Final year dissertation report submitted to the college of Engineering, Design, Art & Technology in partial fulfillment for the award of Bachelors degree of Land economics of Makerere University

JUNE 2018
DECLARATION

I NAKIWOLLO GERTRUDE, it is my sincere declaration that the work done in this Final year report is my original work and has to the best of my knowledge never been submitted to this university or any other higher institution of learning by anyone as an academic requirement. I therefore submit this report in partial fulfillment of the requirement for the award of a Bachelor’s Degree in Land Economics.

Signature

Date 13/08/2018
APPROVAL

This research project has been submitted by the student with my approval as the University Supervisor.

MRS. ALOWO CYNTHIA W

Signature

Date
DEDICATION
This work is dedicated to my family and friends and to all those that in one way or the other contributed positively to the success of this study.
ACKNOWLEDGEMENTS

I extend my sincere thanks to the almighty God who has enabled me go through this research and the compilation of this report in the best of health. This report has been as a result of the generous support of my family, colleagues, and friends without whom I would not have produced this kind of material.

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I thank all my classmates for their ideas, support and inspirations to actualize my dream.

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# Table of Contents

DEDICATION...........................................................................................................iii

ACKNOWLEDGEMENTS...........................................................................................iv

LIST OF TABLES......................................................................................................vii

LIST OF FIGURES....................................................................................................viii

CHAPTER ONE..........................................................................................................1

1.0 Background of the study.....................................................................................1

1.1 Problem Statement.............................................................................................2

1.2 OBJECTIVES OF THE STUDY......................................................................2

1.4 SCOPE OF THE STUDY..................................................................................3

CHAPTER TWO........................................................................................................5

2.0 Introduction:........................................................................................................5

2.1 Overview of Mortgage Financing......................................................................5

2.1.2 Types of Mortgages....................................................................................6

2.1.3 Importance of Mortgage Financing...........................................................6

2.1.4 Funding Mortgage Loans.........................................................................7

2.1.5 Mortgage Insurance..................................................................................7

2.1.6 Loans advancement....................................................................................8

2.1.7 Bank Lending Policies..............................................................................9

2.2 Evolvement of professional responsibility under the common law:..................10

2.3 Lessons from RICS and the IVSC..................................................................12

2.4 Lessons from other countries:..........................................................................12

2.5 Activities in Mortgage Valuation that add up to due diligence.........................16

2.6 Mortgage defaults............................................................................................18

2.7 Foreclosure of a mortgage.................................................................................19

CHAPTER THREE...................................................................................................20

3.0 Introduction.........................................................................................................20

3.1 Research approach and design.........................................................................20

3.2 Sample population and sampling design.........................................................21

3.3 Data types and collection.................................................................................21

3.4 Data Management, Analysis and Presentation................................................22

3.5 Limitations of the study..................................................................................22
LIST OF TABLES

Table 4.2.1: Gender of the respondents

Table 4.2.2: Age of the respondents

Table 4.2.3: Experience

Table 4.2.4: Perceived level of literacy in relation to taking care during mortgage valuations

Table 4.3: Requirements in exercising due diligence by valuers in Uganda

4.3 Table showing challenges faced by valuers in exercising due diligence and reasons attached to these

Table 4.4: Consequences of failure to exercise due diligence in mortgage valuation
LIST OF FIGURES

Figure 1: Level of literacy against percentage in relation to due diligence in mortgage valuation:

Figure 2: Showing the requirements in exercising due diligence by valuers:

Figure 3: Challenges faced
CHAPTER ONE

1.0 Background of the study

“Mortgage” includes any charge or lien over land or any estate or interest in land in Uganda for securing the payment of an existing or future or a contingent debt or other money or money's worth or the performance of an obligation and includes a second or subsequent mortgage, a third party mortgage and a sub mortgage (mortgage act 2009). As valuers carry out valuation for mortgage purposes, they should be aware of the practice of due diligence. Due diligence could be defined as an obligation held by the valuer when he enters into an agreement to fulfil a certain valuation task to act within a certain standard of care.

Professional liability is a legal obligation held by valuers arising out of professional errors and negligent acts or omissions during the course of executing professional duties. This liability lies in any profession and thus professional regulatory bodies have the duty to ensure that all licensed and practising firms take indemnity insurance covers. The liability held by valuers in practice is greatly brought about by incompetence in practice due to less experience and poor qualifications, inconsistency and unsystematic nature in the way tasks are accomplished. Ignorance of code of conduct, failure to exercise duty of care to clients in contract and third parties as well as due diligence while conducting valuations for different purposes also leads to this liability.

Valuations are conducted for a number of purposes and these include mortgage, sale and purchase, rent, rating and many others. Valuation for mortgage is however a very sensitive valuation because lending institutions base on these to grant loans basing on the value of the presented security/ collateral. In Uganda it is a widely used method of financing to facilitate investment and housing. Valuation practice in Uganda is governed and regulated by the Surveyors Registration Board as well as the Institution of Surveyors in Uganda under the Valuation Chapter. The 9th Edition of RICS Valuation standards (2017) provides for the competence of valuers and their ability to perform their tasks with due
diligence, skill, care and with regard to the technical standards required of them.

Failure to accomplish these valuation duties in compliance with the required standards of reasonable skill and with due diligence may therefore amount to negligence. Negligence can only be said to exist when there is a legal duty of care, Breach of the legal duty of care and existence of an injury/loss. A lending institution could therefore sue the valuer under the tort of negligence if he has suffered and losses or damages through the professional advice that was passed on.

The valuer is responsible for establishing the value of this collateral forwarded to the bank and basing on this value the bank will then decide how much to lend the individual. A aluer’s duty is very important because he determines both the Fair Value, Market Value and under forced sale circumstances of this security. To emphasize the requirement of competent work from the valuer, most banks decide on the loan amount to grant basing on the valuer’s opinion of the Forced Sale and Market value reported. The valuer is thus obliged to exercise thorough due diligence when appraising this security. Maximum duty of care has to be exercised to both his clients in contract (usually the bank) and any other third parties to avoid any misleading information that will cause losses to one or both of the parties in agreement. As provided in the RICS Valuation standards VS 1.1 paragraph 3 under the application members that; “Members shall at all times act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with their professional obligations.”

1.1 Problem Statement:
Financing institutions that use valuation services have dispatched complaints such as valuing of non-existent buildings, over and under valuations of collateral which raise questions as to whether due diligence is exercised in this whole appraisal process. Exercising of due diligence during the appraisal is an ethical requirement as well as a valuation standard as provided in the RICS Valuation standards verse 1.1 paragraph 4 under the application that; ‘Members shall carry out their professional work with due skill, care, diligence and with proper regard for the technical standards expected of them”. Failure to employ this is so costly even beyond what the
insurance company can indemnify. This study therefore intends to establish whether
due diligence is exercised and the ways in which it is actually undertaken during the
entire valuation process.

