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DOCUMENTATION AND PERFECTION OF SECURITIES IN NIGERIA

INTRODUCTION:

The interdependent nature of commerce and the financial disability of an individual or group to embark successfully on a project necessitate the issue of lending. The act of lending *(or a loan)* is the delivery by one party to and receipt by another party of a sum of money upon agreement, express or implied to repay it with or without interest.[1] Thus, a loan is a temporary relief or assistance granted to another person which is liable to be returned in either its exact form or its equivalent, with or without compensating the grantor for the interim deprivation.[2]

From the above, it is obvious that a loan presupposes the existence of an agreement between the parties which invariably regulates their relationship. This contractual agreement is crucial but, as we shall see, it is hardly given the desired priority by the parties to the loan agreement. More often than not, factors such as the character of the applicant, the feasibility report presented by him and the viability of the venture in question engage the attention of the lender. Prominent issues of documentation and perfection are usually neglected.

This lackadaisical attitude of the lenders largely accounts for the inability to retrieve or recover the sum lent, and consequently, the subsequent insolvency or bankruptcy of the affected persons such as individuals

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1. See *Black's Law Dictionary*, 6th edition, St. Paul Minni West Publishing Company, 1990, p.936.
2. *Liberty National Bank & Trust Co. v. Traveller's Indemnity Company, 58* Misc. 2nd ed. 443, 295,N.Y.S. 2nd ed. 983 at 986.

and Corporate bodies. In fact, in contemporary Nigeria, the effect is more noticeable in the banking and other financial institutions engaged in the business of lending. The alarming rate with which some of these institutions become distressed led to the inevitable promulgation of the failed Bank Decree.[3] Revelations at the trial of the officials abundantly shows that the loan granted are either unsecured, or improperly documented. Whilst it is conceded that some of the improper documentation and perfection are done deliberately, a sizeable number of them are done out of ignorance of the procedures for proper documentation and perfection.

Apart from the above unpalatable consequence of non- or irregular documentation and perfection of the loan transactions, the substantial nature of the amount involved and the lengthy repayment period often demand for the documentation and perfection of the security. This is in addition to the danger posed by frequent change in policy by the government, or indeed any other probable misfortune.[4]

Furthermore, the problem arising from floating interest rate, which appears to be the latest fashion in credit transactions, makes proper documentation and perfection inevitable. This is so in view of the current controversy surrounding the issue in recent time.[5]

Although the general rule is that a bank is to charge simple interest on all loans and overdrafts, but where the interest rate chargeable is to be exceptional, it must be with the consent of the customer.[6]

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3. See Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994. See also the *-Fed. Rep. of Nigeria* v. *Mallam Bello Abubakar* FBFMT/L 21/2c/95 judgement delivered on 13th Oct, 1995. See also *Fed. Republic of Nigeria v Dr. Onwochei Odogwu* reported in *The Guardian*, Thursday, Feb. 8, 1996, p.3.
4. See O. A. Adeniji: "Loan Agreements and Released Documentation" Paper presented at the Advanced Loans Management Workshop organised by the Financial Institutions Training Centre (F.I.T.C.) between 17th and 20th may, 1994.
5. See *Union Bank of Nigeria v. Ozigi* (1994)3 NWLR p. 386*; Union Bank of Nigeria v. Sax (Nig.) Ltd & Ors (1990)7 NWLR p. 227.*
6. See *Rickett v Bank of West Africa* (1960)5 F.S.C. p.3*; Barclays Bank v. Abubakar* (1977)10 S.C. p.13.

In contemporary times, the settlement or fixing of interest rate will appear to be a matter of special arrangement, with the proviso however that it must be in accordance with the statutory dictate of existing regulation and the prevailing Central Bank guidelines.

To this end, the *Banks and other Financial Institutions Decree*[7] provides that:

> "Every Bank shall display at its offices its lending and deposit rates and shall render to the Central Bank of Nigeria information in such rates as may be specified from time to time by the Central Bank of Nigeria."

However, in terms of deregulation which the Nigerian economy is currently operating, the Central Bank of Nigeria guidelines leave the determination of interests rates to the operation of market Forces; subject to the maximum spread *(usually 5%)* on the average cost of funds as or performance criterion.

