

Law of Ukraine***ON MORTGAGES*****Chapter . GENERAL PROVISIONS*****Article 1. Definition of Terms***

For purposes of this Law, the terms used hereinafter shall have the following meanings:

“Real property (real estate)” shall mean land plots, as well as objects located thereon and inseparably attached thereto, which may not be relocated without its depreciation and change of its designated use. Real property status shall extend to aircraft and seagoing craft, inland vessels, and space vehicles;

“Land parcel” shall mean a land plot in the meaning as set forth in the Land Code of Ukraine, except for agricultural land plots;

“Mortgage” shall mean a type of securing performance of an obligation with land or real estate which remains in the possession of a mortgagor, whereby in the event of the debtor’s failure to perform the principal obligation secured by the mortgage the mortgagee shall be entitled to satisfy its claims at the cost of mortgaged property having priority over other creditors of such debtor, unless otherwise provided by this Law;

“Principal obligation” shall mean obligations under loan and credit agreements, sale and purchase agreements, lease contracts, and other obligations arising on other grounds, the performance of which is secured by mortgages;

“Subsequent mortgage” shall mean a mortgage of real property, which is already the subject matter of the mortgage under a preceding mortgage agreement;

“Mortgagor” shall mean a person who mortgages real property in order to secure performance of its own obligations or obligations of another person before a mortgagee;

“Property guarantor” shall a mortgagor, who mortgages real property in order to secure performance of another person’s obligations before a mortgagee;

“Mortgagee” shall mean a creditor under a principal obligation, the performance of which is secured by a mortgage;

“Debtor” shall mean a mortgagor or some other person who is liable before a mortgagee for performance of a principal obligation;

“Unfinished building” shall mean a building (structure) whose construction is not finished, “UnuCivil Code of U consistent with this Law, as well as international treaties and agreements of Ukraine, consent to which binding force has been granted by the Supreme Rada of Ukraine.

Article 3. Arising and Application of Mortgages

Mortgages shall arise out on a contractual basis, pursuant to law or court decisions. Unless otherwise provided by law, rules on mortgages arising on a contractual basis shall apply to mortgages that arise on the basis of law or a court decision. A mortgage shall be subject to state registration pursuant to procedures provided by law.

Mutual rights and obligations of a mortgagor and a mortgagee under a mortgage agreement shall arise as of the date of notarization of such agreement. In the event of a mortgage arising on the basis of law or a court decision, mutual obligations and obligations of the mortgagor and the mortgagee shall arise as of the date of state registration of the mortgage.

A mortgage may secure performance of any actual obligation or satisfaction of a claim, which claim may arise in the future, but is provided in an agreement that has entered into force.

A mortgage shall be of a derivative nature with respect to the principal obligation whose performance is secured by such mortgage. The mortgage shall be effective as long as the principal obligation is effective.

A mortgage shall grant a mortgagee a right to satisfy claims secured by such mortgage at the expense of mortgaged property having priority over a mortgagor's other creditors, whose claims have not been registered pursuant to procedures provided by law, including in the course of bankruptcy proceedings against the mortgagor.

Article 5. Terms of Mortgaging

expenses relating to insurance of mortgaged property;
 losses resulting from the breach of the principal obligation or terms and conditions of the mortgage agreement.

Article 7. Insurance of Mortgaged Property

A mortgagor shall be obligated to insure mortgaged property for its full estimated value against risks of accidental destruction, accidental damage or harm, unless the mortgagee bears such an obligation under the mortgage agreement. In the event of a subsequent mortgage, no insurance for the mortgaged property shall be required. An insurance agreement shall be entered into for the benefit of the mortgagee, who will acquire a right of claim against the insurer in case an insured event has occurred. The right of claim against the insurer shall also transfer to a new mortgagee in the event of transfer of rights under the mortgage agreement.

