotment letters, amount paid receipts, tax assessment order etc. fall in the category of Secondary/Supporting Documents, and these documents are not title deed/s.

Land Revenue Records: Land Revenue Record System prevails in each State. Following documents generally provides details about type of land, ownership, third party rights etc. few of which are explained hereunder which are popularly known:

- *7/12 Records:*

7/12 extract is a document, which shows the names of the owners of the property. It contains details such as the Survey numbers, area, date from which the current owner's names were registered as owners. The 7/12 extract is issued by the Tehsildar or the concerned land authorities. Along with this, the corresponding record of rights in Form no. 6 for last 30 years may be obtained.

- *Form No. 6:*

Form No. 6 (Records of Rights) mainly for Rural & Semi Rural, this form contains details of Moje, Taluka, Registration No (Mutation No), Type of Holding or right, Name of the holder, Change in the land area and Signature of authorized officer.

- *Form No. 8:*

Form No. 8 (Records of Ownerships), mainly for Rural & Semi Rural, this form contains details of Moje (sub-area), Taluka, Mutation No, Names of Holders, Chain of ownership from inception, Remarks, Signature.

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- *Index II:*

Index II is a document issued by the office of the Sub- Registrar of Assurances. It mainly mentions the names of the sellers & purchasers of a property for which the document is registered.

- *Tax Receipt:*

Tax receipt is the payment made to the appropriate authorities by the owner of the property.

Non-agricultural permission (N.A): If the land under consideration is agricultural land and such agricultural land has to be converted to non-agricultural land, an N.A order has to be obtained from the Collector of the District where the property is located. Along with this, one needs to take the latest receipts evidencing the payment of N.A. tax. In cases where the conversion from agricultural use to N A use is not done within the stipulated period then, there should be an order from the concerned authority extending the period.

Affidavit: It is a document which contains the statement of facts and not of law. The facts may be (a) facts in personal knowledge (b) facts based on information received and (c) facts found from perusal of the record.

Agent: Section 182 of the Indian Contract Act,1872 defines an ‘ agent ‘ as a person employed to do any act for another or to represent another in dealings with third person.

Agreement: It is an instrument by which the parties wilfully agree to perform certain acts or refrain from doing something. An agreement enforceable by law is a contract.

Bill of exchange: It is an instrument in writing containing an unconditional order ,signed by the maker , directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Codicil: A codicil is a supplement to a will when a testator intends to make any minor alteration in his “will” .A codicil has to be executed and attested just as a will.

Decree: The formal expression of an adjudication which so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of.

Decree Holder: Means any person in whose favour a decree has been passed or an order capable of execution has been made.

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Gift: It is a transfer of certain existing movable or immovable property made voluntarily and without consideration by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the lifetime of the donor and when he is still capable of giving. If the donee dies before acceptance, the gift is void. (Registration of gift of an immovable property is compulsory and that of movable property is optional.)

Instrument: Section 2(14) of the Indian Stamp Act, 1899 defines Instrument as including every document by which any right or liability is, or purports to be, created, transferred, limited, extended, or recorded.

Lease: A lease is a contractual relationship arising by the transfer of right to enjoy the property by a transferor to a transferee (Section 105 of the Transfer of Property Act). A lease of immovable property is a transfer of a right to enjoy such property made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms).

The transferor is called as Lessor and the transferee is called as the lessee, the price is called as premium, and the money, share, service or other thing to be so rendered is called the rent.

License: If the document creates an interest in the property, it is a lease, but if it only permits another to make use of the property of which the legal possession continues with the owner, it is a license. Such license does not create interest in the property.

A license is that permission to stay on an immovable property without which the stay would be a trespass.

Marketable title: A person is said to have a marketable title only when the title to the property is clear (without any encumbrance) and he/she has the right and capacity to transfer the same.

Notarization: Notarization means signing a document before a Notary Public appointed by the Government. Once the document is signed before a Notary, execution of such document is presumed under the Indian Evidence Act. Affidavit and Power of Attorney are therefore, notarized.

Notice: It constitutes the information or intimation of the proposed action which the party giving notice may take. Generally speaking notice is to give an opportunity to the other party to reconsider his position before an action or any legal proceedings take place.

Ownership: It means relation between a person and a right which is vested with him. It includes a right of possession, enjoyment and alienation. Only possession does not confer complete title of the property.

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Partnership: Section 4 of Indian Partnership Act, 1932 - partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually “partners” and collectively “a firm” and the name under which their business is carried on is called the “firm name”. Partnership deed should be written on stamp paper of requisite value according to local Stamp Act.

Possession: It means relation between a person and thing. It generally means physical control over the thing. Possession includes use and enjoyment of things but one can't legally transfer it unless he is the owner.

Power of attorney: It is an instrument whereby one person (called Principal) authorizes another person (called power of attorney holder or constituted attorney) to do certain acts, deeds and things on his behalf and in his name. Power of Attorney is required to be stamped with a requisite stamp duty and notarized by a Notary Public. Power of Attorney by itself does not create any interest in favor of the constituted attorney. It merely authorizes the constituted attorney to do certain acts on behalf of the principal. Power of Attorney must be notarized, wherever; the Registration Act made it mandatory, the same should be registered under the provisions of Registration Act.

Promissory note: It is an instrument in writing containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Release: A release is an instrument by which a person renounces a claim upon another person or against a specified property. By a release the releaser renounces his claim upon another person or against specified property to which he is legally entitled.

Sale: Sale of immovable property is defined in Transfer of Property Act. Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. In a sale there is an absolute transfer of all rights in the property sold. Registration of sale deed in respect of immovable property is compulsory.

Stamp duty: It is the duty /fee payable on various types of instruments as per the rate/s prescribed by the concerned State Stamp Act or as per Indian Stamp Act. The adequacy of stamp duty should be ensured to make a instrument valid and enforceable. Some of the instruments if not duly stamped are not admitted in evidence.

Surety: The person who gives the guarantee is called the surety, the person in respect of whose default the guarantee is given is called the principal debtor and the person to whom the guarantee is given is called the creditor.

Will: Section 2(h) of the Indian Succession Act, 1925, defines “WILL” as the legal declaration of the intention of the testator with respect to his property, which he desires to be carried into effect after his death or in other words an instrument in which a person makes a disposition of his property to take effect after his death. According to section 63 (c) of the

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Indian Succession Act, the will must be attested by two or more witnesses, though registration of will is not compulsory.

V. Legal Precautions for different types of Borrowers:

a. Individual

Every promise and every set of promises forming the consideration for each other is called Agreement. An agreement involves: (a) a valid offer and (b) a valid acceptance

All agreements are enforceable by law if they satisfy the following essential conditions:

- They are made by the free consent of the parties
- They are made by parties competent to contract
- They are made for a lawful consideration and for a lawful object and
- They are not expressly declared to be void by the Act.

Minors:

- Minor is a person who has not completed the age of 18 years. In case guardian is appointed by a court for his person or property before he has attained 18 years of age the period of minority is extended up to 21 years of age.
- Sec 11 of the Contract Act says that a minor cannot enter in to a contract at all and it will be void and not enforceable.

Any contract entered into with a minor is void ab-initio (i.e. from the very beginning) and the minor cannot ratify the same even after attaining majority. A loan granted to a minor cannot be recovered so also security if any given by a minor cannot be enforced as the minor is incompetent to contract.

Lunatics and insolvents are also incompetent to contract.

b. Hindu Undivided Family (HUF)

The HUF is a joint family consisting of male members lineally descended within 4 degrees from a common ancestor, and includes their wives and unmarried daughters. The senior most members are the karta or manager and members of Hindu Undivided property are called coparceners, who attains the right in the property by birth. The Karta manages the family property, which is the joint property of all the coparceners. They are all related to the head of the family.

Earlier females were not member of coparceners, hence were denied succession to the ancestral property. Only coparceners can demand partition of the HUF, and

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are entitled to a share of the property; female members are only entitled to receive maintenance from the HUF. States like Karnataka, Andhra Pradesh, Maharashtra, Tamil Nadu, and Kerala have amended the Hindu Succession Act 1956, in some states; a daughter ceases to be a member of the family on her marriage which needs to be verified before considering any proposals from HUF and specific prior approval is required from Corporate Legal.

Declaration cum undertaking for utilization of the loan for the benefit of estate and legal necessity of the coparceners must be obtained.

Confirmation cum Declaration letter from Karta and all the coparceners that all coparceners to be severally and jointly liable.

Loan documents can be signed by Karta, when declaration is given by all the coparceners.

c. Partnership Firms

Partnership is defined in the Indian Partnership Act, 1932, as the relation between person who have agreed to share the profits of the business carried on by all or any of them acting for all.

The partnership deed should be duly scrutinized and closely studied to find out if any restrictions have been imposed on one or more partners to open operate or overdraw the account and any limitations are imposed on borrowing powers.

The implied authority does not empower the partner to: transfer immovable property belonging to the firm. He has no authority to bind his co-partners by a mortgage deed executed by him alone. All partners must sign or authorize any one of them to execute the mortgage deed.

- A Deed of Partnership in writing must be made.
- This deed must clearly specify the name of the partnership firm, the names of the partners, the capital to be contributed by each partner, the profit or loss sharing ratio between partners, the business of the partnership, the duties, rights, powers and obligations of each partner and other relevant details.
- The partnership deed must be made on paper which is duly stamped as per the laws prevalent at the place of signing.
- It must be signed by all partners and witnessed by independent persons.
- The maximum number of partners which are permissible in a firm is 20. It is essential the terms of the partnership deed clearly specifies the duties and authorities of all partners.
- Every partner is an agent of the other partners and has implied authority to do all acts and things necessary for the purpose of carrying on business of the firm. But such an implied authority does not empower a partner to acquire & transfer immoveable property on behalf of the firm.

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However, **Section 22** of the Act provides that in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name or in any other manner expressing or implying the Intention to bind the firm. This means that in order to bind the firm and all the partners thereof every act must be done in the name of the firm or expressly on behalf of the Firm.

Conditions:

- Partnership Firm must be a registered firm, even though it is not mandatory under the Act.
- Registered Partnership Deed must be obtained.
- Undertaking for no change in constitution of the Partnership firm without intimation to the Bank.
- Declaration cum Undertaking by all Partners with principle of continuity of liability clause to be obtained.
- Authority Letter or Power of Attorney should be issued by all the Partners of the Firm in favour of one Partner to sign all the loan documents.

d. Types of Companies (Public Limited / Private Limited)

In case of loans to limited companies, copies of Board Resolutions must be obtained. Charges over the properties must be registered with the ROC within 30 days from the date of creation of security.

- A company under the Companies Act, means, a company formed and registered under this Act.
- Memorandum of Association (MOA) is the constitution of the Company and prescribes the area beyond which the actions and activities of the Company cannot go.
- It lays down the objects of the company & purpose for which it is formed.
- Any Act outside the permitted range is said to be “Ultra Virus” the Company and hence void. Such acts cannot be validated even by unanimous assent of the members at general Body Meeting.
- Article of Association (AOA) deals with the internal regulations of the Company and lay down the manner in which the business is to be conducted.
- The Articles being subsidiary to the Memorandum, cannot empower, the directors to do anything which is beyond the power of the company as set out in the Memorandum.
- A Certified True Copy of this Document should be obtained.

Conditions:

- While entertaining any proposal for advance to limited companies, we should call for the following documents:

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- Memorandum of Association & Articles of Association
- Certificate of Incorporation
- Certificate to commence business (in case of Public limited company)
- Certified true copies of Audited Balance Sheets and P & L Account.
- List of Directors duly certified by the Chairman of the company
- Borrowing Powers: U/s. 293 (1) (d) of the Companies Act, 1956
- Board Resolution for raising loan
- All communications/Legal Notices and Documents must be served on the Registered Office of a limited Company and on such other addresses as per the agreement/arrangements.
- Certificate of Auditor certifying all necessary approvals for loan has been obtained and all statutory requirements have been complied with under Companies Act.
- Form 8 to be filed with Registrar of Companies, where the company is owner of the Property

Note: Conditions mentioned above are general conditions and the same shall be taken into consideration by credit, legal while appraisal of property/project

Documentation & Common seal

- Before execution of loan documents it is necessary to read the provision of the Articles of Association of the company.
- In case the resolution empowering any Director (s) /official to execute loan documents and the affixation of common seal on the loan documents, resolution must be very clear with regard to the mode of such affixation and the person in whose presence it is to be affixed.
- To ensure that the loan documents are executed by the directors/officials duly authorized by the relevant Board Resolution.
- Guarantee of Directors, as applicable

Charge

- Searches in case of Loan to company from the Office of Registrar of Companies (ROC).
- Certificate from the Advocate or Practicing Company Secretary / Chartered Accountant to ascertain any charge is created by the company in respect of the property.
- Form No. 8 for creation or modification of charge. Branches should get the charge registered immediately after its creation. The charge should be registered with ROC u/s 125 of the Companies Act, 1956
- Form No.17 for satisfaction of the charge to be collected for verification, in case a charge is satisfied.

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VI. Legal Restrictions for funding

- The applicant/Borrower is an Insolvent or adjudged insolvent.
- The applicant is convicted under criminal offence.
- The applicant/borrower is a lunatic.
- The applicant/borrower has filed divorce petition and the property is funded by both the parties.
- Leased property for the term exceeding lease expiration period unless past history shows renewal without any restriction.
- Title to the Property is not clear and marketable.

After sanction of any Loan application it comes to the knowledge about any of the above restriction, the loan shall not be disbursed. Where after disbursement of loan it comes to the knowledge about any of the above restriction, the further disbursement shall not be made and unless repayment is assured by the borrower, legal action shall be initiated to re-call the loan.

VII. Legal Scrutiny of Important Property Documents

During the course of entire loan process, Property Documents shall come across to various officials of the company. In view of the security interest of the company and to prevent the frauds following general observations are advisable by any official who is coming across to any of the document:

- i. **Signatures:** Signature of the Seller and Purchaser of the property matches in documents provided.
- ii. **Name:** The name of any individual or person transferring the property should be same in the Conveyance/Sale document through which he would have obtained ownership and in the latest document showing name of such transferor.

The name of the Applicant/Borrower should be same under Application form, other identity documents and under the proposed conveyance document.

An individual or person can change his name, surname by appropriate process of law of state government and Registrar of Companies in case of company. On change of name the particulars of change in name shall be published in the Official Gazette or a Certificate of Change of name shall be issued by concerned authority.

In case of deviation in the name under Application Form, Identity Document, Original Conveyance Document and Proposed Conveyance Document unless it is a typographical mistake, copy of such publication in Official Gazette or Certificate to be obtained from the Applicant/Borrower.

- iii. **Legal Address:** The legal address of the property should be same in all the referred documents and any doubts must be clarified with the Technical Department.

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Survey no. and address of the property must be the matched in legal and technical property documents.

- iv. **Genuineness of the Original document:** The originality of the registered documents and the other documents submitted has to be verified by the In-house legal. It is important to note that the equitable mortgage is created only on the Original title documents.
- v. **All owners to the property are party to the loan agreement:** Legal shall ensure that LSR clearly reflects the names of all owners as reflected in the Conveyance/sale deed.
- vi. **Following shall be obtained where any of previous chain original documents are lost:**
 - Indemnity from seller for loss of document and confession of non-submission of original documents or creation of charge
 - FIR- First Information Report
 - Paper publication – in 2 Newspapers – one in English in national newspaper and one in local language in local newspaper
 - In case registered document is lost, certified true copy of the registered document
- vii. **Make sure with respect to No Objection Certificate (NOC):**
 - NOC must be obtained in the STAR HFL's Standard format.
 - Dated NOC shall be obtained. Date of NOC must be on or after the date of execution/ registration of Agreement.
 - NOC must contain Property details & Building Name, being financed. Property details as mentioned in NOC must match with that in registered property agreement.
 - NOC must contain Amount of Property which should match the primary (lump sum) price agreed in Property Agreement. Where the amounts are different, legal shall obtain explanation
 - NOC signed by respective authority - Name and designation must be clear to determine authority.

NOC shall be accepted by Legal with reference to the above. Certain aspects may not be fulfilled. HO Legal shall determine whether NOC obtained can be accepted.

Prior to disbursement Provisional NOC shall be obtained from the Seller for all BT cases from the Builder and/or the Society.

NOC must be verified from the office of the Builder or Society for its genuineness.

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- viii. **Following documents are required in case of succession on case to case basis, as per the transactions:**

The Indian Succession Act, 1925

- It is a law regulating succession to deceased person's immovable and movable property.
- Succession is the transmission of property vested in a person at his death to some other person or persons. The Law of Testamentary Succession regulates the devolution of property of a person who dies having made a will disposing of it. The Law of Intestate Succession, on the other hand, regulates the devolution and distribution of the undisposed property of a person who dies without making a will.
 - Following needs to be verified :
 - (a) Wills
 - (b) Probate (wherever applicable)
 - (c) Succession Certificate or Legal heir certificate
 - (d) Letter of Administration
- An Executor is a person who is appointed in a "will" by the Testator to administer his estate according to the instructions in his will. Whereas, when a person dies intestate i.e. without leaving a will, the court may appoint an administrator to deal with the estate of the deceased and to wind up his affairs.
- The duties of both are practically same except that an administrator settles the affairs of the deceased according to the law while the executor settles them according to the terms of the will.

