Annex A: Proposed Amendments and Laws

PROPOSED REVISIONS TO PART X OF THE LAND LAW

The proposed revisions to the Mortgage Law are based on the following premises:

(1) In most respects the Mortgage Law is adequate and can be improved by amendment of key provisions. It is our view that creation of a new mortgage law, or removing the current law from the Land Law is not necessary, and in any case would not in itself bring about significant changes in the system without changes to the underlying policies of the law.

(2) The main problem with the law today is that it is unbalanced in favor of debtors and against the interests of the lenders. We acknowledge that limiting the jurisdiction of courts to deal with issues that arise in the course of mortgage enforcement is difficult, but believe it is possible to change the approach and tone of the law to achieve better balance, and in some cases to establish rules that appropriately constrain the discretion of courts. In our view, the current law reflects a view of mortgage lenders as predatory and the mortgage relationship as primarily adversarial. The law also seems to assume that there are often valid legal and equitable defenses against mortgage enforcement that require the consideration of courts. In our experience in many countries there is little basis for any of these perceptions. Valid legal defenses to mortgage enforcement are rare, and lenders typically act responsibly. Embodying these perceptions in the law only encourages court interventions on extra-legal grounds and diminishes the availability or increases the cost of mortgage credit for all citizens, who are forced to do without or pay more because a very small number of people abuse the system.

(3) As noted in the preliminary report, we are not addressing the issue of customary rights and mortgages. In our opinion, establishing different rules for certain types of property can distort the flow of credit and result in less lending. Thus, for example, requiring the intervention of Village Councils in the case of "customary mortgages" or limiting the execution sale of customary lands to only certain people could have a negative affect on mortgage lending in these areas. However, we know too little about the place of customary land and law in Tanzania to argue for eliminating these rules at this time. The same arguments could be made regarding the distinctions made for agricultural land; to the extent that these distinctions make enforcement of a mortgage more difficult there is likely to be less agricultural landing than otherwise, particularly if lenders have the alternative of a growing residential mortgage market.

(4) Regarding the potential for mortgage securities as a liquidity device, it is our view that the best approach that can be taken now is to improve the primary mortgage market and create quality mortgage assets, in which case the common law regime of Tanzania would support rudimentary mortgage securities even today with only minor adjustments to the securities regulations. More sophisticated securitization legislation can be adopted over time if necessary in accordance with the present plans for integration of East African financial markets.

(5) In our experience most matters relating to mortgage lending typically fall under the authority of a central bank, financial services authority, or Ministry of Finance. Mortgage lending is primarily a banking activity, and there are good arguments for consolidating regulation of mortgage lending

with regulation of bank lending generally to assure that the regulator is knowledgeable about banking practice and procedure and the needs of the regulated industry, as well as to avoid institutional conflicts among Ministries. However, we consider this to be primarily a political decision and we offer no opinion at this time on which Ministry of government should be responsible for implementation of the Mortgage Law in Tanzania. Should it be decided that a change of responsibility is desirable, we do not think it is necessary to remove the mortgage provisions from the Land Law or create a new mortgage law, but to simply change the definition of "Minister" for purposes of Part X.

Section 132

Modify sub-section (2) of section 132 to permit non-judicial power of sale procedures for residential property.

> (2) A mortgagee shall not exercise the power of sale in relation to any such land as referred to in paragraphs ~~*(a),*~~ (b) or (c) of subsection (5) of section 130 without first having obtained an order of the court for possession of the land or having taken possession in the manner prescribed in paragraph (b) of subsection (2) of section 130.

<u>Comment</u>: In our view the power of sale procedures of the present law would be sufficient for protection of both lenders and borrowers with only minor amendments. First, we recommend that the non-judicial power of sale be extended to residential property, and suggest this step could help to address the problems that are arising in mortgage enforcement today, and may forestall even greater problems as the mortgage market expands. In our view the prohibition on non-judicial power of sale is based on certain misperceptions of the workings of the mortgage market. First, that responsible lenders will act in a predatory manner toward borrowers. In our experience, there is little or no evidence for this proposition, and lenders typically see sale of a property as the last resort. Secondly, the prohibition presumes that there are often legal or equitable defenses to enforcement of a mortgage that must be considered by a court, which in our experience is a very rare occurrence.

We would recommend that the prohibition on non-judicial sale be eliminated for all types of property, including agricultural property, as retaining it for some types of property will likely distort the flow of credit, but whether it should be eliminated for agricultural lands is not a main priority as we do not now see agricultural lending as a main source of growth in the mortgage market, and there are other forms of lending (e.g. micro credit) that are more appropriate for the time being.

Add a new sub-section (4) to section 132 as follows:

> *<u>(4) Not less than 10 days prior to sale of the mortgaged property by any means other than public auction pursuant to subsection (2) of section 134 of this law the mortgagee shall give to the owner and to any third party holding a registered interest in the property a notice of the sale which shall include the date of completion of the sale and the price at or above which the property will be sold.</u>*

Comment: To assure opportunity for redemption, in cases other than public auction separate notice should be provided to the mortgagor and interested third parties.

Add a new sub-section (5) to section 132 as follows:

> *(5) In its discretion, a mortgagee may bring an action for possession and sale of the mortgaged property in a court pursuant to the provisions of this law and the Civil Procedure Act.*

Comment: It should be noted that use of the non-judicial power of sale is discretionary and actions may still be brought in court proceedings. Some lenders may prefer this approach to avoid procedural challenges from borrowers.

New Section 138-1

Add a new section 138-1 as follows:

> *Section 138-1. Requests to suspend or stop sale*
>
> *(1) A mortgagor may bring an action in court to suspend or stop sale of the mortgaged property by the creditor under section 132.*
>
> *(2) In any challenge to the sale price under sub-section (1) of section 133 the mortgagor shall bear the burden of going forward. A challenge to a sale price shall not alone be grounds for delaying sale of the property if the price has been certified by a licensed property appraiser.*
>
> *(3) In the case of any auction sale of mortgaged property carried out in compliance with sub-section (2) of section 134 there arises a rebuttable legal presumption that the price received for the property is fair and the mortgagee has met its duty of care under sub-section (1) of section 133 of this law.*
>
> *(5) The court shall allow sale of the mortgaged property to proceed despite commencement of an action by the mortgagor if it determines that the challenge is unlikely to succeed or that the challenge has been made primarily for the purpose of delay. The court may impose a penalty against the debtor of up to 10% of the amount of the mortgagee's claim if it finds that the request to suspend or stop sale of the mortgaged property was made without substantial grounds and primarily for the purpose of delay.*

Comment: The current provisions of 133 are an invitation to frivolous challenges to sales and could undermine the utility of power of sale provisions. Risk of penalties against the borrower for ungrounded actions may reduce the incidence of frivolous actions.

