

## **DISCHARGE OF MORTGAGES**

A mortgage is defined as a security for the repayment of a loan or discharge of an obligation.

When a mortgage is registered on a Certificate of Title the mortgagor may in a number of situations decide to discharge (or remove) the mortgage from the Title.

### **Circumstance in Which a Mortgage may be discharged**

1. Where the mortgagor wishes to have his title free from the mortgage .
2. Where the mortgagor wishes to transfer the property and there are outstanding mortgages.
3. Where a mortgage is endorsed on several Certificate of Title and the mortgagor wishes to sell one of the properties he may do a partial discharge for that particular Title.
4. Where an Order is obtained from one of the Courts of Jamaica directing that the mortgage be discharged.
5. Statutory discharges pursuant to Section 121(2) and section 123 of the Registration of Titles Act.
6. In all cases except (4) the mortgagor will have repaid the loan or part or discharged other obligation.

### **Who can discharge a mortgage under the Registration of Titles Act?**

Pursuant to section 121 (1) of the Act a mortgage may be discharged by the **mortgagee** (the lending institution) or his transferees producing a memorandum signed by him.

Section 121(2) empowers the **Registrar of Titles** to discharge the mortgage once he/she is satisfied that the principal amount in addition to the interest has been paid and that the mortgagor is either dead, left Jamaica or has disappeared and cannot be found

Section 123 also empowers the Registrar of Titles to discharge the mortgage once a receipt is produced from the Accountant General as proof of payment of the mortgage money and interest.

### **How to Discharge a Mortgage**

A properly completed discharge memorandum must be submitted to the Stamp Office before lodgement at the Titles Office. There are however exceptions to this requirement as Government institutions and Credit Unions are exempt from paying Stamp Duties. Also a partial discharge of mortgage does not attract Stamp Duty.

*Details of the mortgagee*

- = The discharge memorandum must state the volume and folio number as appearing on the Title.
- = The name of the Mortgagee must be consistent with that endorsed on Title. If the mortgagee has subsequently changed its name a Change of Name application must be submitted with the Discharge instrument. For e.g. a mortgage endorsed to Mutual Security Bank cannot be discharged by the new entity MSB Limited unless a change of name is first noted on the title.
- = The particulars of the mortgage should be clearly stated in the instrument which includes the mortgage number, the date of registration and the loan amount and the extent to which the mortgage is discharged..
- = The address of the mortgagee must be stated .If it is a local address the parish must be included. Where the address is overseas the name of the country must be given.

*Section 121 (2)*

- = Pursuant to section 121(2) the mortgagor makes an application to the registrar of Titles to discharge the mortgage. The details of the mortgagee are given as stated above. However the mortgagor must produce receipts or other evidence to the satisfaction of the registrar that the monies secured on the mortgage land including any arrears and interest has been repaid and that the mortgagee has either died, left Jamaica or disappeared and cannot be found. If the Registrar is satisfied with the evidence produced then she will discharge the mortgage on the original and duplicate Title.

## *Section 123*

= The Discharge of Mortgage form must be submitted to the Registrar of Titles completed in the form mentioned above (see Details of the Mortgagee). In this case a receipt from the accountant- General must accompany the form. Where it is claimed that the person is dead then a Death Certificate for that individual must also be submitted.

### **Partial Discharge of Mortgage**

= A Partial Discharge of Mortgage form must be submitted to the Registrar of Titles complete with the details of the mortgagee and mortgage. The Volume and Folio number for the Title(s) on which the mortgage remains must be stated.

= The Partial Discharge Form may also be used where the mortgagee is seeking to discharge a portion of the loan amount.

### **Execution**

The discharge of mortgage instrument is signed by the mortgagee in one of four ways.

a) *General Execution*

Where the mortgagee is an individual he signs the instrument before a witness. The witness must be a person authorised under Section 152 of the Registration of Titles Act or a senior person in the securities department.

b) *By a Company*

Where a discharge of mortgage is being executed by a company under seal the seal must be affixed to the instrument and the name must be consistent with

that on Title. If it is not under seal the directors can sign for and on behalf of the company and their names and capacity must be stated. It is witnessed in a manner similar to that of general execution.

*c) By virtue of a Power of Attorney*

The name of the person on whose behalf the document is being signed must be stated and must not materially differ from that in the power of attorney. The name of the attorney must be stated and must not materially differ from that in the power of attorney. The power for attorney number must be stated. It is also witnessed in the same manner as that of general execution.

*d) By virtue of a marksman clause*

Where the mortgagee is unable to read or write the attesting witness must include a statement that the document is read over and explained to the person making the mark and that he appeared to fully understand the nature and effect of same.

**FEES**

For each mortgage being discharged a fee of \$100.00 is required. For each additional Title affecting the same mortgage additional memo fee of \$20.00 must be paid.