‘NOTE’ ON DOCUMENTATION FOR CREATING SECURITY ON PROPERTIES OWNED BY HOUSING SOCIETIES, DEVELOPMENT AGENCIES, GHQ, ETC.

1. As security for various financial facilities, it is visualized that the Bank would obtain a mortgage by “deposit of title deeds.” I would like to point out that such security can, of course, be created where an original title deed is available. However, in many transactions relating to sale of property by various development authorities or cooperative housing societies (**“Authority”**), a sale deed is executed only **after** a house has been constructed. In the first instance only an **allotment** letter or an agreement to sell is executed. It is also a common practice that property exchanges hands by assignment of rights from the allotment holder, without a sale deed having been executed by the Authority. In such cases, the Authority issues a letter in favour of the assignee acknowledging that the assignee would have the same interest in the property as the assignor. The absence of a transfer deed creates certain problems where a mortgage by deposit of title deeds is to be created.

2. The peculiar issues of mortgage by deposit of title deeds would become clear from the discussion that follows:

   a) Mortgage, in case of land, means “transfer” of the property by a mortgagor to the mortgagee as security for some financial or other obligations. Once the secured obligation has been discharged, the mortgagee has to “re-transfer” the property back to the mortgagor. If the obligations are not discharged, the mortgagee can bring the mortgaged property to sale, and convey to the purchaser title to the property.

   b) Transfer of immovable property in **urban areas** can take place only through a transfer deed registered with the Registrar of Documents. In case of mortgages, the law provides that where the mortgagor holds “title deeds”, regarding the land, he may create a mortgage by mere “deposit” of the title deeds with the mortgagee or his agent. If he does not have title deeds, but is owner of the property, he must create a mortgage by a “registered instrument”. Deposit of a document, whose nature is not that of a **“title deed”** cannot create any mortgage interest.

   c) Where a property development authority or agency, such as **DHA, LDA, CDA**, various cooperative housing societies etc. ("**Authority”),** issues allotment letters to an allottee and, in cases of transfer from the allottee to a new person issues him a letter of “transfer of allotment”, then these documents are only evidence of “contractual obligations” between the Authority and the holder of the allotment interests. As long as the Authority has not transferred the property to the allottee by a registered sale deed, the title in the property continues to remain with the

Authority, and the Authority continues to be the “owner” of the property.

d) Even where the allottee himself (without having obtained a registered sale deed from the Authority), transfers his allotment interest to another person by a registered deed, such deed cannot be a document of title to the relevant land for the simple reason that the transferring allottee himself holds no registered “Title Deed”.

e) An “allottee” cannot, therefore, either create a registered mortgage so as to “transfer” by way of mortgage the relevant land as security nor can he create an equitable mortgage by deposit of the allotment letters, since allotment letters are not title documents.

3. In view of the above legal position, the question arises whether a security can be created, at all, over the “contractual rights” of the allottee, in favour of a financial institution? The answer to this question is that a security can certainly be created, but this has to be by “assigning” the allottee’s contractual interest in favour of the person who wants to be secured. Such a transaction cannot properly be called a mortgage of land, but it is more in the nature of a “hypothecation/assignment” of benefit of contractual rights, by way of security. If the transaction is structured properly, the secured person would be entitled to bring to sale, the allotment interests of the allottee.

4. For proper structuring of the transaction for creating a security interest over allotment rights, the following measures could be adopted:-

a) The Bank must obtain a copy of the bye-laws of the Authority.

b) The Bank must also obtain a copy of the original allotment letter issued by Authority so as to know its terms and conditions.

c) The Bank must follow the procedure set out in the allotment letter/bye-laws for encumbering the rights of an allottee. Ordinarily, permission of Authority is required.

d) After permission to assign the interest of the allottee by way of security has been granted, a security instrument encumbering the interest of the allottee in favour of the Bank must be prepared.

e) It must be reported to the Authority, thereafter, that the security interest had been created and such interest should be recorded in the relevant file of Authority.

f) Authority should confirm that a lien has been marked on the record of Authority regarding relevant allotted plot and that the

Authority would not allow transfer of that plot to any person as long as a written NOC has not been issued by the Bank.

g) The allottee should surrender to the Bank all original documents pertaining to the plot, with a covering letter stating that this was being done in recognition of the security interest created in favour of the Bank.