Section 114

Modify sub-section (2) of article 114 as follows:

> (2) For the purpose of subsection (3) (sic), it shall be the responsibility of a mortgagee to take reasonable steps to ascertain whether the applicant for a mortgage has a spouse or spouses. ***Notwithstanding the foregoing sentence, a mortgagee shall be deemed as a matter of law to have met its responsibility for ascertaining the marital status of the applicant upon receipt from the applicant, and any spouse or spouses identified by the applicant, of a written and witnessed document, in the nature of an affidavit or otherwise, that there are no other spouses holding an interest or potential interest in the mortgaged property. No claim to nullify or modify the mortgage on the basis of marital rights asserted by any person or persons not identified in such writing shall be permitted, unless the rights of such person could have been ascertained from an inspection of the land records at the time the mortgage is created.***

Comment: Mortgagees should be able to rely on representations of borrowers unless information can be obtained from easily accessible and accurate public records. The current approach to marital rights is a trap for lenders. We are aware of the provisions of the Land (Mortgage) Regulations of 2005 but consider them to provide inadequate protection to lenders against court discretion, leaving significant interpretive questions regarding term such as "independent person" and the whether a waiver of "independent advice" has been freely given. In our view the documents to be provided under paragraph 5 of the Land (Mortgage) Regulations of 2005 are as susceptible to challenge on the grounds of "undue influence" as is the mortgage itself and real protection for mortgagees will require that the burden on mortgagees to ascertain states of mind and the nature of marital relationships be eliminated.

Section 135

Add a new sub-section (5) to article 135 as flows:

> *(5) A person described in sub-section (1) of this article, acting for himself or by and through the mortgagee from which he obtained the property, shall be entitled to possession of the property immediately upon acceptance of a bid at auction or contract of sale for the mortgaged property.*

Comment: The mortgagee and any bona fide purchaser should be entitled to an order of possession immediately upon sale of the property. The mortgagee should be permitted to act on behalf of the purchaser so that vacant possession can be delivered. Any challenge to the request for possession would be subject to sub-section (4) of article 135.

Section 139

Modify sub-section (1) of section 139 as follows:

> (1) Where the mortgagee under a mortgage of land which consists of or includes a dwelling house, to which subsection (5) of section 130 applies, brings an action in

which he claims possession of the mortgaged land***, or a mortgagor brings and action to suspend or stop a sale pursuant to section 132 of this law,*** the court may exercise any of the powers conferred on it by section 140 if it appears to ~~it~~ ***a high degree of certa***inty that in the event of its exercising that power, (1) the mortgagor is likely to be able within a reasonable period to pay any sums due under the mortgage or to remedy a default consisting of a breach of any other obligation arising under or by virtue of the mortgage***, and (2) there is sufficient value in the mortgaged property that despite the delay, in the event that the mortgagor fails to cure his default and pay the sums due the mortgagee will be likely to recapture the amount of its entire claim from sale of the property.***

Comment: The current test of whether a borrower will be able to cure a default I weak and courts should be held to a higher standard to make such a finding. In addition, the decision of whether to allow a delay in execution should take into consideration the size of the debt in relation to the value of the property, the condition of the property and the likelihood of further deterioration of the property value if left in the possession of the borrower. At this time the test is too one-sided, considering the interests of the borrower but not the risks to the lender from delayed possession and sale of the mortgaged property.

Add a new sub-section (4) to section 139 as follows:

(4) The court's discretion under this section may be exercised on behalf of the same mortgagor with respect to the same debt no more than once.

Comment: Repeated defaults, legal actions and court ordered suspensions of execution impose unacceptable costs on lenders. The court's equitable intervention should be exercised only once for a borrower with respect to the same debt.

Section 140

Add a new sub-sections (2) and (3) to section 140 as follows:

(2) Notwithstanding any other provision of this law, an action for exercise of a power of sale or for possession of a mortgaged property may be brought in any division of the High Court.

(3) Notwithstanding any other provision of law, and excepting any action on a customary mortgage under section 115, any action brought in a forum other than the High Court to contest, stay, suspend, terminate or seek relief from a demand for payment of a debt secured by a mortgage of real property, or an action for possession of mortgaged property, or exercise of a power of sale under this law shall be transferred to the High Court immediately upon commencement therein of an action on the same subject matter and consolidated with such action. Upon commencement in the High Court of an action for collection of a debt secured by a mortgage of real property, or for possession of mortgaged property, or exercise of a power of sale under this law no action on the same subject matter shall be

entertained in any other forum, but shall be referred to the High Court and consolidated with the action commenced therein.

Comment: Despite rules of civil procedures designed to restrict collateral attacks, forum shopping and re-opening of decided cases these appear to be commonplace and a concern of mortgagees. A more direct approach to defining the appropriate forum for mortgage enforcement actions may be desirable.

Modify sub-section (2) of section 140 as follows:

> (~~2~~3) Without prejudice to subsection (1), the court (a) may adjourn the proceedings; or (b) on giving judgment, or making an order, for delivery of possession of the mortgaged land, or at any time before the execution of such judgment or order may -
>
> (i) stay or suspend execution of the judgment; or
> (ii) postpone the date for delivery of possession,
>
> for such period or periods as the court thinks reasonable for the payment of the sums due or for the remedying of the default***, provided that in no case may the period of such suspension or postponement exceed six (6) months from the date of the order.***

Comment: There should be more balance in the law and a limit on the court's discretion. If a mortgage default cannot be cured within 6 months it is not likely to be cured, and over time the risks to the mortgagee increase from unpaid accruals of interest and property deterioration..

Modify sub-section 3 of section 140 as follows:

> (~~3~~4) Any such adjournment, stay, suspension or postponement as is referred to in subsection (2) may be made subject to such conditions with regard to payment by the mortgagor of any sum secured by the mortgage or the remedying of any default as the court thinks fit***, provided that modifications to the interest rate or the maturity of the secured debt shall not be permitted without the consent of the mortgagee.***

Comment: It should be clear that the court may not exercise its discretion to modify the economic terms of the mortgage contract.

Modify sub-section (4) of section 140 as follows:

> (~~4~~5) The court may *(a) at any time, upon motion of the mortgagee, terminate any period of suspension or postponement under sub-section (3) upon a showing of change of circumstances posing increased risk that the mortgagee will not be repaid, including without limitation any failure or threatened failure of the mortgagor to meet the terms of the suspension or*

any waste or other deterioration to the value of the mortgaged property, and (b) from time to time vary or revoke any condition imposed by virtue of subsection (~~3~~4).

Comment: The proposed language is not necessarily implied in the court's power to modify its orders under this section.

Modify sub-section 5 of section 140 as follows:

(~~5~~6) A court shall not exercise by virtue of subsection (3) of section 139 the powers conferred by this section unless it appears to the court not only that the mortgagor is likely to be able within a reasonable period to pay any amount regarded (in accordance with subsection (3) of section 139) as due on account of the principal sum secured, together with the interest on those amounts, but also that he is likely to pay ***(i)*** any further amounts that he would have expected to be required to pay on account of that sum and of interest on it if there had been no such provision as is referred to in subsection (3) of section 139 for earlier payment, ***(ii) any penalties and charges due under the mortgage agreement, and (iii) and costs incurred by the mortgagee on account of the default, including court costs and attorneys' fees.***

Comment: The current law does not take into consideration the lender's costs for bringing collection actions, which can be significant and are a legitimate addition to the amount of the debt. This is particularly true for repeat defaulters.

