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# MORTGAGE LAW

("Off. Herald of RS", Nos. 115/2005, 60/2015, 63/2015 - decision of the CC and 83/2015)

## Part One BASIC PROVISIONS

### Scope of the Law

#### Article 1

The present Law governs the mortgage, for the purpose of securing and collection of claims.

### Notion of Mortgage

#### Article 2

A mortgage is a lien right on real estate, which empowers the creditor, in the event of the debtor's failure to pay a matured debt, to request the collection of claim secured by the mortgage (hereinafter: the claim) from the value of the real estate prior to the ordinary creditors and prior to junior mortgage creditors (hereinafter: the creditor), regardless of who is in the possession of the real estate.

### Subject of Mortgage

#### Article 3

The following may be the subject of a mortgage (hereinafter: the subject or real estate):

- 1) Immovable object (title to land, building and the like);
- 2) Part of an immovable object, in accordance with the decision on partition;
- 3) Portion of joint tenancy over an immovable object;
- 4) Separate part of a building over which ownership title exists, or some other right containing the right of disposal (apartment, business premises, garage, parking space, etc.);
- 5) Right to land containing authorization of free legal disposal, in particular the right of construction, right of priority construction or disposal regarding state or social ownership;
- 6) Building under construction, as well as a separate part of the object under construction (apartment, business premises, garage, etc.), irrespective of whether already constructed and under condition that a valid building permit has been issued in conformity with the law governing the construction of objects.

## Joint Mortgage

### Article 4

For the purpose of securing a claim, a mortgage may encumber multiple immovables, irrespectively of whether they belong to the same or different owners.

In the case specified in paragraph 1 of this Article, the creditor may collect the claim by its own bona fide choice from the value of one or multiple immovables.

## Scope of Mortgage

### Article 5

A mortgage encompasses the real property, in particular:

- 1) All integral parts of real estate, natural fruits not separated from real estate, unless otherwise stipulated by the mortgage agreement;
- 2) Fixtures of a real estate stipulated by the mortgage agreement, except for the things owned by third parties;
- 3) All improvements and accretions to the value of real estate occurred after institution of the mortgage.

## Mortgage on Joint Tenancy and Joint Property

### Article 6

The owner of an aliquot part in joint tenancy may mortgage that aliquot part without the consent of other joint tenants, unless the mortgage is being based on an aliquot part of a building under construction, in which case the consent by all joint tenants is necessary.

A mortgage on a jointly owned real estate is instituted only on the real estate as a whole, with the consent of all joint owners.

In the case of mortgage referred to in paragraphs 1 and 2 of this Article, the remaining joint tenants or joint owners are entitled to pre-emption right at the occasion of settlement.

## Secured Claim

### Article 7

Any claim, including a future or conditional claim, as well as a claim denominated in foreign currency, may be secured by a mortgage.

The claim referred to in paragraph 1 of this Article includes the principal, interest and collection costs.

If the interest is not entered in the real estate registry, the mortgage includes only statutory interest from the moment of default, determined in line with laws that regulate obligations and default interest rates, but not in case when the contracted interest rate is applied as default interest rate after the debtor's default.

Current interests, as well as three-year residual interests, calculating as of the day of adoption of the writ of execution, or as of the finality of the writ on the annotation of foreclosure in extrajudicial settlement procedure, have the same priority order as the principal.

The part of the claim not secured by mortgage may be collected only from the mortgagor's residual assets.

## Part Two INSTITUTION OF MORTGAGE

### Mode of Institution and Types of Mortgage

#### Article 8

A mortgage is instituted by registration in the competent real estate registry, on the basis of:

- 1) Agreement or a judicial settlement (contractual mortgage);
- 2) Mortgage deed (unilateral mortgage);
- 3) Statute (statutory mortgage);
- 4) Court decision (judicial mortgage).

The contractual mortgage rules apply *mutatis mutandis* to unilateral, statutory and judicial mortgage, unless otherwise provided by law.