In case an insured has occurred with respect to mortgaged property, the mortgagee shall have a preemptive right to satisfy its claims under the principal obligation at the expense of an insurance indemnity amount. Upon satisfaction of the claim of the first mortgagee at the expense of the insurance indemnity, any amounts of the insurance indemnity exceeding the amount of the first mortgagee's claim shall be allocated to subsequent mortgagees on the basis of priority and amounts of their claims and, lastly, to the mortgagor.

On the basis of an agreement between the mortgagor and the mortgagee, an insurance indemnity may be directed to restore the mortgaged property.

Unless otherwise provided in a mortgage agreement, the mortgagor shall be obligated to provide to the mortgagee one original copy of an insurance agreement within ten business days following the execution of the mortgage agreement.

Article 8. Possession, Enjoyment and Disposal of Mortgaged Property

A mortgagor shall have the right to possess and enjoy mortgaged property pursuant to its designated purpose, unless otherwise provided by this Law. In the course of use of mortgaged property, the mortgagor must prevent deterioration of the condition of the mortgaged property and depreciation of its value in excess of norms of its normal depreciation (wear and tear).

The mortgagor shall have the right to receive fruit, products and income from mortgaged property, unless otherwise provided in a mortgage agreement.

The mortgagor shall have the right, exclusively on the basis of consent from the mortgagee that is contained in the mortgage agreement or amendments thereto:

- to erect, demolish or perform capital repairs of a building (structure) that is located on a land plot mortgaged, or to make essential improvements to such land plot;
- to transfer the mortgaged property into a subsequent mortgage;
- dispose of the mortgaged property, with a simultaneous assignment of obligations under the mortgage agreement to a new owner;
- to transfer the mortgaged property for joint activity purposes or into leasing (use).

A mortgagor shall have the right to bequeath mortgaged real property. A legal agreement that restricts the right of the mortgagor to bequeath the mortgaged real property shall be null and void.

Article 9. Preservation of Mortgaged Property

Unless otherwise provided by law or in a mortgage agreement, the mortgagor shall be obligated to undertake at its cost all necessary actions to duly preserve mortgaged property, including timely effectuation of current repairs, removal of insignificant damage, rational exploitation and protection of the mortgaged property against illegal encroachments and claims of third parties.

The mortgagor must provide timely notice to the mortgagee of any threat of destruction and damage of and harm to or deterioration of the condition of mortgaged property, as well as of any circumstances that may adversely affect the mortgagor's right of ownership to the mortgaged property or the mortgagee's rights under the mortgage agreement.

At any time during the term of the mortgage agreement the mortgagee shall have a right to carry out documentary and on-site inspections of availability, status, storage and use conditions of the

In the event of levy of an attachment upon mortgaged property by the preceding mortgagee, the subsequent mortgagee shall also have a right to levy an attachment upon mortgaged property, even if the performance of the principal obligation before the subsequent mortgagee has not yet become due.

In the event of levy of an attachment upon real property, which is the subject matter of several mortgages, claims of every subsequent mortgagee shall be satisfied upon full satisfaction of the claims of very preceding mortgagee pursuant to the registered priority and amounts of such claims.

Article 13. Specific features of Mortgaging of State-Owned Property

Real property, which is in state ownership and has been transferred to a state-owned enterprise, institution or organization on the basis of a right of full commercial management, may be mortgaged. Mortgages of such property shall be entered into on condition that an applicable state-owned enterprise, institution or organization has obtained consent from the government agency within whose economic management competence the applicable state-owned enterprise, institution or organization falls, if a requirement for obtaining such consent is provided by law.

It shall be prohibited to mortgage state-owned property that may not be privatized.

National, cultural and historic values, which are in state ownership and are recorded or subject to recordation in the National Registry of Cultural Heritage, may not be mortgaged.

Article 14. Specific Features of Mortgaging of Land Plots

This Law shall not apply to mortgages of agricultural land plots. It shall be permissible to mortgage agricultural land plots following the entry into force of a law that will govern the establishment and operation of a Single Land Cadastre, but not earlier than 1 January 2005. Specific features of mortgaging of agricultural land plots shall be set forth in a separate law.