Other documents which need to be verified based on transactions and facts of the proposals:

- Nomination form
- Indemnity form from Legal heirs
- Public notice
- Death certificates
- Probate, wherever applicable
- Succession certificate, wherever applicable
- Family tree or affidavit.
- Legal Heir ship Certificate, if available

- ix. **Where the Property ownership is through Government/Development Authority Allotment Order or on Lease:**

- Where the Property is allotted or leased by the Government or Development Authority, the actual ownership shall remain with such authority and the allottee

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will get right of occupation for specified or unlimited period. In such case the Authority issues Receipts for the payment made by the Allottee and Allotment Letter. We should verify such documents. The possession letter must also be verified. Generally such authorities put restrictions on usage and transfer of properties and any change in the usage as well as transfer of the property can be done only after obtaining a written permission from such authorities.

- In case of resale of right of occupation, the Authority generally charges Transfer Charge and gives No Objection and No Due Certificate. In such case we should verify, Receipt for Transfer Charges and No Objection and No Due Certificate along with original Allotment Letter.
- As explained in case of Development Agreement, many times the Government/Authority entrusts the right of Development & Allotment in the professional Builder through Development Agreement, Lease Deed or other Conveyance Document. In such case we should verify, such Lease/Development/Conveyance Document of Development Authority, Allotment Letter of the Builder, No Objection Certificate of the Authority, permission to mortgage, Receipts for the payments made by the allottee and the Agreement for sale (latest conveyance document) executed with the allottee (if any).

x. **Where the Land/Property ownership is held by Trust**

In case the public trust is registered under applicable Trust Act, permission of Charity Commissioner for any development/construction is necessary. Further, the Trust Deed is also required to be checked in respect of various powers of the Trust.

xi. **Updating of Government Records**

On the basis of information of registered conveyance documents with the sub-registrar, the governing body (i.e. municipal council etc.) will update their property register and accordingly the Municipal Tax Bill or Land Tax Bill shall be raised in the name of the Purchaser/Borrower.

On the basis of records of governing body, the Property card or 7/12 register, Mutation register, Record of Rights shall be updated and the name of the Purchaser/Borrower shall be entered.

Above two government records can happen only after execution of registered conveyance document. Therefore, it cannot be verified at the time of disbursement of a loan. In such case either of above two records, should be verified reflecting name of immediate seller of property contained in the conveyance document.

xii. **Non Resident Indian / Person of Indian Origin**

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Subject to the Foreign Exchange Management Act and Reserve Bank Guidelines for financing to Non Resident Indian (NRI) / Person of Indian Origin (PIO), Home Finance can be granted to NRI/PIO. Before sanctioning any loan we should ensure that such person is complying with all requirements of above said act and guidelines. In case the NRI/PIO a duly constituted attorney (which should be notarized by Indian Consulate) will be eligible to deal on behalf of such NRI/PIO. For such case all other norms of Credit shall be complied. Power of Attorney should be obtained as per the norms of the company in the standard format approved by the company.

xiii. **Where the Borrower is a Divorced or Separated**

Where the Borrower is a Divorcee and the Court has distributed the property in his/her name, a copy of such Court Order shall be taken.

Where the Borrower is taking a Balance Transfer loan, and the property is purchased before filing Divorce Petition the Court, finance shall be extended only if the Borrower is able to prove through documentary evidence that all the payments has been made by the Borrower.

Where the Borrower is Divorced or Separated, irrespective of already filed Divorce Petition with the Court, if the Borrower is purchasing a new property exclusively from own fund, the finance shall be extended.

VIII. **Scrutiny of Title Deeds**

Needs and Importance:

For a Housing Finance Company, it is necessary to scrutinize the title deeds/documents that create a security for repayment of a loan. Such scrutiny is generally done by an outside expert legal professional. STAR HFL has also appointed its panel advocates (branch-wise) for getting the scrutiny of title deeds done. After scrutinizing the title deeds/documents, the panel advocate gives a report called "Legal Scrutiny Report" (LSR).

Not even a single loan instalment of the loan should be disbursed before compliance of the requirements stipulated in the LSR. The Branches should ensure that the LSR covers the full details about the title deeds inspected, flow of title etc. Adverse remarks if any, made by the panel advocate should be taken into account. Branch officials should go through LSR to ensure compliance of the requirements stipulated therein.

a) **Legal Scrutiny Report (LSR) -**

Objective and Purpose:

- Scrutiny of title Deeds is carried out broadly with the intention of ensuring that;

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- The ownership of the property is complete in all respect and the same is free from all encumbrance and reasonable doubt;
- To examine the title Deeds, to certify that the property is clear, marketable.
- To scrutinize the title of the property and to understand whether loan can be granted by collecting the title documents/by mortgage of the property.
- To collect all the title deeds as per LSR before disbursement of the Loan.
- To ensure the loan is secured and to be a secured Creditor.

LSR should be obtained in the format prescribed by company. Conditions/instructions stipulated by the panel advocate in the LSR must be complied with before disbursement of the loan. Not even a single loan instalment of the loan should be disbursed before compliance of the requirements stipulated in the LSR. The Branches should ensure that the LSR covers the full details of the property, about the title deeds inspected, flow of title etc. Adverse remarks if any, made by the panel advocate should be taken into account. Branch officials should go through LSR to ensure compliance of the requirements stipulated therein.

Process:

To send the Property papers to the Panel Advocates to scrutinize/carry out legal due diligence and issue LSR.

Branches to maintain the Register to record the details of files sent to the Panel Advocates and the date of receipt, fees to be paid, etc.

LSR should be obtained in the format prescribed by company and conditions/instructions stipulated by the Advocate in the LSR must be complied with before disbursement of the loan

The Panel Advocates should issue the LSR as per the standard format.

The Legal Scrutiny Report format is having following major clauses:

- Description of the property
- List of Documents
- Flow of the property
- Evidence of title of property,
- Other provisions affecting the property
- Certificate

Description of the property has to be mentioned clearly with Plot/Flat/unit/apartment No, Survey No/, area, boundary, etc., in the **PART I** of the format.

- **List of Documents** submitted for scrutiny and legal opinion, as referred in **PART II** of the format, the Advocate has to mention clearly, specifying whether the

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documents submitted are original/Xerox-certified/notarized/registered/ name of the registration office and registration number/parties name/date of the document, etc.

- **Flow of the property** – History of title, in **PART III** of the format, the Advocate has to write in detail the complete flow of the property from the original owner till the property is acquired or to be acquired by the Applicant- Borrower. In all cases, the flow has to be clear that how the title has been transferred from the owner and how and in which document the Applicant –Borrower has acquired or going to be acquired the property.
- **Evidence of title of property**, as referred in **PART IV**, the Advocate has to write in detail what are the title deeds, which can be relied as title of the property.
- **Other provisions** In **PART V** of the format, there are some relevant questions, which the Advocate has to answer, please ensure that all are answered by the Advocate.
- **Certificate PART VI**, the Advocate should write clearly, the list of documents required to be collected before disbursement and remark, if any

The Fees to be paid is as per standard fee structure approved.

All the chain documents and Encumbrance Certificate (Latest) and other property papers should be forwarded to the Panel Advocate.

If the landed property is reserved for agriculture, a copy of the land conversion permission or Non-agricultural (N.A.) order should be called for.

If the property is owned by two people (co-ownership) both the owners should be the Applicant.

b) Investigation of title – Search Report or Encumbrance Certificate (EC)

- In Indian law there is no fixed period for which title is required to be shown by the Vendor.
- Therefore, the Vendor has to make out a good title for a sufficient period.
- What is sufficient period would depend upon on the facts & circumstances of each case and the facts to be taken into account, the tenure of the property (Whether Freehold or Leasehold or held under the government grant, whether any minor had or has any interest in the property, modes of transfer, etc.
- Generally speaking 30 years is considered as sufficient period.
- Investigation of title being a professional job, it is done by a legal professional. Our panel advocates undertake investigation of title and issue title search report or obtain the Encumbrance Certificates.

Legal Policy

- Investigation of title should be carried out as per the circular sent to the Branches from time to time. The Circular is re-produced herein to ensure that Search Report or EC to be obtained in these cases:
- All Original registered title deeds should be obtained for security of Loans.
- It is always necessary to find out the root of title in every case.
- Root of title, complete flow of title or chain of title deeds (from the first title deed to the last title deed) should be examined.
- If title deeds produced do not show flow of title then the missing document has to be called for.
- In case of lost documents, certified copies of the original registered document from the Sub-Registrar of Assurances, a copy of the police complaint, a newspaper publication along with an Indemnity cum Declaration that the original is lost and the same is not mortgaged with anybody also to be obtained. For such cases, the process for paper publication is clearly mentioned in this policy which has to be followed strictly.

Investigation of title is carried out broadly with the intention of ensuring that;

- Whether the borrower has a valid and marketable title to the property;
- Whether the property is free from encumbrance;

Important points to be noted while carrying out investigation:

- Investigation is done normally for a period of 30 years before the date of the current transaction.
- However, in some cases, investigation can be done for 13 years.{which differ on case to case basis]
- If the title deeds produced do not show flow of title then the missing documents should be called for in original.
- Section 51 and 55 of the Indian Registration Act, 1908 provide for maintenance of Books and Indexes in the Registration offices.
- Book No.1: All documents and memorandum relating to immovable properties and registered under the Act are entered or filed therein.
- Index II: It contains particulars of immovable property relating to every document and memorandum entered or filed in Book No.1.

Methods of Investigation

i. Searches and Enquires:

- The object of taking searches in the office of the concerned Sub-Registrar of Assurances and making enquires is to discover / ascertain as to whether the property has already been encumbered / transferred. Searches reveal the important information about the property that might have been concealed by the Owner/Seller/Applicant.
- Before a search is undertaken it is necessary to ascertain the Sub-Registrar's office within whose jurisdiction the property is situate.

Legal Policy

- The search fee receipt evidencing the making of the search must be obtained from the panel Advocate and kept in our records along with the search report.
- In the Search Report, the Advocate has to mention the period of search carried by him and office of Sub- Registrar.
- Property taxes due to government or municipality are a first charge on the immovable property and therefore inquiries must be made and the branch officials should ask for the latest property tax paid receipts from the Applicant.

ii. Encumbrance Certificate:

In some States, there is a practice of issuing Encumbrance Certificate by the Office of the concerned Sub-Registrar of Assurances. In such States, the Sub-Registrar itself certifies as to whether there are any encumbrances over the property. These certificates should be obtained through the Panel Advocate and the fees paid receipt also to be collected. The Panel Advocate must mention in the LSR the period for which the EC is obtained and the charges or encumbrances, if any found or not.

iii. Search at the Office of the Registrar of Companies:

In addition to the Search/EC, if the Applicant is a limited company, search should be taken even at the office of the Registrar of Companies (ROC). Any charge created by a limited company over its properties is required to be registered as per the provisions of the Companies Act, 1956. When a limited company's property is taken as a security, search at the office of the ROC would indicate as to whether any charge is created over the properties of the company.

In case the Applicant is purchasing a flat/Apartment/unit from a builder/Developer who is a Limited company, in such case also ROC search of the said company is required to ascertain whether the Builder/Developer has availed the Project Loan or not. If the project property of the Builder is mortgaged/charged to any Banks/FIs/HFC, a specific NOC from the said Bank/FIs/HFC is required to be obtained in advance releasing the flat/Apartment and it should be verified and further the strict compliances of the NOC terms and conditions has to be fulfilled before disbursement.

ROC Search Should be carried out through the Panel Advocate or through the Company Secretary approved by the Corporate Legal Department. The Search report must be collected and the same should be verified by the HO Legal.

IX. ROC Search Report and NOC from Bank/Financial Institution in case of fresh purchase of Flat/unit/Apartment from Builder/Developer by the Applicants

For the under construction property or for the property which is completely constructed, wherein the Builder/ Developer is a registered Company incorporated under the Companies Act 1956, the Registrar of Companies (ROC) Search Report of that

Legal Policy

Builder/Developer Company has to be compulsorily obtained through the Panel Advocate or through the approved Company Secretary to ascertain whether the Builder/Developer has availed any Project Loan and/or created charge on receivables and mortgaged the project property. (The ROC Search Report has to be vetted by the Panel Advocate before issuing LSR).

If it is found from the ROC Search Report, that the Builder/Developer has created charge in respect of the project property, then NOC to mortgage must be obtained. The NOC also needs to be vetted by the Panel Advocate and the Advocate has to mention in his LSR that, he has vetted the ROC Search Report and NOC issued by the Project Lender /Bank/Financial Institution.

The ROC Search Report and NOC must be vetted by the Panel Advocate before issuing LSR. The above practice is in addition to the Legal due Diligence, vetting and carrying any search from the office of Sub Registrar.

The ROC Search Report and NOC should also be sent to HO Legal for the reference, along with Disbursement Memo/file.

It is necessary to comply the stipulations conditions mentioned by Legal Department in the APS approved note before processing the individual files to ensure that all the compliances are made by the Builder and Builder has right to sell the Flat /unit/Apartment.

All the Branches are requested to follow it strictly.

X. Type of Transactions

- Fresh Purchase flat/ Apartment from Builder/Developer
- Resale of Flat/ Apartment from Builder/Developer
- Self-Construction (Construction on Own Land) or Plot Loan
- Flat/Plot/House allotted/agreed to sale by a Development Authority/ Housing Board/Collector
- Loan against the property (LAP)/Mortgage Loan
- Resale of Flat in a Registered Housing Society
- Balance Transfer (BT)
- Home Improvement / Extension Loan – New Customer

The list of documents for each type of transactions is mentioned in this policy is for ready reference, which may change/vary, based on specific case to case or state or Locations wise.

Documents to be submitted by the Applicants as mentioned herein to the Panel Advocate for carrying out legal due diligence and obtaining LSR.

Legal Policy

HO Legal may stipulate conditions asking for any documents in respect of the Builder/Developers status, like whether it is a Partnership firm, Limited company, Society and the documents of in support thereof, if any.

XI. Document check list for each type of Transactions

The documents requirement as defined herein is the general list of documents used for the transaction as mentioned and subject to change. The additional documents requirement is the sole discretion of Legal Department and as per the LSR and will change on case to case. The modification in the list of documents and the formats can be reviews from time to time.

Process notes:

Separate Process Notes will be prepared for each location containing regional/state specific legal requirements/documents and the type of transactions. Such notes shall form part of this policy and shall be read in conjunction with this policy. Such notes shall be reviewed periodically and can be revised with the approval of authorized signatories.

In this policy list of documents required and stage of collection are defined for each product type and transactions. Any document required at a stage later than as specified therein shall require approval for authority as defined in process note.

Any transaction / event pertaining to legal activity not defined hereinabove or in any other process note shall be initiated with the approval of the Legal Department.

In Balance Transfer (BT) cases, the original title documents and No due certificate shall be collected within maximum of 45 days from the date of disbursement. It is the responsibility of the Branch Head to ensure that all the documents are collected and kept in the Docket. A register shall be maintained to follow-up and monitor for collection of the documents.

Fresh Purchase of Flat/Apartment from Builder/Developer

- Original registered Agreement for Sale or Sale Deed for purchase of flat/ Apartment.
- Original stamp duty paid receipt
- Demand Letter from the Builder/Developer
- Original Registration Receipt issued by the concerned Sub-Registrar.
- Original Index II
- Original NOC for mortgage of the flat/ Apartment from the Builder/Developer as per format attached before disbursement which needs to be verified for its genuineness.
- All Original stamped receipts for payments made to the Builder/Developer.
- Title Report issued by an Advocate in respect of the land/property developed by Builder/Developer, (if not attached to the Agreement for sale, as required under the state Flat Ownership Act/s).

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- A letter/certificate from the Builder/Developer/Architect indicating the latest progress of construction, (in case of under construction cases) or (in case of fully completed cases Occupation certificate issued by the Competent authority or completion certificate from the Architect, as the case may be /as per the rules of the company.
- Possession letter in case of fully constructed Flat/apartment
- Non –Agricultural permission and/or ULC order, as applicable.
- Legal Scrutiny Report (LSR) and all compliances as per LSR
- Search Report as per circular and process note

Past title chain documents of the Builder/Developer to be collected for verification if the Builder/Developers Project is not approved under the APS.

Wherever registered Agreement for sale or registered Sale Deed is not executed or to be executed and collected before disbursement of the Loan, prior written approval is required to be obtained from corporate office for Tripartite arrangement and tripartite arrangement must be executed as per the approved terms and conditions and follow up should be made for collection of Registered Sale Deed/ Agreement for Sale.

Legal Policy

NOC from Builder/Developer (New Flat Purchase)

(Letter to be obtained from the Builder/Developer on his Letter head and it should be issued (preferably) by the person who has executed the Agreement for Sale for the Builder/Developer)

Date_____

To
Branch Manager
STAR Housing Finance Limited (STAR HFL)

Subject: Permission to mortgage

Dear Sir,

This is to confirm that we have agreed to sell/sold flat No. _____ on _____ floor in the building called _____ situated at _____ admeasuring _____ sq.ft./carpet area or thereabout to Mr. /Mrs. _____ for total consideration of Rs. _____/- (Rupees _____ only) under Agreement for Sale or Sale Deed dated _____, which is duly registered under document number_____.