1.2 OBJECTIVES OF THE STUDY

General Objective

To assess the practice of due diligence in carrying out mortgage valuation in Uganda

Specific objectives

i. To find out the requirements for due diligence to be exercised by valuers.

ii. To find out challenges faced in exercising due diligence by valuers during
    mortgage valuation in Uganda.

iii. To find out the consequences of failure to exercise due diligence in valuations
    for mortgage purposes in Uganda.

iv. To establish ways through which the risk of failure to exercise due diligence
    can be mitigated

Research questions

a. What are the requirements for due diligence to be exercised by valuers?

b. What are the challenges faced in exercising due diligence by valuers during
   mortgage valuation in Uganda?

c. What are the consequences of failure to exercise due diligence in valuations for
   mortgage purposes in Uganda?

d. How can the risk of failure to exercise due diligence be mitigated?

1.3 Significance of the study

The study will act as a reminder to the valuation regulatory bodies of their duties to
ensure professional codes of conduct and that valuation standards are maintained in practice.

The study will give knowledge to the practising valuers on their obligations while accomplishing their valuation tasks which include due diligence, duty of care and skill to avoid liability on them as professionals.

The research will provide knowledge to be used as reference to valuation students and practitioners about due diligence in the valuation profession,

1.4 SCOPE OF THE STUDY

Subject scope:

The study focuses on the valuers’ mandatory obligation to exercise due diligence while conducting valuations for mortgage purposes, issues involved and the hardships faced. The study further analysed the requirements for due diligence to be exercised and on the other side the immediate effects of failure to exercise it on the contractual parties involved and will also identify the ways through which the risk of failure to exercise due diligence can be mitigated. An in-depth study was conducted on the ongoing valuation assignments for mortgage purposes as instructed by the banks they respectively do valuation work for.

Geographical scope:

A sample of 20 private valuation firms in Uganda was consulted and 10 commercial banks. These were chosen by purposive sampling.

Time scope:

The research was carried out for a period of four months.

1.5 CONCLUSION:

The above chapter focuses on the background of the study, statement of the problem, objectives of the study, significance of the study and the study scope. It gives a clear picture of the researcher’s area of interest to conduct the research.
CHAPTER TWO

2.0 Introduction:
This chapter presents a critical review of the research work that was done by various scholars in the field of mortgage financing, ethical requirements of valuers while performing their duties, valuation standards and the professional code of conduct that have to be abided by as illustrated below;

2.1 Overview of Mortgage Financing
A mortgage is a debt with income producing property such as retail space, office, hotel or multi-family building as collateral (Xudong, 2008). Similar to the former, MC Donald & Thornton, (2008), define a mortgage as a particular type of loan for real estate. Furthermore, a mortgage can be both the instrument that pledges real estate as a security for an obligation and the process of pledging real estate as security (Hassanein&Barkouky, 2008).

Unlike the above scholars who define a mortgage in regards to real estate, Tuma, (2006) generally defines a mortgage as it occurs when owners pledge interest as security or collateral for a loan. This means that a mortgage can apply to any sort of property say a car, land or even a building. It is any encumbrance, charge, debenture or loan agreement, whether legal or equitable, that constitutes a charge over an estate or interest in Uganda and is registered under the Registration of Titles Act.
A mortgage is described as any debenture, loan agreement, mortgage charge or any other encumbrance whether legal or equitable which constitutes a charge over any estate or interest in land in Uganda and partly elsewhere which is registered under this act (Mortgage Act(1974) Cap 229 of the Republic of Uganda Section 1 part (b)). In the contractual agreement that is reached upon creation of the mortgage their exists two parties that is the mortgagor (lender) and the mortgagee (borrower). Section 2 of the mortgage Act No.7 of 2009 defines a mortgage to include any charge or lien over land or any estate in land in Uganda for securing the payment of an existing or future or a contingent debt or other money or money’s worth or the performance of an obligation. It should be observed that this definition is only inclusive and not conclusive.

The mortgage market comprises of primary mortgage market and secondary mortgage market. Primary mortgage market is the market which involves origination and servicing of mortgage loans secured by real estate (Hassanein & Barkouky, 2008). Secondary mortgage market on the other hand allows mortgage originators to sell mortgages that they do not wish to hold in their portfolio and allows ultimate investors to hold mortgages assets without becoming involved in the mortgage origination and servicing.

2.1.2 Types of Mortgages
There are a number of different types of mortgages which include repayment mortgage, interest only mortgages, flexible mortgages, endowment mortgage, legal and equitable mortgages, but the most common are the fixed rate mortgages and the adjustable rate mortgages. Fixed rate mortgages are those where the creditor/investor assumes the interest risk while there is typically no prepayment penalty for the borrower. Fixed rate mortgages are advantageous because the monthly repayment is constant for the term of the mortgage and regardless of the behaviour of the market interest rates, the interest rate paid by the borrower is the same for the life of the loan (MC Donald & Thornton, 2008). However, with adjustable rate mortgages, the interest rates are lower than on otherwise equivalent fixed rate mortgages. The reason is that the borrower is bearing some of the market risk.

2.1.3 Importance of Mortgage Financing
According to Loic and Lea, 2007, the following are the benefits associated with
mortgage financing. They include:-

a) Mortgage finance improves the operation of the housing market and the economy in a number of ways, both directly by facilitating transactions and indirectly by improving the environment in which transactions take place.

b) Mortgages can provide good collateral. Mortgages are usually the lowest-cost way for households to finance general borrowing for consumption, non-housing investment, or business formation. Housing investors (e.g., for rental housing) use leverage to increase the returns on investment, as well as to expand and diversify their investment opportunities.

c) Mortgage financing has a stronger effect on consumption expenditures than do other forms of savings. House-price increases can lead to stronger increases in consumer demand than do rising stock markets, with the result that housing market trends may be more closely related to overall macroeconomic cycles. As mortgage markets deepen, there are greater opportunities for households to access this wealth.

d) Furthermore, Mortgage finance makes it possible for people to acquire affordable housing as they have the option to own their homes and pay for them in affordable instalments over time (Kibirige, 2006).

e) The mortgage finance sector creates employment directly and indirectly particularly to the construction industry and indirectly to other sectors (Kibirige, 2006).

2.1.4 Funding Mortgage Loans
The willingness of financial institutions to make mortgage loans is of course not sufficient. They must also have access to the necessary funding. Retail deposits are being used to fund long term mortgage loans. While at first sight it might not seem prudent for short term deposits to be lent over say ten or fifteen years, in practice most housing finance systems work on this basis and do so safely.

According to J Sa-Aadu, 1997, Mortgage Bonds are another promising way of attracting capital into the housing sector. Non-bank institutions issue bonds which are sold to
investors including long term institutional investors for the express purpose of financing housing. The bonds are backed by the full faith and credit of the lending institution, its assets and or in some cases the government. He further emphasized the use of Secondary Mortgage Market and Securitization. The globalization of financial intermediation relies on a wide range of new products such as securitization and other synthetic assets to allocate risks of financial instruments to those better able to handle them. An alternative way to increase resources available for housing finance is to securitize the originated mortgages and sell them to long term investors.

2.1.5 Mortgage Insurance
Mortgage insurance is a specialist form of credit insurance which provides protection to the lender. In the event of a borrower defaulting on their loan and the property being taken into possession and sold but not at a price sufficient to cover the outstanding debt and costs then the insurance policy pays out to the lender.

One form is for the “top slice” of the loan to be insured, that is, for example, any amount in excess of say 70 percent of the valuation. An alternative is for a proportion of the whole loss to be met by the insurance company.