This Law shall not apply to land plots in communal and state ownership until decisions on their privatization have been adopted.

Unless otherwise provided by law, in the event that a land plot without buildings (structures) located thereon is mortgaged, only a bank, which complies with the requirements as are laid down in the Law of Ukraine "On Banks and Banking Activity" and regulatory acts and rules of the National Bank of Ukraine, may be a mortgagee.

unless the mortgagor and the buyer have agreed otherwise. Upon levy of the attachment, the real-estate developer's rights and obligations before third party buyers shall transfer to the new owner of the completed building (structure) or unfinished building.

Article 16. Grounds for Termination of a Mortgage

A mortgage shall terminate in the event of:

termination of a principal obligation;
sale of mortgaged property pursuant to this Law;
transfer to a mortgagee of the right of ownership to mortgaged property;
invalidation of a mortgage agreement;
destruction (loss) of mortgaged property, unless the mortgagor has restored it;
on other grounds as are provided by this Law.

Subsequent mortgages shall terminate as a result of levying an attachment under a preceding mortgage.

Chapter . FORMALIZATION OF MORTGAGES

under any other obligations secured with the subject matter of the mortgage that was registered prior to registration of the amendments to or modifications of the mortgage agreement.

Article 19. Mortgage Deeds

A mortgage deed shall mean a security that evidences an unconditional right of its holder to obtain from a debtor performance of a principal obligation and, in the event of failure to perform the principal obligation, a right to levy an attachment upon mortgaged property. The mortgage deed shall be executed only if its issuance is expressly provided in the mortgage agreement.

The holder of a mortgage deed may transfer such deed to any person by way of endorsement in accordance with this Law. The next holder of the mortgage deed shall have the same rights as the mortgagee had under the agreement giving rise to the principal obligation and the mortgage agreement, on which basis the mortgage deed has been executed.

Upon execution of the mortgage deed, the principal obligation may be performed and an attachment may be levied upon mortgaged property only pursuant to a claim by the holder of the mortgage deed. The holder of the mortgage deed shall levy an attachment upon the mortgaged property pursuant to the procedure as is specified in Charter **V** of this Law.

Upon execution of a mortgage deed, amendments of and modifications of the mortgage agreement and the agreement giving rise to the principal obligation may be made only after the mortgage deed has been annulled, and a new mortgage deed has been issued. Otherwise, such amendments and modifications shall be invalid. The mortgage deed may be annulled and the new mortgage deed may be issued by consent among the mortgagor, the debtor if the latter differs from the mortgagor, and the holder of the mortgage deed. Information about annulment of the mortgage deed and issuance of the new mortgage deed shall be subject to state registration pursuant to the procedures provided by law.

A mortgage deed may not be issued if a monetary obligation is secured by a mortgage, the amount of debt under which obligation is not determined as of the date of execution of a mortgage agreement and which obligation does not contain conditions that make it possible to determine such amount at a particular point of time.

7) a note about the registration number, the date and place of state registration of the mortgage (this requisite detail shall be entered by the authority maintaining the applicable National Registry).

The mortgage deed may contain other terms that reflect the contents of the principal obligation and the mortgage. If the contents of the mortgage deed are inconsistent with the corresponding terms of the mortgage agreement or an agreement, which gives rise to the principal obligation, the provisions of the mortgage deed shall prevail.

The mortgage deed shall be signed by the mortgagor and the debtor if the latter differs from the mortgagor.

Article 21. Conditions for the Exercise of Rights and Performance of Obligations that arise out of the Mortgage Deed

In order to exercise rights under a mortgage deed, the holder of such a deed shall be obligated to file with the debtor a written request requiring performance of a principal obligation, and to present the original copy of the mortgage deed. If a monetary obligation is to be performed, the request of the holder of a mortgage deed shall indicate the holder's bank account, to which a debtor must transfer the respective amount of money.

A mortgage deed must be handed over to a debtor in the event of its due performance of the principal obligation. The fact that the debtor holds the mortgage deed testifies to the performance of the principal obligation, unless proven to the contrary. The fact that the mortgage deed is held by another person testifies that the principal obligation has not been performed, unless proven to the contrary.