5. For all cases where a “title deed” is not available and only “agreements to transfer” exist, it would be necessary to design a standard “Assignment Agreement” for creating security interest in favour of the Bank.

6. If the above procedures are followed, it would be ensured that no third party can acquire the plot of the allottee and claim that he was an innocent purchaser without notice of the claim of the Bank. Since no sale of Authority’s property (till such time that Authority itself has not executed in sale deed), can take place without permission of Authority, no purchaser from the allottee can claim to be a bona-fide purchaser of the property free of the claims of the Bank.

7. I am discussing below the practices of certain Authorities.

a) **DHA LAHORE, LDA, COOPERATIVE HOUSING AUTHORITIES ETC.**

In case of DHA Lahore, LDA and various cooperative housing societies etc. the practice is to issue an allotment letter or a transfer agreement in the first instance. Conveyance deed is executed only when a house has been erected at the site according to the approved site plan. Very often property changes hands after taking permission from the relevant authority. The transfer of interest is accepted by the Authority on the same terms and conditions as original allotment/transfer letter.

b) **DHA KARACHI**

(i) In the case of DHA, Karachi the procedure that is followed is that, in the first instance, a Sub-lease in Form-A is granted authorising the lessee to raise construction on the relevant plot. Once that has been done, a 99 years lease in Form-B is issued. Since in both cases a regular "Sub-lease" is issued it should be possible in the case of sub-lease in Form-A to create security by its deposit under an MDTD coupled with execution of an “Assignment Agreement”. Financing in relation to Form-A sub-lease would, of course, be for the purpose of building a house at the site. Considering the nature of this lease,

permission to create security would also be required from DHA in an agreed form.

(ii) As regards Sub-lease in form-B, if financing is to be provided for purchasing a house covered by this kind of lease then security can be created by deposit of this document with the Bank under a "Memorandum of Deposit of Title Deeds" and thereafter DHA may be informed about the security interest.

8. **ARMY OFFICERS HOUSING SCHEME PART-II**

Before I render an opinion regarding appropriate security structure for providing facility to erect a house in the Scheme, or to purchase an already constructed house, it would be useful to refer to certain provisions of the Scheme and also "GHQ Finance Scheme on Mark up Basis through Banks".

i) Army Officers Housing Scheme Part-II (as per their Brochure of January 2003) visualizes that in the first instance an eligible officer, who is a member of the Scheme, would have a plot earmarked for him on which he may construct a house. Clause 8 (l) makes it very clear that formal allotment letter would be issued only when construction of a house had been completed on the plot. After allotment has been made the allottee would, under clause 9(a) be eligible for grant of "lease rights". Even where lease rights have been formally granted, any transfer of such rights to persons who do not belong to the Army would require special permission.

ii) From the above it can be seen that if the Bank were to provide finance for erecting a house in any Army Officers' Housing Scheme, then the relevant plot cannot be available by way of security, since allotment rights would be conferred on an officer only after the house has been constructed.

iii) Even where a lease has been granted to an officer for a plot having a fully constructed house, if finance were to be provided by the Bank for purchase of the house by the officer then the difficulty in enforcing the security over the house would be that the house would not be saleable to the public at large without special permission from Army authorities under Clause 9(e). The requirement of special permission would have a serious negative effect on the liquidation value of the security.

iv) In view of the above, properties in the Scheme are not suitable as collateral security for financing in general. Where financing is required to build a house in the Scheme, mortgage should also be obtained over some property not falling within the Scheme.

