

# Legalities to eternal luxury

## Legal requirements to obtain a bond

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**Property ownership forms part of the most important assets that one should strive to hold to their name. But for those looking to buy their first property the question is 'Are you going about it the right way?'**

Among the many other ways to getting your first property one can apply for a home loan. With this comes the requisites by the bank or financial institution that administers the application. The three main requirements that a financial institution will consider are:

- the affordability of the client to pay the monthly instalments,
- the history of the client to pay back current and past credit instalments and
- the value offered, the latter often referred to as the LTV or loan to value.

### Credit Score

The credit score and propensity of the applicant will be the first defining factor to enable the financial institution to determine the risk of the loan and the possibility of the client to repay the monthly instalments.

Statistics reveal that almost 50% of all home loan applications are declined due to a low, thin/bad or poor credit score. Many consumers also pay up to 75 % of their income towards debt repayment and as such fail the "affordability" test for a home loan.

If a financial institution is found guilty of reckless lending practices, such institution can be slapped with a severe penalty and also have to repay all monies received in lieu of repayment of such loan.

A financial institution will consider the risk to advance credit to an applicant and the past credit behaviour will determine the interest rate of the home loan. The better the credit score, usually the lower interest rate.

Research has shown that a 2 % increase in a home loan can cost a home owner up to 32 % in mortgage repayments over a 20-year repayment term.

### Affordability

Affordability, as guided by the National Credit Act is based on the ability of the client to pay back the credit instalment every month. If a consumer is over indebted, then the financial institution may decline or lower the amount approved.

As a guideline, a financial institution will consider 30% of the gross income of an applicant to apply for the repayment of a home loan. For instance, 30% of R30 000 per month income is R10 000, the R10 000 can be applied to repay a home loan.

A repayment of R10 000 will be able to service a home loan of + R10 000 per month, depending on the repayment period of a home loan and the interest rate that the client qualifies for.

### Repayment example

- **9.75 %** - calculated at the current prime interest rate of 9.75%, a home loan payable over 20 years will cost the home buyer R 9 485.17 per month
- **10.75%** calculated at 1% over the same period at the current prime interest rate of 9.75%, a home loan payable over 20 years will cost the home buyer R10 152,29 per month

This 1% extra will cost the home owner an extra R160 109.05 in home loan repayments payable over 20 years.

### Security offered

An existing property owner can apply using his/her existing property as collateral. An aspiring home buyer can provide the new property to be purchased as collateral, or even an existing property as collateral.

Some financial institutions are currently willing to offer a home loan at 104 – 108 % of the purchase price of the property. This means that the Purchaser may be able to include transfer or mortgage

registration costs as part of the property finance application.

### Get a deposit from the government

First time home buyers can also get a deposit to assist them to qualify easier for a home loan and apply for a smaller home loan if the available FLISP Government subsidy allowance for first time home buyers is used.

A FLISP deposit is available for all first-time buyers who have a dependent, [spouse or child] and whose total gross household income is between R3 501 up to R22 000. The subsidies range between R12 162.00 (the highest to R27 960.00) on a sliding scale, based on one's income.

A practical example: As first-time buyer who earns R15 000 per month may qualify for a home loan of +/- R480 000 and a FLISP subsidy of R62 300.00.

### Apply for a lower loan

The subsidy can be subtracted from the home loan applied for and the buyer may thus have a better chance to qualify for a R417 700 home loan compared to a R480 000 home loan application. (R480 000- R62 300 = R417 700).

However, if a home loan of R480 000 is approved, the subsidy can be added to the home loan and then the purchase power of the buyer increased to R542 300.00. (R 480 000 + R62 300 = R 542 300.00)

### Who can apply for a home loan?

An applicant must be at least over 18 years old and must have sufficient income to service the monthly repayments, to comply with the requirements of "affordability" under the National Credit Act.

If a home buyer is married in community of property, in terms of Section 15 (2) of the Matrimonial Property Act 88 of 1984, both spouses must consent to the registration of the mortgage bond. If a company is to register a mortgage bond, such action must be sectioned by the directors of the company.

The records of the Companies and Intellectual Property Commission (CIPC) must be scrutinized if the company is still "in business" as other the CIPC may have commenced with a process to deregister a company due to the failure to provide and update the records of the company with the CIPCC.

If a Trust is to register a mortgage bond, such action must be approved by the trustees of the Trust. A trust agreement may stipulate that a minimum number of trustees must be in office and if such required number of trustees are not appointed or the required quorum obtained, then such mortgage application cannot legally be submitted.

### Insolvency Act

Section 34 of the Insolvency Act 24 of 1936 prescribes that certain types of property sales must be advertised to creditors and such advertisement must be placed in the Government Gazette and newspapers in the area the seller traded in.

If the advertisements were not placed, a financial institution that extended a property finance facility may face the harsh reality that their mortgage loan and security held can be regarded as worthless if the seller is declared insolvent, sequestrated or liquidated within a certain period of time after the property transfer.

It is best advised to obtain property legal advice when transaction in any property transaction or property finance application.

**SOURCES** MDW Inc, FLISP, Avid Firefly