We confirm that we have obtained necessary, permissions, approvals/sanctions for construction of the said building from all the concerned competent authorities and the construction of the building as well as of the flat is in accordance with the approved plans. We also confirm that the said flat as well as the said building and the land appurtenant thereto are not subject to any encumbrance, charge or liability of any kind whatsoever and that the entire property is free from encumbrances and are marketable. We have clear, legal and marketable title to the said flat and every part thereof.

We have no objection to your giving loan to the aforesaid Mr/Mrs. _____ and his/her/their mortgaging the said flat with you by way of security for repayment, notwithstanding anything to the contrary contained in the said agreement.

We undertake that till the formation of society in due course of time and so long as the amount is due and payable by Mr./Mrs. _____ under the Loan Agreement whether by way of principal, interest or other charges, we will not permit him/her/them to allow the said flat to be occupied by any other person without prior written permission from STAR HFL.

We further say that in the event of default or otherwise, STAR HFL will have the right to sell the said flat to any person(s) and for that we give our consent.

We also undertake to inform and give proper notice to the Co-operative Housing Society as and when formed, about the flat being so mortgaged with STAR HFL.

Yours faithfully,

Name of the Builder/Developer

Authorized Signatory

Legal Policy

Resale of Flat/Apartment from Builder/Developer

- Original registered Agreement for Sale or Sale Deed for purchase of flat/ Apartment from the Builder/Developer and all other Agreement for sale/s made thereafter (subsequently)
– All chain agreements.
- All Original stamp duty paid receipts
- All Original Registration Receipts issued by the Sub-Registrar.
- Original Property tax paid receipt of the flat – Latest, if any
- Original bill/payment (towards maintenance charges) receipts made to the Builder/Developer by the original flat/ Apartment purchaser.
- Original Electricity Bill paid receipt –Latest of the original (first) purchaser
- Original NOC for mortgage of the flat/apartment from the Builder/Developer
- Legal Scrutiny Report (LSR) and all compliances as per LSR
- Search Report as per circular and process note

Legal Policy

NOC from Builder/Developer (Re-Sale Cases)

(Letter to be obtained from the Builder/Developer on his Letter head)

Date_____

To

Branch Manager

STAR HOUSING FINANCE LIMITED (STAR HFL)

Subject: Permission to mortgage.

Re: Flat No. _____ in the Building _____ admeasuring _____ sq.ft, situated at _____ of Mr. _____.

Dear Sir,

This is to confirm that we have sold flat No. _____ on _____ floor in the building called _____ situated at _____ to Mr. _____ (Name of previous owner) for a total consideration of Rs. _____/- (Rupees _____ only) vide an Agreement for Sale dated _____ (previous agreement date), duly registered on _____ with the Sub-Registrar of Assurances at _____ vide document number _____. We confirm that we have received from Mr. _____ (Previous owner) full sale consideration of the said flat and all outgoings are up to date.

We hereby assure that the said flat is not subject to any encumbrance, charge or liability of any kind whatsoever and that the entire property is free and marketable and we have a clear, legal and marketable title to the land where the said building is constructed and every part thereof.

We are aware that you have in principle sanctioned a housing loan to Mr. _____ (Proposed Buyer) for purchasing the said flat from Mr. _____ (Previous Owner).

We have no objection to your giving a loan to the (Proposed Buyer) Mr. _____ and his mortgaging the said flat to you and your charge of the said flat by way of security for repayment of the loan sanctioned / granted by you. We further agree that notwithstanding anything to the contrary contained in any agreements, we shall record the fact in our records.

We undertake that till the formation of society in due course of time and so long as the amount is due and payable by (Proposed Buyer) Mr. _____ under the relevant loan agreement whether by way of principal, interest or other charges, we will not permit him, allow the said flat to be occupied by any other person or deal in any manner with the said flat without prior written permission from STAR HFL in that behalf.

Further, we say that in the event of default or for any other reason as STAR HFL may deem fit, STAR HFL will have the right to sell/deal/dispose the said flat to any person(s) and for that we will not object to such person(s) as bonafide purchaser(s)/tenant of the said flat.

We also declare and undertake to inform and give proper notice to the co-operative housing society as and when the same will be formed, about the said flat being so mortgaged with STAR HFL.

Yours faithfully,

Name of the Builder/Developer

Authorized Signatory

Legal Policy

Self-Construction (Construction on Own Land) or Plot Loan

- All Original registered Title Deed/s of the land/plot.
- Original's) stamp duty payment receipt along with original Registration receipt issued by the concerned Sub –Registrar.
- Original property card or 7/12 extract or Record of Rights or Patta, Mutation entries as the case may be.
- Original tax payment receipt of the land/plot – Latest
- Certified copy of Electricity/Water tax payment bill –cum –payment receipt (Latest), if the construction is on own land after demolition of existing house/property.
- In case of any difficulty, the branch/CPU should refer to the Legal department (HO) and /or Advocate and seek guidance accordingly.
- A copy of the plan sanctioned by the competent authority in the name of a person applying for Home Loan (if the construction is on own land) must be obtained by the company before sanctioning the Home Loan. – As per Delhi High court order/HNB Circular.
- In addition to the Loan documents, An Affidavit – cum- Undertaking must be obtained from the person applying for the Home Loan for construction on own land, as per the standard format attached herewith and in the intranet – Policy –Legal.
- From the title deed's)/document, following particulars are required to be checked by Branch officials:
 - Full detail and description of the land/plot
 - Boundary of the Land/plot (East- West –South – North)
 - Area of the Land/plot, Survey Number/ Plot Number, etc,
 - Previous Owner's of the Land/plot, Present owner of the Land/plot
 - Date of the Agreement/Deed/Document, Registration or Document number, ,etc
 - Date of stamping/Registration, Consideration, Rights and liabilities of both the parties
 - Encumbrances, if any on the said land/ plot
 - In case the land/plot is an Agricultural land, a conversion permission/order from the competent authority is required to be insisted for the use of the land/plot from Agricultural to Non-Agricultural-Residential Purpose/ (NA Tax paid Receipt).
 - LSR of the land/plot
 - Search Report or Encumbrance Certificate for 30 years of the Land/plot from office of Sub- Registrar concerned to be obtained to avoid any claim's, through the panel Advocate along with receipt for payment to the Government for carrying out search/obtaining EC to ascertain whether any mortgage or charge or any other Encumbrances are subsisting on the subject Land/Plot.

Delhi High Court order on unauthorized construction- NHB Circular

A. Housing Loan for construction of a House:

(a) In cases where the applicant owns a plot/land and approaches for a Loan facility to construct a House, a copy of the plan sanctioned by the competent authority in the name of the person applying for such loan facility must be obtained before sanctioning the Home Loan.

Legal Policy

(b) An Affidavit-cum-Undertaking must be obtained from the person applying for such Loan facility that he shall not violate the sanctioned plan, construction shall be strictly as per the sanctioned plan and it shall be the sole responsibility of the Applicant to obtain completion certificate within three months of completion of construction.

(c) Technical officer of the company must also certify at various stages of construction of House that the construction is strictly as per the sanctioned plan and shall also certify at particular point of time that the completion certificate is issued by the competent authority has been obtained.

B. Housing loan of Purchase of constructed property/Built-up property:

(a) In cases where the Applicant approaches for Loan facility for purchase a Built-up house / flat, it should be mandatory for him to declare by way of Affidavit-cum-undertaking that the Built-up property has been constructed as per the sanctioned plans and/or building bye-laws and as far as possible has a completion certificate also.

(b) Technical officer of the company must also certify before disbursement of the loan that the built-up property is strictly as per the sanctioned plan and/or building bye-laws.

C. Unauthorized colonies

No Loan should be given in respect of those properties which fall in the category of unauthorized colonies, unless and until they have been regularized and development and other charges paid.

Flat/Plot/Apartment/House allotted/Agreed to Sale by the Development authority/Housing Boards/Authorities by way of Allotment Letter/Agreement for Sale/Sale Deed/Agreement for Lease/Lease Deed/Sale Certificate

Development Authorities or Housing boards, like: CIDCO, GNOIDA, DDA, HUDA, JDA, MHADA, state Housing Boards, etc.

- a. All original documents, like Allotment Letter/ Agreement to Lease/Sale issued by the Development Authority or Competent Authority has to be collected in original before disbursement of the Loan. The terms and conditions of the allotment letter must be read to ensure the compliances as stipulated therein.
- b. All payments (Receipts) made to the Development Authority or Competent Authority and the receipts thereof have to be collected in original.
- c. No Objection Certificate (NOC) for mortgage, a NOC must be collected and the same has to be submitted to the Panel Advocate along with the copies of property documents for obtaining the Legal opinion.
- d. Branch has to confirm and verify the genuineness of NOC for Mortgage issued by Development Authority or competent Authority before disbursement of the Loan.

Legal Policy

- e. Branch officials also to strictly comply the clauses/conditions stipulated the NOC issued for mortgage issued by the authorities and in LSR relating to title.
- f. Before the Loan is disbursed, Branch should send the letter as per approved format attached herein to the Development Authority or competent Authority for noting the lien/charge of STAR HFL. This letter is to be issued only where the particular flat/plot number is allotted through allotment letter or Agreement to Lease/sale and the Development Authority has not executed the Sale/Lease Deed and the same is going to be executed only after payment of full consideration/price to the Development Authority or competent Authority.
- g. In case the loan is disbursed based on Allotment Letter and NOC to Mortgage, Branch should ensure to collect the original Sale/Lease Deed, if the same is going to be executed latter and maintain a Registrar for such cases and review the same periodically.
- h. Legal Scrutiny Report (LSR) and all compliances as per LSR
- i. Search Report in case of Re- sale of the flat/Apartment or Plot allotted by the Development authorities from the office of Sub- Registrar and from the office of Development Authority
- j. Transfer permission in case of Re- Sale of Flat/Plot/apartment to be obtained in advance for vetting by the Panel Advocate
- k. Tax Paid receipt in case of Re-Sale of Flat/Plot/Apartment

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(Draft Letter to the Development Authority or competent Authority)

INSTRUCTIONS:

This letter should be prepared in duplicate. The original should be submitted to the Development Authority/Competent Authority, after taking their seal and signature on the duplicate.

Date: _____

To,
The Competent Officer,
Name of the Development authority,

Ref: (1) Allotment Letter No. _____ dated _____ or Lease Agreement or Agreement for Sale dated _____ and

(2) NOC dated _____ to mortgage the property _____ (write Full Description of the property).

Subject: - Noting of our Mortgage/charge/Lien

Dear Sir,

Mr./Mrs./Ms. _____ has approached for housing loan of Rs. _____/- from our company and the same is sanctioned vide offer letter dated _____. The said Mr./Mrs./Ms _____ has agreed to mortgage the aforesaid property towards security for the repayment of the Loan.

Kindly make note of the same and acknowledge the receipt.

Thanking you,

Yours faithfully,
For STAR Housing Finance Limited

Authorized Signatory

Legal Policy

Loan against the property (LAP)/Mortgage Loan

- a) Original title Deeds (all) pertaining to the property or flat along with original stamp duty paid receipts and Registration fees paid Receipts.
- b) Latest tax paid receipt of the property/flat
- c) Latest electricity or Telephone Bill
- d) Latest Encumbrance Certificate (EC) or Search Report for a period of 30 years, is to be carried out, in case of flat in a Co-operative society 13 years Search.
- e) Where the flat or property which is possessed (as ancestral/inherited), to find out the parent documents to the title of the flat or property and latest Revenue Record copy, like 7/12 extract / Record of rights, mutation entries, etc, wherein the name of the owner is recorded.
- f) In case of the flat or house is situated in Co-operative Housing society, in such a case, (i) the NOC from the Society (as per the standard draft of the company) for mortgage of the flat, (ii) the Original Share Certificate issued by the society and (iii) latest maintenance charges payment receipt issued by the society is also required in addition to the above documents.
- g) NOC of such society should be verified by the Authorized Officers of the company to verify the genuineness.
- h) Property/flat to be mortgaged should not be constructed on an Agricultural land.
- i) Legal Scrutiny Report (LSR) and all compliances as per LSR

Resale of Flat in a Registered Housing Society

- a) Original Agreement for Sale or Sale Deed for purchase of flat from the Builder/Developer and all other Agreement for sale/s made thereafter (subsequently) – All chain agreements.
- b) All Original stamp duty paid receipts
- c) All Original Registration Receipts issued by the Sub-Registrar.
- d) Original Share Certificate issued by the Society
- e) Original bill/receipt towards payment of society maintenance charges –Latest.
- f) Original Property tax paid receipt of the flat – Latest
- g) Original Electricity Bill or water tax paid receipt -Latest
- h) Original NOC for mortgage of the flat from the Society as per the standard format of STAR HFL.
- i) LSR from the Panel Advocate
- j) Search Report from the Panel Advocate as per the circular from time to time

Legal Policy

NOC from the Society (In case of Resale of Flat in a society)

INSTRUCTION: NOC to be obtained from the Society on their Letter Head

Date: _____

To
Branch Manager
STAR HOUSING FINANCE LIMITED (STAR HFL)

Subject: Permission to mortgage

Re: Flat No. _____, in the Building _____ situated at _____ of Mr. /Mrs. _____

Dear Sir,

1. This is to confirm that the above society is registered under registration No. _____ dated _____ is the owner of the above land pursuant to the conveyance dated _____ registered as document number _____.
2. We hereby assure you that the said flat, as well as, the land appurtenant there to is not subject to any encumbrance, charge or liability of any kind and that the title to the entire property is free and marketable and dues in respect thereof have been paid up to date.
3. We say that Mr. / Mrs. _____ is/are a member(s) of our Society and the Society has issued the Share Certificate No. _____ dated _____ bearing distinctive No: from _____ to _____ in his/her favor in respect of the above referred flat, and that the society has agreed to transfer the above flat to Mr./Mrs. _____.
4. We say that no amount by way of society charge(s) or proportionate share of outgoing in respect of the said flat are due and payable by the aforesaid member.
5. We have been informed by the said member that by and agreement for sale dated _____ he/she/they has/have sold/agreed to sale the said flat to Mr./Mrs. _____ for total consideration of Rs. _____/- and the said agreement is registered with Sub-Registrar of Assurances at _____ as document number _____.
6. We have no objection to your giving a loan to Mr./Mrs. _____ and his/her/their mortgaging the said flat with you by way of security for repayment.
7. We confirm that we have made necessary entries in our books of record, the charge of STAR HFL in respect of the said flat and his/her/their mortgaging the said flat with you by way of security for repayment.
8. We say and undertake that the Society will not allow transfer/sale/mortgage of the said flat by the said Mr. /Mrs. _____ or permit to part or otherwise deal in whatsoever manner to any third party till such time a NOC from you is submitted to us that the loan is repaid in full.
9. We say that the said share certificate pertaining to the said member will be transferred in the name of Mr./Mrs. _____ on its submitting to the society in due course of time.

Yours faithfully,

For _____ society

Chairman / Secretary

Legal Policy

Balance Transfer (BT) -

Guidelines/Process on takeover of Loan from other Banks or Financial Institutions: (Balance Transfer- BT)

This Guidelines and Procedure for Take over/Balance Transfer cases from other Institutions, which will enable the company to mitigate the risk involved in such type of cases:

To strengthen the process and for implementation of standard practice in respect of BT cases and for collecting the original documents from other institutions in time and to fix responsibility, accountability, it is decided to circulate these consolidated guidelines/directions on the captioned subject.

Balance Transfer (BT) cases are of two types:

(i) Balance Transfer by the Loan Applicant(s) from other Institutions to STAR HFL

Or

(ii) Balance Transfer, wherein the Seller of the property availed the loan from other Institutions and selling the property to our Loan Applicant(s) and STAR HFL makes the payment of the sanctioned loan outstanding amount to the other Institutions to liquidate the loan outstanding of the Seller.

Process to be followed and accountability in respect of:-

(i) Balance Transfer (BT) by the Loan Applicant from other Institutions to STAR HFL

- A. Letter from other Institution from whom the loan is taken over mentioning the total outstanding amount to be paid by the Applicant(s) to clear the loan (Latest outstanding letter should be obtained). This is mandatory in all BT cases and the Appraisal Officer is primarily responsible and shall ensure that the said letter is received in original/Xerox- self attested before appraising the Loan Request.
- B. Detailed list of property documents deposited by the Applicant, (whether original/Xerox/registered or not) for availing the Loan from them (other Institution) should also be obtained. It will be the primary responsibility of the Branch Manager/Branch Head to ensure that the said letter is submitted by the Applicant during appraisal stage/at the time of loan request and the Branch Manager also should ensure that the same is submitted to the Panel Advocate along-with the copies of the property documents for the purpose of Legal due diligence and collecting LSR thereafter. In case it is found that the list with the copy of the documents is not submitted to the Advocate, then the Branch Manager/Branch Head shall be responsible for the same.
- C. Based on the Legal Scrutiny Report (LSR) submitted by the Advocate, Branch has to collect the papers in original on the date of disbursement or in case the Institution agreed to deliver the original title documents directly to STAR HFL, the Authorized Officer of the Branch should visit the Institution to collect the original documents and also to collect No due Certificate issued by the Institution. The Branch has to collect the authority letter in advance from the Loan Applicant(s) before the disbursement. The Authority letter addressed to STAR HFL must be marked to the Institution and an acknowledged copy from the Institution to be collected by the Branch before disbursement.

