

What is a private bond?

In most transactions for the sale of immovable property, a mortgage bond is registered over the property being sold in favour of the bank that provided the loan to the buyer to finance the purchase price. However, it may happen that the buyer does not qualify for the loan, and the seller may be willing to accept a mortgage as security for the outstanding purchase price or a part thereof so that the registration of the transfer can be completed. Such a mortgage is called a private mortgage.

Thus, the property is transferred into the buyer's name, and simultaneously, a mortgage bond is registered in favour of the seller for the outstanding purchase price. This can obviously only work if there are no existing mortgages on the property; alternatively, the deposit paid by the buyer must be sufficient to settle the seller's existing mortgage. Such a scenario occurs quite rarely, but it is still important to keep this option in mind for when it might happen.

If the buyer fails to pay the purchase price, the seller will be in a similar position as a bank that provided a mortgage loan. The seller will be able to take execution steps to have the property sold at an auction. The seller can also bid to buy the property back himself. In the event of the buyer's insolvency, the seller will also enjoy a preferential claim in respect of the property, due to the mortgage.

Keep in mind that the provisions of the National Credit Act must still be complied with.