

MORTGAGE-TO-RENT AND MORTGAGE-TO-OWN: INNOVATIVE SOLUTIONS TO KENYA'S DISTRESSED MORTGAGE CRISIS

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With rising mortgage defaults, declining asset values, and increasing auctions of family homes, Kenya's property market is under visible distress. As reported in the *Business Daily* (24th July 2025) article "Tycoons scramble for posh homes in auctioneers' yards," the traditional response to mortgage non-performance — forced auction — is proving economically and socially wasteful. It erodes property values, displaces families, and offers lenders deeply discounted recoveries.

In response, alternative mechanisms such as Mortgage-to-Rent (MTR) and Mortgage-to-Own (MTO) are gaining traction as viable, humane, and economically sound solutions.

WHAT IS MORTGAGE-TO-RENT?

Mortgage-to-Rent is a structured solution whereby a lender or a Special Purpose Vehicle (SPV) purchases the distressed property from the borrower — typically at market value — and immediately leases it back to them as a tenant. The borrower avoids foreclosure and retains occupancy of their home under a formal tenancy.

The borrower may also be granted the option to re-acquire the property over time under a pre-agreed structure (see Mortgage-to-Own below).

WHAT IS MORTGAGE-TO-OWN?

Mortgage-to-Own is an extension of Mortgage-to-Rent, where the tenant is granted the right to repurchase the home after a set period (usually 3–7 years). This option-to-buy is typically indexed to inflation or agreed market benchmarks, allowing the borrower to restore ownership while stabilizing their finances.

WHAT DOES KENYAN LAW SAY?

Kenyan law does not prohibit lenders from purchasing or owning immovable property, provided the acquisition is undertaken in a commercially reasonable and non-captive structure.

Section 90 of the Land Act allows lenders to pursue remedies including foreclosure, lease, or sale of the mortgaged property.

Section 97(1) of the Land Act imposes a duty on the lender to obtain the best price reasonably obtainable — a principle better achieved through structured transactions than public auctions.

Lenders or their affiliates can form Special Purpose Vehicles (SPVs) to purchase distressed properties and manage them as rental stock, thereby maintaining asset value while offering former owners a dignified transition.

Such SPVs may, under the Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations, 2013, be structured as Investment REITs (I-REITs) — allowing income from rental portfolios to be securitized and sold to long-term investors such as, pension funds, insurance companies, housing co-operatives, impact investment funds and high-net-worth individuals seeking stable returns.

REAL-WORLD APPLICATION: A CASE EXAMPLE

A borrower with a KES 12M mortgage defaults due to economic hardship. The lender faces an auction with expected recovery of just KES 7M. Instead, a negotiated transfer to an SPV allows:

- The SPV to acquire the property at KES 10M
- The borrower to continue living in the house under a 5-year lease
- An option to buy back the property in Year 5 at KES 11M
- The SPV to release KES 3M equity to the borrower for business recovery
- A pension-backed REIT to hold the property and receive rental income

All parties benefit:

a) The borrower avoids auction and preserves dignity;
b) The lender avoids litigation and maximizes recovery;
c) The SPV builds a de-risked, income-generating portfolio; and
d) Investors access steady, asset-backed returns

HOW CM ADVOCATES LLP CAN ASSIST

At CM Advocates LLP, our Real Estate, Banking and Finance Department is actively advising on the legal structuring, negotiation, and documentation of such mortgage innovations. We help:

a) Distressed borrowers negotiate voluntary exits or transitions
b) Lenders craft lawful, commercially sound transfer agreements
c) Investors create compliant SPVs or REIT structures
d) Ensure regulatory alignment with the Land Act, REITs Regulations, and tax frameworks
e) Provide risk mitigation through tenant vetting, income insurance, and dispute resolution frameworks

We also assist in due diligence, rent-to-own modeling, and the design of sale-back and equity-sharing structures that suit institutional mandates.

CONCLUSION

Mortgage-to-Rent and Mortgage-to-Own models present a compelling alternative to Kenya's rigid enforcement pathways. They preserve value, promote dignity, and create investable housing stock — all while reducing systemic risk for banks and unlocking institutional capital for residential real estate.

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