Legal Policy

- D. The disbursement cheque should be in the name of the Institution and should be delivered through the Branch officials and a valid acknowledgement must be collected from the Authorized officer of the Institution in that respect.

Enclosed herewith three drafts (Draft 1, 2 and 3) which the Branch has to strictly follow:

- (i) Letter of Authority to be issued by the Applicant(s) to STAR HFL to make the payment of loan outstanding to the Institution and collect all the title documents directly, in case the Institution agrees to deliver the document after the disbursement. (Draft 1) or
- (ii) In case the Institution insists for POA of the Applicant(s), POA as per the format attached needs to be collected by the Branch in advance along with the Letter of Authority. (Draft 2)
- (iii) STAR HFL Letter to the Institution enclosing the Cheque/Pay Order (enclosing copy of the acknowledgement issued by the Institution to the request of the Applicant(s) agreeing to deliver the same) requesting them to deliver all the title documents and other documents deposited with them directly to STAR HFL & to issue No -Due Certificate. (Draft 3)

Responsibility and Accountability:

- A. Branch Manager is the overall responsible to ensure that the original title documents are received from the Institution in time, i.e. (within 10 days) from receipt of disbursement cheque by other institution from whom loan is taken over.
- B. In case the Branch is unable to collect the documents from the Institution, within the period as mentioned above, a reminder is required to be sent to the Institution in that respect by registered post /Courier/Hand delivery, informing that the documents are not received by STAR HFL in spite of repayment of loan.
- C. The HO Legal shall follow up with the respective Branch Managers who have not collected the documents to ensure that the original title documents are collected within a maximum period of 45 days of first disbursement.

Balance Transfer BT: MIS:

Branches must maintain a MIS in respect of Balance Transfer cases and a monthly MIS will be generated, zone wise, branch wise, to enable all concerned to monitor the same and take appropriate action.

Branch Managers after verifying the MIS will follow-up to ensure that the original title Deeds are collected within the maximum period of 45 days.

Important:

All the Xerox copies of the documents relating to the title of the property must be forwarded in advance in such type of loan proposals to the Panel Advocate mentioning clearly that it is a Balance Transfer Loan, mentioning the Institution and enclosing the letter of the Institution indicating the documents deposited with them so as to collect correct LSR to avoid the risk.

Legal Policy

(Draft Authority Letter to be collected from the Applicant/s)

Date:

From

To

STAR Housing Finance Limited (STAR HFL)

Dear Sir,

Ref: Your Offer Letter dated _____

Sub: Request for Disbursement of Loan

I/We hereby authorize STAR HFL to make the payment of Rs. ____/- directly to _____ Bank, herein after referred to as "said Bank", out of the loan sanctioned by STAR HFL and on my/our behalf collect all the title documents deposited by me/us with them in respect of the property, i.e. _____ and also the No Dues certificate from the said Bank.

On payment of the aforesaid amount by STAR HFL to the said Bank, STAR HFL is hereby authorized to collect from the said Bank the following on my /our behalf:

1. No Due Certificate
2. All documents deposited by me/us with the said Bank in respect of the said property (as per the list mentioned in the Banks Letter dated _____).
3. Request the said Bank to release the mortgage over the said property.

Kindly acknowledge the receipt.

Thanking you,

Yours Faithfully,

(Name of the Applicant and Signature)

C/C: _____ Bank, the Bank is hereby requested to kindly act on the above.

Legal Policy

The POA to be obtained as per the Draft, it should be stamped as per the stamp duty rate of the state and should be notarized. Photo of the Applicant(s) also to be affixed with the Full signature.

POWER OF ATTORNEY

TO ALL TO WHOM THESE PRESENTS shall come I/We, Mr.
 _____, residing at
 _____ do hereby SEND GREETINGS

WHEREAS:

STAR Housing Finance Limited, a Company registered under the Companies Act, 1956 and having its registered office at Akme Business Centre (ABC), 4-5 Subcity Savina Circle, Opp. Krishi Upaz Mandi, Udaipur - 313002, (hereinafter referred to as "STAR HFL") has sanctioned/agreed to lend/advance/lent to me/us a loan to an extent of Rs._____/ - upon the terms and conditions mentioned in the letter of offer and other documents executed by me.

I/We have already availed the Loan from _____ Bank (hereinafter referred to as "the said Bank") against the mortgage of the property, i.e. _____ (hereinafter referred to as 'the said property') and deposited with them the title deeds relating to the said property/executed deed of Mortgage and registered the Mortgage bearing No----- dated

Being personally unable to attend the said Bank, to repay the said loan I have requested STAR HFL to disburse an amount of Rs. _____/- being the amount due and payable by me/us out of the sanctioned loan and pay directly to the said Bank and to collect all the title documents relating to the said property as well as the NO Dues Certificate on my behalf and to keep the same with STAR HFL as a security for the loan sanctioned to me by STAR HFL.

To comply and complete the requisite formalities for the repayment of the loan by myself and as such I/We have decided to nominate, constitute and appoint STAR HFL as my Attorney, for me and in my name and with full power and authority to act for me and on my behalf execute and do all or any of the following acts, deeds and things.

NOW KNOW YOU ALL AND THESE PRESENTS WITNESSETH that in pursuance of the said premises I/We, Mr. _____ hereby appoint and constitute the said STAR HFL to be my/our true and lawful Attorney or agent with full authority to do and execute the following acts deeds and things for me/us, in my/our name and on my/our behalf through any of its officers.

- A. To make payment the outstanding amount of Rs._____/ - payable by me/us directly to the said Bank, and to collect all the title documents relating to the said property as well as the NO Dues Certificate, and to sign the acknowledgement/receipt for the said documents.

Legal Policy

- B. To request the said Bank and receive the title documents of the said property and for that purpose give effectual discharge.
- C. To request the said -----Bank to release the mortgage created by me/us.
- D. To execute any writings, undertakings, etc., in my name and on my/our behalf in respect of the collection of the title documents of the said property from the said Bank and any other writings whatsoever required and necessary in respect of the said transaction of the loan granted/ to be granted to me and creation of the security in respect of the same.
- E. To represent me/our before the Said Bank and to do all such things as I/We would have done if I/we were personally present.
- F. To do all other acts and things that may be necessary or incidental to the repayment of the said loan outstanding and to collect all the title documents from the said Bank.
- G. **AND GENERALLY** to do all other acts, deeds, matters and things which I/We myself/ourselves would have done, in connection with the transaction as aforesaid with the said Bank.

AND I/We do ratify and confirm whatever my said Attorney or any of its officers appointed by STAR HFL will lawfully do in the premises.

IN WITNESS THEREOF I/We Mr. _____ & _____ have hereunto set and subscribed my/our hand to these presents at _____ on this _____ day of _____.

SIGNED AND DELIVERED by the
Within named "Executants"

Mr. _____

Affix the Photograph of the Executants'

and signature

Before Me

Legal Policy

(STAR HFL Letter to the Institution for collecting the original title documents from the Institution)

Ref:

Date:

To

_____ Bank

Dear Sir,

Ref: Your letter dated _____ addressed to _____. in respect of title documents deposited with you.

We have received the authority letter from Mr. /Mrs. _____ vide his/her/their letter dated _____, enclosing the copy of the above referred letter, copies whereof are attached herewith.

Pursuant to the above, please find enclosed herewith the Cheque/Pay Order bearing number _____ dated _____ of Rs. _____/- (Rupees _____ only) in your favor.

You are requested to issue and deliver the following documents directly to us:

1. All the documents deposited by the said Mr. /Mrs., _____ with the Bank in respect of the property (as per the list mentioned in the Banks Letter dated _____ and
2. No Due Certificate and Release letter

You are requested to acknowledge the receipt.

Thanking you,

Yours Faithfully,
For STAR Housing Finance Limited

Authorized Signatory

Encl: Copy of your letter dated _____ and letter dated _____ of Mr./Mrs. _____ for reference and record

Legal Policy

(ii) Balance Transfer, wherein the SELLER of the property availed the loan from other Institution and selling the property to our Loan Applicant:

1. Copy of the Letter from the Institution from whom the Seller has availed the loan mentioning the total outstanding amount to be paid by the Seller to clear the loan (Latest outstanding letter). This is mandatory in all Sellers -BT cases and the Appraisal Officer is primarily responsible and shall ensure that the said letter is received in original/Xerox before appraising the Loan Request.
2. Detailed list of property documents deposited by the Seller, (whether original/Xerox/registered or not) for availing the Loan from the Institution is also important and necessary. It is the primary responsibility of the Branch Manager to ensure that the letter is submitted by the Applicant at the time of loan request and the Branch Manager also ensure that the same is submitted to the Panel Advocate along with the property documents for the purpose of Legal due diligence and collecting LSR. In case it is found subsequently that the list was not submitted to the Advocate, then the Branch Manager is solely responsible for the same.
3. Based on the Legal Scrutiny Report (LSR) submitted by the Advocate, Branch has to collect the Title deeds/documents, papers in original on the date of disbursement or in case the Institution agrees to deliver the original title documents directly to STAR HFL, the Authorized Officer of the Branch should visit within 7 days to the Institution to collect the original documents and also simultaneously collect No due Certificate issued by the Institution. The Branch has to collect the authority letter in advance from the Seller and the request from the Loan Applicant before the disbursement. The Authority letter addressed to STAR HFL by the Seller must be marked to the Loan Applicant and also to the Institution and an acknowledged copy to be collected by the Branch before disbursement. [the Draft letter from the Seller to the Institution – as per Draft No.4 and STAR HFL letter to the Institution as Draft No. 5 are enclosed herewith], which has to be complied strictly.
4. The disbursement cheque should be in the name of the Institution (only after the request letter from the Loan Applicant, as per the Draft No.6) and should be delivered through the Branch officials and a valid acknowledgement must be collected from the Authorized officer of the Institution in that respect.

Important:

It is advisable not to disburse/release the balance sanctioned loan amount, if any, till such time all the documents are deposited with STAR HFL and the No Due Certificate is issued by the Institution and all other sanction conditions are fulfilled by the Loan Applicant.

Legal Policy

(Authority Letter to be collected by STAR HFL from the Seller, In case of Sellers Balance Transfer-BT)

Date:

From

_____ (Full name, Address of the Seller)

To

STAR HOUSING Finance Limited (STAR HFL)

Dear Sir,

Sub: Authority to collect all the title documents as well as No-Due Certificate from _____ (Name of the Institution)

I/We have availed the Loan from _____ (Name of the Institution) against the security of the property, i.e. _____ (full description of the property to be mentioned), and an amount of Rs. _____/- is due and payable by me/us to the said institution.

I/We have sold/agreed to sell the said property to Mr./Mrs. _____ for a sale consideration of Rs. _____/- and accordingly executed Agreement for Sale/Sale Deed dated _____ which is duly registered before the office of Sub- Registrar at _____ and I/We know that STAR HFL has sanctioned a Loan of Rs. _____/- to the Mr./Mrs. _____ against the security of the property i.e. _____.

In the said circumstances, I/We hereby authorize STAR HFL to make the payment of Rs. _____/- being the amount outstanding and payable by me/us directly to _____ (Write the name of the Bank), (hereinafter referred to as "said Bank"), and I/We have no objection for STAR HFL to collect all the title documents of the property deposited with them and the No Dues certificate from the said Bank.

That on payment of the said amount by STAR HFL to the said Bank, STAR HFL is hereby authorized to collect from the said Bank the following on my /our behalf:

1. All documents deposited by me/us with the said Bank in respect of the said property (as per the list mentioned in the Banks Letter dated _____) and request the said Bank to release the mortgage over the said property.
2. No Due Certificate

Kindly acknowledge the receipt.

Thanking you,

Yours Faithfully,

(Name of the Borrower and Signature)

C/C: to

(1) _____ Bank, the Bank is hereby requested to kindly act on the above.

(2) Mr./Mrs. _____ (Applicants(s) for information.

Legal Policy

(STAR HFL Letter to the Institution for collecting the title documents from the Institution)

Ref:

Date: _____

To

_____ Name of the Bank/Institution

Dear Sir,

Ref: Your letter dated _____ addressed to _____ (Name of the SELLER). (Mention the Banks Letter in respect of deposit of title documents with them)

We have received the authority letter from Mr. /Mrs. _____ vide his/her/their letter dated _____, enclosing the copy of the above referred letter, copy whereof is attached herewith.

Pursuant to the above, please find enclosed herewith the Cheque/Pay Order bearing number _____ dated _____ of Rs. _____/- (Rupees _____ only) in your favor.

You are requested to issue and deliver the following documents directly to us:

1. All the documents deposited by the said Mr. /Mrs., _____ with your Bank in respect of the property (as per the list mentioned in the Banks Letter dated _____).
2. No Due Certificate and Release letter

You are requested to acknowledge the receipt.

Thanking you,

Yours Faithfully,
For STAR HOUSING Finance Limited

Authorized Signatory

Encl: Copy of your letter dated _____ or reference and record.

Legal Policy

(Draft Authority Letter to be collected from the Applicant/s)

Date:

From

To

STAR HOUSING Finance Limited (STAR HFL)

Dear Sir,

Ref: Your Offer Letter dated _____ and Letter of Authority dated _____
issued by Mr./Mrs. _____ (Name of the Seller)

Sub: Request for Disbursement of Loan

I/We refer to the aforesaid offer letter as well as the authority letter issued by Mr./Mrs. _____.

I/We hereby authorize STAR HFL to make the payment of Rs. _____/- directly to _____ Bank, (hereinafter referred to as “**said Bank**”), out of the sanctioned loan amount and on my/our behalf collect all the title documents deposited with them in respect of the property, i.e. _____ and also the No Dues certificate from the said Bank.

That on payment of the said amount by STAR HFL to the said Bank, STAR HFL is hereby authorized to collect from the said Bank the following on my /our behalf:

1. All documents deposited by me/us with the said Bank in respect of the said property (as per the list mentioned in the Banks Letter dated _____, and
2. No Due Certificate and request the said Bank to release the mortgage over the said property.

Kindly acknowledge the receipt.

Thanking you,

Yours Faithfully,

(Name of the Borrower and Signature)

Encl: As above

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Home Improvement / Extension Loan – New Customer

1. All original title Deeds along with the registration receipts of the property
2. Latest tax paid receipt
3. Original Share Certificate (in case the flat / house is situated in a Co-Operative Housing Society) issued in the name of the Applicant along with NOC from the Society to Mortgage the flat/house in favor of STAR HFL to secure the loan and latest maintenance charges payment receipt issued by the society is also required.
4. NOC from the Builder, in case of society is not formed.
5. Latest electricity or Telephone Bill (preferably)
6. Property/flat should not be constructed on an Agricultural land.
7. Latest Revenue Record copy, like 7/12 extract/ Record of rights/ Patta/Katha Utara, mutation copies, wherein the name of the owner is recorded
8. Legal Scrutiny Report (LSR)
9. Encumbrance Certificate or Search Report, wherever applicable.

XII. Documentation

Need for Documentation: (i) Requirement of Law (ii) purpose of maintaining a permanent record of evidencing of the transactions.

Need for proper Documentation

Documentation results to a contractual relationship and establish a legal relationship between STAR HFL and the borrower. Documents create evidence which can be relied upon in case of legal action. Proper documentation ensures due repayment of the loan by the borrower and in case of default by the borrower, enables STAR HFL to recover the loan by taking appropriate legal action against the borrower. Thus, the purpose of documentation is to create a record of loan transaction and also a valid and proper security in favour of STAR HFL. Documents create evidence which can be relied upon in case of legal action.

A proper and legally enforceable record/documentation is maintained for the purpose of recovery of the loans so advanced.

As such, utmost care should be taken while obtaining documents from the borrowers.

EXECUTION OF DOCUMENTS

Execution of Documents involves three stages viz: stamping, signing and registration. The term “duly executed” means duly **stamped, signed and registered** document. However, all the documents are not required to be registered though most of the documents are required to be stamped.

Utmost care must be taken while executing loan documents. Any discrepancy in the documentation may adversely affect the rights of STAR HFL in the event of institution of legal proceedings to recover the dues.

Examples of defective documents

1. Inappropriate documents

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2. Documents not complete as prescribed by the company.
3. Documents which are left partially blank
4. Over-writings /alterations without proper authentication by the borrower
5. Unstamped or inadequately stamped documents.
6. Documents executed wherein:
 - a) all the parties have not signed
 - b) the person has no proper authority- e.g. documents executed by agent in the absence of a power of attorney

FILLING UP OF DOCUMENTS:

- a) No space should be left blank in any document. All details relating to rate of interest, tenure, amount of loan, number of EMIs, amount of EMI, names of all the applicants etc. should be carefully and accurately filled in before disbursing the loan.
- b) The documents should be got completed in one sitting and in the same handwriting using the same ink and pen.
- c) Loan documents should be signed by the borrowers on every page in order to avoid all risk and safeguard the interest of STAR HFL. The borrowers must be asked to affix full signatures in the same style throughout the documents.
- d) All types of additions, insertions, striking, overwriting, erasing, deletions, interlining etc in the documents must be authenticated by the borrower under his full signature in the same style as elsewhere signed in the documents.
- e) Wherever the documents are to be witnessed, the same must be done by the officials of the company as it helps in identification of the executants (borrower).
- f) When a document is to be executed by an illiterate person, his/her Thumb impression should be obtained. A declaration by the person knowing the language of the document is to be obtained.
- g) In case the borrower signs the documents in a language other than the language of the document, it is necessary to explain the contents thereof to him and obtain a declaration to the effect by a person knowing the language of the document.