## Chapter One MORTGAGE AGREEMENT

### Notion

#### Article 9

A mortgage agreement is a contract between a real estate owner and a creditor, by which the real estate owner undertakes the obligation to institute a mortgage in favor of the creditor for the purpose of satisfying a secured claim, in a manner set forth by law.

The debt becomes due in conformity with the agreement or some other legal ground it stems from.

The mortgage agreement may be independent, or a part of a contract which stipulates the claim (loan or credit facility agreement, etc.).

### Conclusion

#### Article 10

The mortgage agreement is concluded in the form of a notarized affidavit, or a document certified by a notary (solemnized).

The mortgage agreement may be concluded by the owner or other person having the right of disposal, as well as the investor and buyer of a building under construction or a separate part of a building under construction in terms of Article 3 of the present Law (hereinafter: the owner).

### Registration

#### Article 11

A contractual mortgage is registered at the request of:

- 1) Owner of the real estate or his guardian or legal representative;
- 2) Debtor;

### 3) Creditor.

In a case specified in Article 3, item 6, of the present Law, the contractual mortgage is registered as follows:

1) On the land on which the building is being constructed, the mortgage is registered on the building under construction, and once the building is entered in the real estate register, the mortgage is registered on the constructed building or a separate part of the building, *ex officio*;

2) If the investor has sold to the buyer a building under construction or a separate part of the building under construction, the buyer's mortgagee as well may request that a mortgage be registered on the building under construction, or on the separate part of the building, and once a building is entered in the real estate register, the mortgage is registered on the constructed building or the separate part of the building, *ex officio*.

If the owner of the building is changed in the course of construction, the new owner enters into all of the previous owner's rights and duties towards the persons in whose favor the mortgage was registered.

For the purposes of the present Law, the building under construction also includes a physically completed building, or its separate part, which has not been entered in the real estate register, if it fulfills the requirements for mortgage registration on the building under construction.

The risk of possible demolition of an improperly constructed building on which a mortgage has been registered is borne by the real estate owner, debtor and creditor, in accordance with their internal relationships.

## Mandatory Provisions

### Article 12

A mortgage agreement includes the following, in particular:

1) Name and surname, permanent or temporary residence, or business name and headquarters of the creditor, pledgor, as well as the debtor, should these be different persons;

2) (Deleted)

3) Precise data on the secured debt, currency of payment and payment deadline, amount of each installment and their maturity date, place and method of payment, or data on the principal claim, interest rate and other elements on the basis of which the amount of interest rate may be determined, place and method of payment of interest, as well as the amount of other auxiliary costs if stipulated, maturity of the claim, or the way of determining the maturity, if the deadline has not been fixed;

4) Data on the mortgaged real estate, or immovables, including also the data evidencing ownership over them, or existence of other right referred to in Article 3 of the present Law;

5) Data on the objects referred to in Article 5 of the present Law, which the mortgage includes.

Owner's (pledgor's) unconditional statement of consent for the mortgage being registered on his real estate by the creditor (*clausula intabulandi*), may be included in the mortgage agreement, or the separate document, in the form set out in Article 10, paragraph 1, or Article 15, paragraph 1 of the present Law, as used for concluding the mortgage agreement.

## Null and Void Provisions

### Article 13

Null and void is any provision of a mortgage agreement on the grounds of which, should the debt not be paid when due:

1) The creditor may sell the real estate contrary to the provisions of the present Law;

2) The real estate becomes the property of the creditor or a third party at an unspecified price, or a price specified in advance.

Any provision of the mortgage agreement on the grounds of which the creditor is entitled to use the subject of mortgage, or to enjoy usufruct from the mortgaged property, is null and void.

Any provision of the mortgage agreement on the basis of which the owner is prevented from disposal of the subject of mortgage, or from encumbering it by mortgage in favor of a junior creditor is null and void.

## Chapter Two UNILATERAL MORTGAGE

### Notion and Origination

#### Article 14

Unilateral mortgage is created on the basis of a declaration of will of the owner of real estate - mortgage deed.

