

28 October 2016



## Ministry of Lands warns Banks on sale of mortgaged properties

- **60 days' notice must be issued**
- **Registrar to issue 30 days' notice prior to registration**
- **Property not to be sold below 75% of market value**
- **Lenders are breaching the law**
- **Ministry to strongly enforce the law**
- **No transfers without full compliance**

In a circular issued recently by the Ministry of Lands and Human Settlement Development (Ministry), the Ministry has come out strongly against lenders, banks inclusive, who do not comply with the mandatory provisions of the Land Act No 4 of 1999 (Land Act), and Mortgage Financing (Special Provisions) Act No 17 of 2008.

The statement warns that the Ministry has noticed that lenders have been breaching the above laws by not providing proper information of the defaults to borrowers, in addition to not providing statutory notice periods to borrowers. Such non-compliance can invalidate claims and lead to counter claims.

It reminds lenders that it is mandatory, before selling any mortgaged property to give 60 days' notice. This notice is as provided for under section 127 of the Land Act and is issued to inform the mortgagor the nature and extent of the default, that the mortgagee may proceed to exercise his remedies against the mortgaged property, actions that must be taken by the mortgagor/borrower to cure the default and that on expiry of the notice, the mortgagee may exercise the right to sell the mortgaged property.

Further, the Ministry warns lenders to ensure that they comply with section 133 of the Land Act which states inter alia that the sale of a mortgaged property should not be below 75% of the market price of the property and if a property is sold below 75% of the market value, the mortgagor whose mortgaged property is being sold can apply for a court to order that the sale be declared void. FB Attorneys opines that this would entail lenders to conduct a fresh valuation prior to any such sale so as not to be caught out by the 75% minimum rule.

The statement provides that there are situations whereby the lenders sell the mortgage properties and the price remain a secret between the Banks and Brokers/Auctioneers, and the mortgagor is purposely not informed of the sale price. The Ministry further states that it has been noted there are situations whereby mortgaged properties are sold below 50% or even 25% below the market value. Some of the examples provided by the said statement is of property worth TZS 432,000,000 being sold at TZS 140,000,000 and a property worth TZS 1,000,000,000 being sold at TZS 200,000,000 whereby the actual loan amount is TZS 400,000,000.

This notice comes in the wake of increasing non-performing assets in the leading banks balance sheets, and will likely make it harder for banks to recover their funds.

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### About FB Attorneys

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