PLACE OF EXECUTION (JURISDICTION)

- a) Generally documents mention the place of the branch where the loan is disbursed and this will determine the jurisdiction within which suit can be filed.
- b) Sometimes one or more parties execute the documents in different states .In such cases the following points are to be noted
 - i. No further stamps be affixed if the stamp duty is same in all states
 - ii. Difference in stamp duty is payable if the documents travel to the higher stamp duty area from lower stamp duty area.
- c) The borrowers should be asked to write the name of the place below their signature if they are executing the documents in different states.

REGISTRATION

All the documents are not required to be registered. A Sale Deed/Agreement/Conveyance and Mortgage Deed are required to be registered under the Registration Act. Thus, while accepting a title deed in the nature of a Conveyance or Sale Deed, it should be ensured that the same is registered with the Sub-Registrar of Assurances.

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Similarly, when a security by way of registered mortgage is stipulated, the Mortgage Deed is duly stamped should be registered.

Some of the important loan documents prescribed by STAR HFL:

- Loan Application: It is a preliminary document of information about the borrower. It should be carefully and completely filled in. The official concerned must get all the information required and necessary for processing a file. The applicant and co-applicant should sign it in the presence of the official.
- Letter of Offer: Letter of Offer is one of the preliminary documents, which contains the terms and conditions on which the loan is sanctioned. Acceptance of the Offer Letter is an admission of the terms and conditions stated in the offer letter.
- Accepted copy of Letter of Offer - It is a document of acceptance by the borrower, of the terms and condition stated in the offer letter.
- Loan Agreement: This is the most important document which contains the detailed terms and conditions of the loan transaction.
- Demand Promissory Note (DPN): It is an instrument in writing containing an unconditional undertaking signed by the maker to pay a certain sum of money to , or to the order of a certain person or to the bearer of the instrument. It also attracts Stamp duty. On the basis of DP Note, a money suit can be filed. If a DPN is not duly stamped, it is inadmissible in evidence.
- Letter of Guarantee: Guarantee is a contract to perform the promise or discharge the liability of a third person in case of default. A suit of recovery of debt can also be filed against the guarantor separately. In case of any change / alterations / modifications in loan documents, consent of the guarantor is required to be taken.

Legal Compliances to be carried out before disbursement

As regards proper documentation, the branches must ensure that the following formalities are complied with before disbursing the loan:

- All the original documents/title deeds as stated in the LSR are collected.
- Loan related documents are properly stamped and signed.
- Primary/Collateral security papers are properly obtained. (if applicable)
- In case of sanction condition is registered mortgage, the same is complied.
- All other sanction conditions are complied with.

Renewal/Revival of Loan Documents

Law of Limitation prescribes the period within which the existing rights can be enforced in a court of law. According to section (3) of the limitation Act, 1963, any suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defense. Therefore it is necessary to keep watch on the period of limitation and before expiry of such period, efforts should be made to recover the dues or decision should be taken to file a suit or get the limitation period extended by obtaining Acknowledgement of Debt (AOD) from the borrowers.

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Loan documents are prima-facie evidence to establish the right, claim or interest of the lender in a security against which the loan is granted. Branches should ensure that the documents are kept alive at all times. Necessary steps should be taken to renew/revive the documents before the expiry of the limitation period.

Branches should ensure that Acknowledgement of Debt (AOD) is obtained before completion of 36 months from the date of loan papers/commencement of limitation period.

Branches should note that an AOD is required to be stamped as per the State Stamp Act.

Failure to renew the documents or to obtain AOD from the borrowers will result in loan documents getting time- barred. The right to take legal action against such borrower will be lost.

Branches should obtain AOD from all the borrowers, especially from the defaulters who have more than 12 months outstanding. A draft of AOD is given herein. AOD is required to be stamped.

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AOD IN RESPECT OF HOUSING LOAN

From

To,
The Branch Manager,
STAR Housing Finance Limited (STAR HFL)

Sub: Housing Loan Account No_____ with you.

With reference to the Agreement dated _____ and the relative records connected with it. I/We hereby acknowledge the liability in respect of the Housing Loan being Rs._____-/- (Rupees _____ only) as on _____ which includes interest, costs, expenses, etc debited up to _____ and all other charges, expenses etc incurred and debited to my / our account, subsequent interest, charges, expenses etc, also being due.

I/ We also confirm the security created by me/ us in your favour for the purpose of securing the above Housing loan.

Signature

Place:

Date

Legal Policy

XIII. Types of Transfer as per Transfer of Property Act, 1882

SALE - SECTION 54
MORTGAGE - SECTION 58
CHARGE- SECTION 100
LEASE - SECTION 105
EXCHANGE - SECTION 118
GIFT - SECTION 122

Sale: Sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

Mortgage: Section 58(a) of the Transfer of Property Act defines “Mortgage “as follows:-
“A Mortgage is a transfer of an interest in specific immovable property for the purpose of securing payment of money advanced or to be advanced by way of Loan, an existing or future debt or the performance of an engagement which may give rise to pecuniary liability”.

The transferor is called a Mortgagor, the transferee a Mortgagee, the principal money and interest of which payment is secured for the time being are called the Mortgage Money, and the instrument (if any), by which the transfer is effected is called a Mortgage Deed.

Charge: Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Lease: A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Gift: Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made: Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

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For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

Exchange: When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange".

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

A. Mortgage of Immovable Property

From the definition, it is very clear that the term "Mortgage" applies only to a security of an Immovable Property and not movable property.

What is security of Movables? Security of Movables is known in law as either "Hypothecation (when possession is not given) or Pledge or Pawn (when possession is given).

Like a Deed of Conveyance or sale, a Mortgage is also a transfer of an immovable property or an interest in such property.

The difference is that the former is an absolute transfer of the property or any interest therein while the latter is a limited transfer, limited to or for a particular purpose, namely to secure a past or future debt or the performance of an engagement which may give rise to pecuniary liability.

Mortgage: A mortgage is the transfer of an interest in specific immovable property for the purpose of securing (i) the payment of money advanced or to be advanced by way of loan, (ii) an existing or future debt, or (iii) the performance of an engagement which may give rise to a pecuniary liability.

The transferor (who transfers the interest in the immovable property) is called a Mortgagor, the transferee a Mortgagee, the principal money and interest of which payment is secured for the time being are called the Mortgage-money, and the instrument (if any) by which the transfer is effected is called a Mortgage-deed.

Features:

- The immovable property, the interest of which is transferred to the creditor, must be specific in description with boundaries.
- It should be easily identifiable.
- The debt or money lent is an important component of mortgage.
- It is the payment of the debt, which is secured.
- The debt may be money advanced, or to be advanced, existing or future debt.

Legal Policy

It also covers the performance of an engagement, which may give rise to monetary liability. The purpose of the mortgage is to secure the payment of money lent or to be lent.

Persons competent to create a mortgage:

Any person competent to enter into a contract can create a mortgage. This excludes minors and lunatics. Guardian of a minor can create mortgage on obtaining permission from the Court. Joint owners of property, partner of firm or Karta of Hindu Undivided Family, can mortgage property.

In case of joint owners, all the co-owners, all the partners in case of a partnership firm, and in case of Hindu Undivided Family all the male members, widows of the deceased male members, and daughters who have been conferred property rights by the state government have to sign the mortgage deed.

B. Types of Mortgage

There are six types of mortgages defined under the Transfer of Property Act.

Following are the six types of mortgage that are recognized under the Transfer of Property Act, 1882

Simple Mortgage [Sec 58 b]

Mortgage by conditional sale [Sec 58 c]

Usufructuary Mortgage [Sec 58 d]

English Mortgage [Sec 58 e]

Mortgage by deposit of Title Deeds or Equitable Mortgage [Sec 58 f]

Anomalous Mortgage [Sec 58 g]

Banks/HFC/Financial institutions generally obtain Simple mortgage (Registered Mortgage) or Mortgage by deposit of title deeds (also known as equitable mortgage).

C. Simple Mortgage

Section 58 (b) of the Transfer of Property Act, defines the “Simple mortgage”, which is also known as “Registered Mortgage”.

Features:-

- There is transfer of interest in the immovable property to the mortgagee to secure the payment of money lent.
- There is no delivery of possession of the immovable property to the mortgagee.
- The mortgagee would have, in event of default, two causes of action, one arising out of breach of obligation and the other arising out of the contract of mortgage. If he sues on the personal undertaking only, he obtains what is known as money decree. If he sues on the contract of mortgage, he obtains an order for sale of property. I.e. that in case of his failure to pay the mortgage money as agreed, the mortgagee (creditor) has right to get the

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immovable property mortgaged sold and the sale proceeds are to be adjusted towards the payments secured.

- It is very important to note that the act uses the words “cause to be sold”, which means the property can be sold only through intervention of the Court.
- The deed of simple mortgage requires to be attested by two witnesses. It also needs to be properly stamped. Registration is necessary if the principal amount is Rs.100/- or more. Only the principal amount is the criteria and not the interest. The stamp duty payable on simple mortgage varies from State to State.

The remedies available under simple mortgage are personal decree against mortgager and decree for the sale of the mortgaged property. Procedure for putting through Simple Mortgage Wherever there is a condition in the sanction letter for registered mortgage, the deed of mortgage should be obtained. Even where the security by way of registered mortgage is stipulated, it is advisable to obtain all the original title deeds from the borrower.

The mortgage deed should be stamped.

Before registering the deed, the branch should ensure that all details such as borrower's name and description of property are correctly mentioned.

The Mortgage deed is to be signed by all the parties who have right as owners over the properties and attested. If the parties are illiterate, thumb impression is to be affixed in the deed and the same should be attested.

When the mortgage document has been prepared, the same should be presented without delay to the Registrar/ sub-registrar of Assurances in whose jurisdiction the properties are situated and the document may be executed in the presence of the Registrar/ sub-registrar and then registered or, where the document has already been executed elsewhere, it may be presented for registration and the executants must admit its execution.

The BM/OIC of the branch should produce the document for registration with a request to return the registered document to STAR HFL only and the receipt issued by the Registrar of Assurances/ Sub-registrar in favor of STAR HFL should be produced by STAR HFL before the Registrar on the specified date to receive the mortgage deed directly from them, if the registered Mortgage document is not delivered by the Sub- Registrar on the same day.

The deed of mortgage should not under any circumstances, be handed over to the parties for presenting the same for registration or thereafter.

Even in case of security by way of registered mortgage, all the original title deeds to be collected from the Mortgagor/Borrower.

Wherever it is specifically mentioned in the sanction terms and conditions for Simple Mortgage or Registered Mortgage, a duly stamped Mortgage Deed should be executed, stamped with the payment of requisite stamp duty and duly registered, such Mortgage Deed should be in the format prescribed/approved by Legal Department. For ready reference the

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draft of the Deed of Simple Mortgage is provided in the Intranet- Policy- Legal. However, the draft may be changed suitable if required, and any changes should be approved by the Legal Department. Branches may the help of Panel Advocates for assistance.

The rate of Stamp duty payable for Simple Mortgage is mentioned in the Legal Policy. The Panel Advocates to be consulted to ensure the changes in the rate by the state Governments.

After registration of Simple Mortgage an Index/Encumbrance Certificate to be obtained immediately through the panel Advocate to ensure that STAR HFL mortgage/charge is registered/recorded in the revenue record/Sub- Registrar's Office.

Whenever a loan for which a registered mortgage is created stands cleared and the Borrower requests for a registered discharge, (Release Deed) the same may be complied at the cost of the Borrower after obtaining permission from the appropriate authority.

D. Mortgage by deposit of Title Deeds or Equitable mortgage

In this type of mortgage the mortgager delivers the documents of title to the immovable property to the creditor in notified places with intent to create security thereon.

What is mortgage by deposit of title deed is defined under Section 58(f) of the Transfer of Property Act, as follows:

'Where a person in any of the following towns, namely, the towns of Calcutta, Madras and Bombay, and in any other town which the State Government concerned may by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent, documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds.

In this type of Mortgage:-

- Possession of the property is not delivered to the Mortgagee.
- It is created by delivering to the creditor/Mortgagee (or his agent) the documents of title to the immovable property, with the intention to create a security. The original title deeds must be deposited.
- The deposit of title deeds must be made with the intention of securing a debt or advance.
- If any instrument evidencing the deposit of title deeds is executed, such instrument attracts stamp duty. The law relating to this differs from state to state.
- In this type of mortgage, there is no mortgage deed; it may be in the form of Memorandum, Agreement and Letter etc.
- This type of mortgage is treated on par with any other legal mortgage. Mortgage by deposit of title deeds shall have priority over any mortgage deed subsequently executed and registered which relates to the same property.

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Features:

The debt: The money, the payment of which is secured may be an existing debt or a future one. It may also be a performance of engagement, which gives rise to monetary liability.

Physical or constructive delivery of original title deeds to the mortgagee: It is to be noted that only original title documents should be accepted for deposit. Copy of a document is not a document to the title. But certified copy of original document is a document to the title subject to proper proof of original lost document. If any original document is reported to be lost, proper enquiries should be made. There are chances of documents being deposited in other financial institutions as such through enquiry is necessary.

Place of deposit of title documents: Title deeds must be deposited or delivered with the creditor in notified centers. Thus, the place where the title deeds are to be deposited is important and not the place where the property is situated. This type of mortgage can be created anywhere in India provided the place of deposit of title deeds is notified.

Deposit must be with an intention that the title deeds shall be security for the debt.

Stamp duty on equitable mortgage: When the deposit of title deeds is evidenced or confirmed by executing a written instrument (letter or memorandum), such written instrument is required to be stamped with the appropriate amount of stamp duty as applicable to the place (As per the state stamp Act) where such instrument is executed.

Under the Stamp act of the following mentioned states, the agreement relating to the deposit of title Deed or instrument constituting or being evidence of the title of any property whatever (other than a marketable security), where such deposit has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt, the stamp duty is applicable as mentioned there under.

Moreover, as per the explanation, irrespective of anything as stated in any judgment, Decree or order of any court or order of any Authority, any letter, note, memorandum or writing relating to the deposit of title deeds whether written or made either before or at the time when or after the deposit of title deeds is effected, any whether it is in respect of the security for the first loan or any additional loan or loans taken subsequently, shall, in the absence of any separate Agreement or memorandum of Agreement relating to deposit of such title deeds, be deemed to be an instrument evidencing an agreement relating to the deposit of title deeds

Name of the states where the above mentioned explanation is applicable:-

(1) Andhra Pradesh (2) Madhya Pradesh (3) Tamil Nadu (4) Bihar (5) Chhattisgarh (6) Uttar Pradesh (7) Maharashtra (8) Karnataka

Registration of Equitable Mortgage: Registration of Equitable Mortgage is not mandatory. In some States a stamped instrument evidencing/confirming deposit of title deeds is accepted

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for registration by the Sub-Registrars and made it compulsory for registration of such memorandum, writing, letter or note.

Procedure for putting through Mortgage by Deposit of title Deeds/Equitable Mortgage:

Memorandum of Deposit of Title Deeds/Letter Evidencing Deposit of Title Deeds

For Housing Loans the branches should continue obtaining deposit of title deeds without any accompanying instrument/letter/memorandum, unless intimations or instructions or unless it is a sanction condition for executing and/or registering the Memorandum or Agreement relating to deposit of title deeds or Mortgage Deeds.

Wherever it is specifically decided to obtain a duly stamped Memorandum or Letter Evidencing Deposit of Title Deeds, such must be in the format prescribed by Legal Department.

In southern states, like Tamilnadu, the letter evidencing deposit of title deeds are accepted for registration by the office of Sub- Registrars and in some other states the Memorandum by deposit of title deeds are accepted for registration. Both the drafts are incorporated in the Intranet – Policy- Legal for ready reference.

Wherever it is specifically mentioned in the sanction terms and conditions for Registered Equitable Mortgage or Registered Memorandum of Deposit of title Deeds, a duly stamped Memorandum or Letter Evidencing deposit of title deeds should be executed, stamped with the payment of requisite stamp duty and duly registered, such Memorandum or Letter Evidencing deposit of title deeds should be in the format prescribed/approved by Legal Department. For ready reference the draft of the Memorandum or Letter Evidencing deposit of title deeds is provided in the Intranet- Policy- Legal. However, the draft may be changed suitable if required, and any changes should be approved by the Legal Department. Branches may take the help of Panel Advocates for assistance.

All the original title deeds as advised in the LSR should be obtained.

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Draft of Letter Evidencing Deposit of Title Deeds

Place:

Date:

From

(Owner(s)/Applicant of the Property)

To

Branch Manager

STAR HOUSING Finance Limited

_____Branch

Dear Sir,

**Sub: Housing Loan of Rs. _____/- (Rupees _____ only)
granted/sanctioned to me/us**

This is to place on record that to secure the above loan granted to me/us, I/We have already deposited with you on _____ (mention the Date of Deposit) the title deeds and documents relating to my/our property situated at _____ and more particularly described in the schedule "A" attached/enclosed herewith with an intent to create security by way of deposit of title deeds within the meaning of section 58 (f) of the Transfer of Property Act 1882 in favor of STAR HOUSING Finance Limited (STAR HFL) in respect of the property more particularly described in schedule "B" attached/Enclosed herewith on the said property together with all structures standing thereon and other structures to be constructed in future to secure the said loan facility due and owing to STAR HOUSING Finance Limited of the principal amount of loan together with interest, compound interest and/or additional or further interest in case of default, liquidated damages, costs, expenses and other monies payable by me/us to STAR HOUSING Finance Limited under the Loan Agreement executed separately.