9. **LEASEHOLD PROPERTIES**

Leasehold properties can be acceptable only when the lease is assignable. If consent of the lessor for assignment is required then his permission to mortgage should be obtained. The Bank has to carefully consider whether the lease has sufficient period to run. The Bank must also monitor the lessee's performance obligations under the lease to ensure that it is not forfeited on account of default by the lessee. The Bank should obtain an assurance from the lessor that the Bank would be given opportunity to cure any default on part of the lessee.

FINANCING AGAINST PROPERTIES IN COOPERATIVE HOUSING SOCIETIES

1. A cooperative housing society is a corporate body established under the Cooperative Societies Act of 1925. It is required by law to have a constitution in the form of bye laws. These bye laws have to be approved by the Registrar of Societies before a society can function. In legal terms society is "juristic person".

2. In cases of cooperative societies sometimes the societies execute transfer deed in favour of a member but very often a transfer deed is executed after building has been erected or some other conditions have been satisfied. It is also an existing practice that interest relating to a plot in society keeps getting transferred from one person to the other person without there ever being a registered transfer deed from the society. In these kinds of cases the society issues a letter acknowledging the transfer of interest from one allottee to the other. Pending execution of the sale deed by the society, the primary document in favour of the first allottee is a letter of allotment setting out terms and conditions of the engagement between the parties.

3. While taking a decision of providing facility to a person secured on a plot or a house in a society, the Bank would need to examine such proposition from three angles:

   a) Is there a validly constituted society?

   b) Does the society own the land in which a plot has been allotted to a prospective customer, and whether the proposed housing scheme has been approved by the regulatory authorities for land use & planning (such as Local Government Institutions, statutory development authorities etc.) and also whether the housing scheme has reached a reasonable stage of development.

   c) Whether the customer holds a transfer deed in his favour from the society or a subsisting allotment agreement?

4. In the light of the above discussion, a bank should seek the following information and materials before providing Housing Finance:

CHECKLIST

i) Copy of bye-laws of the society.

ii) Copy of the lay out plan of the housing scheme being set up. Where the society is being developed in phases, then a copy of the lay out plan for the relevant phases be obtained. The plan should identify the relevant plot.

iii) Proof that the housing scheme has been approved from the relevant planning authority,

iv) Copy of the approval letter from the regulatory authority should be obtained since, in case of housing societies, certain number of specific plots are mortgaged with the approving authority.

v) Proof of ownership of the land where the plot is located.

vi) Copy of the **original** allotment letter relating to the relevant plot.

vii) Copy of the transfer deed or letter of allotment in favour of the applicant customer

viii) Possession slips relating to the plot.

ix) Where the society or the developer has also to erect structure at the site, copy of the relevant building agreement be obtained.

x) Permission to mortgage from the society.

xi) Where an applicant claims to be in possession of the plot, bank before agreeing to financing should have the plot examined by a surveyor, or should itself confirm that the applicant is in possession of the relevant plot.

xii) It should always be confirmed, after site inspection that the infrastructure of the society (roads, electricity, sewerage etc.) has reached sufficient stage of development to make the scheme livable.

5) Since the issues discussed above, are going to be of recurrent nature, it would be advisable for bank to carry out a regular survey of various housing societies and give them a rating

regarding their reliability. It is in the interest of all housing societies that funds should be available to their members and it is also in the interest of the Registrar Cooperative Societies that confidence be created in schemes floated by cooperative housing societies. Bank could seek basic information regarding ownership, plotting, & planning permission directly from a society before investment of funds in housing societies. Bank could take up the matter with Registrar of Societies and obtain necessary information from the Registrar regarding various housing societies. Wherever, a housing society claims that its plans have been approved by the planning authorities, the matter could also be taken up with the planning authority and information be confirmed from them. Once the survey has been completed, bank could proceed on the basis of the information available and save its prospective customers from the difficult process of obtaining the necessary information in the Checklist above.

