

# Your Mortgage

By Lorren Wilson

Paying off your Mortgage - the Necessary Legal Formalities

The title of this article may seem to contain an illusory goal for those who have just taken out a thirty or thirty-five year mortgage but rest assured the day will come when you have finally finished paying back the Bank. One thing that a new mortgagor may not realise is that, with time, your ability to repay your mortgage debt should become easier as your income will invariably rise (due to cost of living increases and the like). Added to this is the fact that your equity increases as time passes due to each monthly mortgage payment going to pay off a portion of the principal of the loan. Furthermore, as property prices inevitably rise, your property is worth more and hence the equity to debt ratio increases in your favour effectively making you wealthier ...at least on paper!

So your mortgage might well be paid off sooner than you think. Indeed, if you sell your property while your mortgage is still outstanding, the mortgage will have to be paid off before the buyer can get good title. What you may not have realized all those years ago when you signed your mortgage is that you "conditionally" conveyed the legal title of your house to the person or institution that lent you the mortgage money. You see, in Bermuda a legal mortgage over property actually conveys the legal title of the property to the lender thus enabling the lender to sell the property to recoup his loan in the event you do not repay it. This is the essence of the lender's security. So that old phrase "the Bank owns my house" is indeed accurate.

When a mortgage is repaid, there is a certain procedure that is followed to formally acknowledge that your property is now no longer encumbered. Usually the Bank will ask you which law firm you would like to retain in order to have the necessary legal work done. The Bank will then send your

deeds to your designated lawyer with instructions to prepare a reconveyance. The reconveyance is a deed which, when executed by the Bank, has the effect of transferring the legal title back to the borrower. The deed will make it clear that the debt is repaid and that the property is reconveyed to you "free and absolutely discharged" from the mortgage debt. The cost of having a reconveyance done is typically charged on a Bar Scale fee basis and is fairly minimal in comparison to what it costs to have a mortgage or conveyance drawn. There is stamp duty payable on a reconveyance and this is charged at the rate of 1/20% of the original mortgage loan amount.

Once the reconveyance has been prepared by your attorney, it will be sent to the Bank for execution. It will then be stamped by your lawyer and, most importantly, he/she will arrange for the entry of your mortgage in the Book of Mortgages in the Registrar General's office to be marked satisfied. The importance of this act is to make it clear to any potential purchaser of your property that it is no longer encumbered and that you can deal with the legal title freely. Some people sometimes overlook the need to have a reconveyance done and this can lead to big problems down the road, especially if the lender's records no longer show your mortgage on the books and uncertainty exists as to whether the debt has actually been repaid or not.

If you have repaid or are about to repay your mortgage, you would be well advised to ensure a reconveyance is prepared in a timely fashion as only then will your title be complete.

Harry Kessaram is a Partner in the Property Department of Cox Hallett Wilkinson. You may contact him with any questions you may have at [hkessaram@chw.com](mailto:hkessaram@chw.com) or on 295-4630.

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**Partner-Head of Department**  
Harry Kessaram hkessaram@chw.com

**Partners**  
David Cooper dcooper@chw.com  
Wendell Hollis whollis@chw.com  
Lorren Wilson lwilson@chw.com

**Cox Hallett Wilkinson  
Barristers & Attorneys**  
Milner House  
18 Parliament Street  
P.O. Box HM 1561  
Hamilton HM FX  
Bermuda

Tel: 441-295-4630  
Fax: 441-292-7880  
email: chw@chw.com  
web: www.chw.com