Mortgage deed is a document drawn up by the owner of the real estate whereby he commits unilaterally to institute a mortgage in favor of the creditor, for the purpose of satisfying the secured claim, in the way set forth by law.

Mortgage deed on placing unilateral mortgage corresponds, by form and content, to mortgage agreement.

Registration of unilateral mortgage based on mortgage deed is made at the request of the creditor.

## Chapter Three ENFORCEABLE DOCUMENT

### Characteristics and Registration

#### Article 15

A mortgage agreement, i.e. a mortgage deed on unilateral mortgage, drawn up in conformity with the present Law, is deemed to be, in terms of the present Law and the law regulating enforcement and security interest, an enforceable document, provided that it had been concluded or given in the form of a notarized affidavit, provided that it includes the provisions referred to in paragraph 3 of this Article.

The mortgage based on an enforceable agreement or enforceable mortgage deed is entered in the real estate registry as an "enforceable extrajudicial mortgage", and the extra judicial settlement proceedings are conducted in conformity with the provisions of the present Law.

An enforceable mortgage agreement or a mortgage deed on institution of unilateral mortgage shall also include the following:

1) A clearly indicated provision, or statement whereby the real estate owner irrevocably empowers the creditor, if the debt is not paid when due, to collect the claim from the proceeds of the sale conducted in accordance with the extrajudicial sale procedure provided by the present Law, without filing a claim to the court, and that the real estate shall be vacated forcibly and put in the buyer's possession within 15 days from the day of the sale contract, unless the mortgage is registered on a joint tenancy stake.

2) An express provision or statement of the owner that he has been warned about the consequences of the failure to satisfy the debt on maturity and that being aware of such

consequences, he agrees to the possibility of the mortgage agreement being implemented by selling his real estate in conformity with the provisions of the present Law governing the extrajudicial settlement, without the right to conduct civil lawsuit, and that his real estate shall be vacated forcibly and put in the buyer's possession within 15 days from the day of the sale contract, if the owner fails to hand it over voluntarily, unless the mortgage is registered on a joint tenancy stake;

3) A clearly indicated provision or statement made by the owner that he agrees that the creditor has access to the real estate, including the right to enter it, irrespectively of who might be in it (owner, lessee, etc.) for the purpose of checking on its maintenance or for other justified reasons, and that he shall cooperate with the creditor in the sale procedure, and particularly to allow access to the mortgaged real estate (entry into apartment and the like);

4) (Deleted)

The mortgage agreement, or the mortgage deed on unilateral mortgage that is not in the form as specified in paragraph 1 of this Article, and which does not include the elements set out in paragraph 3 of this Article, has no power of enforceable document.

## Part Three RIGHTS AND DUTIES

### Chapter One RIGHTS AND DUTIES OF THE REAL ESTATE OWNER

#### Rights of the Real Estate Owner

##### **Article 16**

The owner has the following rights even after the mortgage has been instituted:

- 1) To hold the subject of mortgage;
- 2) To use the subject of mortgage for its usual purpose;
- 3) To use and enjoy the fruits or profits yielded by the subject of mortgage;
- 4) To dispose of the subject of mortgage and transfer the right to the acquirer, in which case nothing is changed in debtor's duty and in the secured claim.

#### Duties of the Real Estate Owner

##### **Article 17**

The owner of mortgaged real estate may not make any physical changes in the subject of mortgage (making partition-walls, making additions, demolition, joining, partition etc.) without the creditor's written consent, which the creditor may not withhold without a justified reason.

The owner shall look after and maintain the subject of mortgage as expected of a good housekeeper or a good businessman, in order to avoid depreciation of the real estate due to his actions or omissions.

The owner shall insure the subject of mortgage against all of the usual risks prior to conclusion of the mortgage agreement.

The creditor has the right of access to the real estate, including the entry into the real estate regardless of who is in it (owner, lessee, etc.), for the purpose of checking on its maintenance or for other justified reasons, if the mortgage has been instituted in conformity with the provisions of

Article 15 of the present Law or if so is expressly stipulated by the mortgage agreement or mortgage deed. The right of access to the real estate may not be used between the hours of 22:00 and 7:00, nor during public holidays, envisaged by law.