I/We, as Mortgagor(s) declare that the said title deeds so deposited are the only documents to title relating to the Schedule "B" property.

Yours Faithfully,

Mortgagor

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Annexure/Enclosures: Schedule "A" and "B" as refereed herein above.

SCHEDULE "A"

(Please write in detail the list of Title Deeds deposited)

1.
2.
3.
4.

Signature of the Mortgagor

SCHEDULE "B"

(Please write the full description of the property with boundary)

Signature of the Mortgagor

DRAFT OF MEMORANDUM OF DEPOSIT OF TITLE DEEDS

THIS MEMORANDUM made at _____, this _____ day of _____, 20__ by Mr./Mrs. _____ having its/his/her office/residential address at _____, hereinafter called "**THE Mortgagor**" (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include his/her/their heirs, executors, administrators and assigns) of the ONE PART, in favour of **STAR HOUSING FINANCE LIMITED**, (STAR HFL), a company incorporated under the Companies Act, 1956 having its Registered Office at 2ND Floor, Warden House, Sir P. M. Road, Fort, Mumbai - 400 001 and one of its branch office at _____ hereinafter called as "**THE Mortgagee**" (which expression shall unless it be repugnant to the context or meaning thereof shall mean and include its successors and assigns) of the OTHER PART,

WHEREAS

The Mortgagor is the absolute owner, seized, possessed and well sufficiently entitled to the immovable property bearing No. _____, admeasuring _____ sq.ft, situated at _____, the mortgagor acquired the same under Sale Deed dated _____ registered as Doc. No. _____ at the office of Sub-Registrar at _____ (hereinafter referred to as "said property") and more particularly described in the **FIRST SCHEDULE** hereunder written.

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The Mortgagee at the request of the mortgagor has sanctioned and granted credit facility to the Mortgagor to be secured by way of deposit of title deeds of the said property more particularly described in the **SECOND SCHEDULE** hereunder written.

With intent to create security/Mortgage by way of Deposit of Title Deeds of the said property the Mortgagor have already deposited with the Mortgagee at its Branch office at _____, the Title Deeds and the documents, more particularly described in the **SECOND SCHEDULE** hereunder written relating to the said property, more particularly described in the First **SCHEDULE** hereunder written and belonging to mortgagor with intent that the same will be equitably charged as security to the Mortgagee for the credit facility of Rs._____/-(Rupees_____ Only) granted to Mortgagor by the mortgagee.

NOW THIS MEMORANDUM WITNESSETH AND RECORDS AS FOLLOWS:

1. The Mortgagor declare and record that the title deeds and documents comprised in the second schedule hereunder written relating to the said property , more particularly described in the first schedule hereunder written, have been deposited by the Mortgagor with Mr._____, the Manager of Mortgagee at their _____ branch on _____ with an intent to create security as and by way of deposit of title deeds as defined under section 58(f) of the Transfer of Property Act, 1882 for securing loan/credit facility granted by the mortgagee to the Mortgagor with interest thereon and for all costs, charges and expenses incurred by the mortgagee in connection therewith.
2. The mortgagor further declare and record that the title deeds and documents and writings comprising in the second schedule hereunder written relating to the said property, more particularly described in the first schedule accepted by said Mr. _____, the Manager of the Mortgagee at their _____ branch are the only documents of title to the said property with the Mortgagor and are not previously deposited with any person whatsoever and/or the copies thereof by the Mortgagor.
3. The Mortgagor furthermore declares that the said title deeds are not deposited to any other Bank, party, company or any person/s and that no encumbrance whatsoever has been created on the said property and the said property is absolutely free from any encumbrance.

In Witness whereof the mortgagor & mortgagee have hereunto set and subscribed their hands the day and year hereinabove written.

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**The first schedule above referred to
Please write full detail of the property and the surrounding boundary**

**The second schedule above referred to
(List of the Title Deeds)**

Signed, sealed and delivered by the
Within named Mortgagor _____
In the presence of

Signed, sealed and delivered by the
Within named Mortgagee _____
In the presence of

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E. Re-Conveyance in Respect of Registered Mortgage

Whenever a loan for which a registered mortgage is created stands cleared and the party requests for a registered discharge, the same may be complied with at the cost of the party after obtaining permission from the appropriate authority.

XIV. Stamp Act & Registration

One of the important aspects of a valid and legal document is that the document has to be properly stamped as required under the Indian Stamp Act or respective state stamp Act.

Though the Indian Stamp Act, 1899 is a central legislation, each state is empowered to vary the stamp duty rate/fee on certain instruments/documents based on state stamp Acts and amendments and method of payment, like Non- Judicial paper, Adhesive Stamps, Franking, E- Stamping.

Stamp duty should be paid on or before the execution of the document.

A. Stamping of Instruments

Stamp duty on certain instruments is governed by the Indian Stamp Act, such as promissory notes, bills of exchange, transfer of shares etc. Stamp duty on various other instruments is governed by the respective State Stamp Acts. Stamp duties are generally payable in one or more of the following ways:

1. Adhesive stamps: Stamp authorities issue/affix adhesive stamps (in the form of labels) on printed documents.
2. Non-judicial stamp papers: Stamp authorities issue non-judicial stamp papers of different denominations on which instruments can be written/typed.
3. Franking: This is a new method whereby the Stamp authorities use franking machines for indicating payment of stamp duty on the printed documents.
4. E- Stamping

Stamping can be done by any of the methods prevalent in a particular State. State Governments have also framed Rules under the State Stamp Acts.

In some States, the validity of Stamps issued by the stamp authorities is restricted to 6 months from the date of issue. The branches must therefore ensure that the date of execution of documents is not later than 6 months from the date of stamping.

All Instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution as per the provisions of the Indian Stamp Act or the State Stamp Act as the case may be.

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When Non-judicial stamp papers are used for the purpose of payment of stamp duty instead of adhesive stamps or franking, the branches must adopt the following procedure:

1. Preamble portion as appearing in the printed agreement should be typed on the non-judicial stamp paper of requisite value.
2. After writing the preamble on the stamp paper, the words “continued in the printed format containing ----pages” should be written at the bottom of the stamp paper/s.
3. The corresponding preamble portion of the printed agreement should be cancelled (without filling) under full signature of the borrower.
4. The non-judicial stamp papers so used should be fastened to the printed agreement and should be executed by the borrower as a single document.

An under stamped document cannot be the basis of a suit in a Court of Law as it cannot be accepted in evidence. The following documents, if unstamped or insufficiently stamped, would be void ab-initio (incorrect from the beginning) and no amount of penalty would render them valid.

1. Demand Promissory Note
2. Bills of Exchange

Other documents could be revalidated by payment of duty/deficit, together with the penalty prescribed by the concerned State Government.

State-wise rates of stamp duty payable on some important instruments are given separately. The branches are advised to consult the local panel advocate before getting such instruments stamped as the stamp duty is changed from time to time by the State governments.

Stamping of documents executed abroad:

Document to be executed abroad should be printed on plain papers. Such document must be signed by the executants before the official of the Indian Embassy. On receipt of such document in India, the same should be got stamped in India within three months after it has been first received in India. Once such document is received in India, the same should be taken to the Stamp authorities along with a covering letter stating the date of receipt of such document in India. Thereafter, on payment of the requisite stamp duty, the Stamp authorities stamp such document.

- What is Registration? Why documents are registered?
- Registration means recording of the contents of a document with a Registering Authority and preservation of copies of the original document so registered.
- The documents are registered for the purpose of conservation of evidence, assurance of title, publicity of documents and prevention of fraud.

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- Also registration helps an intending purchaser to know if the title deeds of a particular property have been deposited with any person or a financial institution for the purpose of obtaining an advance against the security of that property.
- The object and purpose of the Registration Act, amongst other things, is to provide a method of public registration of documents so as to give information to people at large regarding legal rights and obligations arising or affecting a particular property; The object of the Registration Act is also to prevent people being duped into purchasing property from a person who does not own it.
- The instruments of which registration is compulsory under the Act are enumerated in Sec. 17 and the effects of failure to register are to be found in Sec. 49 of the Act.
- The documents requiring registration should be presented for registration within 4 months of their execution

Registration of documents relating to immovable property acts as a public notice. A registered document is evidence that a document has been registered with the concerned Sub-Registrar of Assurances. It is evidence that a document has been duly executed between the parties to the document.

- All the documents are required to be registered where it relates to transfer of immovable property exceeding Rs.100/-
- Where the principal money secured is Rs.100/- or upwards, a mortgage otherwise than a mortgage by deposit by title deeds can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses. When the principle money secured is less than Rs.100/-, mortgage may be effected either by a registered instrument signed by the mortgagor and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.
- Registration is done after the parties execute the document. However, if due to any unavoidable circumstances, the document is not registered within the time limit, and then the document can be registered only on making an application to the Sub-Registrar of Assurance within a further period not exceeding 4 months and on payment of appropriate penalty.
- For each registered document, conveying title in favour of the Borrower, the Original Registration Receipt shall be verified.
- Registration charges are calculated as per the state law, which differs from state to state.

B. Registration of Instruments

Indian Registration Act, 1908 contains provisions regarding registration of documents. All documents are not required to be registered. Only those documents which are compulsorily required to be registered must be registered. For example, Mortgage Deed and Sale Deed/Conveyance are compulsorily required to be registered.

XV. Procedure for collecting over the Counter Documents (OTC)

- As per the Document list defined in the process note, as advised in the LSR, in the Disbursement Memo and advised by the Legal Department.

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- Standard mandatory documents should be collected.
- Stage of receiving documents is classified product wise in the process note into pre disbursement, Over the Counter and Post Disbursement documents (PDD).
- Where any document is to be obtained at a date later than stage mentioned (i.e. pre disbursement document is to be received as OTC or PDD or OTC document is to be received as PDD) same shall require approval from authority as defined in process notes to be obtained.
- OTC Failure: In case Legal is not able to verify all/any required OTC documents; disbursement cheque shall not be handed over to Seller/Borrower. Prior approval for PDD or waiver from the concerned authorities shall be obtained before disbursement. OTC documents shall not be collected in piece meal.
- Register shall be maintained for obtaining acknowledgement on handing over of the OTC or PDD documents to the Branch Operations or Legal. Same shall be filed Docket.

XVI. Process for collecting Original Title Deeds of the property - Post Disbursement Documents (PDD)

In the process of loan disbursements, there are instances, where the Customers are unable to deposit the original registered title deeds of the property on or before disbursements of the Loan with STAR HFL.

- Collecting PDD is the responsibility of the respective Location Head/Branch Head.
- Any PDD approved document, which has not been received within the reasonable period must be highlighted in the MIS and necessary approval/extension has to be obtained by concerned Branch.
- Register must be maintained for collecting, handing over the documents to the Location Heads/Branch Heads the PDD Original documents.
- Branch Managers should ensure the follow-up and monitoring system for such type of cases, either manually or in the system to ensure that the original title deeds are collected.

Following are the loan types and instances, where the original title deeds are not deposited with STAR HFL on or before disbursement of the Loan:

1. Balance Transfer
2. Purchase of Land or Flat or Unit or Apartment, where the office of the Sub – Registrar/s are not delivering the original registered title Deed to the Customer/s on the same day.
3. Loan disbursed under Tripartite Agreement/s with Flat Buyer agreement or Allotment Letter
4. Loans disbursed under Allotment Letter issued by Development Authorities , where the Registered Lease Deed or Sub- Lease Deed or Tripartite Lease Deed will be executed later on by such Development Authorities

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1. Balance Transfer

The original registered Title Deeds in such type of cases are not collected from other Banks/HFC/s on the date of disbursement and generally it takes some time., thus the Branches should maintain register or in the system maintain MIS of such loan accounts and keep a track on such accounts, it will be easy to know whether in Balance Transfer cases, all the title documents are received from the Banks/HFC/s or not in the reasonable time. It should be monitored on every fortnightly basis.

2. Purchase of Land or Flat or Unit or Apartment, where the office of the Sub – Registrar/s are not delivering the original registered title Deed to the Customer/s on the same day.

There are instances, where in some of the states the office of Sub- Registrars are not delivering the original registered title deeds, such as: Sale Deed/Agreement for Sale/Deed of Transfer, etc. on the same day and in turn the customers are unable to submit the original registered title deeds to STAR HFL on or before the date of loan disbursement.

The Borrower/s submits with STAR HFL only original Registration Receipt of the property and the original title deeds are collected later on.

In such case, the Borrower must give an authority Letter to STAR HFL to collect the Original Registered Sale Deed from the office of Sub- Registrar directly.

Branches should tag such loan accounts and keep a track on such accounts and to collect the original registered title document from the Office of Sub- Registrar. It should be followed –up and monitored on every fortnightly basis.

3. Loan disbursed under Tripartite Agreement/s with Flat Buyer agreement or Allotment Letter

There are cases, where in some of the states, the Builders issues Allotment Letter and execute only Flat/Apartment Buyer Agreement and the same is also not registered and enters alongwith the Borrower/Flat Purchaser a Tripartite Agreement with STAR HFL and in such type of cases, the Sale Deed is executed in a latter stage, it may take in some cases more than a year also, depending upon the stage of construction and handing over of possession of the property to the Borrower by the builders.

Branches should tag such loan accounts and keep a track on such accounts to collect the original registered title document, like Sale Deed/Deed of Apartment/Conveyance Deed. It should be followed –up and monitored on every month/quarter.

4. Loans disbursed under Allotment Letter issued by Development Authorities , where the Registered Lease Deed or Sub- Lease Deed or Tripartite Lease Deed will be executed later on by such Development Authorities

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There are cases, where in some of the states, the Development Authorities allot either plots or flat/ Apartments and issues Allotment Letter and agreed to execute the Sale Deed/lease deed/Sub Lease Deed in a latter stage, it may take some time up to one year also, depending upon the stage of construction and handing over of possession of the flat/ Apartment/plot to the Borrower by such authorities.

Branches should tag such loan accounts and keep a track on such accounts to collect the original registered title document, like Sale Deed/lease deed/Sub Lease Deed. It should be followed -up and monitored on every month/quarter.

XVII. Advance Processing Scheme (APS)

APS Documents List:

- Legal & Technical Documents (Photocopies) required for carrying out legal due diligence and approving the Builder/Developers project under Advance Processing Scheme (APS)
- Sale Deed/Agreement for Sale
- Development Agreement/ Joint Development Agreement
- Power of Attorney from Land Owner to Builder/Developer, in case of
- Development Agreement is executed by the Land Owner with the
- Builder/Developer.
- Non- Agricultural permission /order
- ULC permission/order, as applicable
- Title clearance Certificate (LSR) of an Advocate of the Builder/Developer
- Search Report – latest / Encumbrance Certificate
- Index II or Records of rights or 7/12 extract or Property Card
- Lease Deed or Lease agreement, in case of land is acquired by the
- Builder/Developer through Lease.
- Copy of Approved Letter(s) of any Bank/FI/HFC, if the Builder or Developers
- Project is already approved
- Building layout, individual building floor plans approved by concerned authority
- Construction Permission certificate / order issued by concerned authority
- Plot Allotment letter from concerned authority
- List of Legal Documents (Xerox/) required from the Builder/Developer to forward the same to the Advocate for issuing Legal Scrutiny Report (LSR) of a Builder/Developers project under APS:
- Agreement for Sale/Flat/ Apartment Buyer Agreement (Draft)
- Development Agreement, in case of Development Agreement is executed by the Land Owner with the Builder/Developer.
- In case of Builder/Developer is a Private or Limited Company registered under the Companies Act, 1956, the ROC Search report (Latest) of the company to know whether any charge is created and registered by the Builder/Developer on the project property in favour of any Banks /FIs.

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- In case the Builder/Developer is a Partnership firm, Partnership Deed and Registration certificate (certified Copies) are required to be collected at the first instance only.

Note: All the chain documents of the project property (Xerox copies) must be collected from the Builder to ensure detail flow of title and to ascertain the title of the Builder to the project property by the Panel Advocate.

DETAILED PROCESS NOTE ON ADVANCE PROCESSING SCHEME (APS) WHICH IS ALREADY CIRCULATED NEEDS TO BE STRICTLY FOLLOWED.

XVIII. Empanelment of Advocates

The following is the procedures for empanelling an advocate in STAR HFL's Panel:

1. The Bio-data / CV with the relevant certificate/s copies to be submitted by the advocate to the Branch.
2. The Branch should enquire about the advocate in the local courts/advocates/bar association for their reputation.

Purpose:

- To issue Legal Scrutiny Report (LSR) for the Loan files
- To file / defend various suits/cases (Civil or Criminal)
- To reply Legal Notices/complaints
- To assist in the process of SARFAESI Action, i.e. filing Application and obtaining the order from the competent court/authority.
- To create a central Data base of Panel Advocates at various Locations.
- To get in touch with the Advocate for the amendments to the local laws relating to property/Stamp/Registration/Revenue and other allied issues.

