

MORTGAGE FORECLOSURES IN GHANA: THE LAW, PRACTICE AND IMPLICATIONS

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Abstract

Historically, the mortgage market in Ghana has been bedeviled by notoriously long delays in foreclosure proceedings. The delays have largely been attributed to the inefficiencies in the judicial system as the country primarily operated under the lien theory, which requires lenders to enforce their rights over the collateral under the supervision of the courts. However, the passage of two key legislations (Borrowers and Lenders Act and Home Mortgage Finance Act) in 2008 has sought to fundamentally alter the mortgage foreclosure procedure in Ghana. In particular, both legislations allow lenders to foreclose without resorting to court processes so long as they are able to obtain possession in a peaceable manner. Notwithstanding these provisions, anecdotal evidence suggests that the use of court proceedings remains the predominant means of foreclosure. In this paper, I examine the provisions in the Home Mortgage Finance Act and Borrowers and Lenders Act relating to mortgage foreclosures and investigate the effectiveness of the provisions in affording lenders an expeditious foreclosure process.