



PRINCIPLE OF ACCESSORY NATURE OF THE MORTGAGE TO THE DEBT

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- In most civil-law systems (including Portugal and other jurisdictions influenced by Roman-law traditions), a mortgage (hipoteca) is considered an accessory right
 - This means:
 - A mortgage cannot exist without a valid underlying debt. It depends on the existence, validity, and extent of the principal obligation
 - In other words, the mortgage “follows” the debt

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1. THE MORTGAGE DEPENDS ON THE EXISTENCE OF THE DEBT

- A mortgage is granted to secure the repayment of a loan or other credit obligation. Because it is accessory:
 - If there is no debt, there can be no mortgage
 - If the debt never legally comes into existence, the mortgage is invalid
 - If the debt is declared null, the mortgage is null as well.
- The mortgage does not have an independent life — it is always tied to a specific credit

2. THE MORTGAGE FOLLOWS CHANGES TO THE DEBT

- Because of its accessory nature:
 - If the debt is reduced, the mortgage coverage is reduced proportionally
 - If the debt is increased beyond the amount originally secured, the mortgage does not automatically expand unless the contract provides for it (e.g., floating mortgages where legally permitted)
 - If the debt is transferred, the mortgage transfers automatically with it to the new creditor (e.g., the bank sells the loan)
- This feature protects both the debtor and the creditor by maintaining the proportionality of the security.

3. THE MORTGAGE EXTINGUISHES WHEN THE DEBT IS EXTINGUISHED



Since the mortgage exists only to guarantee the debt, when the debt ends:

through payment, compensation, prescription (statute of limitations), novation, or other forms of extinction,



the mortgage also ends (“Accessorium sequitur principale”)



This is why mortgage cancellations in registries require proof that the debt was extinguished.

4. PRACTICAL CONSEQUENCES

- **For creditors:**
 - They have a real right over the property, but only to the extent the underlying debt exists
- **For debtors:**
 - They cannot be charged a mortgage on something already paid off, because the mortgage cannot survive beyond the debt
- **For third parties / property buyers:**
 - A property sold with a mortgage stays subject to it as long as the debt exists (principle of real subjection)



5. EXCEPTION: CERTAIN “INDEPENDENT” CLAUSES

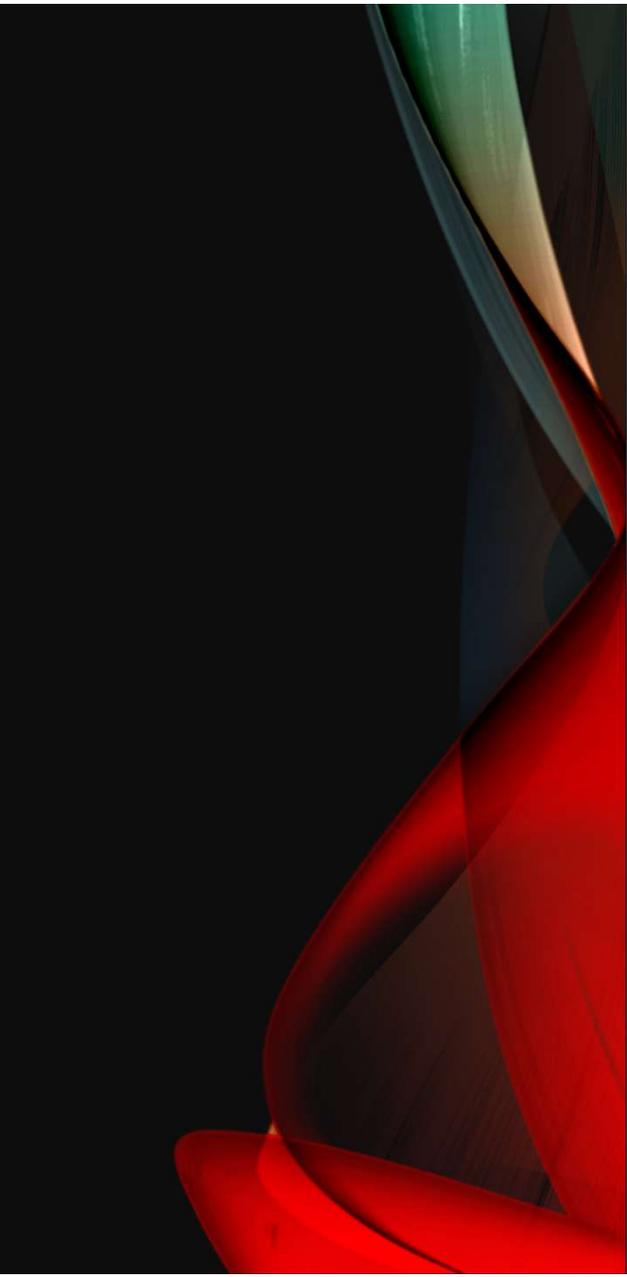


Some legal systems permit contractual clauses that make the mortgage secure:

future debts,
conditional debts,
current account balances,



But even in these cases, the mortgage is still accessory — it simply attaches when the debt materializes



6. GERMANY – THE INDEPENDENT LAND CHARGE (GRUNDSCHULD)

- In German law, real estate can be encumbered either by:
 - an accessory mortgage (Hypothek),
 - or a non-accessory, independent real estate charge called the Grundschuld.

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6. GERMANY – THE INDEPENDENT LAND CHARGE (GRUNDSCHULD)

- What makes the Grundschild independent?
 - According to German real estate finance law, the Grundschild does not depend on a specific debt.
- This means:
 - It exists independently of any specific loan
 - It does not extinguish when the original debt is paid
 - It can be reused to secure new or future loans without requiring a new registration

6. GERMANY – THE INDEPENDENT LAND CHARGE (GRUNDSCHULD)

- How it works in practice
 - The Grundschuld is entered in the land register
 - A separate security agreement (Sicherungsvertrag) links it to a particular loan for practical purposes—but this is a contractual, not a real-rights link.
 - Because the Grundschuld remains valid even after repayment, banks prefer it for financing since it can “remain abstract even if the original loan has been repaid,” allowing it to secure new loans later.

6. GERMANY – THE INDEPENDENT LAND CHARGE (GRUNDSCHULD)

- Why Germany uses it
 - German law and banking practice overwhelmingly prefer the Grundschuld because its independence provides flexibility for:
 - refinancing,
 - securing fluctuating or future liabilities,
 - restructuring debts.
- It is, today, the dominant form of real estate security in Germany.

Feature	Hipoteca	Grundschuld (Germany)
Legal nature	A real right over immovable property to secure an obligation	A non-accessory abstract land charge independent of debt
Dependence on debt	Accessory; only exists with a specific debt	Non-accessory; independent of any specific claim
Effect of repayment	Automatically extinguishes	Remains valid and reusable
Registration	Must be registered to be valid	Registered as land charge
Possession	Debtor keeps possession	Debtor keeps possession
Flexibility	Low	High; reusable
Conceptual use	Classical civil-law hypothec	Modern abstract security right