Add a new sub-section (8) to section 140 as follows:

(8) The provisions of this section shall apply to any action brought to suspend or stop sale of a mortgaged property by power of sale under this law.

Comment: The present provisions of the law appear to apply only to a challenge brought against a court action, and not exercise of a power of sale.

New Section 120-1

Add a new section 120-1 as follows:

Section 120-1.

(1) At least five days prior to making a mortgage loan to a borrower for purposes of acquiring, improving or constructing a residential property, a creditor shall provide the consumer in writing and in plain language the following information:

- *(a) Identification and address of the creditor and any intermediary acting for the creditor;*
- *(b) The purposes for which the loan may be used;*

(c) *A description of the payment terms of the loan, including the amount and frequency of payments, the allocation of payments to principal and interest of the loan, respectively, and the place and method of payment;*
(d) *With respect to loans on which the interest rate may be changed from time to time in accordance with the terms of the mortgage (variable interest rate loans), a description of the formula by which the interest rate will be changed and the frequency of change;*
(e) *A calculation of the entire cost of the loan to the consumer over the stated duration of the loan, assuming no prepayment, distinguishing between principal and interest and in the case of variable interest rate loans statements of the assumptions underlying the interest calculation and that actual interest paid could be more or less than disclosed;*
(f) *A good faith estimate of other costs related to the loan to be paid by the consumer, including the mortgagee's administrative costs, insurance premiums, legal, notary and registration fees, appraisal fees, etc.;*
(g) *Whether there is a possibility of early repayment (prepayment) of all or any portion of the loan, and if so, its conditions;*
(h) *Whether an appraisal of the property is necessary and, if so, by whom it will be carried out;*
(i) *A summary of the main terms of the mortgage securing the loan, including any restrictions on use or disposition of the property and the obligations of the consumer for maintenance and insurance of the property;*
(j) *An unambiguous statement that failure to repay the loan could result in loss of the mortgaged property and a description of the steps may be taken by the creditor to enforce the mortgage in the event of the consumer's failure to meet his obligations.*

(2) The Minister may by regulations prescribe the form and content of the written notice to be provided to borrowers under this Section, and where so prescribed a notice provided under this section shall be in that form and shall be considered void if not in that form, provided that no such notice shall be considered void on the grounds of technical defects alone in the absence of material harm to the recipient. No notice given under this section shall be considered defective because of discrepancies between costs estimated diligently and in good faith under item (f) of sub-section (1) of this section and costs actually incurred.

Comment: It is our view that the best protection against abusive lending practice is an appropriate and standardized regulatory regime governing pre-contract disclosures of the economic and legal terms and conditions of the mortgage.

Section 141

Add new sub-sections (2) and (3) to section 141 as follows:

(2) Notwithstanding subsection (1) of this section, upon receipt from the mortgage applicant and any other party to the mortgage, including any spouse identified by the mortgage applicant, of a signed and witnessed statement that they have understood and assented to the terms and provisions of the mortgage as their own free act and deed, a mortgagee shall as a matter of law have satisfied it obligations under sub-section (1) and no mortgagee shall be required to make further inquiry regarding such matters. No claim of undue influence shall be permitted as a defense against enforcement of a mortgage or exercise of a power of sale by or on behalf of any person signing the document described in the foregoing sentence.

(3) Notwithstanding subsection (1) of this section, upon compliance by the mortgagee with the requirements of section [120-1] of this law there shall arise a rebuttable legal presumption that the mortgagee has not engaged in fraud, deceit or misrepresentation with respect to the terms or conditions of the mortgage.

Comment: Lenders should not be required to know or inquire into the state of mind of applicants or their spouses or into the nature of marital communications. The current provisions of the law are a trap for lenders and provide too many opportunities for borrowers to abuse the system. As noted earlier, we do not think that the provisions of paragraph 5 of the Land (Mortgage) Regulations of 2005 provided sufficient protection to lenders as the documents that are delivered under those regulations are subject to the same claim of undue influence as is the mortgage itself.

Similarly, if there is to be a regulatory regime for standardization of pre-contract disclosure to borrowers, as recommended here (see proposed new section 120-1) then compliance with those rules should provide certain protections to the lender, in particular that there has been no fraud or misrepresentation with respect to the terms and conditions of the mortgage loan.

Section 142

Modify sub-section (2) of section 142 as follows:

(2) The court shall not declare a mortgage to be void unless it is satisfied that the circumstances justify it. ***It is the policy of this law that substantial justice be done, and in the absence of a showing of actual and material harm to a mortgagor a court shall not seek to modify or void a mortgage, or suspend or terminate an action for enforcement of a mortgage or possession of a mortgaged property, or suspend or terminate the exercise of a power of sale, on the basis of a mere technical defect in any document, notice or procedure required to be created, obtained, given or followed under this law, which does not materially and adversely affect the intended purpose of the required document, notice or procedure.***

Section 127

Modify sub-section (2) of section 127 as follows:

> (2) The notice required by subsection (1) shall adequately inform the recipient of the following matters:
>
> (a) the nature and extent of the default;
> (b) that the mortgagee may proceed to exercise his remedies against the mortgaged land; ~~and~~
> ***(c) actions that must be taken by the debtor to cure the default;***
> (~~c~~***d***) that, after the expiry of thirty days following receipt of the notice by the mortgagor, ***the entire amount of the claim will become due and payable and*** the mortgagee may exercise the right to sell the mortgaged land.

Comment: The proposed additions are as important as the present content of this notice, particularly bringing to the attention of the debtor that the entire debt can be accelerated. We would recommend that further attention be paid to the content of the notice through regulatory means, as the form of the notice we have seen in the Land (Mortgage) Regulations of 2005 do not necessarily reflect the requirements of the law or best practice

Section 120

Add a new sub-section (5) to section 120 as follows:

> *(5) Notwithstanding the foregoing provisions of this section, an interest rate which by the terms of the mortgage agreement may be changed periodically in accordance with a formula set out therein may be changed by a written notice from the lender to the borrower setting forth clearly and in a manner likely to be understood by the mortgagor -*
>
> *(a) the new interest rate,*
> *(b) the date on which the new rate is to become effective,*
> *(c) any change to the amount of the payment(s) due under the secured debt, and the first date on which the new payment is due, and*
> *(d) the alternative, if such is provided in the mortgage agreement, to paying an increased interest rate, if such is the case.*

Comment: It is not clear that the present terms of section 120 of the law can be changed by regulation, as has been done in paragraph 7 of the Land (Mortgage) Regulations of 2005.

Section 123

Modify section 123 as follows:

> Where a mortgage contains a condition, express or implied, by the mortgagor that the mortgagor will not, without the consent of the mortgagee transfer or assign or lease the right of occupancy or in the case of a lease or sublease, no transfer, assignment, lease or sublease shall be registered until the written consent for the mortgagee has been produced to the Registrar ***and any such transfer shall be null and void as a matter of law with respect to the interests of the mortgagee***.