6) On the basis of the above survey, bank could from a basic judgment regarding feasibility of making investment in their lands. I may point out that as far as information regarding certain established societies is concerned, even a local inquiry from the society area by a responsible officer of bank could create sufficient confidence regarding various issues relating to the plot or land for which financing is to be provided. In fact societies like NESPAK, TECH Society, PIA Housing Society, Pakistan Expatriates Cooperative Housing Society, WAPDA Employees Cooperative Housing Society, Department of Physical Planning Society, & EMECH etc. have already established such credibility that it might be unnecessary to seek complete information, as set out in the Checklist.

UNDERSTANDING EQUITABLE MORTGAGES

1. A regular “sale” of immovable property and a “mortgage” of immovable property have certain similarities. Both constitute a “transfer” of property. When a property is sold by the seller to the buyer it becomes the property of the buyer. After having made the sale the seller cannot sell this property to another person. The purchaser from him would acquire no title since the seller has none (having already transferred it to the buyer). If after the sale any attachment is levied against the sold property or any recovery for any unpaid taxes or other governmental dues is sought to be recovered by sale of the property, such attempt would fail because the seller is no more the owner of the property. The buyer can always step forward and tell the attaching creditor or governmental department that they should not touch the property since it belonged to the buyer and the seller had ceased to have any title or interest in the property. A buyer having effectively purchased the

property as above is under no obligation to transfer it back to the seller, if the seller wants to reacquire the same.

2. In the case of a “mortgage”, the mortgagee is in the same position as that of the buyer discussed above, and is a “transferee” of property having acquired a “title” to the property. However, since the transfer is by way of “security” he is required by law to retransfer the property to the transferor (by a deed of redemption or return of the title documents, as the case may be) if the transferor (mortgagor) discharges the obligation for which the property had been “transferred”, by way of security. After transfer of the property by way of mortgage, the seller does not retain any “title” as absolute owner, but only retains a right known, in legal parlance, as “equity of redemption” i.e. he has the right to redeem the property by discharging the secured obligations. After a proper mortgage has taken place, the only transferable interest that remains with the seller is this “equity of redemption” and any purchaser from him, or any attaching creditor or governmental department, cannot reach the property (which already stands transferred to the mortgagee) but can only attach or acquire the “equity of redemption”. In other words the purchaser, any attaching creditor, or department, that acquires or seizes the property may redeem the property by fully discharging the obligations secured on it. Without doing this, they cannot touch the property of the transferee (mortgagee).

3. The law recognizes two modes of transferring a property by way of mortgage. One mode would be a regular mortgage deed “registered” with the Registrar of Documents. The other mode is that where the mortgagor deposits “title deed” of the property with the mortgagee such deposit operates as a mortgage, commonly known as “mortgage by deposit of title deeds” and also as “equitable mortgage”. Where the documents that are deposited with a creditor are not “title deeds” such deposit does not operate as a mortgage. In such situation if the property were to be attached by some other creditor, or seized for tax recovery or sold to some other person, such attaching creditor, government department, or purchaser could always say that they had taken over the property of the owner free of any mortgage since the mortgage (claimed on the basis of deposit of documents other than a title deeds) was no mortgage in the eyes of law.

4. A person having purchased any property under any “title deeds” is expected to retain with himself the title deeds. The absence of title deeds in his hands is taken by law as ample warning to all persons dealing with him that the deeds might have been deposited with some third party by way of security. As far as “jamabandis”, “mutations”, “girdawaries”, “aks shajra” and similar revenue papers are concerned, it is possible for the owner to obtain as many copies of them as he may desire. Deposit of such documents with any creditor is not recognized by law as a mortgage.