The above policy coupled with the general economic instability and recession compels banks to lend on the basis of floating interest rates. The unpalatable consequence of the above is to convert the courts in recent times to arena for settling interest rates.[8] For example, in ozigi's case,[9] the question was, can a bank unilaterally increase the interest rates payable on loans/ overdraft?

In the case, the relevant clause was:

> "The interest payable on the money hereby secured shall accrue from day to day at the rate from time to time stipulated by the Bank...."

In construing the clause, the Court of Appeal was of the opinion that the customer's consent is required to the fixing of the interest rates. In fact, in Mohammed *J.C.A* word: ... It is my view that the bank is under an obligation

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7. Section 23 of the Bank and other Financial Institutions Decree No. 25 of 1991. See also Clause F(7) of the Guidelines for Finance Houses.
8. See *Union Bank of Nigeria v Ozigi; Union Bank of Nigeria* v *Sax (Nig.)* Ltd. & *ors (supra)* (Footnote 5)
9. *Union Bank of Nigeria v Ozigi* (*supra*)

tion to communicate its intention to increase the interest rate. This will give the borrower notice of the increase of his liabilities so that if he has any objection, he would raise it.

This reasoning was adopted in the subsequent case of *Union Bank of Nigeria v. Sax (Nig.) Ltd. & ors.*[10] by the Court of Appeal.

Unfortunately however, the Supreme Court in determining the appeal brought by Union Bank of Nigeria in *Ozigi's cases*,[11] reversed the decision reached by the court of Appeal. According to Adio, *JSC* while reading the lead judgement on the construction of the aforementioned clause 3 of - the Agreement:

> "The provision of clause 3 of the mortgage deeds could not reasonably or properly be construed to require the appellant to obtain the prior consent of the respondent or to give prior notice to the respondent in connection with increase or increases in rates of interest and failure, if any, to obtain respondent's consent or to give prior notice of increase to the respondent could not nullify the rates of interest stipulated by the appellant under clause 3 of the mortgage agreements"[12]

In the above case, it would appear that the Supreme Court missed the point canvassed by the respondent.

The complaint of the respondent amongst others was that the Appellant failed, neglected and/or refused to notify him of the purported increments in the interest rate.

Although it is conceded that the appellant is at liberty to charge any interest rate from time to time, it is our contention that the Clause 3 in question is not exhaustive of the issues argued in this case. Specifically, the clause neither excluded dispensing with notice, nor service of same.

In the circumstance, therefore, whilst it is not contested that prior consultation before increment of interest rate is compulsory, it is submitted that the notification of the increment is a salient requirement in the transaction affecting the parties.

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10. *Supra*
11. *U.B.M. v Ozigi* (1994)3 N.W.L.R. p. 386
12. *U.B.N. v Ozigi* (*supra*) at p. 408.

The situation in this regard is analogous to the requirement of issuance and service of Statement of Account on the debtor. This, it is submitted, is a common law duty owed to a customer/debtor, as in the case, by the Banker/ Creditor.

In fact, according to Clive Hamblim,[13] the duty of a Banker in this regard is so enormous that the customer is under no duty to the Banker to examine his passbook or statement to verify the correctness of the entries. But where the customer does take the trouble to examine it, and forms the opinion that certain entries are incorrect, and fails to inform his banker of his belief, he is not thereafter estopped from challenging their accuracy.

Consequently, where the Banker has failed to communicate the increment in interest rates, as in this case, originating interest rate as between the parties should be used. Hence, assuming without conceding that the interest rate at the commencement as canvassed by the appellant was 13½%, as against the respondent's assertion of 11%, that should have been upheld as the operating interest rate between the parties throughout the transaction.