The owner, lessee and any other actual holder of the real estate shall cooperate with the creditor in the sale procedure and particularly allow access to the subject of mortgage (entry into apartment and the like), if the mortgage has been instituted in conformity with the provisions of Article 15 of the present Law or if that right is expressly stipulated by the mortgage agreement or mortgage deed.

## Chapter Two RIGHTS AND DUTIES OF THE CREDITOR

### Supplementary Security

#### **Article 18**

A creditor has the right to demand that the debtor provides supplementary collateral of a similar degree of security if the subject of mortgage has been depreciated by the conduct or actions of the owner, or actual holder.

In the case referred to in paragraph 1 of this Article, if the mortgagor fails to provide supplementary collateral, the creditor has the right to demand full payment of the debt from the value of the real estate, without any delay, in line with the present Law.

The depreciation of the subject of mortgage is determined by the court in non-contentious proceedings envisaged for securing evidence, at the request of the creditor.

### Court Prohibition against Damage

#### **Article 19**

The creditor has the right to request from a court to order the owner or actual holder to stop a certain conduct if:

- 1) Due to such conduct the subject of mortgage has been depreciated; or
- 2) There is hazard of the mortgaged real estate being depreciated because of the conduct he intends to undertake.

In the cases referred to in paragraph 1 of this Article:

- 1) The court may permit the creditor to take necessary measures to avoid depreciation of the value of the mortgaged real estate;
- 2) The mortgagee may, if no delay is permissible under the circumstances, take the necessary measures even before being permitted to do so by the court, if the mortgage has been instituted in conformity with the provisions of Article 15 of the present Law, or if so has been expressly stipulated by the mortgage agreement or mortgage deed;
- 3) The creditor is entitled to request from a court to issue an order to the owner to reimburse the costs incurred.

The claim for reimbursement of the costs incurred pursuant to this Article is secured without registration and enjoys priority in relation to all other registered encumbrances.

# Chapter Three

## TRANSFER OF CERTAIN RIGHTS AND DUTIES

### Assignment of Claim

#### **Article 20**

A claim secured by a mortgage may be assigned under a contract between the creditor and the person to whom the claim is being assigned.

A mortgage assignment contract concluded separately from the assignment of claim produces no legal effect.

A contract referred to in paragraph 1 of this Article:

- 1) Is concluded in the form prescribed by Article 10, paragraph 1 of the present Law;
- 2) Transfers the mortgage to the person to which the claim is being assigned;
- 3) Produces legal effect towards third parties as of the day of entry in the real estate register.

### Designating a Third Party

#### **Article 20a**

A mortgagee or multiple mortgagees may, in written form with certified signatures, designate the third party or one of them to undertake legal actions for the purpose of protection and satisfaction of the claim secured by mortgage.

In the case referred to in paragraph 1 of this Article, the third party acts in the name and for the account of the mortgagee or mortgagees, in relation to mortgagor, i.e. owner of the mortgaged real estate, when he is not the same person, as well as in relation to all third parties that are actual holders of mortgaged real estate.

The name of the third party referred to in paragraph 1 of this Article is entered into the real estate registry, whereas the mortgagee or mortgagees may request, at any time, to be entered into real estate registry, i.e. to replace the third party.

### Super Mortgage

#### **Article 21**

A claim secured by a mortgage may be pledged on the ground of a contract between the mortgagee and a super mortgagee.

A contract referred to in paragraph 1 of this Article:

- 1) Is concluded in the same form in which a mortgage agreement has been concluded, in accordance with Article 10, paragraph 1, i.e. Article 15, paragraph 1 of the present Law;
- 2) Includes the mortgagee's express and unconditional statement that the super mortgagee may be entered in the real estate registry in that capacity;
- 3) Produces legal effect towards the debtor as of the day of his being notified in writing of the claim being pledged, from which time the mortgagor may perform his duty only to the super mortgagee or under his written instructions;
- 4) Produces legal effect towards third parties as of the day of entry in the real estate register.