Comment: The main issue is the legal effect of the transfer, not the fact of registration

Section 124

Add the following new sub-sections (5) and (6) to section 124 as follows:

> *(5) Consent given under paragraph (f) of the sub-section (1) of this section shall not imply subordination of the mortgage to any such lease or sublease in the absence of specific agreement of the mortgagee to such subordination, which agreement may be granted or withheld by the mortgagee in its sole discretion.*
>
> *(6) It shall not be deemed unreasonable for a mortgagee to require, as a condition of granting its consent under paragraph (g) of sub-section (1) of this section, that the entire debt secured by the mortgage be repaid in full.*

Comment: The present requirement that consent not be "unreasonably withheld" is weighted too heavily in favor of the borrower, and it should be clarified that while the mortgagee may not be able to prevent alienation of the property it is not obligated to subordinate its interests to any other person or to accept a substitute debtor.

Section 118

Amend section 118 as follows:

> (1) A mortgagee may, subject to the provisions of this section, make provision in the mortgage instrument to give further advances or to give credit to the borrower on a current or continuing account. ***A mortgage instrument intended to permit further advances shall include a maximum aggregate amount which may be advanced and outstanding at any point in time.***
>
> (2) A further advance ***made pursuant to a mortgage instrument described*** in subsection (1) shall not rank in priority to any subsequent mortgage unless -
>
> (a) the provision for further advances is noted in the register in which the mortgage is registered; or
>
> (b) the subsequent mortgagor has consented in writing to the priority of the further advance.
>
> (3) Except as provided for in this section, there is no right to tack.

(4) Where a mortgage provides for the ***disbursement of*** a ***specified*** principal sum ***by the mortgagee*** by way of installments, ***whether such disbursements are conditional or unconditional obligations of the mortgagee***, the payment of those installments shall not be taken to be a further advance, and such ***disbursements*** shall rank in priority to all subsequent mortgages ***up to the amount stated in the mortgage***.

Comment: As a protection for other lenders, further advance mortgages are typically subject to maximum amounts. It is better to impose a maximum on the registered mortgage than to require that a mortgage modification be registered as a condition of establishing priority over subsequent mortgages. With regard to sub-section (4), the current language appears to confuse disbursements with payments. The proposed language reflects typical practice with respect to loans for construction.

DRAFT LAW ON CONDOMINIUM (DIVIDED CO-OWNERSHIP) OF REAL PROPERTY

Section 1. Application of this law

(1) Divided co-ownership of real property occurs when certain portions of a real property are owned by specific owners (hereinafter "co-owners") for their use alone and certain portions of the property are held in co-ownership by co-owners for their common use.

(2) A property constructed and subjected to divided co-ownership after the effective date of this law shall comply with the provisions of this law. A property constructed prior to the effective date of this law may be subjected to the provisions of this law by agreement of the co-owners.

(3) For purposes of this law a "property" shall include a single building or several buildings comprising section of a unified project, together with the land on which they are located and all real rights existing in their favor.

Section 2. Fractional shares

(1) Those portions of the property that are owned by a specific co-owner and that are for his use alone are called the units. Those portions of the property that are owned by all the co-owners and serve their common use are called the common areas. Some of the common areas may nevertheless serve the use of only one or several of the co-owners, and those are called common areas for restricted use. The rules regarding the common areas also apply to common areas for restricted use.

(2) Ownership of the common areas of the property shall be divided into fractions (the "fractional shares") belonging to one or several co-owners. Each co-owner holds an undivided right of ownership in the common areas equal to the relative size of his fractional share.

(3) The relative size of each of the fractional shares with reference to the aggregate of all the fractional shares is determined as the quotient of the physical area of the co-owner's unit divided by the aggregate physical area of all units of the property. The sum of all fractional share shall equal one (1) after rounding for minor discrepancies.

(4) The following are presumed to be common areas of the property: the land, yards, verandas or balconies, parks and gardens, access ways, stairways and elevators, passageways and halls, common service areas, parking and storage areas, basements, foundations and main walls of properties, and common equipment and apparatus, such as the central heating and air-conditioning systems and the piping and wiring, including such of the foregoing that is found in units. Partitions or walls that are not section of the foundations and main walls of a building but which separate a unit from a common area or from another unit are presumed to be common.

(5) Each unit of the property constitutes a distinct object of real property and may be alienated by the owner in whole or in part. Alienation includes, in each case, the fractional share appurtenant to the unit, as well as the right to use the appurtenant restricted common areas, where applicable.

(6) The fractional share appurtenant to a unit may not be alienated separately from the unit or be the object of an action in partition. Fractional shares are not distinct objects of real property for the purposes of real property assessment and taxation.

(7) Alienation of a divided section of a unit is without legal effect unless the declaration of co-ownership and the plan of the property have been altered prior to the alienation so as to create a new fractional share, describe it, give it a separate property number and record the alterations made to the boundaries between contiguous units.

(8) Divided co-ownership of a property that is built on land that is leased or held under a right of construction or other right less than ownership may be created if the unexpired term of the lease or right, at the time of registration of the declaration of co-ownership, is over 40 years and the lease or other right is fully assignable to, and may be registered in the name of, the association of co-owners as required under this law. Any such lease or right shall be treated as section of the common areas of the property subject to co-ownership. Except as otherwise provided in this law, each co-owner, proportionately to his fractional share, is liable for the divisible obligations to the owner of the land, and the association of co-owners assumes the indivisible obligations.

Section 3. Establishment of divided co-ownership

(1) Divided co-ownership of a property is established by registration in the land records of a declaration of co-ownership.

(2) Upon registration of the declaration of co-ownership, the co-owners as a body shall constitute a legal person, called the association of co-owners ("association"), the objects of which are to preserve the property, maintain and manage the common areas, protect the rights appurtenant to the property or the co-ownership, and to take all measures in the common interest of the co-owners.

Section 4. Contents of the declaration of co-ownership

(1) A declaration of co-ownership ("declaration") is comprised of the contract of co-ownership, the by-laws of the association of co-owners, and the plan of the property.

(2) The contract of co-ownership includes:

- (a) a description of the property subjected to divided co-ownership, including a description of the real rights affecting or existing in favor of the property, other than mortgages;
- (b) an unambiguous statement of intention to submit the property to divided co-ownership under this law;
- (c) a schedule of the co-owners known at the time of registration;
- (d) a description of the units, common areas and common areas for restricted use, if any;

(e) a chart or charts showing the fractional share attached to each unit;

(f) a description of any restrictions on rights of use, occupancy and alienation of units;

(g) provisions conforming to the requirements of this law regarding creation, organization and operation of the association of co-owners, including without limitation the name and legal address of the association, its powers and responsibilities, and rules and procedures for governing its financial and other affairs;

(h) such other matters that the co-owners deem appropriate and which do not contradict this law.

(3) The by-laws of the association of co-owners contain the rules on the enjoyment, use and upkeep of the private and common areas, and those on the operation and administration of the co-ownership. The by-laws also deal with the procedure of assessment and collection of contributions to the common expenses.

(4) The plan of the property shall contain the information required under section 5 of this law.

(5) No declaration of co-ownership may impose any restriction on the rights of the co-owners except restrictions justified by the use, characteristics or location of the property.