Be that as it may, it is our submission that this kind of controversy can be averted where there is proper documentation and perfection. This is more so, when the court will not, and cannot rewrite contract for the parties.[14] Finally, the recognition of the need for securing loans by means of proper documentation and perfection account for the statutory intervention by the Government.[15] That the problem in this area of securities is more real than imagined in buttressed by the recent judicial decisions.[16]

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13. *Banking Law*, 1985, edn., London Sweet & Maxwell, p.75. See also *Chartlerton v. London & County Banking Co. Ltd* (1891). *The Times*, January, 21.
14. *Fakorede V. A.G.M/M* (1972)8 SC, p.79. *Udogwu v. Oki* (1990)5 NWLR p.721, *Salami* v. *S.B.M.* Ltd. (1990) 2
15. Sections 18 and 20 of the Bank and other Financial Institutions Decree No. 24 of 1971.
16. See e.g. *Savannah Bank v. AJILO & Anor* (1987)1 NWLR, p. 305. *National Bank of Nigeria v. Adedeji* (1981)1NWLR, pt. 96, p.212.
Awojugbagbe v. National Bank of Nigeria (1995) 4NWLR (PART 390), p. 379.

The essence of this paper, therefore, is to familiarise prospective lenders with the procedures for the documentation and perfection of their interests in a loan transaction, with the ultimate view of reducing, if not totally eliminating the loss of huge sums of money to loan defaulters, especially at the time of realising the security.

To this end, the paper shall consider the meaning and types of security obtainable in lending transactions; the pertinent preliminary issues to be noted in loan transactions, the mode of documentation and perfecting the rampantly used securities; the legal and other problems associated with the procedures; and finally, the recommendations and suggestions for law reform.

MEANING AND FORMS OF SECURITY

The word 'security' is incapable of exact or precise definition. It is a word that could mean different things at separate times. However, for our purpose and in the context of this discussion, a working definition becomes imperative.

According to Sykes'[17], it is a transaction whereby a person to whom an obligation is owed by another person called the "debtor" is afforded, in addition to the personal promise of the debtor to discharge the obligation, rights exercisable against some property of the debtor in order to enforce the discharge of the obligation.

Similarly, Black's[18] perceives security as a protection, assurance or indemnification usually applied to an obligation, pledge, mortgage deposit, lien, etc., given by a debtor in order to assure the payment or performance of his debt, by furnishing the creditor with a resource to be used in case of failure in the principal obligation.

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17. *Law of Securities* (Australian edn) Chap. 1, p-3
18. *Black's Law Dictionary*, (*supra*) 6th edn. p. 1355.

From the above definitions, it is inferable that the essence of a security is the creation of rights by a person over another person's property.[19] Thus, the distinction can be drawn between the document evidencing the transaction, and the creation of rights from the transaction in favour of another person. However, the latter cannot exist without the former, thereby showing the prominence of documentation and I perfection in the creation of security.

A security can therefore simply be described as the further assurance given by way of creation of right in favour of the other party, towards the performance of an obligation.

Having explained the concept of security, we should now discuss the kinds of security available to a lender. To this end, the Romanic classification into *Fiducia, Pignus and hypotheca*[20] shall be adopted.

Fiducia is the Roman classification denoting mortgage *stricto sensu* in the English sense. It is a security transaction involving the transfer of the property from the debtor to the creditor, with a supper-added obligation, resting on contract, to re-transfer the property to the debtor when repayment of the debt has been effected.[21] The distinguishing feature of this form of security is the transfer of the proprietary interest in the property from the mortgagor/ Debtor to the mortgagee/creditor. This does not however imply that the mortgagee/creditor cannot obtain in addition to this, a possessory interest. The tendency to acquire possessory interest is however discouraged in view of duties arising therefrom. In this regard, we are alluding to the requirement of accountability and duty of care, amongst others.

Pignus is another type of security otherwise known in English parlance as possessory security. It involves only the transfer of possession from the debtor to the creditor.[22] Examples of possessory security are pledges, pawn and lien. The hallmark of this class of security is the pronounced dichotomy between proprietary and possessory interests. In other words, the creditor

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19. Prof. A.M. Goode: *Legal Problems of Credit and Security*, 1982 edn., p.2.
20. Sykes: *The Law of Securities, supra* pp. 12-13
21 See Lindley M.R. in *Stanmey v Wilde* (1899)2 ch. 474. See also Fisher & Lightwood - *Law of Mortgage*, 9th ed., 1977, p.4.
22. Sykes (*Supra*), pp. 14-15

upon the execution of the security agreement assumes possession of the property and will only vacate the possession upon the fulfilment of the obligation created in furtherance of the transaction, thereby permitting the grantee or borrower to resume his original possession.