5. In the case of quite a few transactions relating to **rural properties** only mutations/ jamabandis etc. are being taken into custody on the assumption that their deposit operates as a valid mortgage. In fact, in the revenue papers, entries of only mutations relating to the registered “token mortgage” of Rs.50,000/- or Rs.100,000/- are made. The revenue entries, in such cases, mention the registered deed by which the token mortgage had been created, or the mutation based on such registered mortgage deed. These deeds represent only the token mortgage, and in such cases any transferee from the mortgagor could say that he had no notice of any mortgage other than the token mortgage, and there was no occasion for demanding title deeds since the rights of the seller were based on inheritance, or other revenue entries such as oral sales, and not on any title documents. Although the present banking law prohibits sale of mortgaged property (under certain conditions, as stated in the law), such sale in breach of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (if made before a suit had been filed), does not make the sale void or a nullity at law.

IMPORTANCE OF CHAIN DOCUMENTS

a) The necessity to demand chain documents arises out of the peculiar structure of a mortgage by deposit of title deeds, also commonly known as an "equitable mortgage" ("**EM**").

b) An EM, unlike a registered mortgage, can be created without there being any public record of the same. It can be created merely by some deposit of a title document. The absence of the title documents in the hands of the property owner is, by itself, taken to be notice to third parties of an interest having been created in favour of some party.

c) In a case where a bank obtains the title deed only in favour of the person creating a mortgage in favour of the bank, there is always a risk that the seller of the property to such mortgagor (or any other previous seller in the chain) might have deposited his own title documents with some bank. Such previous mortgage would prevail over all subsequent mortgages, even where the subsequent mortgagees had no knowledge, whatsoever, of the previous mortgage. At present, I am handling two cases in the Lahore High Court, Lahore where persons have purchased property without knowledge of a mortgage having been created by one of the earlier vendors in a chain. In another case when I tried to enforce a decree in favour of bank, it was found that the relevant property had already been sold in execution of a mortgage decree in favour of another bank based on deposit of an earlier title deed.

d) In view of the above scenario, it is desirable that the Bank must satisfy itself about the whereabouts of the title deeds of any person who has been owner of the relevant property during the past 15 to 20 years.

e) Due to the very nature of an EM, there is no effective way of really discovering a previous EM (since there is no public record). The only way for the Bank is to satisfy itself regarding the whereabouts of the earlier title deeds.

f) In cases where a previous title deed is not available, or its whereabouts cannot be suitably determined, unless the Bank is willing to bear the risk identified above, the only protective measure that the Bank could adopt would be to ask the party to provide further mortgage over some other acceptable property.

STAMP DUTY & FINANCIAL INSTITUTIONS

1. Where a suit is based on any negotiable instrument, an instrument is negotiated or acted upon in Pakistan, or is otherwise sought to be enforced in Pakistan, and also where any other instrument which relates to property situated in Pakistan or to anything done in Pakistan, is to be presented in a court of law, it is necessary that it should bear the appropriate stamp duty. The first holder in Pakistan of any bill of exchange payable otherwise on demand or promissory note made or drawn out of Pakistan, shall before presenting the same for acceptance or payment, or negotiating it in any manner, affix thereto the proper stamp. All foreign instruments of the nature mentioned above must be stamped within three months after having been first received in Pakistan.

2. Public authorities in Pakistan are prohibited from acting upon any instrument which is not properly stamped and a duty is cast on them to impound the instrument and forward it to the appropriate authority for recovery of the duty plus ten times the shortfall. No instrument chargeable with stamp duty may be admitted in evidence, or otherwise acted upon. However, such instrument, with the exception of bills of exchange or promissory notes, may be admitted in evidence on payment of the deficient stamp duty plus ten times the deficiency by way of penalty. These prohibitions do not apply to Banking Courts.

