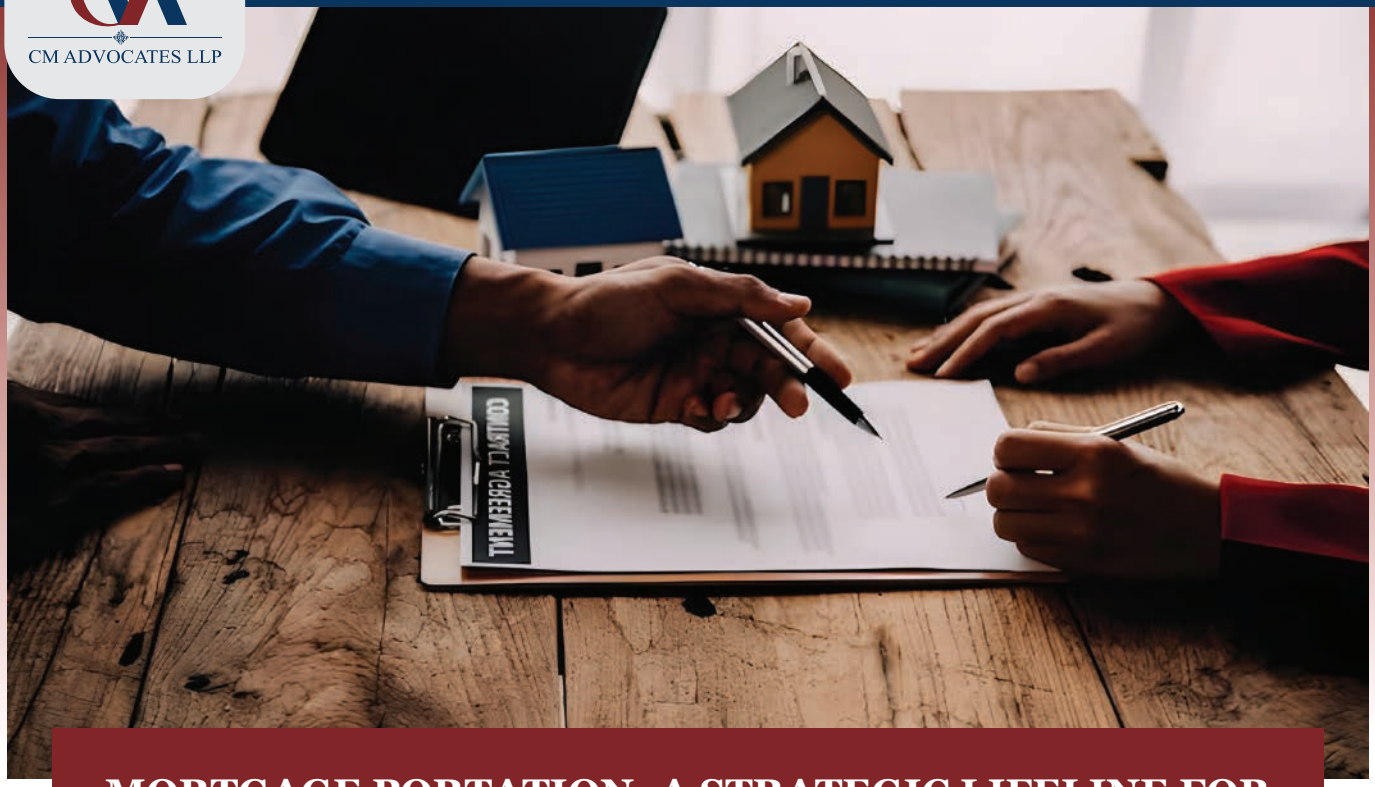


MORTGAGE PORTATION: A STRATEGIC LIFELINE FOR KENYA'S DISTRESSED PROPERTY MARKET

Date: 24th July 2025

A recent Business Daily feature, "Tycoons scramble for posh homes in auctioneers' yards" (24th July 2025), has once again highlighted the rapid rise in property auctions in Kenya's high-end real estate sector.

While public auctions remain a lawful remedy for lenders, they often result in significant losses for homeowners due to deep undervaluation, reputational harm, and prolonged recovery timelines for banks. Moreover, these auctions frequently spark litigation over ownership and procedure.