The statement referred to in paragraph 2, item 2) of this Article, may be included in the contract referred to in paragraph 1 of this Article, or in a special document, and in the form in accordance with Article 10, paragraph 1, i.e. Article 15, paragraph 1 of the present Law.



## Assumption of Debt

### Article 22

The debt towards the mortgagee may be transferred under a contract of assumption of debt secured by mortgage between the owner and acquirer of the subject of mortgage, or a contract between the owner, acquirer of the subject of mortgage and the debtor, if the owner is not a mortgagor.

The contract referred to in paragraph 1 of this Article:

- 1) Is concluded on the occasion of disposal of the subject of mortgage, in the form of a separate contract or a provision i.e. part of the contract of disposal of the subject of mortgage;
- 2) Produces legal effects if the mortgagee gives his written consent on disposal.

## Disposal of a Part of Real Estate

### Article 23

If the owner partitions or merges the subject of mortgage with some other real estate with the creditor's consent, the mortgage is registered *ex officio* on such immovables and each mortgage secures the entire claim, unless otherwise stipulated with the mortgagee.

## Part Four SATISFACTION

### Chapter One GENERAL RULES

#### Right of Satisfaction

### Article 24

In the event of debtor's failure to pay the debt on maturity, the mortgagee may satisfy his claim from the value of the mortgaged real estate, regardless of who is its owner or actual holder at that moment.

The satisfaction referred to in paragraph 1 of this Article is carried out in conformity with the present Law i.e. the law governing the enforcement procedure, as well as the law governing the coercive collection of tax debts on real estate.

Where a mortgage agreement is drawn up in the form of an enforceable document referred to in Article 15 of the present Law, the rules of extrajudicial settlement provided by the present Law shall apply.

#### Choice of Satisfaction

### Article 25

Mortgagee may request that his mature claim is satisfied as follows:

- 1) Firstly from the value of the mortgaged real estate and then from the debtor's other assets;

- 2) Concurrently, from the value of mortgaged real estate and the debtor's assets; or
- 3) Firstly from the debtor's assets and then from the value of mortgaged real estate.

## Time-barred Claim

### Article 26

Mortgagee may be satisfied from the value of mortgaged real estate even after the secured claim was barred due to statute of limitation.

In the case referred to in paragraph 1 of the present Article, interest and other periodical dues may not be satisfied from the subject of mortgage.

## Subsequent Contract

### Article 27

A subsequent contract is a separate contract between the mortgagee and the real estate owner concluded upon maturity of the secured claim in the form envisaged by Article 10, paragraph 1 of the present Law, and which may stipulate the following:

- 1) A partial or full transfer to the creditor, *in lieu* of the satisfaction of debt, of the right of ownership or some other property right relating to the subject of mortgage;
- 2) Any other transaction which results in deletion of mortgage from the real estate.

The creditor shall notify the debtor of the subsequent contract without any delay.

The subsequent contract referred to in paragraph 1 of this Article may be concluded only in the case that there is one registered mortgagee on the subject of mortgage.

## Personal Subrogation

### Article 28

If the mortgage debt is paid by a person who is not the debtor, that person subrogates the mortgagee in relation to the debtor and third parties.

## Chapter Two EXTRAJUDICIAL SETTLEMENT PROCEDURE

### First Notice

#### Article 29

In the event of the debtor's failure to pay the debt on maturity, the mortgagee referred to in the enforceable document under Article 15 of the present Law sends a notice in written form concurrently to the debtor and the owner of the subject of mortgage (if they are different persons), whereby the extrajudicial settlement procedure pursuant to the present Law is initiated.