3. From the above, it can be seen that absence of properly stamp duty does not make the instruments void but only renders them unforceable in the absence of payment of deficient stamp duty plus penalty. The proceedings may continue after the proper duty and penalty has been paid. However, as far as bills of exchange and promissory notes are concerned, deficiency in stamps would be a fatal defect in the enforceability of the instrument in a court. It may be remembered that if an instrument which is not duly stamped has been admitted in evidence without objection from the opposite party then such an instrument cannot be ignored as evidence.

4. As far as financial institutions are concerned, they are allowed certain liberties under the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("**Ordinance**"). Section 18(4) lays down as follows:

> **Sec.18(4)** Notwithstanding any thing contained in this section or any other law, the Banking Court shall not refuse to accept in evidence any document creating or purporting to create or indicating the creation of a mortgage, charge, pledge or hypothecation in relation to any property or assumption of any obligation by a customer, guarantor, mortgagor or otherwise merely because it is not duly stamped or is not registered as required by any law or is not attested or witnessed as required by Article 17 of the Qanun-e-Shahadat

Ordinance, 1984 (P.O. 10 of 1984) and no such document shall be impoundable by the Banking Court or any other Court or authority.

5. The provision reproduced above introduces certain exceptions to the Stamp Act, 1899. Under **Section 33** of the Act every public officer or other person having a authority to receive evidence is bound to impound a document which appears not to have been duly stamped. Under **Section 35** an instrument not duly stamped can neither be admitted in evidence nor can it be acted upon unless it is duly stamped. As a result of **Section 18(4)** of the Ordinance, the prohibition against admitting a document in evidence becomes inapplicable when a financial institution approaches a Banking Court. However, certain problems still remain attached to inadequately stamped instruments.

   i) As far as the liberty to admit an unstamped document in evidence is concerned, such liberty is available only to the Banking Court and not to any other court e.g. civil court a company court.

   ii) Again **Section 18(4)** of the Ordinance states only that a document may be admitted into evidence and may not be impounded. It does not state that the prohibitions contained in **Section 33** of the Stamp Act, 1899 that such document may not be "**acted upon**" would not apply. Therefore, the risk still remains that legal effect may not be given to an unstamped document.

It is, therefore, evident that the best policy is to ensure that all documents are properly stamped.

BANKERS AND THE LAW OF LIMITATION

1. 'Law of Limitation' is that part of the law which lays down the timeframe within which a person claiming any relief may approach a court of law for enforcement of any rights claimed by him.

2. It is the policy of the law that, as far as the courts are concerned, any person who desires to invoke its jurisdiction must approach it within the given timeframe. It should not be expected that access to court is available whenever a person may choose to do so.

3. Under the Law of Limitation, if access to court is not sought within the given time, the court is bound to dismiss any claim that has been pressed. The Law of Limitation governs not only the initial time within which a court may be approached but also lays down the time within which appeals etc. may be filed where a decision has been given.

4. If claim of a party is barred by limitation that does not mean that the right itself comes to end. The only legal effect is that help of the court would not be available e.g. in case of default, a bank may sell the pledged goods although a suit for recovery of the amount (to secure which the pledge had been created) might be barred by time. As far as the banks are concerned, ordinarily, their relationship would be governed by a contract. Where a contract lays down a time by which an act is to be done and the party obliged under the contract fails to do so by the prescribed time, the other party may approach a court within **three years** from the date of the breach of the contract. Where the contract has been registered with the Registrar of Documents access to court may be sought within **six years**.

5. Where payment is to be made to the bank in instalments, the position would be as follows:

   i) If the contract states that in case there is a failure to pay one instalment, the entire balance amount would become due and payable immediately then a suit must be filed for the entire amount within three years from the date when default in payment of instalment takes place.

   ii) If the contract states that in case an instalment is not paid the bank would be at liberty to recall future instalments then, in such a case, unless the bank calls in the future instalments, the bank would be at liberty to waive its rights to demand immediate payment and may allow the customer time upto the date of the final instalment to make payment for all instalment in arrears. In such a case time would run three years from the date of the final instalment.

   iii) Where the contract is silent on the effect of non-payment of any instalment then time regarding each instalment would run for a period of three years from the date of default of the particular instalments.