Section 5. Plan of the property

(1) A plan of the property ("plan") consisting of one or more sheets shall be appended to the declaration of co-ownership. Each plan must be clear and legible and contain a certification of the sponsor that it contains all information required by this section.

(2) The plan of the property shall show:

(a) a survey or general schematic map of the land and building(s), whether existing or proposed;

(b) to the extent feasible, a legally sufficient description of all servitudes serving or burdening any portion of the land;

(c) the identifying numbers of the units, their approximate location and the approximate dimensions of their vertical and horizontal boundaries, the latter with reference to an established datum;

(d) identification by appropriate notation or indicator of the common areas, including the approximate location and dimensions of any porches, decks, balconies, garages, or patios characterized as common areas for restricted use; and

(e) all other matters customarily shown on land surveys.

(3) Portions of the property which at the option of the sponsor may not be constructed shall be marked as such on the plan.

(4) Plans shall be approved by the [ ] and separate cadastre numbers shall be assigned to the property and to each unit in the manner provided by law. The cadastre plan shall be registered in the surveying book of the area in which the property is located.

(5) The [ ] shall make laws, not conflicting with this law, governing the preparation and registration of the cadastre plan and assignment of cadastre numbers for properties subject to divided co-ownership.

Section 6. Registration of the declaration

(1) A declaration of co-ownership shall be in written form and signed by all the co-owners of the property at the time of registration, by the owner of the land on which the property is located, and by all the creditors holding mortgages on the property. Amendments to the declaration shall be signed by the association of co-owners.

(2) The declaration and any amendments made thereto shall be registered in the [ ] of the area in which the property is located.

(3) The property subject to divided co-ownership and each of the units shall be treated as separate real estate objects for purposes of registration with the [ ]. The declaration shall be registered against the property, and shall be noted in the registration of each unit as an encumbrance on the ownership right. Amendments to the declaration shall be registered only with respect to the property, unless they directly affect a unit, and amendments made to the by-laws of the association shall be filed only with the association.

(4) The [ ] shall collect and archive registered declarations separately from other real estate documents.

(5) The [ ] shall issue laws consistent with this law for registration, indexing and archiving of declarations, properties subject to divided co-ownership and units of such properties.

(6) From the time of its registration the declaration binds the co-owners and their legal successors in ownership of a unit of the property.

Section 7. Rights and obligations of co-owners

(1) Subject to the provisions of this law and the declaration, each co-owner has the right:

- (a) to use his unit and the common areas for his own needs as well as for the needs of his family and household;
- (b) without the approval of the association or any other co-owner, to transfer his unit to any other person by sale, lease, gift, bequest, devise, pledge or mortgage or any other manner permitted by law;

(c) to participate in the management of the association in accordance with the provisions of the declaration and bylaws;

(d) to elect and be elected to the association's governing boards and committees; and

(e) to have and exercise other rights that do not contradict this law that are provided by law or the declaration.

(2) Each co-owner is obliged:

(a) to observe the declaration and by laws;

(b) to observe all laws an laws pertaining to the property; and

(c) to contribute to costs of maintaining and operating the property, including the contingency fund, in proportion to his fractional share.

(3) Only the co-owners who use common areas for restricted use contribute to the costs resulting from those portions.

(4) No co-owner may interfere with the carrying out, even inside his unit, of work required for the conservation of the property approved by the association, or of urgent work.

(5) A co-owner who suffers prejudice by the carrying out of work, through a permanent diminution in the value of his unit, a grave disturbance or deterioration of enjoyment, even if temporary, is entitled to obtain compensation from the association if the association ordered the work or, if it did not, from the co-owners who did the work.

(6) Where the refusal of a co-owner to comply with the declaration of co-ownership causes serious and irreparable prejudice to the association or to one of the co-owners, either of them may apply to the court for an order ordering the co-owner to comply with the declaration. If the co-owner violates the order or refuses to obey it, the court may, in addition to the other penalties it may impose, order the sale of the co-owner's unit, in accordance with the provisions of the Civil Procedure Code regarding the execution sale of property.

Section 8. Physical alterations to units

(1) Subject to the provisions of the declaration, any mortgage encumbering a unit, and other provisions of law, a co-owner may:

(a) make improvements or alterations to his unit that do not damage or impair the common areas or any other unit;

(b) not change the appearance of the common areas, or the exterior appearance of a unit or any other portion of the property, without permission of the association;

(c) after acquiring all or section of an adjoining unit, remove, alter or create apertures in any intervening partition if those acts do not impair the structural integrity or mechanical systems of the property or another unit or lessen the support of any portion of the property;

(d) relocate the boundaries between adjoining units, combine two or more units or subdivide an existing unit into two or more portions by an amendment to the declaration upon approval of the association and the co-owners of any affected units.

(2) At the expense of the co-owners applying for relocation of boundaries, combination or subdivision of units, the fractional shares will be reallocated among co-owners as necessary and the association will prepare and register necessary amendments to the declaration to show the subdivided unit or altered boundaries between adjoining units, their dimensions, identifying numbers, and the amendments to the fractional shares of such units.

Section 9. Rights and obligations of association and of co-owners

(1) The association of co-owners acts through the general meeting of co-owners or the board of directors as provided in this law and the declaration.

(2) Unless otherwise provided in this law or in the declaration, an association of co-owners may:

(a) adopt and amend rules and laws;

(b) adopt and amend budgets;

(c) elect a Board of Directors;

(d) hire and discharge managers;

(e) elect from among the co-owners an independent audit committee and select independent auditors to review and certify the financial affairs of the association;

(f) take loans to support the activities of the association;

(g) acquire real property, including units of the property, through purchase or otherwise;

(h) arrange for the expansion and construction of the property;

(i) terminate the co-ownership;

(j) transfer use or ownership of common areas to persons who are not co-owners, and impose and receive any payments, fees, or charges for the sale, use, rental, or operation of the common areas;

(k) institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or co-owners on matters affecting the co-ownership or the property;

(l) make contracts and incur liabilities;

(m) hire and discharge employees of the association and other independent contractors;

(n) regulate the use, maintenance, repair, replacement, and modification of common areas;

(o) collect payments for common expenses from co-owners, and impose charges for late payment of assessments;

(p) levy reasonable fines for violations of the declaration, by-law and rules and laws of the association;

(q) open and manage any financial accounts of the association with banks or other financial institutions;

(r) invest funds of the association not needed for daily operations;

(s) exercise any other powers conferred by this law or the declaration or that may be exercised under the laws of the Republic of Egypt by legal entities of the same type as the association; and

(t) subject to the declaration and this law, exercise any other powers necessary and proper for the governance and operation of the association and the property.

(3) The powers enumerated in paragraphs (a) through (j) of the foregoing paragraph of this section may be exercised only by vote of the co-owners at a general meeting, and all other powers of the association may be delegated to the board of directors.

(4) The association shall keep at the disposal of the co-owners a register containing the name and address of each co-owner and each lessee of a co-owner; the minutes of the meetings of the co-owners and of the board of directors; the financial statements of the association; the declaration of co-ownership; copies of the contracts to which the association is a party; the plan of the property and all other documents relating to the property and the association.