Finally, *hypotheca* is the class of security which involves neither the transfer of proprietary nor possessory interest to the creditor at the initial stage; but upon a default of performance by the debtor, the creditor can obtain any one of or all of the above interests.[23] In Salmond's[24] expression, it is merely the shadow, so to speak, cast by the debt upon the property of the debtor, the implication of which is that only potential rights exercisable in the future upon default that are created.

The above considerations constitute a brief analysis of the forms of security interest. Hence, it is left for the creditor to choose the type he intends to obtain as a further assurance. This choice does not however finally settle the issues involved, as the lender must ensure proper documentation and perfection of the security in order to facilitate the realization of the security upon default. How this is done forms the Corpus of the next part of this paper.

DOCUMENTATION AND PERFECTION

Documentation is the process of physical embodiment of information or ideas in a contract, receipt or any other instrument.[25]

The importance of proper documentation in loan transactions cannot be overemphasised. This is because where a loan transaction is improperly documented, or not documented at all, it stands the risk of being void and unenforceable.[26] Where this is not the consequence, it may jeopardise the chances of recovery of the loan by the lender in the event of default.

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23. See *Horroyd v Marshall* (1862)10 H.L.P. 191
24. *Jurisprudence*, 12th edn., p.430
25. See *Black's Law Dictionary*, 6th edn. (Supra) p. 481.
26. See Section 26 of the Land Use Act, Cap. 202, Laws of Federation 1990. See also *Savannah Bank Nig. Ltd. v. Ajilo (Supra)*

Proper documentation therefore must involve stating such information as the amount of loan, period of repayment, number of instalments where allowed, interest payable, drawings, consequence of default and such other information vital to the realization of the money advanced.

At this stage, it is pertinent for a bank, or any lender for that matter, to adequately protect itself by eliciting appropriate covenant from the borrower before disbursing the loan to him or allowing him to draw-down in case of an overdraft. Experience has shown that at this stage, the customer behaves like an obedient servant willing and ready to conclude anything. Any failure or neglect to exploit this opportunity may affect the chances of recovering the money lent.

Perfection of Securities, unlike documentation that regulates the affairs of the parties, is a means of complying with the Law governing the vesting of the property secured by the creditor.

Consequently, while the style of documentation can vary from one transaction to another or as between parties to similar transactions, the mode of perfection is procedurally specific in relation to each form of security. Thus, for a meaningful discussion, it is intended to discuss the two issues together.

However, before proceeding it is apt at this stage, to state that the type of security dictates the mode of documentation and the process of perfection. Consequently, each form shall be discussed independently.

Firstly, the prospective mortgagee must conduct a search at the land registry to determine the genuineness of the title in question, and to detect if there are other prior existing encumbrances on the property. This search will also assist the lender in determining the capacity of the borrower to use such property as a security.

Moreover, the search is not conclusive of the matters to be considered. Hence, the prospective lender must also undertake physical inspection, apart from assisting the evaluation of the worth of the property, it also enable the prospective mortgagee to conduct neighbourhood inquiries and note the nature of use, or tenancy the property is put into. It is, not strange at times to discover that such property is under a misting long lease which was not registered. Whilst conceding the legal right of the lender to the property upon the mortgage in this regard, it must be said that recovery of such property

may take ages, and at times, can be frustrated by those existing interests which are protected by virtue of constructive notice. Thus, it is vital that site inspection be conducted.

Furthermore, it may be necessary to consider the available real property rights mortgageable. To this end, it must be noted that prior to the enactment of the Land Use Act[27], the highest right capable of being mortgaged was that of absolute ownership denoted by a conveyance; but with the enactment of the Act, such absolute ownership has ceased to exist. [28] This does not however imply that the old registered conveyance cannot still form the subject-matter of a mortgage. In contemporary times specifically since the enactment of the Act on March 29, 1978, the system of conveyance has been replaced with that of right of occupancy,[29] usually evidence by Certificate of Occupancy.[30]

The Certificate of Occupancy is *sui generis*, and as already judicially recognised,[31] is not absolutely proprietary;' it is a right of a hybrid nature, partaking of some qualities of absolute ownership and that of possessors interest. It has been described as a dangerous document to rely upon as a security because of the associated defects identified with it.[32] Whatever the shortcomings, the Certificate of Occupancy, nonetheless remains the prevalent security used in securing loans in recent times.