Mortgage insurance schemes can take various forms but a common feature of most schemes now, particularly after substantial losses were incurred on mortgage insurance business in the 1990s, is an element of co-insurance whereby the lender assumes some of the risk.

Most mortgage insurance, even in industrialized countries with sophisticated financial systems, is provided by specialist government agencies. These were often established in difficult and different circumstances when an element of government “pump priming” was needed to help a mortgage market develop. It proves very difficult in practice for such institutions to divest themselves of their business even when they are able to do so. In a few countries, notably the United Kingdom, mortgage insurance is provided by the major insurance companies. In the past this insurance has often been tied in with other forms of insurance, for example insurance of the houses being mortgaged. In America, in particular, there are a number of specialist private insurance companies, which are now seeking to operate internationally.
2.1.6 Loans advancement
The limits in amounts of money that any bank can loan out in Uganda depends on the individual bank lending policy (what it states on how much should be lent out), the capital held by the bank as well as the provisions on the monetary policy of the Bank of Uganda.

However with all the above terms of lending the banks lend out money ranging from 1,500,000/= Ushs to over a billion Ugandan shillings depending on the type or class of the loan sought and the credit worth of the borrower. When the economy is performing well and business are booming, the bank interest rates are averagely affordable. This encourages people to borrow lots of money and use them for different purposes.

During recess economic periods in Uganda, less banks give out money and the lending interest rates also hike. It should however be noted that the amount forwarded to the mortgagor is determined basing on a variety of aspects like the Market Value of his security, his occupation and sources of income, his credit trust worthiness among others (credit history), age, distance of property from financing branch, work experience, spouse’s income source, repayment period, relationship with the bank, purpose of the loan and surplus income.

2.1.7 Bank Lending Policies
Bank lending policy in lending institutions is a statement of its philosophy, standards and guidelines that its employees must observe in granting or refusing a loan request. These policies determine which retail or corporate clients the commercial banks approved for loans and which will be avoided, and must be based on the bank lending laws and regulations.

Mortgage lending policy outlines the minimum information requirements to be obtained, the appraisal process, determining affordability, term of loan, the valuation of the collateral as well as loan to value ratio.

Every bank in Uganda is supposed to have its own Lending Policy as a requirement by the Monetary Policy of the Bank of Uganda. The Bank Lending Policy stipulates the basic minimum of the contents of the loan proposal.
The lending policy elucidates among others on the issues of

- Who to lend i.e eligibility of the mortgagor
- How much to lend out (loan amounts)
- Aspects of loan performance
- Defaulters and how this is to be handled
- Acceptable and the unacceptable securities
- Due diligence to be carried out by the bank before it forwards the mortgage.

These therefore act as guidelines to the bank as it lends out money and securities forwarded in the mortgage transactions. Relations or Loans officers are actually mandated to go visit the security forwarded (in this case the landed property presented).

2.2 Evolvement of professional responsibility under the common law:
Lending institutions in Uganda face difficulty in attaining their advanced loan when a borrower defaults loan repayment due to the fact that some valuation reports are not fully representative of what exists on the site. The poor relay of site details in mortgage valuations is caused by improper search of tenure details, negligence in title searches leading to the lenders holding thin air as security. In other instances, the landed property displayed in the report and valued for the purpose is not the one actual standing on the plot for which the correct title was issued. The explanations above being some of the few areas of negligence in the valuation.

According to Fleming (1977), the English law did not emphasize or look into financial losses originally. The law of negligence did not support or take into consideration economic losses; however, in the English Law tort case of Hedley Byrne vs. Heller (1964) the door was finally open. Responsibility of negligence was held over fraudulent and misrepresented advice and information that was passed on from a professional to a
layman who used it and incurred economic losses

Facts of the case include the following;

a) Hedley Byrne was a firm of advertising agents and used the National Provincial Bank

b) Easipower Limited used Heller and Partners as its bank and it placed a large order before Hedley Byrne.

c) Hedley Byrne decided to find out the financial state and credit worth of Easipower and thus asked its bank to do the search.

d) Heller and Partners wrote to National Provincial Bank a letter saying that Easipower was good for its ordinary business arrangements; it footed all the costs of sending the letter and placed a disclaimer clause too.

e) Easipower was liquidated and Hedley Byrne lost 17,000 pounds in contract.

Defendant was Heller & Partners and the Plaintiff Hedley Byrne. The case was decided by House of Lords and they introduced a limited duty of care for persons who take it upon themselves to give advice directly to people who they know will place reliance on it to his financial detriment.

This Duty of care was imposed to people only whose profession is to provide advice of a special kind that calls for skills and competence like valuers. In addition, the duty of care only owed to person or institutions like banks that are known and evidencedly rely on this advice in a particular kinds of transaction like mortgages. Therefore it is the responsibility of these professionals to exercise due diligence while accomplishing their tasks to avoid negligence cases.

After the above case quite a number subsequent development and other cases came up and this included the Case of Smith vs. Eric Bush (1990). This was an English tort and contact case and its decisions emphasized existence of a duty of care in tort for negligent mis-statements.
Reasonableness of the terms placed excluding liability under the Unfair Contract Terms Act of 1977 was discussed. Facts of the case include the following;

- Eric Bush an employee of Abbey National Building Society to value a 242 Silver Road House.
- Eric Bush in his report disclaimed responsibility to the purchaser. Mrs Smith paid 36.89 pounds for this valuation work and then bought the house on sale.
- Valuation report claimed there was no need for essential repairs on the house but after a short time, the Chimney of the house collapsed and she then argued existence of duty of care in tort to be exercised while making those statements.

The House of Lords did judge the case as follows: That it was actually reasonable for a buyer of a building/house to actually depend on the valuation report forwarded to him (buyer) and therefore the professional surveyor had to bear the risk of liability. In addition, that not all exclusion clauses are reasonable. This case also gives us a further insight on the fact that valuers are charged with that duty of care and due diligence obligation during accomplishments of their tasks.

The above literature generally provides insight on how this professional responsibility came up after 1964 in the English Law and how it has further evolved up to the point of negligence being a professional tort.

2.3 Lessons from RICS and the IVSC
Trevor (2007) argues in his paper about the application of International Valuation Standards for minerals that these were very important. He encourages that these be applied in all the types of valuation as in for all types of properties and for all purposes anywhere in the world. Standards anywhere in the world he said should focus on the objectives of the valuation and the best practice should ensure that valuers used are qualified and experienced.

Thorne (2007), in his work claims that countries where valuation standards are enforced, valuers are in favor of them as they help define and specify the entire valuation practice
and the possibilities of professional liability being reduced. He added that valuation standards also set a required qualification level and create an environment in which they can charge a reasonable fee for the services rendered as well as maintain consistency in valuation reporting.

According to the 2008/2009 IVSC Annual Report, warning was put across about the failure to understand market value of underlying assets and property which can lead to severe global consequences for investors, shareholders, banks and the public at large. Valuation as the key to the proper functioning of the property market must have internally recognized standards and organizations. The report puts forward advice about now being the time when market participants, clients and supervisors need to refer to a complete and single set of high quality, internationally recognized standards for valuation of all kinds of assets and liabilities, implemented by qualified professionals according to an appropriate set of ethical principles and best practices. This report made comments about the general practice and its effect on the property market and all its participants including banks.