(5) Each year, upon the recommendation of the board of directors or the manager, the association shall fix the respective contributions of co-owners for common expenses, after determining the sums required to meet the expenses arising from the co-ownership and the operation of the property, and the amounts to be paid into the contingency fund. The association, without delay, shall notify each co-owner of the amount of his contribution and the date(s) when it is payable.

(6) Upon the recommendation of the board of directors or the manager, the association shall establish, according to the estimated cost of major repairs and the cost of replacement of common areas, a contingency fund to provide cash funds on a short-term basis allocated exclusively to such repairs and replacement. The association shall be the owner of the fund. The contribution of the co-owners to the contingency fund shall be at least 5 % of their contribution for common expenses. In fixing the contribution to the contingency fund, the rights of any co-owner in the common areas for restricted use may be taken into account.

(7) The association shall have an insurable interest in whole property, including the units. It shall obtain and maintain insurance against ordinary risks, such as fire and theft, on the whole of the property, except improvements made by a co-owner to his unit. The amount insured shall be equal to the replacement cost of the property. The association shall also take out third person liability insurance. Each contract of insurance obtained by the association shall be deemed to provide as a matter of law that non-observance of a condition of the insurance contract by a co-owner may not be set up as a defense against the association.

(8) The indemnity owing to the association following a substantial casualty loss to the property shall be paid to a trustee appointed in the declaration or, where none has been so appointed, designated by the general meeting of co-owners. The indemnity shall be used to repair or rebuild the property, unless the association decides to terminate the co-ownership, in which case the trustee, after determining the share of the indemnity of each of the co-owners according to their fractional shares, shall pay to mortgage creditors of each co-owner out of that co-owners share any amounts owing on the mortgage, and remit the balance of the indemnity to association for distribution to co-owners in accordance with their shares.

(9) A unit does not cease to exist as a separate property by the fact that the fractional share is acquired by the association, but the association has no vote for that unit at the general meeting and the total number of votes that may be given is reduced accordingly.

(10) A judgment requiring the association to pay a sum of money is executory against the association and against each of the persons who were co-owners at the time the cause of action arose, proportionate to his fractional share. A judgment may not be executed against the contingency fund, except for a debt arising from the repair of the property or the replacement of common areas.

(11) The association may demand termination of a lease of a unit, after notifying the lessor and the lessee, where the non-performance of an obligation by the lessee causes serious prejudice to a co-owner or to another co-owner.

(12) The association holds a lien in the nature of a mortgage against the unit of any co-owner for unpaid common expenses and other assessments of the association. Such lien is superior to the lien of any other creditor, except that the amount of such lien that is superior to the rights of a mortgage registered against the unit is limited to the amount of common expenses attributable to the unit for the period of 3 months under the budget of he association then in effect.

Section 10. Board of directors of the association

(1) The co-owners may elect a board of directors ("board"), which shall be the executive body of the association accountable to the general meeting of co-owners. The composition of the board of directors of the association, their mode and term of appointment, replacement and remuneration, and their powers and responsibilities shall be fixed in the by-law of the association.

(2) Decisions of the board are taken by majority vote of members present and voting at the meeting at which a quorum of fifty percent (50%) of the members of the board are present.

(3) The day-to-day administration of the association may be entrusted to a manager chosen from among the co-owners or otherwise.

Section 11. Officers of the association

(1) The chairman of the board shall be elected by the board from among its members. The chairman of the board shall be the chief executive officer of the association and the chairman of the general meeting of co-owners. In the chairman's absence meetings of the board and the general meeting shall be chaired by other persons or officers of the association designated by the board.

(2) The association may provide in the declaration for such other officers of the association as may be necessary, including without limitation one or more deputy chairmen, a treasurer, and a secretary.

(3) The chairman of the board of directors may act for the association in its transactions. The powers and authority of other officers of the association shall be defined in the by-laws of the association.

Section 12. General meeting of co-owners

(1) The general meeting of co-owners may exercise all of the powers of the association. The powers of the general meeting may be delegated to the board or to committees of the board or the general meeting, in accordance with the declaration and the by-laws of the association.

(2) A general meeting of co-owners shall be held at least once in each fiscal year of the association within sixty (60) days of the start of the fiscal year. Special meetings may be called by the board or by co-owners holding at least ten percent (10%) of the fractional shares.

(3) The notice calling the annual general meeting of the co-owners shall be accompanied by the summary financial results of the association for the preceding fiscal period, a statement of outstanding debts and claims, the budget forecast for the coming fiscal period, any proposed amendment to the declaration of co-ownership and a summary on the general terms and conditions of any proposed contract or planned work to be approved by the meeting.

(4) Within five days of receiving notice of a general meeting of co-owners, any co-owner may cause a question to be placed on the agenda. The board of directors shall give written notice of the questions newly placed on the agenda to the co-owners before the meeting.

(5) Co-owners holding forty percent (40%) of the fractional shares present or represented by legal proxy constitute a quorum at the general meeting. If a quorum is not reached, the meeting is declared adjourned to a later date, notice of which shall be given to all the co-owners, and at the second meeting decisions taken shall be binding on co-owners even in the absence of a quorum.

(6) Unless otherwise provided in this law or the declaration, decisions of the association shall be taken by a majority of the co-owners present or represented at the meeting.

(7) Each co-owner is entitled to a number of votes at a general meeting proportionate to his fractional share. The undivided co-owners of a fractional share shall vote in proportion to their undivided shares.

(8) Any co-owner who has not paid his share of the common expenses or his contribution to the contingency fund for more than three months may be deprived of his voting rights by decision of the board.

(9) Decisions respecting the following matters shall require a majority vote of co-owners representing at least seventy-five percent (75%) of the fractional shares of all the co-owners:

(a) acts of acquisition or alienation of real property by the association;

(b) work for the alteration, enlargement or improvement of the common areas, and the apportionment of its cost;

(c) the construction of properties or the creation of new fractional shares;

(d) the amendment of the declaration or of the schedule of fractional shares;

(e) change of the use of the property.

(10) Any stipulation of the declaration which changes the number of votes required in this section for taking any decision shall be legally ineffective.

(11) Any decision of the association which, contrary to the declaration, imposes on a co-owner a change in his fractional share, a change of his unit or a change in the use he may make of it shall be without legal effect. Any co-owner may apply to a court to annul a decision of the general meeting if the decision is biased, if it was taken with intent to injure the co-owners or in contempt of their rights, or if an error was made in counting the votes, provided that the action shall be forfeited unless instituted within 60 days after the meeting.

Section 13. Rights and obligations of a sponsor of divided co-ownership; transfer of control of the co-ownership property

(1) A sponsor ("sponsor") of a divided co-ownership is any person who, individually or through affiliated persons or entities, at the time of registration of a declaration of co-ownership, owns one-half or more of all the fractional shares, or that person's legal successors, except that a person who in good faith acquires from a sponsor the fractional share of a unit for a market price with the intention of occupying it or holding it for investment is not considered to be a successor of a sponsor.

(2) Commencing at the end of the second year after the date of registration of the declaration of co-ownership no sponsor of a co-ownership property comprising four or more units is entitled to over forty-nine percent (49%) of all the votes of the co-owners, or more than twenty-five percent (25%) commencing at the end of the third year after registration of the declaration.

