

Guarantee instruments in IRAN

1. Mortgage
2. Lien
3. Lien with Irrevocable Power of Attorney
4. Giving Irrevocable Power of Attorney
5. Promissory note
6. Check (cheque)
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Mortgage



Mortgage is a legal agreement that transfers the conditional right of ownership on an asset or property by debtor to the creditor with the condition that the conveyance of title becomes void upon the payment of the debt. The mortgage contract is recognized in article 458-463 of Iran Civil Code and considered as one of the strongest available guarantee.

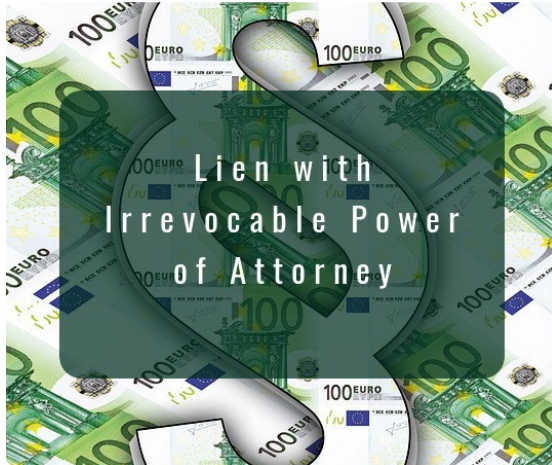
Since in a mortgage contract the debtor officially transfers the title of his property to the creditor and an official deed is issued for this, debtor has to go through a difficult procedure to take the property back after settlement of his debt. Therefore, it would be hard to convince a debtor to agree to such a guarantee.

A lien is a form of security interest granted over a property to secure the payment of a debt. When a property put under lien and the debtor has not settled his debts, the creditor would be able to sell the property to take back his money. A lien contract has to be registered in a notary public and certain costs should be borne.

Lien



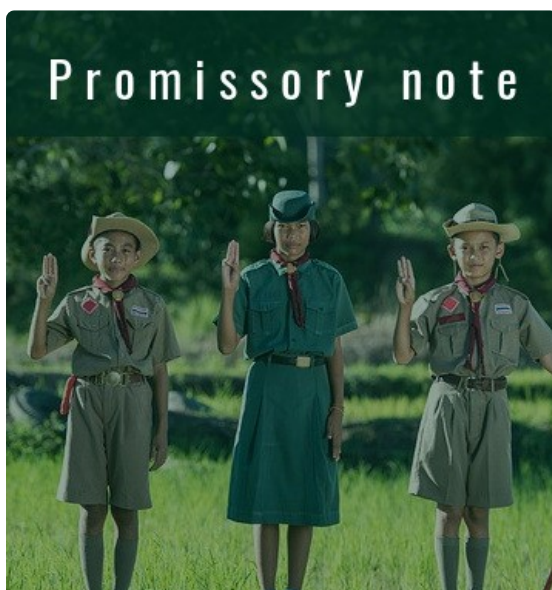
This type of guarantee has the difficulty of enforcement in Iran. The creditor has to go through litigation process and obtain a court order to sell the property. Moreover, the debtor would be able to sell his property and makes problem for the creditor to settle the debt.



In this sort of lien, the debtor issues an irrevocable power of attorney to the creditor to sell the property and take back his money. This power of attorney solves the problem of enforcement of lien and there is no need to obtain court order anymore.

Compared to a simple lien, this kind of guarantee provides a better protection of creditor's interests. Many of Iranian banks use this kind of guarantee for giving loan to their clients.

In this type of guarantee, debtor only issues an irrevocable power of attorney to the creditor and empowers him to sell the property on his behalf. Although the cost of issuing such power of attorney is low, it does not secure the creditor's interest properly. The debtor can easily sell the property before the creditor uses the POA and as a result, the POA will become ineffective.



Promissory note is a signed document containing a written promise to pay a stated sum to a specified person or the bearer at a specified date or on demand. This type of guarantee is recognized in Commercial Law of Iran and therefore it can be used as a guarantee of payment.

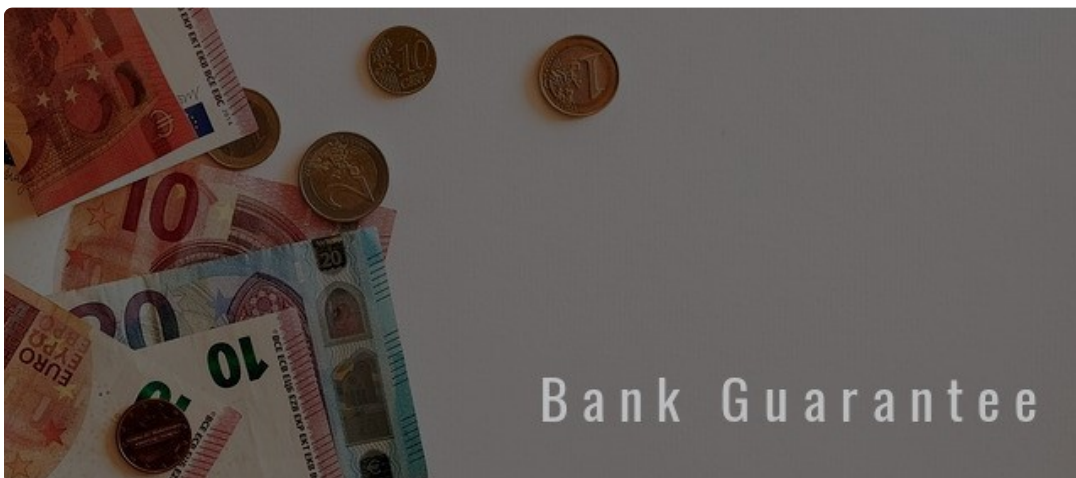
However, this guarantee is not common among businessmen anymore due to its enforceability difficulty. The bearer of promissory note has to go through a time-consuming litigation process to force the debtor to pay the amount of promissory note. Therefore, it is not considered as a suitable



guarantee in Iran.



Check is a document that orders a bank to pay a specific amount of money from a person's account to the person in whose name the check has been issued. Check is also a recognized guarantee instrument in Commercial law of Iran and compared to promissory note, it is more common among businessmen. A check provides stronger security than a promissory note since it can be enforced through “State Organization for Registration of Deed and Properties” and it may also result in criminal conviction of the check's drawer. However, in case of nonpayment of check's amount by drawer (debtor) the check beneficiary has to go through time-consuming court procedure to force the debtor to settle the check's amount. Similarly, enforcing the check through “State Organization for Registration of Deed and Properties” is expensive (10% of check amount must be paid to the Organization) and beneficiary also needs to introduce an asset of debtor to be confiscated by Organization. At the same time, the debtor would be able to close his account and even obtaining turnover of the debtor's account before accepting a check would not be helpful!



A bank guarantee is a written promise from a bank that the liabilities of a debtor will be met in the

event that he fails to fulfill his contractual obligations. There are several kinds of bank guarantee available, but the one which provides the best protection of creditors' right is an "irrevocable, unconditional, on demand bank guarantee". By issuing a bank guarantee which is irrevocable, the debtor cannot close his account or cancel the guarantee and where the guarantee is "on demand" the creditor would be able to ask for the guarantee's amount without a need for proving breach of the contract by debtor.



Comparing above mentioned guarantees, "Mortgage", "Lien with Power of Attorney" and "Bank Guarantee" provides the highest level of guarantee for a creditor in Iran. On the other hand, it may be difficult to convince the debtor to accept mortgage or even lien with POA. Therefore, the most desirable available guarantee would be a bank guarantee.

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