2.4 Lessons from other countries:
These lessons were mainly the research carried out in Tanzania and partially Kenya Geho, (2002) under the paper titled “Due Diligence in Mortgage Valuation carried out under Land Act, No.4 1999” in Tanzania. The Act placed new responsibilities on the part of a valuer carrying out mortgage valuation on behalf of a lender. The Act includes specific provisions on the right of spouses, the ability of the lender to command the income from property in the event of the borrower’s default and the lender’s obligation to ensure that in exercising the power of sale under the Act, the sale price is not less than 25% of the market value of the property. He dwelled much on physical inspection of the property where by the valuer needs to make careful note of the construction details for the building and in particular, the structural condition of the building. Further than this the valuation report needs to incorporate information on the following issues: tenure, planning and zoning, market conditions, valuation methodology, suitability of the property for mortgage purposes, rental income and forecasting. This research intends
to go deeper into the practice of due diligence in Ugandan Valuation firms.

Masebu, (2001) Cementing on similar topic in his paper "Valuations for mortgage Purposes-
Lenders need to be more careful". There are many reasons to explain this sad state of affairs and these include the following: use of inappropriate valuation methods, inadequate/improper search on the tenure details of the subject property, fraud and in some cases, corruption e.t.c. The use of inappropriate valuation methods, this normally will result into a valuation that is out of touch with market realities. For many years, valuers in Tanzania were using the contractors test (or replacement cost) method to value virtually all types of properties the excuse being that there were no adequate data on the property market with which to use market valuation approaches like the investment, comparative, profits or residual methods.

Rwongezibwa (1982) evaluates the practice and valuation standards in Tanzania. He concluded that there lies subjectivity in the conclusion of values and he emphasizes elements of objectivity which are scientific. He further reviewed the work standards of valuation practitioners. He studied on whether valuations carried out by the Ministry of Lands Housing and Human Settlement Development were meeting professional standards as provided. His study was conducted approximately 30 years ago when valuation firms were few and awareness of standards was minimal. This research intends to dig deeper from where he stopped and specifically focus on due diligence as a standard that has to be met while carrying out valuation for different purposes mortgages inclusive up to date in Uganda.

In their paper about ‘Ethical conduct in valuation practice in Tanzania’ Mbangukira and Kironde (2011) explain the general need for a well-established ethical code of conduct. This was due to observations made of highly divergent values reported on the same property valued by different valuers and valuing of non-existent buildings for mortgage purposes. As though that was not enough, complaints have also risen from people who were supposed to be compensated and under valuation of properties for taxation purposes.
The authors went further to ask themselves whether valuers attain all the required information before they take on any valuation assignment, whether due diligence is observed, confidentiality maintained and conflict of interest avoided when accomplishing tasks. They emphasized that it’s the valuer’s responsibility to produce credible valuation for different properties and purposes that can stand tests. Emphasis was made on the need for compliance with the following ethical principles among others:

a) Confidentiality; respecting all acquired information through business relationships, not to disclose it to third parties and not to use it for personal advantage.

b) Professional competence; maintaining of up to date professional knowledge and skill required to ensure the client receives competent services based on current practice. Acting diligently and in line with the professional standards

c) Objectivity; being resistant from any undue influence, bias or partiality to override his professional judgment and opinion.

d) Integrity; ability to be straight forward, honest and avoiding misleading and fraudulent behavior.

Komu in his paper, ‘Tanzanian valuer imbued in International Valuation Standards’ questions whether the private and government valuers understand the norms, ethics and valuation standards. He emphasizes that National Valuation standards are non-existent in the national practice and yet their importance to impartially and professionally deal with 2 parties with conflicting interests that raise the need for a valuation. He argued that when valuation standards are well complied with an informed third party could easily evaluate the procedures undertaken by the valuer.

He also gives his opinion about objectivity in valuation as the ability to assess all the pertaining circumstances in an impartial manner on a consistent basis to a logical conclusion and subjectivity as the honesty with which valuation tasks are dealt with in current practice. The pros of the International Valuation standards he also explained to
include minimal risks to the banking sector, improved quality of services rendered and a consistent analysis of asset valuation among others. This study developed a general overview of how and why Tanzanian valuers should be complying and integrating the International Valuation standards in their current practice whereas this research intends to further work specifically on one of the standards that is due diligence in valuation for the mortgage purpose in a Ugandan context at that.

Client’s perception and implied desire on high quality valuation reports has persuaded good practices and ensuring high abidance to valuation standards. This explains why this issue has received worldwide audience among professional bodies and researchers in the recent past. In Tanzania, the low standards and regulations guiding valuation profession has induced scholars to warn and advice financial institutions to be cautious about valuation services. Masebu (2001) viewed this as a sad state of affairs by mentioning unethical valuation practices such as use of inappropriate valuation methods, inadequate/improper search on tenure details of the subject property, fraud and in some cases corruption. He added that the use of inappropriate valuation methods has normally resulted into valuations that are out of touch with market realities

Waigama (2008) in his study explained about the way valuation firms value different properties with almost the same method of valuation in Tanzania. Observations made showed that the most applicable method of valuation for mortgage without any considerations of various aspects is replacement cost approach (DRC). He found that as for methods of valuation, a few cases were valued as going concerns and on market based approaches.

On the other hand, most of the securities forwarded to banks are inappropriately valued using depreciated replacement cost approach only. This approach is improperly applied, particularly, the depreciation aspect and replacement cost rates being applied without any prior research or adjustments to take care of the differences. This ‘copy and paste’ application of replacement cost rates and depreciation rates without any research or adjustments could only amount to professional incompetence amongst the valuers.
He further explicated about the popular use of the DRC being justified by the absence of comparables. While this argument holds for large establishments and special type of properties, it does not hold for smaller properties like residential buildings whose comparables frequently change hands in the market. His work mainly centered on the valuation methods applied in mortgage valuations which creates a gap for the bigger picture of due diligence required from valuers in mortgage valuations.

2.5 Activities in Mortgage Valuation that add up to due diligence
Despite the International Valuation standards and RICS Valuation Standards requiring professional valuers to exhibit due diligence while accomplishing their tasks, they actually do not specify what this diligence involves. There exist key activities that valuers in their opinion find crucial and important in the valuation process less of which would raise claims of negligence upon them. The activities include the following;

**Opening boundaries**

This practise is a recent invention in the early 1990’s in the valuation sector. It was started because of the untrustworthy clients who started taking valuers to wrong properties. This is work done by the land surveyor who is part of the valuation team.

It involves using equipment like tape measures, GPS and total station to confirm the subject property boundaries as shown in the title deed. Boundary dimensions in the deed are measured on ground on addition to using neighbouring plots to compare and confirm the location of the subject plot.

This is done to generate a confirmation for the valuer to continue with his inspection procedure of the subject property. In the valuers’ opinion it is the first and most important diligence step in the valuation process.

**Thorough and detailed inspection**

Inspection in valuation is the basis of a good valuation report and analysis. Every valuer does inspection but the diligence aspect held in here is the quality, detailed and exhaustiveness of this inspection for mortgage purposes. Thorough inspections include observing and taking note of the neighbourhood in which the subject property lies. in
addition to inspecting the site itself taking note of the zoning, drainage, third party interests and finally the developments on the land itself.

