

# CAB Training Cards



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## Five Points on Loan Documentation

### Purpose of Documentation

- a. Written Record evidencing agreement- clarity in terms and conditions
- b. As an evidence of fact in the Court of Law
- c. Identification of the parties
- d. Identification of the security
- e. Identification of the nature of charge
- f. Safeguarding bank's interest by incorporating protective clauses

### Primary and Secondary Evidence

- a. Primary evidence comprises of the original documents as well as evidence in the form of electronic evidence.
- b. Secondary evidence comprises of certified copies, counterparts of the documents and other oral accounts of the contents of the document.
- c. In the eyes of law, primary evidence has a higher value than secondary evidence. Hence, lending institutions must invariably preserve the original documents in their safe custody.

### Stamping of documents

- a. Stamp Duty is payable on or before execution.
- b. Stamp duty is levied on the basis of instrument and not on the basis of transaction
- c. Portion of the agreement may be written on the stamp paper.
- d. Unstamped or inadequately stamped documents may be rendered inadmissible as evidence.
- e. Unstamping or under-stamping may result in impounding of documents and imprisonment of person responsible for the violation.

## **Registration of documents**

- a. The documents that require compulsory registration are mentioned in section 17 of Registration Act, 1908.
- b. All documents in respect of transfer of immovable property such as agreement to sell, conveyance deed, gift deed, mortgage deed, lease deed etc. are required to be registered.
- c. If a document which is required to be registered is not registered, the document will lose its legal validity.
- d. To be registered within 4 months of execution.

## **Important precautions**

- a. It is prudent to obtain supplementary documents for the enhanced portion of the credit facility with a proper link to the existing set of documents.
- b. It is prudent to ensure that the signature is obtained in one sitting on all pages of the agreements including the schedules as the schedules form an integral part of the loan agreement.
- c. Important documents like mortgage deed should be compulsorily attested by two witnesses.
- d. Generally corrections, deletions, alterations, modifications to be avoided in the loan documents.
- e. Revival of documents to be done before the expiry of the period specified in the Limitation Act.
- f. If executant is signing using his left hand, a recording should be done to that effect and kept with the document.
- g. Certified copies of entries in books of account of a bank are admissible in evidence as per section 4 of Banker's Book of Evidence Act. However, in terms of the said Act, banks have to maintain and produce corroborative evidence to support its case.

*Compiled by*

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