If a principal obligation is to be performed in parts, the holder of a mortgage deed shall be obligated to provide to the debtor written receipts of payments, and to keep adequate records (a register) of payments under the mortgage deed, which records (register) are(is) to be given to the debtor at its request. In the event of conflict between receipts of payments and the register thereof, the receipts of payments shall have priority.

Chapter . TRANSFER OF RIGHTS UNDER THE MORTGAGE AGREEMENT AND THE MORTGAGE DEED

Article 22. Consequences of Transfer of the Right of Ownership

to Mortgaged Property to a Third Party

A person, who has acquired real property mortgaged subject to the requirements of Article 8 of this Law from a mortgagor or has received such property by way of succession or inheritance, shall acquire the mortgagor's rights and obligations under the mortgage agreement and the mortgage deed.

If the right of ownership (right of full commercial management) to mortgaged property shall transfer from a mortgagor to another person, the mortgage shtpersht3(n)4.3(d)-1.7(ipr)019-emcpiGEedquirer of suc-.9(h) property evenh acquirer has not been info rmed that the property was encumbered with a mortgage.

If the right of ownership to mortgaged property shall transfer to an heir of a natural person - mortgagor, such heir shall be liable before the mortgagee or the holder of a mortgage deed for performance of the principal obligation only to the exte the value of the mortgaged prop(e)4.2(rt)4.3(y)4.9(.6.4()TJ3.5928 -1.1497 TD.004 Tully 1997 Fed In Resch the 6th of Iowa 8.1(n)-1.6(t)3.8(o)4.4 to the mortgaged property has been transferred by way of succession or inheritance.

rights under the mortgage agreement shall testify to assignment of a right of claim under the principal obligation.

The mortgagee shall be obligated to provide written notice to the debtor of the assignment of rights under the mortgage agreement and the right of claim under the principal obligation.

A legal agreement, whereby rights under a mortgage agreement are assigned, must be notarized and registered pursuant to the procedures provided by law.

It shall be prohibited to assign rights under a mortgage agreement and a principal obligation if a mortgage deed is issued. Upon issuance of the mortgage deed, rights of the mortgagee under the mortgage agreement and the principal obligation shall be assigned to another person by way of transfer of the mortgage deed pursuant to the procedure specified in this Law.

Article 24. Transfer of a Mortgage Deed

A mortgage deed shall be transferred by way of endorsement by the holder of the mortgage deed (endorser) for the benefit of another person (endorsee) and delivery of the original copy of the mortgage deed.

An endorsement must indicate the last name, first name and patronymics and the address of a natural person or the name and address of a legal entity the mortgage deed is transferred to. The endorsement shall be signed by the mortgagee that is indicated in the mortgage deed and, if such endorsement is not first, by the holder of the mortgage deed who is indicated in the previous endorsement.

Endorsements on a mortgage deed prohibiting its further transfer shall be invalid.

An endorser shall be obligated to provide written notice to a debtor of transfer of a mortgage deed to an endorsee. In the event such obligation is not complied with

Article 26. Restoration of Rights under a Mortgage Deed

In the event of loss of a mortgage deed, the mortgagor and the debtor, if the latter differs from the mortgagor, shall issue a duplicate of the mortgage deed, provided that the person, who demands issuance of the duplicate, may prove his right of ownership to the lost mortgage deed by way of reconstruction of all previous endorsements. A refusal of the mortgagor (the debtor) to issue the duplicate of the mortgage deed may be challenged in court.

A note on issuance of the mortgage deed duplicate must be on every page of the text in the duplicate, and information about the issuance thereof shall be subject to state registration pursuant to the procedures provided by law.

Article 27. Pledge of a Mortgage Deed

A mortgage deed may be pledged in order to secure performance of obligations of the holder thereof before another person.