Developments have to be inspected well to note their depreciation levels, structural state and reporting everything as seen on site. This type of inspection then lays a foundation for easily advising the bank about all aspects about the property to determine the level of risk attached to this security.

**Market research**

In a country like Uganda especially Kampala, the property market is generally opaque, the property market is diversified and unpredictable. Property values fluctuate very fast, these values also differ with the geographical location and this therefore calls for thoroughly studying the market to facilitate giving defendable and right opinions of value of landed property.

This market research shall then facilitate advising the bank respectively and with professionally defendable facts in case of doubts and the need to justify values forwarded.

**Application of different valuation methods**

Different types of landed property in Uganda are forwarded as security for loans and these include bare land, commercial buildings, hotels, schools, residential houses among others. And therefore with this variance in properties different methods should be used to determine their fair market value.

All the valuation methods applied in the analysis and calculations should be justifiable for example the investment method for a commercial property because it’s the income earned from the property that is valuable.

However with the different methods applied for different types of properties, other methods should be used for each property to act as a confirmation of the values determined. For example with a single family residential house, the sales comparison
method could be applied to determine its market value however the cost method could be applied to as a check of the values determined.

**Title search**

Valuers in Uganda are obliged to conduct a title search as part of the valuation process as requested by the bank in its instructions. However the details in feedback of the title search are from the Registrar of Titles under the Ministry of Lands Housing and Urban development. Information provided here is then fed into the valuation report.

The information provided in this search includes Block and plot number, location area, plot size in acres, any encumbrances if any on the intended usage of the plot, the legal owner of the plot. And from here it is the valuer to confirm all these diligently with the intending mortgagor and through inspection.

2.6 Mortgage defaults;

Section 19(2) of the Mortgage Act(2009) states that where the mortgagor is in default of any obligation to pay the principal sum on demand or interest or any other periodic payment or any part of it due under any mortgage or in the fulfilment of any covenant or condition, express or implied in any mortgage, the mortgagee may serve on the mortgagor a notice in writing of the default and require the mortgagor to rectify the default within forty five working days.

S.19(4) of the Mortgage Act (2009) provides that a mortgagor will be deemed to be in default warranting the mortgagee to serve upon him or her a notice in writing of the default requiring the mortgagor to rectify the default within the prescribed number of days as stated in sub-section (2) if the mortgagor fails to meet any obligation to pay the principal sum on demand or interest or any other periodic payment or any part of it under the mortgage after a period of 30 days from the date when the obligation to pay becomes due.

S.20 of the Mortgage Act(2009) provides that where the mortgagor is in default and does not comply with the notice served on him or her under section 19, the mortgagee
may—
(a) require the mortgagor to pay all monies owing on the mortgage;
(b) appoint a receiver of the income of the mortgaged land;
(c) lease the mortgaged land or where the mortgage is of a lease, sublease the land;
(d) enter into possession of the mortgaged land; or
(e) sell the mortgaged land.

Not surprisingly, research shows that mortgages made to subprime borrowers have a higher probability of default than other mortgages. Bunce, Gruenstein, Herbert, and Scheessele (2000) found that subprime lending occurred disproportionally among low-income and African-American neighbourhoods and that these loans experienced higher levels of foreclosures than prime loans. Likewise, Immergluck and Smith (2004) found that subprime lending has a substantial impact on neighborhood foreclosure levels, and that non-owner occupied subprime loans have an even higher propensity to result in foreclosure. Research on specific predatory loan characteristics finds these characteristics are associated with higher mortgage default rates. Pennington-Cross and Ho (2006) found a higher incidence of default with variable-rate mortgages than fixed-rate mortgages, and also found the presence of prepayment penalties increased the default rate even further.

2.7 Foreclosure of a mortgage
A foreclosure allows the lender to take action above and beyond repossessing the collateral to recover the mortgage debt.

The Mortgage Act Chapter 229 of 1974 provides for foreclosure. Section 8 states that

1) A mortgagee may apply to the court to foreclose the right of the mortgagor to redeem the mortgaged land any time after the breach of covenant to pay.

2) Upon an application by the mortgagee under this section, the court shall determine the amount due to the mortgagee and may fix a date, not exceeding six months from the date of the failure to pay, within which the mortgagor shall pay the amount due.

3) If the mortgagor fails to pay on the date fixed by the court under subsection (2), the court shall order that the mortgagor be foreclosed of his or her right to redeem the mortgaged land and that the land be offered by the mortgagee for
sale in accordance with section 9 (Sale by foreclosure).

Foreclosure will extinguish the equity of redemption and result in the transfer of the mortgaged property to the mortgagee, free of any rights of the mortgagor (Sec 88 Law Property Act 1925)

CHAPTER THREE

3.0 Introduction
In this chapter, a presentation is made about the methodology that the researcher used during the study. It covers the research design, Area of the study, Sample Population, Sampling design, Sample size, Data Sources, Data collection instruments, Data analysis.

Research methodology is an explanation of the whole research process of carrying out research and the methods applied therein. It is also described as the scientific actions, techniques and instruments a researcher uses to execute the research project study by addressing the research problem and meeting the stated aims of the project according to Liezel (2006). Kothari (1990) further defines research methodology as a strategy that moves from underlying philosophical assumptions to research design, data collection methods and analysis.

3.1 Research approach and design
Research design is defined as “the logical sequence that connects the empirical data to a study’s initial research questions and ultimately to its conclusions (Yin, 2003). The research design aids the researcher in the whole process of data collection, analysis and interpretation of the collected data and observations. Both quantitative and qualitative research approach was applied.
The Qualitative approach was applied in this research because of the exploratory and evaluator nature of the research issue that is the ethics of valuers as a requirement of due diligence in valuation for mortgage purposes. A qualitative design is a non-numerical form of data collection and explanations are made descriptively. It is aimed at gathering a non-depth understanding of the human behavior and the reason that governs this behavior. Kothari (1990) argues that it is majorly concerned with an assessment of subjectivity regarding the topic. Quantitative design will be applied because of the quantitative nature of the research which is a numerical form of data collection. According to (Fellows & Liu(2008)), quantitative research methods are typically adopted because they are scientific and provide immediate results. It is also more efficient, can test hypotheses and always aims at clarifying features and count them to build statistical models.

3.2 Sample population and sampling design
Sampling is a scientific procedure of attaining information from a small group to represent a large population. Purposive sampling was done on the valuation firms for this study whose sampling frame was private valuation firms plus the loans officers of five different banks. A sample of around 20 private valuation firms in Kampala was consulted, loans officers from 10 banks were also consulted. The sample population that was selected had a determinant factor of the experience of over 2 years in the field.

