

# ELEMENTS, PARTIES & KINDS OF MORTGAGE



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## **MORTGAGE DEFINITION** (Section 58 of Transfer of Property Act)

A mortgage is a transfer of an interest in specific immovable property for the purpose of securing the debt.

## **ELEMENTS OF MORTGAGE**

1. There must be a **transfer of an interest**.
2. There must be **specific immovable property** intended to be mortgaged.
3. The transfer must be **made to secure the debt**.

## **PARTIES IN A MORTGAGE**

**Mortgagor** - is the person who transfers the interest and takes loan.

**Mortgagee** - is the person who receives the interest and gives loan.

## **KINDS OF MORTGAGE**

### **1. Simple Mortgage.**

Where without delivering the possession of the mortgaged property, the mortgagor personally binds himself to repay the loan.

To secure the loan the mortgagor transfers to the mortgagee the right to have sold immovable property if he fails to pay.

### **2. Mortgage by Conditional Sale.**

The elements of this mortgage are as follows-

- \* The mortgagor must sell the immovable property.
- \* On the repayment of money due under the mortgage on a certain date, the sale shall become void or the mortgagee(buyer) shall re-transfer the property to the mortgagor(seller).
- \* On default of payment on that date the sale shall become absolute.

The mortgagor must sell the immovable property **ostensibly**; means that it appears to be sale but in reality it's not a sale.

### **3. Usufructuary Mortgage.**

In this the possession of property is delivered to the mortgagee and authorises him to receive rents and profits accruing from the property till the principal amount is satisfied. Here Mortgagor holds no personal liability in repaying the loan.

### **4. English Mortgage.**

It is a transaction in which the mortgagor binds himself to repay the mortgage money on a certain date and transfers the possession to the mortgagee but subject to that on the payment of loan the possession will be re-transferred by the mortgagee to the mortgagor.

- \* The mortgage property is transferred absolutely to the mortgagee.

### **5. Mortgage by deposit of title deeds.**

In England a mortgage of this kind is called **equitable mortgage**. In this mortgage there is simply a deposit of document of title and the loan is taken.

- \* An intention that the deeds shall be the security for the debt.

- \* Registration is not necessary in this mortgage.

### **6. Anamolous Mortgage.**

It is a mortgage which is not mentioned anywhere. It means except above five mortgages mentioned above, all the mortgages are anamolous. This method is not mentioned explicitly but is in practice in India.

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Read **Transfer of Property Act (TPA)**