If an obligation secured with the pledge of the mortgage deed is not performed, the pledgee may demand that it be assigned the rights under the mortgage deed. If an assignment of such rights is denied, the pledgee holding the mortgage deed may demand that it be assigned the rights under the mortgage deed through court proceedings.

Mortgage deeds shall be pledged in the manner prescribed by law for promissory notes and bills of exchange.

Chapter V. SATISFACTION OF CLAIMS OF THE MORTGAGEE AT THE EXPENSE OF MORTGAGED PROPERTY**Article 28. Grounds for Levying of Attachments upon Mortgaged Property**

In the event of non-performance or undue performance by the debtor of a principal obligation, the mortgagee may satisfy its claims under the principal obligation by way of levying an attachment upon mortgaged property. The right of the mortgagee to levy an attachment upon mortgaged property shall also arise on grounds as are specified in Article 11 of this Law.

In the event of termination (re-organization, liquidation) of a legal entity that is a mortgagor, the mortgagee shall acquire a right to levy an attachment upon mortgaged property, irrespective of

mortgagee or another person for a period until such property has been sold. The property shall be managed pursuant to law and the conditions as are specified in the agreement or court decision.

Fruits and incomes obtained as a result of management of mortgaged property shall be

**Article 32. Transfer to the Mortgagee of the Right of Ownership
to Mortgaged Property**

An agreement for satisfaction of a mortgagee's claims, which provides for a transfer to the

obligation to the preceding mortgagee, shall be regarded a person for whose benefit the rights of the preceding mortgagee have been assigned under the mortgage agreement. The property guarantor, who has performed the principal obligation in full or in part, shall have a right to demand from the debtor to reimburse the amount paid by the property guarantor.

Article 38. Preparation for a Public Auction

A public auction must be conducted within two months by a specialized organization upon receipt by the specialized organization of an application from a state enforcement officer to conduct such auction.

The initial sale price for mortgaged property shall be determined by court decision or by agreement between the mortgagor and the mortgagee and, if they have failed to reach such agreement, by a specialized organization on the basis of professional evaluation of the mortgaged property. The initial price may not be lower than 90% of the property's market value determined by way of professional evaluation.

Not later than 15 days prior to commencement of the public auction the specialized organization shall publish a notice of the public auction in at least two local mass media at the address of mortgaged property. Such notice must contain information about the date, time and place of the public auction, a description of the mortgaged property subject to sale, the place where additional information about public auction conditions and any other necessary information may be obtained.

The specialized organization shall be obligated to ensure that any interested person has access to information about the public auction conditions and mortgaged property subject to sale.

Not later than on the date of publication of the public auction notice in mass media, the specialized organization shall provide written notice to the state enforcement officer, the mortgagor, the mortgagee and all persons who rights and claims to the mortgaged property, which rights and claims have been registered pursuant to the procedures provided by law, of the date, time and place of the public auction and the initial sale price for the property.

Article 39. Participation in a Public Auction

Natural persons and legal entities that have paid a guarantee fee and under law may be buyers of the real property to be sold shall be eligible to participate in a public auction. The amount of guarantee fees shall be determined by a specialized organization, but such amount may not exceed 5% of the initial sale price of mortgaged property. The mortgagor and all mortgagees will participate in the public auction without paying a guarantee fee.

Participants in the public auction shall be registered by the specialized organization. Registration shall stop not earlier than one hour prior to commencement of the public auction. In order

to be eligible to participate in a public auction, a person shall (zat)3.6e 800tga9(e)-1.2(r

Upon completion of the public auction, minutes shall be drawn up and signed by the authorized representative of the specialized organization and the buyer of the mortgaged property. The minutes must contain the following :

- a description of the mortgaged property acquired by the buyer;
- the initial price of the mortgaged property;
- the sale price of the mortgaged property;
- information about the buyer of the mortgaged property;
- the date by which the buyer must fully pay the sale price of the mortgaged property;
- a bank account of the specialized organization into which the buyer must transfer the sale price amount for the mortgaged property.

If necessary, other information may be added into the minutes.

Copies of minutes shall be sent to the mortgagor, all mortgagees and the state enforcement officer within 5 days upon signature thereof.