3.3 Data types and collection
Data collection is the gathering of specific information aimed at providing facts. It requires the researcher to have a clear understanding of what he expects to get from the field and he must have a clear vision of the instruments to be used in data collection according to Kombo and Tromp (2006). Both the primary and secondary data was collected and analyzed

*Primary data*

This is a type of data collected in its original and first hand form from the field by the researcher himself. It includes all the information the researcher is likely to get from the
case study according to Kothari (1990). This data was collected using questionnaires. This is an instrument structured in a way that all the participants in the study respond to an identical set of questions which facilitates consistency and accuracy. These questionnaires included very well structured and open ended questions that were distributed to the selected sample of informants and these included valuers from the different firms and bankers (loan officers) from the banks. This instrument enables hypotheses to be tested, correlations to be identified and straight forward descriptive data to be obtained (Bryman & Bell (2007)). Selltiz et al (1981) argued that questionnaires are convenient for the respondent to complete, cheap and are a relatively easy research method to implement when gathering first hand primary data.

**Secondary Data**

The study made use of information from statutory laws for example Surveyors Registration Act Cap 275, Mortgage Financing Act Cap 229 of the Republic of Uganda and the Constitution of the Institution of Surveyors in Uganda. Documents and articles from different paper presentations, government reports, journals, books, newspapers and the International Valuation standards were the source of this kind of information. These are vital in attaining in-depth information concerning the subject matter and validate the data obtained through the questionnaires.

**3.4 Data Management, Analysis and Presentation**

Data from the different sources was compiled, edited, coded and tabulated in order to give meaningful interpretation of the research findings. Data editing was done using Microsoft word and excel, and data coding involves classifying answers into categories.

Quantitative data from the questionnaires was checked for errors and edited to ensure accuracy and consistency. Responses were categorized and entered into tables that show the numbers, frequencies and percentages of the respondents to the particular question. The data was later summarized using a simple descriptive inform of frequency, tables and percentages and presented using pie charts, tables and graphs by use of Microsoft excel.
3.5 Limitations of the study:

i. Limited funds to develop the questionnaires, transport and printing of the report.

ii. Delay by the respondents to respond to the questionnaires that retarded the progress of the research.

iii. Some respondents could not understand some of the items in the questionnaires and needed explanation before they answer them.

iv. Unfavorable climatic condition that did not favor the researcher while conducting the research.

Conclusion
The above chapter provided a brief discussion on the contents of the study including problem identification, the objectives and research questions to the study. The scope and significance of the study, literature review as well as the research methodology have also been included.

CHAPTER FOUR:

4.1 Introduction
The chapter contains an analysis of the results conducted within the case study areas (banks and valuation firms) in Kampala, Uganda. The issues that have been analysed include requirements of practice of due diligence by valuers during mortgage valuation, Challenges faced by professional valuers in exercising due diligence, the consequences of failure to exercise due diligence and how the risk of failure to exercise due diligence can be mitigated.

4.2 Result analysis:
Table 4.2.1: Gender of the respondents:

<table>
<thead>
<tr>
<th>Gender</th>
<th>Frequency</th>
<th>Percentage (%)</th>
</tr>
</thead>
</table>

24
<table>
<thead>
<tr>
<th>Male</th>
<th>35</th>
<th>71.4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>14</td>
<td>29.6</td>
</tr>
<tr>
<td>Totals</td>
<td>49</td>
<td>100</td>
</tr>
</tbody>
</table>

*Source: Author’s field work, April 2018*

The study revealed that the biggest percentage of the respondents were male with 70% and this implies that most men are employed in the valuation and banking professions than women who had 30% of the respondents.

The response rate was 98%.

**Table 4.2.2: Age of the respondents:**

<table>
<thead>
<tr>
<th>Age</th>
<th>Frequency</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below 30</td>
<td>36</td>
<td>73.5</td>
</tr>
<tr>
<td>30-40</td>
<td>13</td>
<td>26.5</td>
</tr>
<tr>
<td>41-50</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>51-60</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Above 60</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>49</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

*Source: Author’s field work, April 2018*

From the table above, it shows that the majority of the respondents were below 30 years with a percentage 74%, 26% of the respondents were between 30 to 40 years, and no respondent was between 41 to 60 years and above.

**Table 4.2.3: Experience:**

<table>
<thead>
<tr>
<th>Experience</th>
<th>Frequency</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 2 years</td>
<td>12</td>
<td>24.5</td>
</tr>
</tbody>
</table>
The information above shows that most of the valuers and loans officers interviewed have experience of more than 2 years (75.5%). Few of them have experience of less than 2 years (24.5%). All information concerning due diligence from these (experience less than 2 years) officials was not considered because the determinant factor was 2 years’ experience.

**Table 4.2.4: Perceived level of literacy in relation to taking care during mortgage valuations:**

<table>
<thead>
<tr>
<th>Level</th>
<th>Frequency</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poor</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Fair</td>
<td>2</td>
<td>5.4</td>
</tr>
<tr>
<td>Good</td>
<td>10</td>
<td>27.02</td>
</tr>
<tr>
<td>Very good</td>
<td>16</td>
<td>43.2</td>
</tr>
<tr>
<td>Excellent</td>
<td>9</td>
<td>24.3</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>37</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

*Source: Author’s research, April 2018*

**Figure 1: Level of literacy against percentage in relation to due diligence in mortgage valuation:**
This indicates that most people have very good literacy in relation to taking care during mortgage valuation with 43.2% of the respondents followed by those having good knowledge with 27.02%, Excellent with 24.3%, followed by those having fair knowledge with 5.4%. No respondent has poor knowledge in relation to taking care during mortgage valuation. This is an indication that most respondents are aware of the practice of due diligence and have very good knowledge about it.

**Table 4.3: Requirements in exercising due diligence by valuers in Uganda:**

<table>
<thead>
<tr>
<th>Response/Requirements</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>Weight</th>
<th>Percentage (%)</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Integrity</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>14</td>
<td>20</td>
<td>164</td>
<td>20.6</td>
<td>3</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>16</td>
<td>20</td>
<td>166</td>
<td>20.8</td>
<td>2</td>
</tr>
<tr>
<td>Professional competence</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>10</td>
<td>27</td>
<td>175</td>
<td>22</td>
<td>1</td>
</tr>
<tr>
<td>Efficiency</td>
<td>0</td>
<td>1</td>
<td>10</td>
<td>14</td>
<td>12</td>
<td>147</td>
<td>18.4</td>
<td>4</td>
</tr>
</tbody>
</table>
Objectivity | 0 | 3 | 7 | 17 | 10 | 145 | 18.1 | 5
Others | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6
Totals | 797 | 100

Source: Author’s fieldwork, April 2018

Response

1-Strongly disagree  2- Disagree  3- Not sure  4- Agree  5- Strongly Agree

Figure 2: Showing the requirements in exercising due diligence by valuers:

Source: researcher’s compilation, April 2018

From the above the order in descending of the requirements are as follows:

Professional competence (22%), confidentiality (20.8%), integrity (20.6%), efficiency (18.4%), objectivity (18.1%). This indicates that all these requirement are really needed by the valuers in exercising due diligence as shown in the percentages since they are close to one another but however from the research finding, the study shows that professional competence is needed most since it has got the highest rank. This therefore means that valuers and loans officers must exhibit a high level of competence
when carrying out mortgage valuation exercise.