Having established the interest mortgageable therefore, the question, which necessarily arises, is: Does the Act specify the procedure for perfecting the mortgage? Although the answer to this question is clearly in the negative, it recognises the other laws regulating the procedures in so far as they are not inconsistent with the provisions of the Act.[33]

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27. Cap 202, Laws of the Federation, 1990.
28. Section 1 of the Land Use Act. See also *Nkwocha v Governor of Anambra State* (1984)6 S.C 362 at 392.
29. See Sections 5,6, 34 and 36 of the Land Use Act.
30. See Section 9 of the Land Use Act.
31. See *Ajilo v. Savannah Bank* (1989)1 NWLR, p. 305 *LSDPC v Foreign Finance Corporation(1987)1* NWLR pt 50, p..413. *Obikoya v Governor of Lagos State* (1987)1 NWLR (pt.50) p.385
32. See F.O. Adeoye: "The Use of Certificate of Occupancy as a Security For Bank Advances; A Caveat, Gravitas", *Journal of Business and Property Law*.(1989)2 GRBPL, No.3,p.17.
33. Section 48 of the Land Use Act.

It will be recalled that we have said that the documentation of any security is a matter of style. The perfection however is statutorily specified. Hence, in order to perfect a mortgage transaction in which the subject-matter is real property, the following steps must be taken. The transaction in question must be in writing, or evidenced by a memorandum in writing.[34] This is general to all mortgage transactions irrespective of the region or state involved. However, for other modes of creation, the procedure differs in accordance with the applicable laws.

Firstly, by virtue of the property and conveyancing law,[35] already re-enacted in the states, the creation of mortgage over real property could either be through a term of years absolute; or through a charge by deed expressed to be by way of legal mortgage off or through a sub-demise.[36] For other states than those covered by the above law, the conveyancing and law of property Act, 1881,[37] becomes applicable.

The statute provides for the adoption of the common law method of creating a mortgage which is usually by outright conveyance, or term of years in the form of sub-demise of the property constituting the subject-matter. In view of the provision of the Land Use Act earlier discussed, the method of outright conveyance is now substituted with an assignment of the interest concerned from the borrower to the lender, usually with a provision for **Cesser** upon redemption.

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34. Section 4, Statute of Fraud, 1974: Section 67(1) of the Property and Conveyancing Law, Western Nigeria 1959, Cap. 100; Section 5 of the Law Reform (Contracts) Act, 1966.
35. Cap. 100 Law of W/N, 1959 as applicable then in Oyo, Ogun, Osun, Ondo, Edo and Delta States, but already re-enacted in the states. For example, cap 99 of Laws of Oyo State of Nigeria, 1978.
36. See Sections 108 and 109 of the P.C.L. W/N
37. "448 45 Vict, c.41" This Law was enacted in 1881 in England and applies in the rest of the country, being a statute of general application in England.

Whichever procedure is applicable, the use of a deed is indispensable. A deed is a document signed, sealed and delivered. Furthermore, subsequent to the execution of the deed, the deed must be presented to the stamp duty office for necessary assessment and stamping.[38]

Moreover, as initially said, since the object of a mortgage is the transfer of interest from one person to the other, it must seek the Governor's consent before it can be valid.[39] However, the writer still maintains his position that a deemed right of occupancy over developed land in urban area should not require the consent of the Governor[40] as opposed to the Supreme Court decision in *Ajilo v. Savannah Bank Ltd.*[41] In that case, the issue for determination was whether a person who is deemed to be a holder of a right of occupancy pursuant to Section 34(2) of the Land Use Act, requires the consent of the military Governor before he can transfer, mortgage, or otherwise dispose of his interest in the Right of Occupancy. The facts of the case briefly are as follows:

The plaintiffs/respondents had created a Deed of mortgage dated 15th September, 1980 in favour of the Defendant. Upon default, the bank sought to sell the property involved by action. The plaintiffs sued for declaration that the deed of mortgage and the auction notice were void.
The grounds of the action *inter alia* were that:

(a) By virtue of section 22 of the Act, the consent of Governor of Lagos State ought to be first sought and obtained before the execution of the Deed of Mortgage and the public auction.