As an alternative, mortgage portation offers an innovative and structured solution that benefits all parties involved.

WHY MORTGAGE PORTATION MATTERS

Instead of defaulting and facing foreclosure, mortgage portation allows a borrower to substitute the property that secures their loan with another property. This enables:

- Homeowners to downsize or relocate without losing their mortgage structure.
- Lenders to retain a performing loan rather than pushing it into non-performing status.
- Buyers to gain access to assets in a controlled environment outside the risks of auctions.

This approach helps all stakeholders avoid the reputational and financial damage that typically accompanies distressed property auctions.

WHAT IS MORTGAGE PORTATION?

Mortgage portation involves the transfer of an existing mortgage from one property to another, with the original interest rate, term, and repayment schedule maintained.

How it works:

1. The borrower identifies a smaller, affordable property.

2. With the lender's consent, the existing charge is released from the old property and registered against the new one.
3. Any difference in value is adjusted, and the borrower continues servicing their mortgage—now tied to a more manageable asset.

BENEFITS OF MORTGAGE PORTATION

- Preserves the borrower's credit history, equity, and dignity.
- Enables a "softer landing" for homeowners under financial strain.
- Maintains performing loan books for lenders, avoiding write-offs and legal costs.
- Avoids undervalued auction sales and associated litigation risks.
- Helps buyers and developers acquire properties through structured negotiation rather than distressed auctions.

KEY LEGAL AND REGULATORY CONSIDERATIONS

Although mortgage portation is not expressly provided for under Kenyan law, it can be achieved through collateral substitution with lender approval. This process requires:

- Formal release and re-registration of the charge.
- Updated security documentation.
- Compliance with applicable statutes including the Land Act, 2012, the Land Registration Act, the Stamp Duty Act, and adherence to CBK Prudential Guidelines.
- Consideration of tax implications for any balance adjustments or capital gains on sale.

ILLUSTRATIVE EXAMPLE: FROM LUXURY TO MANAGEABLE

Current property: KES 25 million townhouse in Karen
Outstanding mortgage: KES 18 million at 13% interest

Proposed solution:

- The homeowner identifies a KES 12 million apartment in Kilimani.
- With the bank's consent, the mortgage is ported to the new apartment.
- The sale of the Karen townhouse clears part of the outstanding mortgage, reducing the balance to KES 8 million.
- The borrower continues to service the KES 8 million mortgage on more affordable terms.

Outcome:

- The borrower avoids default, retains their credit record, and secures a manageable property.
- The lender avoids a forced auction and maintains a performing loan.
- The market absorbs the distressed Karen property through a negotiated private sale.

WHEN MORTGAGE PORTATION IS USEFUL IN KENYA

Mortgage portation is especially effective for:

- Homeowners experiencing financial stress but still willing and able to service a loan.
- Banks looking for alternatives to foreclosure that maintain asset quality.
- Buyers and developers who want to acquire property through structured negotiations rather than auctions.
- High-value and middle-income segments during periods of market volatility and rising interest rates.

HOW CM ADVOCATES LLP'S REAL ESTATE, BANKING & FINANCE DEPARTMENT CAN ASSIST

CM Advocates LLP is a market leader in real estate restructuring and secured lending

solutions. For mortgage portation, our services include:

- Strategic advisory: Helping lenders and borrowers restructure loans to avoid auctions.
- Transaction structuring: Designing collateral substitution and portation frameworks.
- Lender engagement: Negotiating bank approvals and drafting variation documents.
- Documentation: Preparing releases, new charges, and sale agreements.
- Compliance: Ensuring adherence to all land, tax, and banking regulations.
- Dispute avoidance: Mitigating litigation risks through clear, enforceable structures.

KEY TAKEAWAY

Mortgage portation offers a strategic, humane, and commercially sound alternative to foreclosure and auctions. It allows borrowers to reset without defaulting, helps lenders maintain performing loan books, and facilitates orderly property transactions without the losses and reputational risks of distressed auctions.

Stakeholders facing distressed mortgage scenarios are encouraged to contact CM Advocates LLP for expert advisory and structured support.

For comprehensive advisory on mortgage portation, alternatives to auctions, secured lending transactions, or dispute resolution, please contact:

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