Criteria for Empanelment:

1. Minimum Qualification being Law Graduate having enrolled with Bar council as a Practicing Advocate
2. Experience: Minimum of 5 years in practice, preference will be given who have worked for Banks/HFC/Financial Institutions in property matters for carrying out legal due diligence and submitting Legal opinion.
3. Infrastructure: should have Assistants or Associates, Mobile, Fax or Internet
4. Basis of Empanelment: Branch to be recommended through to Head- Legal.
5. Fees: As per Standard Fees Structure of STAR HFL.

Each Branch should have at least three (3) Advocates empanelled, (experts on civil matters, specifically for vetting legal documents and issuing Legal Opinion) and one have experience in Criminal law, like N. I. Act and/or SARFAESI Act, etc. the number of Advocates will vary or increase depending upon the volume of the Loan portfolio, files.

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Recommendation format for Empanelment of Advocate /Firm

1. Name of the Advocate and/or Firm
2. Full Office address with contact numbers of the Advocate or the firm
3. Full Residence address with contact number of the Advocate
4. How was the Advocate or firm Contacted?
5. Name of the Advocate and met on:
6. Reputation of the Agency, reference Checks on track record and past dealings
7. Relevant experience of the agency in providing similar services
8. Strengths of the Advocate or firm
9. Whether the Advocate or the firm currently working for any other Banks/Institution.
10. Any other notable features :
11. If the Advocate or the firm is recommended for Empanelment, justification thereof and the Purpose of Empanelment: whether for LSR /Civil/Criminal/SARFAESI

Recommended By

Branch Manager

Date:

Zonal Manager

Date:

Note:

With the above Recommendation format, Branches must send the following enclosures: - Profile of Advocate and from in hard copy with all enclosures duly signed by the Advocate, partner/proprietor of the firm in support of their Qualification, Experience, copies of Empanelment letters with other Banks/HFC, Bar council certificate, etc, [who are either expert in the property law and/or in the panel of Banks/HFCs for issuing Legal opinions.]

Approval process and policy

Corporate Legal Department will vet the recommendation forms and if found suitable will issue the Empanelment Letter and will send the letter of Empanelment (Panel Advocate) to the Branch in duplicate, and Branch Manager should deliver to the Advocate the Letter of Empanelment and obtain the acknowledgement in the duplicate copy and thereof and accordingly send the same to Legal Department (Corporate Office), preserving the Xerox copy for branch reference.

Legal Department will record the details/data of the panel Advocate in the Master List of Panel Advocates.

Advocates whose services are discontinued as per the instructions from the Corporate Office shall not be entertained for empanelment.

Branches must intimate to Corporate Legal Department the names of the Advocates who are in the Panel but Branches are not availing their services for LSR , with the reasons for not

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assigning the job of issuing LSR, so as to delete their names from the list of panel Advocates after review and update the record.

The Property documents to be send to the Panel Advocate/s with a forwarding letter for LSR.

The forwarding letter should contain the Nature of loan like Housing Loan, Mortgage Loan, Balance transfer, plot loan, etc.,

All the works for LSR/SR/EC to be assigned by distribution to the entire panel Advocates.

The report (LSR, SR, EC) should be studied thoroughly and remarks, compliances and observations should be complied with before the disbursement and creation of mortgage.

If any query/requirement of any document/s by the Advocate, the same be collected and send to the advocate for vetting and issuing Final LSR.

Review of Panel Advocates

Yearly review of all Panel Advocates by the Corporate Legal Department, It is aimed with the objective of improvement and to get quality reports. Further to interact with the panel Advocates and understand the changes and practices followed by the Banks/HFCs.

Branch Managers should meet the Panel Advocates at least twice in a month at the Branch Location to discuss about the latest changes or the practices followed by other Banks/HFCs and the same should be intimated to the Corporate Legal Department from time to time.

Branch Managers should intimate the Corporate Legal about the quality of the LSR and the Turnaround time (TAT) taken by the Advocate from time to time.

XIX. Loan Default and Legal Action

Appropriate legal proceedings shall be initiated on a case to case basis by Branch Manager in consultation with the HO Legal.

The Legal cases may be of any types, like Case u/s 138 of Negotiable Act, Criminal Cases, Civil suits, SARFAESI action, etc.

No Legal Action shall be initiated without prior approval in writing by the Branch Managers.

For initiating action under SARFAESI should be routed by all the Branches to corporate office.

Prior Approval from the GM- Legal or Zonal Manager in writing is necessary before assigning the job to any Advocate and the fees must be finalized.

MIS should be maintained by the Branch for all the cases filed by the company and against the company relating to the Branch.

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Branch Manager shall update the GM- Legal and Zonal Manager with regards to filing and proceedings of the all types of cases including SARAFESI cases. Monthly Legal MIS must be sent by Branch Manager to the GM- Legal and Head- collection & Recovery for updating the status.

XX. Miscellaneous

Retrieval

Original/copies of the documents can be retrieved with prior approval from the Docket. Where original documents are retrieved the responsibility of the Branch Manager is to ensure that they are kept in time with note the purpose of taking out the documents and the date and when it is kept in the Docket.

Registers:

Following registers/MIS shall be maintained:

- OTC collection and handover
- PDD collection and handover
- Register for any original retrieved and corresponding returns
- Register for assign the files to Panel Advocate for the purpose of carrying out Legal due diligence and submitting LSR and/or Search Report.
- Register for maintaining & updating the court cases including SARFAESI

Register/MIS may be system generated or prepared manually.

XXI. Procedure for Public Notice

There are instances, where one or some of the title deeds are misplaced, lost by the seller / applicant. This process note is to take the precautions in such circumstances

Whenever the Applicant approaches for a loan and it is intimated that any chain title deed is lost / misplaced, such matters should be intimated to the panel Advocate in advance to collect proper LSR. After obtaining LSR if it is recommended or stipulated by the HO-Legal a paper publication is required, the same should be carried out. A paper publication for 14 days is required to be done in two Newspapers, one in English and another in Vernacular language. (For this purpose branches should use Format attached herewith).

Other than the above instance, whenever the Applicant approaches for a loan / mortgage loan / NRPL etc., where the flow of title is of complex nature, any of the chain title documents is unregistered and after perusal of Legal Scrutiny Report if HO Legal observes that a paper publication inviting claims is necessary, in the particular case, than a paper publication for 14 days is required to be done in two News Papers one in English and another in Vernacular language. (For this purpose branches should use Format attached herewith).

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Paper Publication must be in the standard format attached herewith. Branch should fill the blanks in the format and write proper property details without mistake and take help of the Panel Advocate wherever necessary.

The News Paper Publication must to be done through Panel Advocate and the cost of Publication has to be paid by the Applicant only.

After the publication is done as per the requirement mentioned hereinabove and after the expiry of 14 days time given for inviting the claims, a Certificate from Panel Advocate has to be obtained stating whether any claim has been received or not. If the Public Notice is issued through the Panel Advocate other than the Panel Advocate who has issued the LSR than the said Certificate has to be provided to the Panel Advocate who has issued LSR and Branch should obtain additional LSR based on the said Certificate.

Note: Text of Public Notice to be published in English Newspaper must be in English language only and Text of Public Notice to be published in Vernacular Language Newspaper must be in Vernacular Language only.

In case any claims are received it should be intimated to HO – Legal and till such time it is resolved no disbursement to be made.

PUBLIC NOTICE **(Where the flow of title is of complex nature)**

TAKE NOTICE THAT Mr./Mrs./M/s. _____residing at / having office at_____, have agreed to mortgage to my / our clients the property more particularly described in the Schedule hereunder written (hereinafter referred to as “the said property”) free from all charges or encumbrances.

ALL PERSONS claiming any share, interest or right in the said property or any part thereof by way of sale, transfer, assignment, mortgage, charge, lease, license, lien, tenancy, trust, gift, easement, possession, inheritance or otherwise howsoever are hereby required to make the same known to the undersigned in writing, within 14 (fourteen) days from the date of publication of this notice, with all supporting documents, failing which the mortgage on the said property shall be created without reference to all claims, if any, and the same shall be deemed to have been waived and/or abandoned and will not be binding on my / our clients.

THE SCHEDULE ABOVE REFERRED TO **(Details description of the property)**

Place: _____, Dated this ____day of _____, 2010

Sd/-
(Name and Address of the Panel Advocate)

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PUBLIC NOTICE (In case of chain title deed is lost / misplaced)

NOTICE is hereby given that one Mr./ Mrs. / M/s. _____(hereinafter referred to as the said Mortgagors / Purchasers) have agreed to create mortgage in respect of the Flat / Property more particularly described in the Schedule hereunder written (which they have purchased by virtue of an Agreement for Sale / Sale Deed dated _____ from Mr./Mrs. _____) in favor of my / our clients, STAR HOUSING Finance Limited (STAR HFL) (Branch Address _____).

According to the said Mortgagors / Purchasers they themselves and / or their Vendors above named have lost / misplaced the original registered of Agreement for Sale / Sale Deed dt. _____ entered into between (_____ & _____) in respect of the property described herein.

All person/s having any claim against or in respect of the said Flat / Property more particularly described in the Schedule hereunder or any part thereof by way of sale, exchange, mortgage (equitable / registered or otherwise), gift, trust, inheritance, family arrangement, maintenance, bequest, partnership, possession, lease, sub-lease, tenancy, license, lien, charge, pledge, easement or otherwise howsoever are hereby requested to notify the same in writing to me / us with supporting documentary evidence at the address mentioned herein below within 14 days from the date hereof, failing which the claim or claims, if any, of such person or persons will be considered to have been waived and / or abandoned and my client shall proceed with the disbursement of loan and creation of mortgage in respect thereof.

DESCRIPTION OF THE PROPERTY (Detail property address to be mentioned)

Place: _____, Dated this _____ day of _____, 2010

Sd/-
(Name and Address of the Panel Advocate)

XXII. Regulation of Construction & Sale of Flats by Builder or Promoter& Apartment Ownership Act

- Sale and purchase of property is governed by the provisions of Contract Act & Transfer of property Act.
- The sale and purchase of flats requires considerable time for completion of process and compliance of various legalities.
- People are purchasing flats or Apartments on ownership basis. Under the circumstances the Agreement to Sell/Sale Deed is a greatest importance. The ownership contemplates, exclusive right of occupation in respect of a part of a building, right as to way, natural and modern amenities and easements, covenants

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relating to maintenance and service and lastly, ownership of land remains joint and undivided. The Agreement to Sell covers all these plus other conditions.

- Thus, it has two aspects in apartment legislation. One is about regulation of construction and sale of flat/apartment by builder or promoter and the second is about ownership enjoyment and maintenance of flat with transferable and heritable interest generally known as Apartment Ownership Act.
- Some of the states have separate statues on both these aspects. And some states have only one statue, covering partly both the aspects. Some other states have statue on the second aspect.
- Where no such legislations or Act is enacted, then the sale and purchase of property is governed by the provisions of the Indian Contract Act 1872 and the Transfer of Property Act 1872.

The Acts of the following states regulates the constructions and sell of flats and apartments in the state, which needs to be considered. HO Legal should understand the changes/updates in the state Acts from time to time from the Panel Advocate. Some of the Acts are as under:

- The Gujarat Ownership Flats Act 1973
- The Karnataka Apartment Ownership Act 1972
- The Karnataka Ownership Flat (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1972
- The Kerala Apartment Ownership Act 1983
- The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963
- The Orissa Apartment Ownership Act 1982
- The Punjab Apartment and Property Regulation Act 1995
- The Punjab Apartment Ownership Act 1995
- The Tamilnadu Apartment Ownership Act 1994
- The Uttar Pradesh Ownership of Flats Act 1975
- The West Bengal Apartment Ownership Act 1972
- The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act 1993
- The Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act 1987
- The Delhi Apartment Ownership Act 1986
- Maharashtra Apartment Ownership Act, 1970
- The UP Apartment (promotion of construction, ownership & maintenance) Act, 2010
- Haryana Apartment Ownership Act, 1983

In general while selling flats/Apartments the Builders/Developers are executing the following types of documents as per the Acts applicable in the states like Apartment Ownership Act and/or Flat Ownership Act:

1. Registered Sale Agreement/Sale Deed

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2. Unregistered Sale Agreement (Flat Buyer Agreement), with an undertaking in the sale agreement to execute registered sale Deed/Deed of Apartment, in a latter stage and/or at the time of handing over possession of the flat.
3. Registered Sale Deed for undivided share of the land (UDS) and/or Semi- finished flat and simultaneously executing a Construction Agreement with the flat purchaser.
4. Un registered Sale Agreement and a construction Agreement with an undertaking in the sale agreement to execute registered sale Deed/Deed of Apartment, in a latter stage and/or at the time of handing over possession of the flat

The clauses of such instruments/documents differ from Builder to Builder.

Thus, measures to be taken and making the evaluation of these documents to understand the legal validity of each type of documents executed by the Builder/Developers, rights of the flat purchaser, its consequences at the time of enforcement of security, in case of default by any of Borrower(s) after obtaining the loan, whether such documents are good enough to treat as title document/to secure the loan or any other document, that is required to be executed by the Builder/Developer, if the flat purchaser approaches for a housing loan.

Sometimes, the Builder/Developers are ready to execute a Tripartite Agreement with the Financial Institutions/Banks along with the flat purchasers to facilitate the Flat purchasers to avail the loan facility before the Registered Sale Deed or Deed of Apartment is executed and registered. We should consider this arrangement, where reputed/rated Builder/Developer to mitigate the risk in financing in such type of cases and the TPT arrangement should be duly approved by the corporate office appropriate authority. Tripartite Arrangement with such builders and for such approvals, Branches should seek the approvals to Corporate Office.

Some times for a fully constructed flat/Apartment, in some states, the Builder/Developer adopt a method only for the purpose of avoiding/minimizing the payment of stamp duty liability and where the lands are acquired by the Builder/Developer through a Development Agreement –cum- General Power of Attorney or Agreement for Sale –cum- General Power of Attorney by executing Registered Sale Deed for undivided share of the land (UDS) and/or Semi- finished flat and simultaneously executing a Construction Agreement with the flat purchaser.

In some of the states, the construction Agreement also to be stamped as per the state stamp Act, but the builders/Developers also not pays the stamp duty with the consent of the Flat Purchaser in such document. Loans for such type of arrangements have to be taken in to consideration with great care; the reason is that, the chances of dispute between the Builder/Developer and the flat/individual house/plot purchaser is more. Zonal Legal and Technical has to approve such arrangements and if required can seek advice from the corporate Legal and Technical.

In some states in India, like, Maharashtra and Gujarat, the Agreement for Sale between the Builder and the Purchaser is required by law to be registered at the office of the Sub-Registrar under the Indian Registration Act, 1908.

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We have enclosed herewith Two Drafts for ready reference, one (When the Builder /Developer executes the Unregistered Sale Agreement (Flat Buyer Agreement), with an undertaking in the sale agreement to execute registered sale Deed/Deed of Apartment, in a later stage and/or at the time of handing over possession of the flat and the other when the Builder/Developer execute Un- registered Sale Agreement and a construction Agreement with an undertaking in the sale agreement to execute registered sale Deed/Deed of Apartment, in a later stage and/or at the time of handing over possession of the flat, which needs to be executed in case of approval is given for builder to execute such Tripartite agreement. Any changes to the draft have to be brought to the notice of HO Legal and approval for such changes needs to be taken from HO- Legal.

Branches may submit the same to the Panel Advocate for vetting and if any suggestion is made by the Advocate, that also to be brought to the notice of HO- Legal for consideration.

XXIII. Process for issuing No-objection Letter to give the flat/apartment on rent by the Borrower

Whenever a borrow approaches for issuing NOC to give his flat or apartment on rent, the borrower should request in writing to STAR HFL.

On receipt of such request, if the Borrowers Account is regular after consent and approval from the HO Legal, the Branch Managers can issue such NOC as per the format attached herein.

Format of No- Objection Letter

Date:

To, _____

Dear Sir,

Ref: Your letter dated _____ requesting to issue NOC

Sub: Loan Account No: _____

This is with reference to the letter dated _____ for our No Objection to the proposed rent of the Flat No. _____ situated at _____.

Kindly note that STAR HOUSING Finance Ltd., (STAR HFL) has No Objection to the proposed arrangement of Leave and License of the aforesaid flat purely on temporary basis, on the following terms and conditions:

1. You will pay the Equated Monthly Installments (EMIs) regularly without default.

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2. You will submit the copy of Leave and License Agreement to STAR HOUSING Finance Limited immediately after its execution. Also you will provide authorization/consent letter from tenant specifically mentioning that, in case of your default in making payment of EMI in time, on intimation from STAR HFL, the rent shall be directly paid to STAR HOUSING Finance Ltd.
3. In case of default towards repayment of loan in time, the STAR HFL has the right to recover the same enforcing the security, i.e. Flat No. _____situated at _____including recovering the rent/fees to be paid by the tenant of the said flat or by way of taking appropriate action as per law towards recovery of the loan overdue/outstanding.
4. You will not create any right title or interest of whatsoever nature in favor of anybody including the tenant of the said flat till such time the loan is repaid in full.
5. It should also be noted that giving on rent of the aforesaid flat will not affect the mortgage created in favor of STAR HFL.