(b) As no consent was sought as aforesaid, both the Deed of Mortgage and the auction notice were void. The Supreme Court upheld the decisions of the lower courts that the failure to obtain the requisite consent was fatal to the transaction.

Obaseki, J.S.C. (as he then was) on page 329 noted however that:

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38. See Preamble to the Stamp Duty Act, Cap 411, Laws of the Federation, 1990.
39. See Sections 21,22 and 34(7) of the Land Use Act.
40. See Yemi Banire: "The Limit of Consent Provision: *Ajilo v. Savannah Bank Ltd*", *The Lawyer*, vol. 18,1988,p.18
41. (*supra*) Footnote 16.

> "In my view and I agree with Chief Williams expression of anxiety over the implementation of the consent clauses in the Decree, it is bound to have a suffocating effect on the commercial life of the land and house owning classes of the society who use their properties to raise loans and advances from the banks.
>
> I have no doubt that it will take the whole working hours of a State Military Governor to sign consent papers (without going halfway) if these clauses are to be implemented. These areas of the Land Use Act need urgent review to remove their problem nature".

It is most unfortunate that in spite of the lamentation of his lordship, he still reached the same conclusion along the same line with the other justices. Be that as it is, since by the doctrine of *stare decisis* we are all bound by the Supreme Court, decision, the consent of the Governor remains a must for the transfer or assignment of all right of occupancy, although of recent, it would appear that the Supreme Court has tacitly reversed the consequence of default.[42]

After the consent must have been obtained, the deed is then taken to the Land Registry where it will be accordingly registered.[43] Furthermore, where the Land in question falls in a Title Registration District, it may need to be registered under the Registration of Titles Act 1935[44] . Finally, where the mortgagor is a corporate body and the assets are those of the company as opposed to the Director's personal property, further registration with the corporate Affairs Commission, Abuja, must be done.[45]

Apart from the Legal mode of creation of a mortgage, it is possible to create a mortgage by equitable means. To this end, it could arise where an equitable interest forms the subject-matter of the security transaction.

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42. See *A.G.Federation v. Sode* (1990)1 NWLR (pt 128),p.500 *National Bank of Nigeria v. Adedeji (Supra), Solanke v. Abed* (1962) ANLB, p. 92
43. Section 6 of the Land Registration Act No 36 of 1924 (Already re-enacted in Lagos, Ogun, Edo, Delta and Oyo as Land Instrument Registration Law).
44. Cap. 181, Laws of the Federation, 1958, Section 5.
45. Section 197 of the Companies and Allied Matters Act, Cap. 59, Laws of the Federation, 1990.

Hence, what will be created in the circumstance will be an equitable mortgage. It may also arise from an agreement to create a legal mortgage where such an agreement exists, and it is such that the court will grant specific performance, in which case, it is said that there is an act of part performance.[46] Consequently, the agreement shall operate as an equitable mortgage.

Finally, an equitable mortgage can arise by the deposit of title deeds coupled with the intention to use it as a security.[47] It must be noted that where such deposit is accompanied by a memorandum of deposit, the mortgagee may by that means acquire the powers of a legal mortgagee under the property and conveyancing law.[48]

Before ending the discussion in this segment, it will be apt to consider the creation of a mortgage under the Mortgage Institutions Act.[49] Just as the Land Use Act did not make provision for the manner of creating a mortgage, this Act equally did not provide for such. However, the following matters are worthy of note as per the Act.