If the winner in a public auction refuses to sign public auction minutes, the next participant, who has offered the highest price, shall be declared a winner in the public auction. If no such participant is available, the public auction shall be declared as such that has not occurred.

Article 41. Procedures of Payment for Property acquired at a Public Auction

Within ten business days following the signature of minutes, the winner of a public auction shall transfer funds for the property acquired at the auction into a bank account indicated in the minutes.

The guarantee fee paid by the buyer prior to commencement of the public auction shall be included into the sale price. Paid guarantee fee amounts shall be returned to the other participants within three business days upon completion of the public auction. The guarantee fees shall also be returned if an auction has not occurred.

If the buyer does not pay the outstanding amount within ten days, the guarantee fee shall not be returned. No guarantee fee shall be also returned to an auction participant who has become a winner in the auction but has refused to sign auction minutes.

Article 42. Finalization of Results of a Public Auction and Allocation of Proceeds from Sale of Mortgaged Property

Within 5 business days upon receipt by a specialized organization of a payment from the buyer for the mortgaged property the specialized organization shall provide notice to the state enforcement officer that such payment has been made.

Within 5 business days upon receipt by the state enforcement officer of the above referenced notice, the state enforcement officer shall send to the specialized organization a certificate for purchase of property at the public auction, which certificate must contain the following information:

- a description of the purchased property;
- provisions to the effect that the public auction has been held in compliance with the requirements of this Law;
- data on the mortgagee and the mortgagor;
- data on the buyer;
- the sale price of the mortgaged property.

The certificate for purchase of property at the public auction shall be signed by the state enforcement officer and sealed with a stamp of the applicable division of the State Enforcement Service.

The state enforcement officer may not refuse to issue a certificate for purchase of property at a public auction, if the public auction is such that has been held in accordance with the requirements of this Law. In the event of the state enforcement officer's refusal to issue the certificate for purchase of property at the public auction, such officer must provide notice thereof to the specialized organization, the mortgagor, the mortgagee and the buyer within five days. The notice must contain references to grounds for the refusal. The refusal of the state enforcement officer to issue the certificate for purchase of property at the public auction may be challenged in court.

to real property, such certificate shall be a ground for assignment to a new owner of rights and obligations of the mortgagor under an agreement that defines lease (use) conditions.

Within 5 business days upon receipt by the specialized organization from the state enforcement officer of the certificate for purchase of property at the public auction the specialized organization shall send such certifi

term performance of the principal obligation and, in case of the debtor's failure to perform, a right of first-priority satisfaction of its claims at the expense of funds to be paid to the mortgagor, or at the expense of other property that is acquired by the mortgagor in connection with the taking (redemption) of the property.

Chapter VI. FINAL PROVISIONS

1. This Law shall enter into force as of the date of its promulgation.
2. As from the date of the entry into force of this Law, Section II of the Law of Ukraine "On Pledges" (Vidomosti Verkhovnoji Rady, 1992, No. 47, page 642; 1995, No. 1, page 3) shall be deemed ineffective.
3. Legislative and regulatory acts adopted prior to the entry into force of this Law shall apply to the extent they are consistent with this Law.
4. Until a law governing matters of establishment and operation of the National Registry of Rights to Real Property and the Single Land Cadastre has entered into force, mortgage registration procedures shall be laid down by a Temporary Regulation on Procedures for State Registration of Mortgages.
5. Within two months following the entry into force of this Law, the Cabinet of Ministers of Ukraine shall:
 - submit to the Supreme Rada of Ukraine for consideration draft laws, which are required to bring legislative acts, in particular the Law of Ukraine "On Enforcement Proceedings", into conformity with this Law and which follow from this Law;
 - approve the Temporary Regulation on Procedures for State Registration of Mortgages;
 - bring its regulatory acts and rules into conformity with this Law;
 - ensure that ministries and other central agencies of executive power bring their regulatory acts and rules into conformity with this Law.

Law of Ukraine

ON MORTGAGES

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