4.3 Table showing challenges faced by valuers in exercising due diligence and reasons attached to these.

<table>
<thead>
<tr>
<th>Challenges faced</th>
<th>Frequency</th>
<th>Percentage, %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional challenges</td>
<td>3</td>
<td>8.1</td>
</tr>
<tr>
<td>Institutional challenges</td>
<td>4</td>
<td>10.8</td>
</tr>
<tr>
<td>Market challenges</td>
<td>9</td>
<td>24.4</td>
</tr>
<tr>
<td>Clients challenges</td>
<td>21</td>
<td>56.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>37</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Clients challenges (56.7%), market challenges (24.4%), institutional challenges (10.8%) and professional challenges (8.1%). This indicates that the greatest challenges faced by both loans officers and valuers while exercising due diligence are from clients.

The professional challenges include Loan officers, unqualified land surveyors, Assistant valuers and others like conflict of interests and agents. Loans officers may influence the values depending on their interests and some may create hardship for valuers under mortgage cases, at times, the valuer may be forced to attach a value to a property depending on the interests of the clients. Assistant valuers on the other hand may seem to have less knowledge and confidence while performing their duties. Unqualified land surveyors heavily contribute to the inaccurate values obtained by the valuers since information got from them is key in the process of attaching value to a property.

The institutional challenges include Bureaucracy and the unclear titles and deed plans. Bureaucracy as institutional challenge is very intense for example banks give valuation firms limited time to complete the reports yet the title search takes a long time to obtain
and because of that they end up bribing officials in the land offices.

The market challenges include insufficient market data, Lack of comparables and others like special buyers and sellers, market speculation and jealous guarding of market data by stake holders.

The client’s challenges that valuers face include bribes, wrong information, forged titles and deed plans, clients taking valuers to wrong plots.

**Figure 2: challenges faced**

<table>
<thead>
<tr>
<th>Response/Consequence</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>Weight</th>
<th>Percentage (%)</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss of trust and confidence in banks</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>15</td>
<td>21</td>
<td>168</td>
<td>18.68</td>
<td>2</td>
</tr>
<tr>
<td>Termination of contracts between banks and firms</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>13</td>
<td>24</td>
<td>172</td>
<td>19.13</td>
<td>1</td>
</tr>
<tr>
<td>Denial of insurance</td>
<td>1</td>
<td>5</td>
<td>10</td>
<td>17</td>
<td>4</td>
<td>129</td>
<td>14.34</td>
<td>5</td>
</tr>
<tr>
<td>---------------------</td>
<td>---</td>
<td>---</td>
<td>----</td>
<td>----</td>
<td>---</td>
<td>-----</td>
<td>-------</td>
<td>---</td>
</tr>
<tr>
<td>Increased premium amounts charged</td>
<td>2</td>
<td>7</td>
<td>18</td>
<td>7</td>
<td>3</td>
<td>113</td>
<td>12.57</td>
<td>6</td>
</tr>
<tr>
<td>Penalties from Surveyors Registration Board</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>12</td>
<td>21</td>
<td>163</td>
<td>18.13</td>
<td>3</td>
</tr>
<tr>
<td>Withdrawal of the practicing licence</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>15</td>
<td>17</td>
<td>154</td>
<td>17.13</td>
<td>4</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>899</strong></td>
<td><strong>100</strong></td>
<td></td>
</tr>
</tbody>
</table>

*Source: Author’s fieldwork, April 2018*

**Response:**

1- Strongly disagree  2- Disagree  3- Not sure  4- Agree  5- Strongly Agree

**Bar graph 4.5: Showing the consequences of failure to exercise due diligence:**

*Source: Researcher’s compilation 2018*
The consequences of failure to exercise due diligence are; termination of contracts between banks and firms (19.13%), loss of trust and confidence in banks(18.68%), penalties from SRB(18.13%), withdrawal of the practising license(17.13%), denial of insurance(14.34%) and increased premium amount charged(12.57%). This is an indication that most banks terminate the contracts they have with firm when they realize that the valuers are negligent when performing their duties.

4.6 How the risk of failure to exercise due diligence can be mitigated:

i. Undertaking continuous professional development (CPD) courses:

Through CPD's, the valuers get a thorough knowledge of the practice and as such they fill fit to perform their duties with maximum care after being sensitized on the relevancy of due diligence.

ii. Activating a general database:

A database will give an overview of the different property valuers and will act as a guide to the property valuers when arriving at the value of the property hence reducing the risk of failure to exercise due diligence.

iii. Computerisation of land information and posting it on internet:

Once information about land has been computerized and posted on internet, the land values will be easy to determine by valuers since they will just log on there and find the information they need however this information needs to be updated overtime since land value have a tendency of rising overtime.

iv. Expansion of land services:

Once services of land have been expanded, the availability of land information makes it easy to be aware of the land values in a given area and therefore the risk of failure to exercise due diligence can be mitigated.
v. Acquisition of current deed prints from the land registry:

To prevent the aspect of valuing wrong properties and being negligent in such a manner, there is need to acquire deed prints.

vi. Use of qualified registered surveyors to value properties:

The use of qualified surveyors who know how to execute their works and aware of the consequences that may result if he does not exercise maximum care in conducting his duties will minimize the risk of failure to exercise due diligence.

vii. Carrying out extensive market research before valuation:

Extensive market research carried out by valuers when arriving at property values is very important since he will have a clear picture of the value to attach to the property he is currently valuing.

viii. Overseeing the services offered by valuers by ISU and they should enforce the control measures to bring surveyors back to line:

ISU should come in place to critically oversee the valuers services and advise them accordingly on the aspect of due diligence so that they perform their duties with a high standard of care.

ix. Rules and regulations governing surveyors should be enforced by professional bodies:

The rules are regulations should not just be there but should be implemented as well. This will make valuers have a fear of going in contrary with the rules and regulations. Imposing strict penalties should be done to those not in line with the rules and regulations.

x. Registration of competent surveyors and valuers:

Surveyors should not be registered and let lose onto the market until they have been proved with reasonable doubt by the trustworthy senior surveyors that they can stand all temptations tending to corruption and other deeds that erode one’s integrity in the
profession. Critical analysis of valuers and surveyors before issuing stamps should be done.

xi. Sharing of knowledge:

Valuers should cooperate and create an environment where ideas and knowledge can be shared such that instances where valuers are forced to apply professional experience which is subjective increasing the scope of errors and thus litigation is greatly reduced.

xii. Strict supervision of practitioners by offices from SRB and ISU would greatly raise standards:

When the practitioners are continuously supervised, the will ensure that they do their duties with a lot of care and since they are aware that they are under supervision.

xiii. A professional should do his duties according to his or her qualifications:

There are situations where valuers are involved in opening plot boundaries when carrying out inspections yet this is a duty of a surveyors and the result is not clear since the work was not by a non-surveyor and at the end the result from the valuation may be subjected to errors. So a valuer should do his valuation work and leave the boundary opening to the surveyor.

4.7 Conclusion

This chapter described requirements of due diligence by valuers during mortgage valuation, Challenges faced by professional valuers in exercising due diligence, the consequences of failure to exercise due diligence and how the risk of failure to exercise due diligence can be mitigated. It is therefore from these findings and field work analysis that recommendations and conclusion are derived in the final chapter.
CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 INTRODUCTION
The objective of this study was to assess the practice of due diligence in carrying out mortgage valuation in Uganda. This final chapter provides observations made during the fieldwork study, conclusions of the study and the recommendations on the way forward from the study’s findings.

