# Chapter IV-A - Mortgage Types and Form

Classify the mortgage correctly and match the instrument, registration and security-perfection route.

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## Dedicated Finin2min Summary - Chapter in 2 Minutes

• Section 58: Mortgage and types of mortgage defined - convert every statutory limb into evidence-backed transaction controls.
• Section 59: Mortgage when to be by assurance - convert every statutory limb into evidence-backed transaction controls.
• Section 59A: References include persons deriving title - convert every statutory limb into evidence-backed transaction controls.
• Classify the mortgage correctly and match the instrument, registration and security-perfection route.
• Apply the current official Act and transaction-date State stamp, registration, land, tenancy, RERA and procedural law.

## Current statutory text / controlled source map

Section 58 - Mortgage and types of mortgage defined.
Section 59 - Mortgage when to be by assurance.
Section 59A - References include persons deriving title.

## Section-by-section provision map

| Provision | Subject / status | Finin2min clause-by-clause decode and implementation |
|---|---|---|
| Section 58 | Mortgage and types of mortgage defined<br>*Operative subject to current official/State law* | Section 58 governs mortgage and types of mortgage defined. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the mortgage classification and form framework.<br>**Implementation:** Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement.<br>**Evidence:** Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt. |
| Section 59 | Mortgage when to be by assurance<br>*Operative subject to current official/State law* | Section 59 governs mortgage when to be by assurance. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the mortgage classification and form framework.<br>**Implementation:** Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement.<br>**Evidence:** Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt. |
| Section 59A | References include persons deriving title<br>*Operative subject to current official/State law* | Section 59A governs references include persons deriving title. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the mortgage classification and form framework.<br>**Implementation:** Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement.<br>**Evidence:** Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt. |

## Finin2min implementation explanation

Classify the property interest, parties, authority, consideration, possession and intended legal result. Complete title, encumbrance, litigation and State-law diligence. Select the correct instrument, stamp, registration and perfection route. Block payment or possession until closing conditions and evidence are complete.

## Practical examples and calculations

**Scenario:** A lender receives title documents and a memorandum, then considers enforcement after default. The file must prove mortgage type, creation, priority, secured amount, notice, redemption and statutory enforcement route.

| Calculation/control | Method | Evidence |
|---|---|---|
| Secured amount | Reconcile principal, contractual interest, default interest, fees, payments and statutory restrictions. | Loan ledger and bank proof |
| Redemption figure | State cut-off date, principal, lawful interest, costs and release conditions. | Account statement and redemption notice |

| Calculation/control | Method | Evidence |
|---|---|---|
| Priority allocation | Map each mortgage/charge by creation, perfection, notice and statutory priority. | Title, CERSAI/ROC and registration searches |

## Practical transaction application

1. Classify the transaction and every interest. 2. Complete title, authority, encumbrance, litigation, land-use and possession diligence. 3. Map the Act and State overlays to the instrument. 4. Reconcile consideration, taxes, possession and completion. 5. Preserve closing and enforcement evidence.

## Authority, consent and execution controls

Confirm legal identity, capacity, title, board/partner/trustee/co-owner/lender consents, power-of-attorney scope, execution, attestation, witnessing and document custody.

## Stamp duty and registration alerts

Apply current State instrument classification, market value, duty, surcharge, registration fee, adjudication and impounding rules. Registration does not cure defective title or prohibited transfer.

## Evidence and document-retention checklist

Retain title chain, searches, authority, valuation, tax and KYC records, executed instrument, witness evidence, registration receipt, consideration, possession, originals handover and notices.

## Performance, delivery and payment controls

Define conditions precedent, long-stop date, escrow/retention, possession condition, risk transfer, taxes, apportionments, originals handover and post-closing filings.

## Breach, loss, mitigation and remedy framework

Separate invalidity, rescission, specific performance, injunction, possession, redemption, foreclosure/sale, damages, restitution and indemnity. Prove causation, market value and mitigation.

## Limitation and forum controls

Select relief-specific limitation and forum: civil/Commercial Court, RERA, DRT/DRAT, NCLT, consumer, revenue or arbitration. Compute notice, cure, termination, appeal and enforcement clocks.

## Arbitration and mediation interface

Assess arbitrability, rights in rem, statutory forums, third-party interests, interim protection, lis pendens, possession and limitation. Preserve source and evidence during settlement.