Firstly, the creation of mortgage pursuant to the provision of the Act is restricted to housing purpose.[50]

Secondly, the percentage of loan securable under the Act must not exceed 20% of the reserve,[51] and finally, the processes of documentation and perfection are as provided for by the adopted laws under the Land Use Act.[52]

MORTGAGE OF CHATTELS

This is governed by the Bill of Sales Act [53] which exists in all other States of the federation. Generally speaking, the validity of a mortgage of

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46. *Tebb v. Hodge* (1869) L.R.S.C. p. 73. See also *Walsh v. Lonsdale* (1882)21 Ch. D., p.9.
48. See J.A. Omotola: "Mortgagee Powers of Sale: A Hammer or Illusion". *Nigerian Bar Journal*, Vol. 18, 1982, p.104.
49. Cap. 231, Laws of the Federation, 1990
50. Section 5(1) a & b of the Act.
51. Section 8(b) of the Act.
52. See our earlier discussion on the mode of creation.
53. See Bill of Sales Act of 1878 as amended by the Bill of Sales Act 1882. See also, Bill of Sales Law, Cap 11, Laws of Western Nigeria, 1959 (as re-enacted).

personal chattels requires no writing. [54] In other words the documentation does not necessarily have to be in writing. [55] Where however, it is in writing it will come within the statutory provision in which event, such a bill of sale will require registration. In fact, under the Bill of Sales Law, the essence of the documentation lies in the execution of the bill in favour of the mortgagee.[56] As said earlier, once the documentation procedure is observed by putting it into writing, the perfection of the security must be completed by registration of the bill of sale within seven days.[57] The consequence of not registering within the period is to render it void.

Mortgage of chattels can be legal or equitable. It is legal where property in the goods passes to the mortgagee subject to redemption. But in an equitable mortgage of chattels, property does not pass until there is default and steps are taken to vest the legal estate in the mortgagee or to foreclose the interest of the mortgagor.

It is observed that this form of security transaction is unpopular in Nigeria. This is probably because of the unfamiliarity of the people with the process and also because of lack of any serious registry for the purpose.

In fact, it is submitted that the government attitude towards the adoption of the transaction is far from being satisfactory. However, it is important that creditors and debtors alike start thinking about ways to rejuvenate this area in view of the hardship and expense usually associated with the obtainment of consent over real property transaction.

MORTGAGE OF LIFE INSURANCE POLICY

Where there is a life insurance policy in existence, a date is usually fixed for the payment of the premium. Where there is failure to pay such premium, the policy may lapse, thereby resulting in the forfeiture of the policy. However,

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54. *Reeves V. Cooper* (1838)5 Bing W.C. 136; See also *United Forty Loans Club v. Boxt*an (1891)1, p.28
55. *Ramsay V. Margaret* (1894)2 S.B. 18. *Adesokan v. Incar (Nig.) Ltd.,* (1979)11 C.L.R. p. 47
56. See Section 8 of the Bill of Sales Law, Cap, 11, Law of W/RN., See also Bill of Sales Act 1818/1882.
57. Section 18 of the same Law.

the Insurance Companies in most cases permits payment of premium after due date within a reasonable period of maximum 30 days, usually known as the grace period.

Thus, where a lender intends to obtain a life insurance policy as a security, the lender must determine the genuineness of the policy, it's existence as well as the surrender value.

The procedure for documentation is via the execution of a deed of assignment[58] upon the assignment of the policy, the lender obtains the possession which he retains until the obligation is finally performed. In perfecting the mortgage, written communication of the existence of the mortgage must be given to the concerned insurer, and obtaining therefrom an acknowledgement of notice. This will constitute the relevant registration with the insurance company.

Once-this is done, and the mortgage deed stamped as discussed earlier, the realization of the security in the event of default will be trouble free. Consequently, the lender obtains and enjoys priority over any subsequently created interest in respect of the policy.[59]

POSSESSORY SECURITY

This category of security as exemplified by lien and pledge is rarely used in view of the disadvantages associated with the class of security. However, before considering these defects, it is pertinent to give a brief explanation of the contents of this class of security.

A lien is a right in one man to retain that good which is in his possession belonging to another, till certain demands of him by the person in possession are satisfied.[60] A lien may be legal or equitable, but arises mainly by operation of Law.

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58. See Policies of Assurance Act, 1867 (A Statute of general application).
59. See *Dearle v. Hall* (1828)3 Russ, p. 1
60. See *Ugo v. Obiekwe* (1989) NWLR, P. 566 at 590-591 per Agbaje, JSC