6. In case of Demand Promissory Notes/Bills of Exchange the time of limitation is three years from the date given on the note. In case of a term bill (that is required to be accepted) time of three years would run from the date when the bill is dishonoured for acceptance or, having been accepted, is not honoured on the date of its maturity.

7. In case of guarantees payable on demand the time would run from the date when a demand is made by a bank under the guarantee.

8. The time of limitation may be extended as follows:

   a) Where a bank is maintaining a mutual account with a customer, time would run three years from the last day of the year in which a transaction takes place between the parties.

b) If the customer of a bank, before the expiry of the period of limitation, makes any payment towards discharge of his debt or acknowledges his liability towards the bank then a fresh period of limitation would run from the date of payment or acknowledgement. However, where the payment or acknowledgement is made **after** limitation has already expired, such payment etc. does not have the effect of extending the limitation.

c) An acknowledgement binds only party making the acknowledgement e.g. the acknowledgement of the principal would not bind the guarantors nor would the acknowledgement of one guarantor bind the principal or other guarantors.

9. Where limitation has already expired, a promise made by a debtor to pay a time-barred debt become binding on the promisor regarding the amount he might have promised to pay. Such promise would not bind any other person who might have been obligated under the original debt.

10. As regards enforcement of mortgage, the mortgaged property may be brought to sale within 12 years from the date when the amount secured on the property had become due and payable.

11. Once a bank obtains a decree, it is entitled to, from time to time, move applications for enforcement of the decree subject to the following conditions:

a) The first application for enforcement should be made within three years from the date of the decree.

b) The last application may be moved not later than six yeas from the date of the decree.

c) There should not be a gap of more than three years between two successive applications.

PRIVATE SALE OF MORTGAGED PROPERTIES

1. Section 15 of the Ordinance empowers a financial institution to sell any immovable property mortgaged with a financial institution for recovery of any “mortgage money”. Mortgage money has been defined as follows:-

> **“Mortgage Money”** means any finance or other amounts relating to a finance, penalties, damages, charges or pecuniary liabilities, payment of which is secured for the time being by the document by which the mortgage is effected or evidenced, including any mortgage deed or memorandum of deposit of title deeds; and

2. Under the applicable procedure, in case of default in payment by the customer, the financial institution is required to serve two successive notices of 14 days each calling upon the mortgagor to pay the outstanding amounts and thereafter send a final 30 days' notice to the mortgagor and the customer.

3. On the above notices having been served, a financial institution becomes vested with the right to recover profits from the mortgaged property.

4. On failure to pay the outstanding amount after the final notice, the bank becomes entitled to sell the mortgaged property, or any part of it, by public auction. This can be done after publishing a notice in an English and Urdu daily newspaper of the Province where the mortgaged property is situated. The notice should furnish the following particulars:-

    a) Particulars of the mortgaged property, with details of the property.

    b) Name and address of the mortgagor.

    c) Amount of the outstanding mortgage money.

    d) Declaration of intention to sell the mortgaged property.

5. Copy of the notice of sale has to be sent to all the persons who, to the knowledge of the financial institutions, have an interest in the mortgaged property as mortgagees. The financial institutions giving the notice may participate in the public auction, and may purchase the property at the highest bid.

6. The financial institution is empowered to execute the sale deed and also obtain possession of the mortgaged property (even prior to sale).

7. The sale proceeds are to be distributed between various mortgagees in accordance with these priorities, after the expenses of sale have been defrayed. Proper accounts of the sale proceeds have to be filed with the banking court within 30 days of the sale. All disputes regarding the sale are to be decided by the banking court.

8. The Courts are prohibited from restraining the sale unless it is established that there is no mortgage, or that the mortgaged money has already been paid or the objector deposits the outstanding mortgage money.