

# Things to do if the bank loses the original sale deed of a property

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**A home loan borrower should immediately obtain an acknowledgment in writing from the bank that the sale deed has been lost. The letter should bear a seal and signature of the bank officials**

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A few weeks ago, Maharashtra State Consumer Disputes Redressal Commission had penalised a foreign bank for losing the original sale deed of a property owner in Mulund, who was unable to sell the apartment in the absence of the documents. The bank was made to pay Rs 1.15 lakh compensation to the property owner who had taken a loan of Rs 9 lakh and had even repaid it. The commission also ordered that the documents be handed over to the property owner within three months and that failure to do so would invite a monthly compensation of Rs 50,000.

Those seeking a home loan must be aware that while borrowing the amount from a bank, the property owner is required to deposit a collateral security to be able to secure against default in repayment. And one of the common form of security is to deposit the property title deed with the bank until the loan is repaid. What happens if the bank loses the title deed and is unable to return it after the loan is repaid?

**What should a consumer do if he learns from the bank that the original sale deed is lost? Should he take it in writing from the bank that the document is lost or the bank's word is enough?**

Sunil Tyagi of Zeus Law, a corporate commercial law firm, one of whose areas of specialisation is real estate transactional and litigation work, is of the view that in case a customer is informed by the bank that the original title document deposited by the customer with the bank has been lost, he should obtain an acknowledgement to the effect from the concerned bank in writing. The customer should also insist that the bank file a complaint with the police regarding the loss of original title documents and provide the copy of the same to the customer.

In case, the bank does not give such an acknowledgment in writing, then the customer should register a written complaint with the bank clearly mentioning the details of the documents submitted by him with the bank along with the details of original documents that the bank has lost and an acknowledgment of the same from the bank.

The aggrieved customer can also approach the banking ombudsman or consumer court to seek redressal.

“To be absolutely sure of whether the document has been lost by the bank, get that intimation in writing from the lender. The bank executives may tell you verbally about it. But you better insist them to give you an official letter about the loss. The letter should bear a seal and signature of the competent bank officials,” advises Rishi Mehra, CEO Wishfin and founder of Deal4loans.

The customer after receiving a communication from the bank that the original sale deed is lost, should file a police complaint stating the loss of the document. He should also consider getting the loss published in the leading news dailies, even though it may cost ₹3,000 to ₹30,000. “Wait for two weeks or so to see if the document is returned by someone to you. You need to keep a copy of the complaint as well as a copy of the press clippings as a proof of the document loss,” he advises.

## **Often banks state that the documents have been misplaced. Here's the difference between misplaced and lost papers.**

At the time of taking the loan clearance certificate from the bank while closing the loan, a customer must take a specific acknowledgment in writing from the bank that the original documents submitted to the bank have been 'lost' or 'misplaced' by it. It may be noted that there is a fine distinction between 'misplaced' and 'lost'.

The word 'misplaced' conveys the meaning that the document is still in possession of the bank but has been wrongly placed and may be recovered later. However, the word 'lost' conveys the meaning that the documents are no longer in possession of the bank.

"In several cases it has been held that the limitation period for the customer to approach the courts would commence from the date the bank has acknowledged that the documents have been lost. However, in cases of acknowledgment by the bank that the documents have been misplaced, the cause of action continues with the customer to approach the court," says Tyagi.

## **At what stage should the buyer approach the consumer court and with what documents?**

The aggrieved customer whose original title documents have been lost by the bank may approach the consumer court having jurisdiction after he is informed by the bank that the original title documents of his property have been lost or misplaced by the bank.

"The customer should attach all the documents for supporting his claim against the bank, including the acknowledgement issued by the bank regarding the loss or misplacement of title documents, complaint filed by the customer with the bank, copies of all loan documents, acknowledgement/ receipt of deposit of title documents etc," explains Tyagi.

## **Is the bank liable to compensate a consumer for loss of documents in its custody?**

*The bank usually compensates its customers as per their compensatory policy for the loss of original document. However, in several cases, courts have awarded compensation to the customer for loss of original documents by the bank which were deposited with it by the customer.*

## **The procedure involved in procuring a true copy**

The owner of an immovable property needs to apply to the concerned sub-registrar's office (where the original document was registered) for obtaining the true copy of the registered document by making payment of the applicable fee and after scrutiny of his application, the certified true copy is issued.

"Courts have held in various cases that the bank is responsible for misplacing/ losing the original documents and has directed the bank to bear the costs for obtaining the certified true copies and also assist the owner for obtaining such certified true copy," says Tyagi.

Mehra says that the cost of getting a certified copy of the original sale deed from the registrar's office is usually around ₹500. "You can also get land revenue records at these offices, further attesting your property ownership.

Another option is to get a duplicate copy of the sale deed from the builder with whom you may have inked a deal for the property,” he says.

### **Does the bank have to pay the buyer the cost of getting the certified document or provide a document called Affidavit cum Indemnity Bond (ACIB)?**

Courts have in various cases held the bank responsible for misplacing/ losing the original documents and have directed the bank to bear the cost for obtaining the certified true copy. Usually, no Affidavit cum Indemnity Bond is given by the bank as compensation is paid by the bank for misplacement or loss of original documents deposited by the customer with the bank.

According to Mehra, one can hope to procure an ACIB by a bank in case the original property documents are lost in its custody. Practically speaking, though, the chances of ACIB issuance from the bank's end are minimal. The reason being that by issuing an ACIB, the bank would commit to compensate consumers for the loss caused with respect to the property.

“You may either fail to sell or sell the property at a price below the market rate, in the event of loss of original documents. The buyers you approach to sell the property could haggle over the loss of the documents, making you settle for a reduced price. The extent of compensation could be a lot more and so the bank may not issue ACIB,” says Mehra.

### **What kind of compensation can a buyer expect from the court for mental agony caused?**

The quantum and entitlement of compensation for the mental agony depends upon the discretion of the consumer court. In a recent judgment, the National Commission had directed the bank to pay a compensation of Rs 5 lakh to the customer whose original title documents were lost by the bank. However, no specific compensation for mental agony was awarded.

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