The notice includes the following elements:

- 1) Data on the mortgage agreement and the mortgaged real estate;
- 2) Description of the breach of mortgage agreement on the basis of which the foreclosure is requested;

- 3) Actions that the debtor shall undertake in order to pay the debt and avoid the sale of real estate;
- 4) Time period in which the debtor shall pay the debt in order to avoid the sale of real estate;
- 5) Warning that, should the debtor fail to undertake actions determined in line with item 3) of this paragraph and thus fail to pay the debt, the creditor shall initiate the procedure of sale of the mortgaged real estate for the purpose of payment of the claim from the value of the sale proceeds, and that the debtor, i.e. owner of the property shall lose ownership or possession of the real estate;
- 6) Name of and necessary data on the creditor's representative (contact details), whom the mortgagor may contact to get more information;
- 7) Other information the creditor might deem important.

## Notice on the Sale of Real Estate

### Article 30

Should the debtor fail to pay the debt within the time period of 30 days from receipt of the first notice, the creditor shall send to the debtor and the real estate owner and other mortgagees a notice on sale of the real estate, its contents being as follows:

- 1) Data on the mortgage agreement and the mortgaged real estate;
- 2) Description of the breach of the mortgage agreement on the basis of which the foreclosure is requested;
- 3) Notice that the whole debt has fallen due for collection;
- 4) Amount of debt due for collection;
- 5) Actions that the debtor or owner shall take in order to pay the debt and avoid the sale of the real estate;
- 6) Time period in which the debtor or the owner shall perform his duties in order to avoid the sale of the real estate;
- 7) Warning that in the event of the debtor's or owner's failure to undertake the mentioned actions and thereby pay the debt, the creditor shall, by selling the mortgaged real estate, suspend the holding right on the real estate;
- 8) Notice on the selected method of sale of the real estate;
- 9) Name and the necessary data on the creditor's representative (contact details) whom the creditor may contact for the purpose of having a meeting;
- 10) Other information the creditor deems important.

## Annotation of Foreclosure

### Article 31\*

After expiry of the term set in Article 30, paragraph 1 of the present Law, the mortgagee shall file with the real estate registry a request for the annotation of foreclosure in his favor, together with the following:

- 1) Copy of the notice of the sale of the real estate;
- 2) Copy of the mortgage agreement;
- 3) Statement that the debtor has failed to satisfy the debt to date;
- 4) Evidence that the first notice and the notice on the sale of the real estate have been sent to the debtor, the owner of the real estate, and other mortgagees.

The real estate registry shall, within seven days from receipt of the annotation request, annotate the foreclosure in favor of the mortgagee, and serve the writ on the annotation of foreclosure on the

mortgagee, debtor and the real estate owner, as well as on other mortgagees whose claim is secured by mortgage on the respective real estate.

Request for inscription of annotation of foreclosure may be filed by each of the mortgagees, regardless of the priority order.

If prior to filing a request for annotation of foreclosure, the real estate registry received multiple requests for annotation of rights on the same real estate in terms of the law regulating registration of rights on immovables, the registry shall decide upon each request according to the order of their receipt, within the term set out in paragraph 2 of this Article.

The annotation of foreclosure and the writ on foreclosure includes the following:

- 1) Express authorization that the mortgagee, in the capacity of the statutory representative of the owner of the mortgaged real estate, may sell such real estate in conformity with the provisions of the present Law, when the writ becomes final, but not prior to the expiry of the term of 30 days from the day the writ was issued;
- 2) Prohibition of alienation or any kind of statutory conveyance of the mortgaged real estate by its owner.

The owner, debtor and creditor who filed request for passing the writ on annotation of foreclosure are entitled to file an appeal to the competent authority against the writ on the annotation of foreclosure, within 15 days from receipt of the writ.

The competent authority shall render a second-instance decree within 15 days from the day the appeal was filed.

The appeal shall be accepted if the debtor or owner of the mortgaged real estate, attached to the appeal, submits the written evidence of the following:

- 1) That the claim does not exist;
- 2) That the mortgage does not exist;
- 3) That the claim is not due for collection;
- 4) That the debt has been paid.

The second-instance decision referred to in paragraph 7 of this Article is final and enforceable.