5.2 CONCLUSIONS

1. Absence of National Valuation Standards

During the study it was noted that the valuation profession in Uganda has no formal valuation standards to abide by. In the past years there were set methodologies for conducting valuations. However, no standards were passed officially. These standards are absent because from independence time, the valuer’s role in the economy was not given serious prominence due to the economy’s infant stage.

There was also a limited number of valuation professionals in the country with no valuation training institutes and with all these issues, formulating of standards was not of importance.

2. Cases of professional liability upon valuers are usually settled internally
The study also discovered that most cases were valuers are professionally liable to banks over negligence in mortgage valuations are settled internally between the banks and the valuation firms. These issues rarely come out into the public and this is because both parties are trying to protect their image.

Arbitration is another procedure that is invoked, usually involving the Surveyors registration board in settling the negligence cases.

Despite the long existence of the profession, Court cases are rarely heard of among the valuation surveyors in Uganda and this has therefore protected the image of the profession.

3. Application of the International and RICS Valuation Standards

Some firms have subscribed to the International Valuation Standards and they do abide by these standards. However this is done on individual firm basis and therefore those that do not subscribe do not apply any standards in their practice.

With the absence of national valuation standards, valuers that have not subscribed to any standards, they only apply basic knowledge, skill acquired in their academic training as well as experience over time of practise.

4. Foreclosure as a test of valuation work

In Uganda, Section 8 of the Mortgage Financing Act cap 229 provides for foreclosure upon securities forwarded on default of paying back the loan. This process of foreclosure is however a test of the mortgage valuation services rendered because the forced sale values have to be achieved on sale of the property.

This professional test through foreclosure does not exist in economies like that of Tanzania where foreclosure was abolished under the Land Act 1999.

5. Professional competence as a requirement:
This was highly ranked as the requirement most valuers must possess in exercising due diligence hence knowledge, skills and experience is essential for a valuer to carry out his duties with maximum care

6. **Clients as the greatest challenge:**

Clients are the greatest challenge to both the loans officers and the valuers and greatly affect the practice of due diligence in carrying out mortgage valuations in Uganda.

7. **Termination of contracts between banks and the firms as the outstanding consequence:**

Banks may end up terminating the agreement of service with these firms and they look for other competent firms who have good reputation and can undertake the exercise.

5.3 **RECOMMENDATIONS**

5.3.1 **Introduction**

As mentioned earlier, negligence in mortgage valuations are brought about by many challenges like lack of a market database, bureaucracy, faulty titles and deeds among others. In this regard the study recommends the following to be done;

i. **Formulating of national valuation standards**

Valuation practise in Uganda should be governed by national standards to which all practising valuation surveyors should be bound. These should be formed as soon as possible to improve the general practise in the nation. The standards would also generate more trust on the profession after being bound by specific standards just like other professions in the country.

ii. **Enforcing the International Valuation standards**

The Valuation chapter of the Institute of Surveyors of Uganda should enforce the application of the International Valuation Standards. This could be done through making it mandatory for all registered valuers to subscribe to these standards as well as applying them in an appropriate manner.

iii. **Establishing a market data base**
Valuers in Uganda under the Institute of Surveyors in Uganda; Valuation chapter should take efforts to establish a joint market data base. This could be done as a whole with everyone’s contribution or by allocating different data base responsibilities to different valuation firms. This data base should include property and land values of different sizes and locations, aspects of access should be taken into consideration.

The data base should then be made accessible to all registered valuers as well as be updated annually to have current values. This way values shall be moving at par in their value opinions to avoid cases of failure to back up values given opinion over in case they are doubted.

iv. Re-addressing the institutional challenges

There should be formulation of a division under the Registrar of titles to deal with titles and their searches for mortgage valuation purposes. The title search reports being well written with all the details fed in accurately to avoid any confusions and mis-leading information.

Title deed plans showing blocks and plots with their numbers and dimensions should be drawn and printed in a better and more presentable way to ease the valuation work especially during inspection of properties.

v. Employing/Retaining Valuers for banks

In most banks, loan officers are the only ones who have a small idea about property values and are not in the best position to fully scrutinize mortgage valuation reports submitted to the banks for errors and mistakes. Banks in Uganda should employ their own valuers to either conduct their mortgage valuations or be the final check before mortgage valuation reports produced by valuation firms are accepted by the bank to advance a loan.
vi. **Banks carrying out mortgage administration**

This is currently not being practised by banks because they lack knowledge on how to do so. This process involves the intending mortgagor writing out a cash flow outlining what he intends to use the loan money for. This proposal should outline what he expects from the money and with what income he shall repay the bank.

If his net profit does not cover the loan to be advanced, then the bank should not lend out its money to him. In this way, banks shall not incur economic losses under mortgages.

vii. **Bank’s collection of its loan money in time**

Banks are advised to collect their loan amounts in time. For example those loans serviced monthly, banks should ensure that these payments are received. This is because in cases of default in payment of the loan or failure to complete this load is all placed on the valuer. However this should not be so because at that stage it’s the bank’s fault.

5.3.2 CONCLUSION

A few valuation firms and banks were taken as sample representatives of the many banks and valuation firms in the country. From these observations, the study has made recommendations that are important to valuers on how to overcome challenges and exercise their due diligence as ethically required. The recommendations however has already been talked about in the analysis of the fourth objective of this research which was to establish ways in which the risk of failure to exercise due diligence has been mitigated, though some few has been discussed in this chapter.
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Appendix

QUESTIONNAIRE TO A VALUATION SURVEYOR/ LOANS OFFICERS

Dear respondent, this instrument is designed to facilitate collection of data on Assessment of the practice of due diligence in carrying out mortgage valuation in Uganda. This is an academic study and all information collected shall be utilized purely for this purpose. You have been carefully selected to participate in this study because of your knowledge and experience in this area and your response will be handled with utmost confidentiality. (Tick where appropriate)

Background information
1. Gender

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<thead>
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<th>Female</th>
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2. Age (in years)

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<th>41-50</th>
<th>51-60</th>
<th>Above 60</th>
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3. Name of the firm/bank

.................................................................

4. Age of the firm/bank.........................

5. Experience

Less than 2 years   2 years and more

6. What would you consider as your perceived level of literacy in relation to taking care (due diligence) in carrying out mortgage valuation?

   (A) Poor   (B) Fair   (C) Good   (D) Very Good   (E) Excellent

7. What are the requirements in exercising due diligence by valuers in Uganda?

<table>
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<th>Requirement</th>
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<th>Agree(4)</th>
<th>Not Sure(3)</th>
<th>Disagree(2)</th>
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43
8. What challenges are faced by valuers in exercising due diligence during mortgage valuation in Uganda?

a) Professional challenges
b) Institutional challenges
c) Market challenges
d) Client’s challenges

9. What are the consequences of failure to exercise due diligence in valuations for mortgage purposes in Uganda?

<table>
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<tr>
<td>Termination of contracts</td>
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</table>
between banks and valuation firms

Denial of insurance

Increased premium amount charged

Penalties from Surveyors Registration Board

Withdrawal of practicing license

Others Specify?

12. How can the risk of failure to exercise due diligence be mitigated?

Thank you, God bless you
**Budget estimates**

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## SCHEDULE OF ACTIVITIES

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