



# FUNCTIONS OF THE DEPARTMENT OF DEBT CONCILIATION BOARD

## Functions of the Department of the Debt Conciliation Board

If you have a problem with regard to the payment of a loan raised on a Mortgage or a Conditional Transfer of:

- House and Property
- Estates, or
- Agricultural Land, both highland and lowland,

the Department of Debt Conciliation Board is always prepared to help you to tide over such difficulties. There are very many instances where very valuable land and property hypothecated or conditionally transferred, in order to borrow money irrespective of the rates or interest and the conditions laid down, in order to get over emergency financial difficulties, are forfeited for paltry sums of money in owing to the inability of the borrowers to redeem such property and instances are not rare where the only property of a particular person is forfeited rendering him destitute. One significant reason for this state of affairs is the lack of a clear understanding among the average persons about the various terms and conditions that may be embodied in deeds.

The Department of Debt Conciliation Board which provides remedial relief to the aforesaid problem has been established by the Debt Conciliation Ordinance No.39 of 1941.

The (Amendment) Act No.29 of 1999, which amended the original Ordinance has made provisions for this Department to intervene even in a case of a transfer of property effected purely for the purpose of a loan transaction and provide relief to the borrower, with sufficient evidence, has to satisfy the Debt Conciliation Board, that the transfer concerned has been effected as a trust or a guarantee for a loan transaction and the application should be made to the Board before the expiry of three years of such transfer.

## **How to apply for relief :**

Printed specimen forms together with all necessary information are supplied by this Department, and such application forms can be obtained from the Secretary, Department of Debt Conciliation Board, at No. 35A, Dr. N. M. Perera Mawatha, Colombo 08. either by post or by personally calling at his office.

It is mandatory that the application be accompanied by a certified copy of the deed concerned in this loan transaction and folios relating to the land, obtained from the Land Registry. Applications in respect of Conditional Transfers and those relating to Mortgage Bonds should reach the Board before the expiry of the period of Conditional Transfer or the institution of action in a court of law, respectively. The Board does not intervene in respect of loans obtained from lending institutions covered by the Recovery of Debts (Special Provisions) Act No.2 of 1990.

The procedure followed by the Department upon the receipt of a application is as follows:

01. Every application received is registered in chronological order, and the number so assigned is promptly intimated to the applicant. Replies to every letter seeking information are mailed on the same day or the day following the receipt of such letter.
02. Upon receipt of the approval of the Board for registered applications, prohibitory notices in terms of the Ordinance are issued to the Secretary, Land Registration and to the creditor concerned. At the same time notice is sent to the applicant, calling him for the Preliminary Hearing and in the case of an application in respect of a deed of transfer, notice, by order of the Board is issued on the applicant calling him for Preliminary Hearing.
03. Where the application is in respect of a conditional transfer, or a mortgage of property, a decision to publish, by order of the Board, the relevant information in the Gazette of the Democratic Socialist Republic of Sri Lanka is taken on the day of the Preliminary Hearing. Where the application relates to a deed of transfer, notice is issued on the respondent concerned calling him to be present for a hearing on the next day. Upon publication of the said information in the

Government Gazette, both parties are summoned for a Final Hearing, at which a settlement is arrived at with their concurrence, or in the case of failure to do so, action will be taken to issue certificates. In the case of applications which are in respect of transfer deeds, if the transaction amounts to a loan, necessary action is taken under the provisions of the Amendment Act No. 29 of 1999.

04. If, after arriving at a settlement, difficulties arise in obtaining payment, action in terms of the provisions of the relevant Act will be taken to conduct a review hearing, only once, at the request of the debtor or the creditor.
05. Where action in respect of problems arising in the process of implementing decisions given after hearing before the Board is filed in other courts and the Department is summoned to give evidence in that regard at the trial, the Department provides the required testimony.
06. The parties concerned may on demand obtain certified copies of the decisions of the Board, and of the proceedings before the Board on payment of the prescribed fees.

### **How settlement of loans is arrived at**

After the Preliminary Hearing both the creditor and the debtor are summoned for a Final Hearing before a Board of (5) members, and after listening to the facts the parties place before the Board, the Board proposes a mode of settling the loan whereby the debtor is afforded the opportunity of settling the loan within a reasonable time in easy installments. The Board does not treat all applications uniformly, but considers each application on its own merits and with the concurrence of both the creditor and the debtor, and decides on a proposal fair and acceptable to both parties after paying careful attention to the circumstances of the case and the social and economic problems facing the parties. The Board does not grant any loans or other financial assistance.

The Debt Conciliation Board in arriving at a decision on an application pays attention to the following conditions (Section 21 of the Act)

- (a) The exact amount of the loan received or obtained by the debtor
- (b) Whether the interest attached to the loan is reasonable;
- (c) The rate of interest agreed upon in respect of the loan;
- (d) The total amount already paid as interest or other charges;
- (e) Special conditions on which the loan has been granted;
- (f) Debtors capacity to repay the loan;
- (g) Any other circumstances which in the opinion of the Board, could be taken into consideration.

### **Procedure to be followed when the creditor refuses to abide by a just and fair settlement**

In the event of the creditor refusing to accept a just and fair proposal made by the Board, a certificate to that effect is issued to the debtor (in terms of Section 32(2)). Similarly, if the creditor fails to present himself at the Final Hearing after service of the notice on him, an *ex parte* hearing is held, and a certificate to that effect is issued to the debtor (in terms of Section 2a). However this course of action is taken only after sending the notice to the creditor by registered post or through Grama Niladhari of the area as the case may be and after the Board is thoroughly satisfied that the creditor has purposely failed to appear at the Haring. The benefit of such a certificate accrues, exclusively to the debtor where such a certificate is produced before a court by the debtor, in any proceedings against him, the court is empowered, by the Debt Conciliation Ordinance, to grant a period up to 10 years for the debtor to settle his debt, to reduce the rate of interest. To the minimum and to order the creditor not to recover any costs from the debtor.

### **Other relief granted by the Board**

In addition to the main types of relief granted by the Board, it provides other relief as well to the public, where action involving land is instituted before a court; the litigants have to pay stamp duty in proportion to the value of the property concerned. However, the proceedings before the Debt Conciliation Board are exempt from stamp duty. A sum of Rupees Forty as cost of serving notice and a small fee on inserting Gazette notices and advertisements, in proportion to the amount of the loan, are levied.

Parties to the proceedings before the Board can conduct their own cases, and it is not mandatory to seek assistance of a lawyer. However, the parties have the option of retaining lawyers in cases involving complex legal issues.

In effecting a settlement, the debtor gets the concession of repaying the loan in easy installments depending on his capacity to pay. The interest too will be reduced to a very reasonable rate. In the case of a Conditional transfer, the Board converts it into a mortgage providing thereby a substantial concession to the debtor. Further, the amendment to the Act enabling intervention in respect of loan transactions on deeds of transfer is also a great relief to the debtors.

### **Co-operation Sought from you**

Before filling the application the applicants are expected to read carefully the instructions issued along with the specimen forms and fill the forms strictly in accordance with such instructions because the Board acts exclusively on the information furnished by you. It is compulsory to submit either the original of the relevant deed or a certified copy thereof enabling the Board to act expeditiously.

Although an application in respect of a conditional transfer can be submitted on any day prior to its date of expiry. You can assist the Board in carrying out its functions by making your application well in time. For further particulars please contact:-

The Secretary  
Department of Debt Conciliation Board,  
No. 35A, Dr. N. M Perera Mawatha,  
Colombo 08.

Telephone : 011-2697911  
Fax : 011-2697911