## Company, partnership, GST and tax overlays

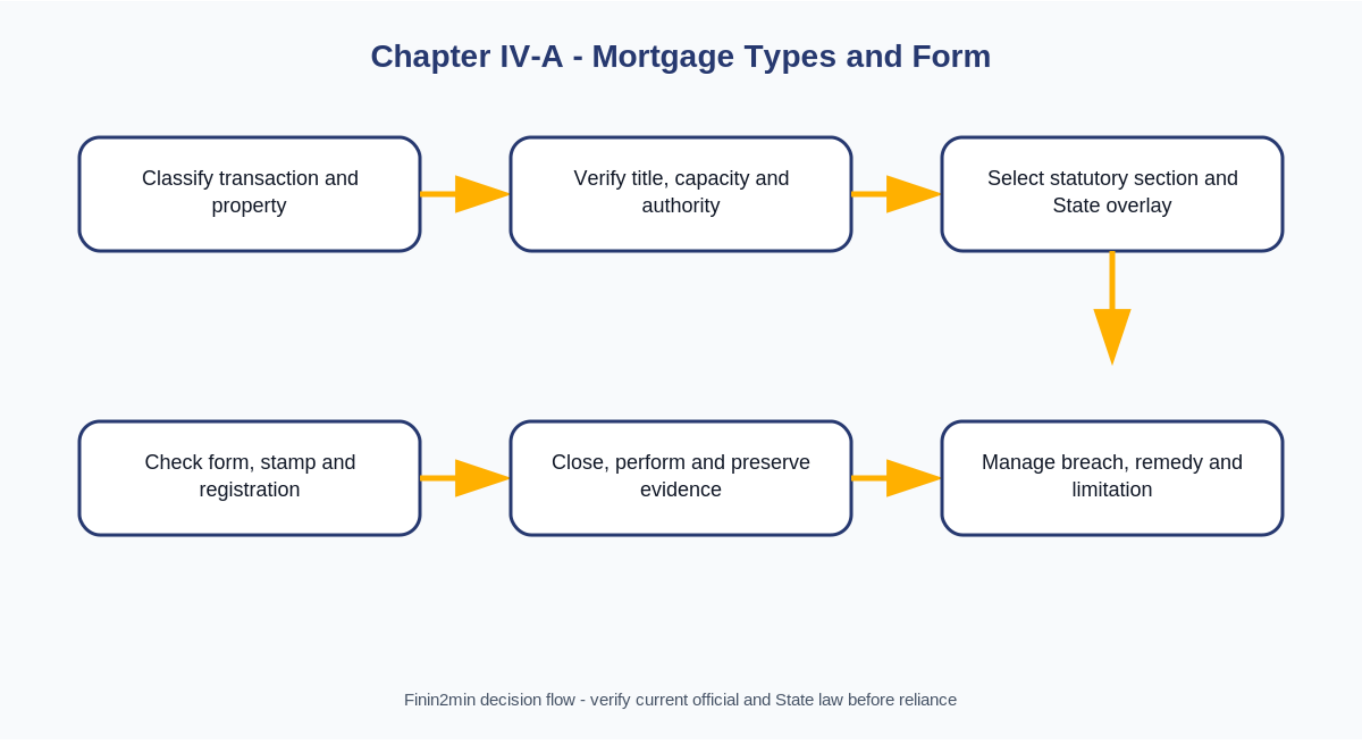
Apply entity authority, charges, RERA, GST, TDS, capital gains, valuation, FEMA, benami, PMLA/KYC, insolvency moratorium and secured-creditor priority.

## Finin2min Q&A;

First classify the transaction and title. The common failure is execution or payment before State stamp/registration and third-party rights are verified. A contract does not always transfer title. Maintain a reproducible source, title, authority, closing and remedy file.

## Chapter-specific decision flowchart

Classify transaction -> verify title/capacity -> select section and State overlay -> check form/stamp/registration -> close and preserve evidence -> manage breach, remedy and limitation.




Official source: https://www.indiacode.nic.in/bitstream/123456789/2338/1/A1882-04.pdf

Legal-use note: verify current official and State law and obtain matter-specific advice before execution, registration, enforcement or litigation.