

What are your rights as a mortgagor?

The Transfer of Property Act, 1882 (Act) enlists the rights and entitlements available to the mortgagor for the property mortgaged

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One are the days when a person of the middle or lower income groups could not afford to buy a home. Now, banks, financial institutions and private lenders offer several loan schemes to buy residential, commercial as well as industrial properties. A standard and popular scheme is loan against property. A buyer can simply apply for a loan to buy a property by placing the same property as security for repayment of the loan. In legal terminology, such arrangement is recognised as mortgage wherein a person transfers interest in a specific immovable property for securing the payment of the loan advanced.

It is important for the mortgagor to identify his statutory rights under Indian laws. The Transfer of Property Act, 1882 (Act) enlists the rights and entitlements available to the mortgagor in respect of the mortgage.

Right of redemption: One

of the most important rights of the mortgagor is the right of redemption. To exercise this right, the mortgagor requires the mortgagee to deliver back the mortgage deed and all documents pertaining to the mortgaged property and possession of the mortgaged property (in case where mortgagee is in possession of such property), upon repayment of loan amount. Where the mortgagee acts in defiance of the aforesaid right, the mortgagor may enforce such right by filing a suit for redemption.

Right of assignment: Further, in case where the mortgaged property is transferred to the mortgagee, the mortgagor may (upon redemption) require the mortgagee to assign the mortgage debt and transfer the mortgaged property to any third party of his choice instead of re-transferring the mortgaged property to the mortgagor. However, this right of the mortgagor will not be available if the mortgagee is or has been in possession of the mortgaged property.

Right of inspection: The mortgagor is entitled to inspect and make copies or abstracts of, or extracts from, title documents relating to the mortgaged

property which are in custody or power of the mortgagee. However, the mortgagor has to pay the mortgagee's fees and bear all costs and expenses on this behalf. This right is available to the mortgagor as long as his right of redemption subsists.

Right of accession: Where the mortgaged property is in possession of the mortgagee and the property has received any accession (ie, any addition or improvement) that has increased the value of such property, then on redemption of the mortgage, the mortgagor will be entitled to receive the mortgaged property along with accession, provided there is no agreement contrary to this understanding between the parties. In case where such accession was carried out at the expense of the mortgagee and is capable of separate possession and enjoyment, then in order to take such accession with the mortgaged property, the mortgagor has to pay expenses and costs to the mortgagee towards such accession.

Leasing of mortgaged property: The mortgagor who is in possession of the mortgaged property will be entitled to create lease of such mortgaged



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property on the following terms as mentioned in the Act:

- The lease will be such as the one made in the ordinary course of management of the property concerned. Further, such lease should be in accordance with any local law, custom or usage
- The lease should reserve the best rent that can reasonably be obtained. No premium shall be paid or promised and no rent should be payable in advance

- No such lease should contain a covenant for renewal of lease
- The lease should take effect within six months from the date on which it is made
- In case of lease of buildings, the duration of the lease should not exceed three years
- The lease should contain a covenant for payment of the rent and condition of re-entry on the rent not being paid with a time therein specified. However, such terms can

be changed by the parties. While entering into such a transaction, a mortgagor should first be aware of his rights under the law to reap the best benefit, and the mortgagor should exercise his rights.

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