Difference between Mortgage and charge

The key differences between mortgage and charge are as under-

Meaning

Mortgage means when there is a transfer of an interest in ownership of an immovable property by the mortgagor as a security for the repayment of debt to the mortgagee. Whereas a charge on an asset implies a security of an asset created to secure a debt or a loan advanced by the lender, there is no transfer of ownership interest but a mere security for the repayment of debt. Hence charge is a right of releasing the debt out of the asset held as security but there is no transfer of interest executed.

Registration

A mortgage should be registered compulsorily under the Transfer of Property Act 1882 whereas a charge need or need not be registered under the Act. When a charge is created by the act of parties, it must be registered. However, if a charge is created on a property through the operation of law, registration is not required.

Time limit

A mortgage on immovable property is created for a fixed period whereas a charge on a property can be created for an indefinite period.

Creation

A mortgage on immovable property is created by the act of parties i.e. the lender or the borrower. Whereas a charge is created by the act of parties i.e. the charge creator or the charge holder or by the operation of law.

Personal liability

A mortgage creates a personal liability on the borrower i.e. the mortgagor for the repayment of the debt unless it is expressly mentioned otherwise in a contract. However, a charge does not create a personal liability on the charge creator for the repayment of debt. When a charge on a property is created under a contract, in such a case it does create a personal liability for repayment.

Right in Rem

A mortgage creates a right in rem i.e. a right enforceable against the world. Whereas a charge is available only against a particular set of persons. It may become a right in rem when a decree has been obtained.

Foreclosure

Foreclosure means when a property is sold through the intervention of court. In certain kinds of mortgages foreclosure can be done however in case of charge there can be no foreclosure. Only remedy that the charge holder has is to sell the security held by him after giving a notice to the charge creator.

Instrument

Mortgage is executed by a mortgage deed which is executed in writing. Whereas charge on a property can be created orally or in writing.

Conclusion

Hence a charge is not a mortgage. However, a mortgage can be a charge. When an immovable property is held as security by the lender for the repayment of money without any transfer of interest or ownership it is said to be a charge and not a mortgage.