Please sign and return the duplicate copy of this letter as a token of acceptance of the above terms and conditions.

Thanking you,

Yours Faithfully,
For STAR HOUSING Finance Ltd,

Authorized Signatory

CC-to the Secretary/Chairman _____Society limited or to the Builder for information and record

XXIV. Assignment of Rent to STAR HFL

Some times in the process of Loan sanction, it is mentioned in the sanction condition as “Rent assignment in favour of STAR HFL”.

When a sanction condition or it is stipulated as a condition precedent during the loan process that the Rent should be assigned to STAR HFL, Branch must take the Letter of Undertaking in the format attached herein.

In addition to the Letter of Undertaking as mentioned herein also to collect a separate letter from the Borrower(S)/Owners that, in case the new Tenant/Licensee comes in, after the Rent/Lease/License Agreement is terminated/expired, the Borrower(s) will continue to make the payment of Rent/License fees of the property situated at _____ to STAR HFL till such time the total due are repaid by them.

Draft Letter of Undertaking in respect of payment of rent to STAR HFL to be collected from the Borrower/Owner/ Applicant is enclosed herewith.

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Ensure that all the required details are filled and other LSR conditions are compiled and property is free from all encumbrances and title is clear.

Draft Letter of Undertaking

Date: _____

From

To

(Name and Address of the Lessee / the Tenant / Licensee)

Dear Sir,

Re: _____ (Write date of the Agreement and brief description of the property)

Reference to the subject I / we have to inform you and instruct as under:

1. Pursuant to the Agreement referred herein above entered into by and between me/us, I/We have given the premises referred herein above to you on Lease / Tenancy / Leave and License basis at or for the rent / License fee and for the period and upon the terms and conditions as more particularly set out in the said Agreement.
2. In terms of the Agreement referred herein above on or before ____, you are required to me / us a sum of Rs_____ /-. I / We have to inform you that I/ We have entered into a transaction of loan with STAR HOUSING Finance Ltd. (STAR HFL). In repayment of the said loan I / We have to make payment of a sum of Rs._____/ - per month on or before _____date of the month.
3. I / We hereby irrevocably instruct you to make payment of the rent / License fee referred herein above payable by you to me / us on or before the date of each month commencing from the month in which this letter is addressed to you. Upon your making payment of the said sum to STAR HOUSING Finance Ltd. (STAR HFL) you shall stand discharged from your liability to make payment of the rent / License fee referred herein above to me / us.
4. I / We have to further record and confirm that the instructions given by me / us to you is irrevocable until the period I/we have not paid the entire loan amount received by me/us from STAR HOUSING Finance Ltd. (STAR HFL) or until the period you continue to be in use, occupation and enjoyment of the premises referred herein above under the transaction of Lease / Tenancy / Leave and License.
5. This letter is being forwarded to you in triplicate in acceptance of what is stated herein above by you. You are requested to put your signature in confirmation

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thereof at the bottom of this letter and return to me/us the same in duplicate one of which would be retained by me/us and one would be handed over to STAR HOUSING Finance Ltd.

Yours faithfully,

Name & Signature of the Borrower

I / We accept and confirm what is stated herein above and agree to act in accordance with the instructions contained herein above.

Signature of Lessee / Tenant / License

Duplicate forwarded for information to:
STAR HOUSING Finance Ltd.

XXV. Court Proceedings

Branch Managers/OICs have been authorized under Powers of Attorney executed by the company in their favour. All the BMs/OICs should seek specific prior instructions before attending any legal proceedings.

1. Procedure for filing complaints U/S 138 of the Negotiable Instruments Act.

Immediately after dishonour of the cheque, seek prior permission from Legal Dept for initiating action u/s 138. A notice demanding payment of the cheque amount should be served on the borrower by Regd. AD. The said notice may be issued through one of Panel Advocates. The maximum time limit for issuing notice is 30 days from the date of receipt of intimation from the Bank. Though the time available is 30 days, branches should not wait till the last date.

Follow up with the post office/ Advocate for receipt of A/d cards.

Monitor response of the borrower after issue of notice. If the borrower comes forward for payment of the cheque amount, don't proceed u/s 138. If the borrower does not pay the amount of the cheque within 15 days of the receipt of the notice, instruct the panel Advocate to file a complaint. The complaint can be filed within 1 month from the date of expiry of 15 days from the date of notice.

A complaint can be signed by the BM/OIC on behalf of STAR HFL. A copy of the cheque, cheque return memo, copy of the notice and copy of the A/D card should be enclosed to the complaint. This may be done in consultation with the Panel Advocate.

After filing the complaint, the BM/OIC will be asked by the Court to "verify" the complaint. After verification, the complaint is numbered and the next date of hearing is given. However, the procedure might differ from State to State.

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A copy of the complaint should be served on the borrower by Regd A/D. The Panel Advocate can directly serve the copy of the complaint to the borrower.

The BM/OIC must attend all the hearings along with the panel Advocates.

If the borrower requests the BM /OIC to withdraw the complaint, the BM/OIC must adopt the following course of action:

Insist on clearance of the entire over dues or

Insist on clearance of the major portion of the over dues or

Accept the amount of the cheque together with the Advocates fees, cheque return charges and recovery charges and

Obtain post-dated cheques for future EMIs

After complying with the procedure given in 8 above, seek specific permission from Legal dept. for withdrawal of the complaint

After receiving approval from legal dept for withdrawal, instruct the Panel Advocate to withdraw the complaint

After withdrawal of the complaint intimate legal dept.

If the BM/OIC who has signed the complaint on behalf of STAR HFL ceases to be in the employment of STAR HFL on account of retirement/ resignation etc, such BM/OIC must make an application to the Court for substitution of his name by a new BM/OIC. This should be done in consultation with Panel Advocate.

It may also be noted that a cheque once dishonoured can be represented again depending upon the practice adopted by the collecting Bank. However, once a demand notice is issued after dishonour, cheque should not be represented again. Representing a dishonoured cheque more than once, allows more time to initiate action under Sec 138.

Updated report should be sent to Legal dept. before the 10th of every month.

2. Procedure for filing Civil suits

Branches should forward their recommendations through their Zonal Managers.

While forwarding recommendations, the branches must give complete background of the loan account. Based on such information/ data, decision regarding filing suit will be taken by legal dept.

If legal action by way of civil suit is to be initiated, the branches must ensure the following:

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All the originals such as the Loan Application, Letter of Offer, Loan agreement, DPN, letter of Guarantee, POA (wherever applicable) and other loan documents duly executed are available.

All original title deeds mentioned in the LSR are available.

Once the decision is taken to initiate legal action, the photocopies of all the above loan documents and title deeds should be handed over to one of Panel Advocates.

After perusal of the documents, the Panel Advocate should issue a legal notice to the borrowers and guarantors demanding repayment of the entire loan along with interest at the contractual rate till the date of payment.

If the borrowers and/or guarantors respond and come forward for payment/compromise, such proposals should immediately be taken up with HO.

If HO accepts compromise proposals, the branch will be informed accordingly.

After receipt of intimation about acceptance of compromise proposals by HO, the branches should follow up with the borrowers and/or guarantors and ensure that the compromise amount is received.

If the borrowers and/or guarantors do not respond or having responded, fail to make payment, the branches should instruct the Panel Advocate to file a suit against the borrowers and/or guarantors

While filing the suit, the claim amount should be correctly calculated and should include all charges, penal interest, interest, overdue PEMIs / EMIs and the closing loan balance. Also, interest at the contractual rate should be claimed from the date of filing the suit till the date of payment.

After filing the suit, the loan account should be frozen.

After filing the suit, details of suit No., date of filing etc. should be informed to legal dept. A copy of the Plaint should also be forwarded to legal dept.

The BM/OIC should attend all the hearings in consultation with the Panel Advocate and inform status of the suit to legal dept.

BM/OIC should obtain certified copies of all the orders passed by the Court from time to time. BMs/OICs should follow up with the Panel Advocate for the certified copies.

Wherever a Court has passed a decree in favour of / against STAR HFL, BM/OIC should follow up with the Panel Advocate for a decree copy and forward the same to legal dept. for taking necessary action.

Updated report should be sent to Legal dept. before the 10th of every month.

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3. Procedure of defending civil suits filed against STAR HFL:

A copy of the plaint, summons and all other papers received from the Court or the advocate of the plaintiff must be forwarded to Legal Dept.

Complete factual position of the matter must be furnished to Legal Dept.

One set of the papers should also be given to one of the panel advocates.

After going the papers, Legal Dept. will advise about proceeding in the matter.

On the date of hearing the BM should attend the Court with the panel advocate and file the written Statement prepared by Legal Dept./panel advocate.

Legal Dept. should be informed about the developments in the matter.

If any order is passed by the Court, the same must be forwarded to Legal Dept. immediately.

Updated report should be sent to Legal dept. before the 10th of every month.

4. Attending Consumer Forum complaints

Whenever the branches receive consumer forum complaints filed by the borrowers, the branches must entrust such complaints to one of the Panel Advocates.

The Panel Advocate should be furnished the correct factual position supported by relevant documents/ data.

The draft reply along with a copy of the complaint should be sent to legal dept. well before the first date of hearing.

After approval of the draft reply, the same must be filed before the forum on the date of the hearing. A copy of the reply must be given to the complainant and the other opposite party if any, against their acknowledgement.

Thereafter the matter must be attended by the concerned BM/OIC in consultation with the Panel Advocate.

If the order is passed against STAR HFL, the matter must be taken up immediately with legal dept seeking further instructions.

Considering the facts and circumstances of the matter, legal dept. will instruct the branch either to prefer an appeal before the State Commission or comply with the order of the District forum.

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Filing of appeal or complying with the order of the District forum must be made immediately and within the time allowed under the Act. (Max 30 days from the date of order)

It must be noted that if the orders of the forum are not complied with, within the stipulated time, the BM/OIC may be liable for imprisonment u/s 27 of the Consumer Protection Act, 1986.

Updated report should be sent to Legal dept. before the 10th of every month.

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFAESI)

Corporate Legal Department is mainly taking the action under the Act to recover the default Loan amounts from the NPA Account. The following activities are dealt by the Corporate Legal Department by the SARFAESI Cell.

- Vetting of Branch Recommendations before initiating action under the SARFAESI Act
- Issue of Demand Notice under section 13 (2)
- Redressing the objections and representations received
- Publication of Demand Notice
- Issue of Possession Notice
- Publication of Possession Notice
- Preparing and filing Applications under section 14 before CMM/DM
- Follow- up and obtaining order from CMM/DM
- Taking physical possession of the property
- Obtaining valuation of the property
- Publication of Sale Notice
- Conducting sale
- Recovery of dues
- Issue of Sale Certificate
- Maintaining and updating the data, preparing MIS

This is separately dealt along with process note in the Policy – Legal in the intranet and circulars are issued from time to time to follow the process.

XXVI. Activities/functions at corporate office – Legal

Legal function at Corporate Office (CO) renders mainly following activities:

- Empanelment of Panel Advocate for carrying out legal due diligence and issuing (i) Legal Scrutiny Report (ii) Search Report and (iii) ROC Search Report and Review of Panel Advocates, Quality of LSR etc.
- To prepare matrix i.e. type of transaction and legal documents required, for each location.

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- To monitor and review legal parameters for scrutiny and title report.
- To scrutinize the Legal Scrutiny Reports/Search Reports and Disbursement Memo/s and advice the requirements and compliances to be carried out before disbursement of Loan.
- To take search reports, wherever required, from empanelled Advocates from Sub-Registrar offices/Encumbrance Certificate, Title Report, Search from Registrar of Companies.
- To scrutinize, appraise and ensure genuines of original/copies of property documents received by STAR HFL.
- To ensure that adequate security exists for the loan
- Fraud Detection and Prevention before disbursement
- Advice to take all preventative measures while scrutiny of documents and collection of original title documents
- To report the fraud/unusual event to the management
- To take legal action for fraud and support recovery
- Legal Measures to be taken in case of default
- Legal remedies in case of default in repayment of the finance
- To meet and brief Advocates and Solicitors in any legal issues/matters/litigation/Complaint filed against or by the STAR HFL
- To reply to the Legal Notices received by the STAR HFL
- Compliance with all the legal requirements:
- To ensure compliance of all laws, rules and regulations including the latest amendments;
- To ensure that regular MIS is sent with regards to compliance of process and procedures with regards to legal approval.
- Monitoring and reviewing the legal process.
- Advice on legal queries of other functions on day to day basis and Vetting/finalizing all Drafts relating to day-to-day operations received from Branches/ Zones/ Corporate office other departments and of the company.
- APS- Advance Processing Scheme, vetting and approval
- Vetting of LSR for the loan cases above Rs.50.00 Lac
- SARFAESI Action under the SARFAESI Act,2002
- Co-coordinating with the Project Finance Department, vetting and Drafting Loan Documents of Project Loans/Mortgage Loans.
- Drafting Documents like Affidavit/Indemnity and other instruments as per the requirements of the Branches/Corporate office/company.
- Issuing POA / Authority Letters to Branch Officials
- Vetting Lease & Leave & License Agreement
- Updating Stamp duty of all the States
- Vetting of all printing articles, Broachers, etc.
- Staff Housing Loan file/Docket verification after disbursement & approvals before disbursement
- Updating / follow-up - all litigations/Court cases

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- Attending Complaints / redressing the same received from the Customers/Borrowers, etc., and other complaints received from other agencies, like NHB/ RBI, etc.
- Preparing drafts and/or finalizing Petitions/Plaints/Written statements/replies, Affidavits/counter-replies for defending the cases
- Freezing and Unfreezing of Loan Accounts

XXVII. Roles and Responsibilities Legal

Role and Responsibility of the legal is broadly classified into following 2 categories:

Pre Disbursement:

- Assignment of property documents to Panel Advocates for carrying out legal due diligence. Maintaining the MIS, data base
- Verification/Scrutiny of copies of documents
- Scrutiny of LSR/Search Reports
- Recommendation for disbursement of Loan files
- Vetting of LSR, legal documents and putting legal observations for compliance as per the format attached.
- Resolving day to day queries about Disbursement memo and arising from Legal Scrutiny Reports.
- Ensure various legal searches, wherever applicable
- Collection and verification of all original title documents
- Ensuring compliance with Legal SOP, Process note and norms for the area in line with those setout as per the SOP
- Recommendations/ Appraisal/ Approvals of projects as per SOP
- Approval and Appraisal of property papers of all individual loan files
- Tracking and collection of documents under OTC
- Refer exceptional cases for opinion/decision to GM- Legal (Corporate Office), wherever required
- Monitoring and review performance/reports of legal consultant/Panel Advocates
- Monitor and review of branch wise activities and approvals for Individual Cases, APS/APF, OTC/PDD and Legal Cases
- List of the documents to be obtained from builders / developers with latest LSR
- Scrutinizing of the documents and approval memo for APS as per STAR HFL standard formats

Post Disbursement:

- Collection and verification of original title documents (in case of Balance Transfer cases or PDD)
- Legal recourse in case of default
- Represent the company for legal cases and reply to legal notices received

Legal Policy

- Negotiation and liaison with legal consultants/ Advocates for filing/ defending Court cases
- Initiate legal action for defaults cases in consultation with collection/Recovery department
- Control over the branch MIS and Monitor the legal TAT across locations
- Update HO-Legal with regards to the legal activities in the Branches and amendments affecting property/Security
- Timely resolving audit queries

Miscellaneous

- Management of day to day legal activities and follow up with legal consultants and outside agencies
- Preparation and maintenance of various reports, MIS and database
- Update GM- Legal with regards to the legal activities in the Branches and amendments affecting property
- Put up recommendations for Panel advocates for the Branches
- Assessment of legal scrutiny reports & Review of Panel Advocates from time to time
- Recommendation for approval of filling of Sec. 138 N.I. Act cases received from Branches to Zonal Manager/ Head Office.
- Maintenance of data for Sec. 138 N.I. Act Matters.
- Withdrawal of the cases after recovery.
- Recommending for initiating actions of Default cases
- Carry out the procedures necessary under SARFAESI Act.
- Follow up and updates from branches court cases and sending MIS and progress reports to Head Office.
- Zonal office Legal Policy matters, in consultation with respective Zonal Heads.
- Any other Legal work assigned by Zonal Office/Head Office.

Legal Policy

Disbursement Memo clearance Sheet (DMCS):

Disbursement Memo clearance Sheet (DMCS) means the sheet by which legal department (prepared by designated officials at Corporate office) defining further property documents (if any) required to ensure clear and marketable title of the property after verifying the Legal Scrutiny Report, EC or Search Report and the compliances to be carried out before disbursement.

DMCS is prepared by the corporate Legal Department/cell on verification of Legal Scrutiny Report, EC or Search Report / documents. Format for DMCS is provided herein.

Corporate Legal Department- Legal observations for compliance before the disbursement:-

Branch Name

Application No

Type of Loan

LSR date: _____ Name of the Advocate: _____

Search Report Date: _____ issued by Advocate: _____

Observations/ Remarks after verifying Documents and compliances to be carried out:

- 1.
- 2.
- 3.

Signature with date

Name/s of the corporate office - Legal Officers

Note: Corporate Legal can add any observations and remarks for compliance, after verifying the LSR and EC, Sear Report and property documents in this list.