(3) Within 90 days from the day on which a sponsor of a co-ownership ceases to hold a majority of voting rights in the general meeting of the co-owners, the board of directors shall call a special meeting of the co-owners to elect a new board of directors. If the meeting is not called within 90 days, any co-owner may call it.

(4) At the general meeting called to elect a new board of directors the sponsor shall render an account of its administration of the association, including the financial statements, which shall be accompanied with the comments of an accountant who has been provided by the sponsor with access to the books, accounts and vouchers concerning the association and the property.

(5) The new board of directors may, within 60 days of the election, terminate, without penalty, a contract for the maintenance of the property or for other services entered into before the election by the association, where the term of such contract exceeds one year.

(6) During the time that a sponsor holds voting control over the association the sponsor shall not be required to make contributions to the common expenses in proportion to the fractional shares held by it, but alternatively shall fund the difference, if any, between the amounts collected from the co-owners other than the sponsor and the actual operating costs of the association and property. Notwithstanding the foregoing, the sponsor shall be obligated to make contributions to the contingency fund in proportion to its fractional shares.

(7) A sponsor may reserve the following rights in the declaration:

(a) to construct or add additional units or common areas to the property and adjust the fractional shares accordingly, but only to the extent specified in the declaration and the plan of the property;

(b) to own units;

(c) to have and use a general construction easement over the land and the common areas of the property to complete construction;

(d) to maintain sales offices and signs and management offices in the property in units owned by the sponsor;

(e) to appoint or remove any member of the board of directors or any officer of the association during the time when the sponsor retains voting control over the association.

(8) No change or modification to the provisions of the declaration dealing with the rights of the sponsor may be made without the consent of the sponsor.

(9) Where a defendant sets up the failure to act with diligence against an action based on a latent defect in construction of the property, such diligence shall be appraised in respect of the association or of a co-owner from the day after the sponsor transfers voting control of the association.

(10) A sponsor shall complete all improvements identified in the declaration and depicted on the plan of the property and not noted as subject to the sponsor's discretion. The sponsor is subject to

liability for the prompt repair and restoration to a condition compatible with the remainder of the property of any portion of the property damaged or destroyed by the sponsor's continuing construction activity.

(11) A unit and appurtenant fractional shares shall be conveyed by a sponsor to a purchaser who is not a sponsor free and clear of all mortgages and liens other than those to which the purchaser has agreed.

(12) Prior to commencement of sales of units and fractional shares the sponsor shall convey to the association the sponsor's rights to the land on which the property is located, free and clear of mortgages or other liens in the nature of security for amounts claimed for purchase or use of the land, other than rental payments to a third party lessor of the land.

(13) Neither the association nor any co-owner shall be liable for any claims made against the association which arise during any period that a sponsor holds voting control over the association, or which are related in any way to the exercise of any rights reserved to the sponsor in the declaration, and the sponsor indemnifies the association and the co-owners against any such claims.

Section 14. Sale of units

(1) Where a unit in a property which comprises four (4) or more units is sold, a seller who is a sponsor shall give the purchaser an offering memorandum at the time of signing the contract of purchase and sale.

(2) An offering memorandum shall contain:

(a) the names and addresses of the sponsors and builders of the property;

(b) the plan of property;

(c) a summary of the descriptive specifications of the property and the units;

(d) a budget forecast for operation of the property;

(e) information on arrangements made for the management of the property, if any;

(f) information on any real rights or other rights, limitations or restrictions which encumber or affect the ownership right to the units or common areas of the property.

(g) a copy or summary of the declaration.

(3) The budget forecast required by paragraph (d) of sub-section (2) shall be prepared on the basis of one year of full occupancy of the property beginning on the date of delivery of possession of a unit to a person other than the sponsor. A budget shall include, in particular, a statement of debts and claims, revenues and expenditures and common expenses, and shall indicate, for each fractional share, the likely amount of real estate taxes, the rate of such taxes and the annual expenses payable, including, where applicable, the contribution to the contingency fund.

(4) No sponsor may offer to sell, contract to sell or sell a unit until the declaration has been registered as required under this law and a registration file has been opened in the [ ] for each unit of the property.

(5) Failure of the sponsor to comply with the requirements of this section shall render any contract for sale of a unit of a property null and void at the discretion of the purchaser at any time prior to actual completion of the sale, and return of any earnest money payment or other deposit made by the purchaser with interest at the legal rate from the time made.

(6) A co-owner who is not a sponsor shall prior to completion of the sale of his furnish to a purchaser copies of the declaration, the association's current budget and financial statement, and a certificate containing a statement of the amount of assessments for common expenses against the unit; the amount of any unpaid common expense currently due and payable with respect to the unit, and of any other fees or charges payable by the co-owner of the unit. The association shall provide the documents and certificate required under this paragraph within ten (10) days of request from a co-owner, subject to reasonable payment for the costs of reproduction.

(7) A person who acquires a unit, by whatever means, including the exercise of a mortgage right, is bound to pay all common expenses due in respect of that unit at the time of the acquisition. A purchaser of a unit shall not be liable for any common expenses, assessments or fees in excess of the amounts shown in the sales certificate of the association prepared in accordance with paragraph 6 of this section.

(9) It shall not be required to provide an offering memorandum or sales certificate in the case of transfer of a unit as a gift; pursuant to a court order; any transfer by a government or government agency acting in its capacity as such and not in a commercial capacity as sponsor; a transfer of a unit of an property used exclusively for non-residential purposes; or a transfer by power of sale mortgage foreclosure.

Section 15. Protection of mortgagees

(1) The association may enter into agreements with mortgagees holding mortgages on any unit by which the association agrees:

(a) to give written notice to the mortgagee of any state of facts or occurrence which actually or potentially affects adversely the physical or financial condition of the property;

(b) to give written notice of any delinquency in the payment of common expense by the co-owner of a unit on which the creditor holds a mortgage, or any intention of the association to enforce its claim to collect common expenses against a unit;

(c) not to amend any material provision of the declaration without the consent of the mortgagees holding mortgages on the units;

(d) not to take specified actions concerning the property without the approval of the mortgagees holding mortgages on the units, including without limitation conveying or encumbering any of the common areas; termination of the co-ownership; or pledge or assignment of the future income or receivables of the association;

(e) upon the request of any mortgagee, to provide a copy of the current financial statements of the association; or

(f) such other matters on which the association and mortgage creditors may agree and which do not contradict this law.

(2) Agreements for the benefit of mortgagees may be included in the declaration, in which case they will constitute contractual obligations of the association toward any present or future mortgagee holding a mortgage on any unit.

(3) Upon acquiring ownership of a unit through enforcement of its rights under a mortgage, a mortgagee succeeds to all rights and obligations of a co-owner.

Section 16. Termination of co-ownership

(1) Co-ownership of a property may be terminated by a decision of a majority of seventy-five percent (75%) of the co-owners representing 90% of the fractional shares.

