

Should a foreign state provide a mortgage

Politics



**ASSIGN
BUSTER**

Should a foreign state provide a mortgage for a diplomatic mission of another foreign state? BY FeltXR02 Diplomatic Law Should a foreign state provide a mortgage for a diplomatic mission of another foreign state? Until the beginning of the 20th Century was generally recognized the principle of international law according to which foreign states cannot be sued in courts of a foreign country (the principle of absolute immunity). This has proven to be unsustainable due to increasing economic activities of public authorities. It has been abandoned by most Jurisdictions.

In Germany for example the principle of limited immunity is now practiced since the beginning of the 1960s. Therefore foreign States only enjoy immunity when they act in the name of their sovereignty (*acta iure imperii*). For claims arising from economic activity (*acta iure gestionis*) the foreign state cannot rely on its freedom of Jurisdiction. This can certainly be seen in a mortgage, because in international law not the purpose of government action, but the nature of the action determines whether it is a *actum iure imperii* or *iure gestionis*.

So there is generally a private law relationship between the bank and the ambassador, as a representative of the country. With the threat of payment default, the bank could therefore theoretically initiate enforcement and claim the money in court. Problems arise, however, in the enforcement of the claim, since Article 22 paragraph 3 of the Vienna Convention of 1961 rules that the buildings of an Embassy are excepted from any enforcement.

For actions of enforcement or execution against a foreign State it is not allowed to take any measures against the things the diplomatic missions

needs for its diplomatic representation and to the performance of their official functions (ne impediatur Legatio). In resume it can be dangerous for the bank to give the mortgage to the countries representatives, though you have the possibility of trying to enforce your claim.