(2) The decision to terminate co-ownership shall be recorded in writing and signed by the association and mortgagees holding mortgages on any unit, which shall be entered in the land register in the file of the property and a notation made in the file of each of the units.

(3) The association shall be liquidated according to the provisions of the laws on liquidation of legal persons.

LAWS AND REGULATIONS ON CREDIT REPORTING AGENCIES AND CONSUMER CREDIT REPORTS

Issues And Drafting Checklist

Definitions

Who is a "Consumer"?
What is "Credit"?
Who is a "Creditor"?
What is "Consumer Credit Information"?
What is (not) a "Credit Reporting Agency"?
What is (not) a "Credit Report"?

Structure

Membership; entry
Mandatory membership for banks?
Obligation to contribute data
Financial support
Reporting and regulation

Consumer Consent

When is consumer consent required for collection or dissemination of data?
- By creditors?
- By credit reporting agencies?

At what point in time must consent be given?
What form should consumer consent take?
Are there cases in which explicit consent is not necessary?
Is the burden on the creditor/credit bureau to obtain consent, or on the consumer to prohibit dissemination of data?

Contents of Consumer Data

What is the scope of data?
- Negative data only?
- Negative and positive data?
- Other personal data?

What data is always excluded from credit reports?
What data cannot be collected by creditors?
What data may not be disseminated by creditors? Relationship to bank secrecy laws.
What is the relationship to laws on discrimination?
May the credit report include data that is in the public domain? Court records, judgments, real estate records, etc.
At what point does data become outdated and no longer relevant?

May a credit bureau gather data from interviews with friends, associates, employer, etc?

To whom may a creditor transmit consumer data?

Only credit bureaus?
Affiliated entities?
Foreign credit bureaus?
Relationship to bank secrecy laws?

To whom may a credit bureau transmit a credit report?

Any person having a legitimate business purpose?
What is a legitimate business purpose?
Government agencies?
Courts?
Who is responsible to assure that reports are provided only to eligible recipients?
How does the credit bureau monitor who is receiving reports?
May a credit bureau transmit bulk data to other credit bureaus? To any other user?
May a credit bureau transmit bulk data to a foreign entity?

Notice to Consumers

Should a consumer be notified -
  when a creditor transmits information to a credit bureau?
  when a credit bureau creates a file for the consumer?
  when a creditor requests or receives a credit report?
  when a creditor makes a decision based on a credit report?
Who is required to give notice to the consumer?
What should be the contents of the notice to consumers?
Should the consumer receive a copy of the credit report automatically when it is released?
Should the consumer have the right to demand a copy of the credit report?
Should the consumer be required to pay to receive a copy of the credit report?

Errors in Credit Reports

Does the consumer have the right to have the credit bureau correct errors in the credit report?
Does the consumer have the right to have a creditor correct errors in the information it has sent to a credit bureau?
Who does the consumer first notify of the error? Who has the primary responsibility?
What is the form of the notice of an error?
What is the procedure when a consumer gives notice of an error?
What is the time period for correction?
What is the procedure if there is a dispute between the creditor/credit bureau and consumer about the accuracy of the data?

Penalties

Actual damages?
Costs of bringing the complaint (attorneys' fees, court costs, etc.)?
Punitive damages?
Minimum damages?
Criminal penalties (imprisonment)? For which violations?
Are credit reporting agencies and creditors treated the same way?
Can a penalty be assessed without first requesting correction?
Is there a "reasonable procedures" defense?

Enforcement

Should there be one agency responsible for enforcing the law?
Does the Central Bank or other government agency have a role?
Can regulatory authorities seek financial penalties for violation of the law?

Annex B: Assessment Resources

Persons Met:

<u>January 2007 visit:</u>

The Honorable J. B. Kalegeya, Justice of the High Court, Commercial Division

Mwanahiba M. Ramadhan, General Manager, Personal Loans, Standard Chartered Bank

Felix G. Kibodya, Legal Counsel, National Bank of Commerce

Silvanus B. Mlola, Advocate, Kisarika & Malimi

Geofrey N. Dimoso, Legal Officer, Azania Bancorp Limited

Juma Kisamme, Managing Director, Eurafrican Bank

Nehemiah K. Mchechu, Managing Director and CEO, United Bank of Africa Limited

Abdallah Singaro, Head of Marketing and Product Development, United Bank of Africa Limited

Christian P. Mpalanzi, Manager, Special Assets, United Bank of Africa Limited

Dickson Mtogesewa, Advocate, Akiba Commercial Bank Limited

Rita A. Akena, Secreary, Tanzania Postal Bank

Regina K. Sinamtwa, Principal Legal Counsel, Bank of Tanzania

Yusto E. Tongola, Legal Services Department, Bank of Tanzania

Charles G. Inyangete, Group CEO, Integrated Risk and Investment Services Limited (IRIS)

Sarah A. Kyessi, Project Manager, Unplanned Settlement Property Registration Project, Ministry of Lands and Human Settlements Development

H. J. Mwagara, Senior Land Officer, Temeke Municipal Council

Johnson Kaijage, Legal Officer, Business Environment Strengthening for Tanzania (BEST) Programme

<u>November 2006 visit:</u>

Dr. Fratern M. Mboya, Chief Executive Officer, Capital Markets and Securities Authority

F. M. Mbala, Principal Investments Officer, PPF Pensions Fund

Ladislaus M. Salema, Programme Coordinator, Property and Business Formalization Programme

Hermes C. Mutagwaba, Reseach and Planning Manager, National Housing Corporation

Fidelis K. Mutakyamilwa, Assistant Commissioner, Legal and Asst. Registrar of Titles, Ministry of Land, Housing and Human Settlements

Alex Lee Chong Pa, Chief Executive Officer, International Commercial Bank

Charles M. Chenza, Derictor of Planning and Investments, Parastatal Pensions Fund (PPF)

Venant B. Mugemuzi, Project Manager, "20,000 Plots," Ministry of Lands, Housing and Human Settlements

Martin G. Madekwe, Direcor General, National Housing Corporation

Laws and Regulations Reviewed:

Bank of Tanzania Act
Capital Markets and Securities Act, as amended
Capital Markets and Securities Act Regulations
Chattels Transfer Act
Civil Procedure Code Act
Companies Act
Draft Regulations On Unit Trusts
Foreign Exchange (Listed Securities) Act
Land Act of 1999
Land Act Amendments of 2004 (Mortgage Law)
Land Dispute Settlement Act
Land Registration Act
Land Registration Regulations
Law of Contract Act
Village Land Act

Other Documents Reviewed:

Capital Markets and Securities Authority, Final Report, "A Study On Feasibility and Implementation of the Appropriate Market Segments for the Capital Markets in Tanzania," June 2006

World Bank, FSAP II Project Appraisal Document, May 19, 2006

Tanzania Bankers Association, Concerns Raised by the Banking Industry With Regard to Provisions of the Land Act No. 4 of 1999 Relating to Mortgages, November 5, 2002

Tanzania Bankers Association, Report Of the Committee of Legal Experts On the Land Act

The Role of Courts in Facilitating Loan recovery: Tanzania Experience, Justice L. B. Kalegeya, Commercial division, High Court of Tanzania, March 8, 2005