A sale or other statutory conveyance deed of the mortgaged real estate contrary to the prohibition set out in paragraph 5, item 2) of this Article, is null and void.

## Right to a Meeting

### Article 32

The debtor i.e. the real estate owner may, within the term of 10 days from receipt of the notice of sale of the real estate, demand a meeting with the creditor or his representative who shall receive him in his premises during working hours.

The creditor's right to proceed with the sale of mortgaged real estate shall not be restricted or postponed if the parties fail to reach an agreement in the way proposed by the debtor at that meeting.

## Written Communication

### Article 33

In terms of the present Law, written communication (notice, information, etc.) is deemed to be delivered to the debtor if they have been sent by registered mail to the address of:

- 1) Mortgaged real estate;
- 2) Debtor, as stated in the mortgage agreement, if the debtor's address differs from that of the mortgaged real estate;

3) Real estate owner, if the owner is not the debtor.

For the purposes of the present Law, a communication shall be deemed delivered to the creditor if it has been sent by registered mail to the creditor's address as stated in the mortgage agreement or to the address stated in the creditor's notice whereby the debtor's reply is demanded.

## Right to Sell

### Article 34

Should the debtor fail to pay the debt by the date of finality of the writ on annotation of foreclosure and 30 days have elapsed from the date of that writ, the mortgagee may, on the basis of that writ, proceed with the sale of the mortgaged property through auction or direct arrangement.

The selection of one method of sale does not preclude the possibility of application of the other method of sale.

After the finality of the writ on the annotation of foreclosure, and before proceeding with auction sale, the creditor shall assess the market value of the real estate by hiring an authorized expert witness or other person authorized by law to perform assessment (hereinafter: assessed value).

Sale by direct arrangement prior to announcement of the auction sale is possible at a price that cannot be lower than 90% of the assessed value referred to in paragraph 3 of this Article.

Should the real estate remain unsold in the first public auction, the creditor may continue the sale by direct arrangement, but at a price that is not lower than 60% of the assessed value, or schedule the second auction sale that shall be held not later than within the term of 120 days as of the day of completion of the unsuccessful auction.

If within the term of 18 months as of the day of finality of the writ on the annotation of foreclosure, the mortgaged real estate remains unsold in extrajudicial settlement proceedings, the real estate registry shall issue a writ on deletion of annotation ex officio.

Simultaneously with issuing the writ referred to in paragraph 6 of this Article, the real estate registry shall make annotation of prohibition of extrajudicial sale of the mortgaged real estate by the mortgagee in whose favor the annotation of foreclosure has been made, who, from that moment, may be satisfied only in the court sale proceedings.

## Sale by Auction

### Article 35

The creditor may organize the auction sale of the real estate on his own or entrust it to a person professionally engaged in these matters.

The creditor shall hold the first auction sale within 6 months as of the day of finality of the writ on annotation of foreclosure.

The announcement of the auction sale shall be prominently published in widely circulated daily newspaper which is sold in the whole territory of the Republic of Serbia and in at least one daily newspaper which is sold in the region where the mortgaged property is located, at least 30 days before the scheduled sale.

The announcement includes the following:

- 1) Description of the real estate;
- 2) Creditor's name and surname or company name;
- 3) Mode of communication with the creditor;
- 4) Opening price at the auction;
- 5) Time and place of the auction;
- 6) Other information that the creditor deems important.

The creditor shall concurrently send to the debtor, the real estate owner, or to the third parties having rights over the mortgaged real estate, the notice about the announcement which contains the following:

- 1) All elements of the announcement;
- 2) Statement indicating the term within which the whole debt may be paid in order to avoid the sale.

The opening price at auction may not be lower than 75% of the assessed value.

If the first auction fails, the opening price at the second auction may not be lower than 60% of the assessed value.

The creditor may place his bid at the auction.

## Sale by Direct Arrangement

### Article 36

Based on the final writ on the annotation of foreclosure and after the expiry of the term of 30 days from the day the writ was issued, the creditor, as the legal representative of the owner of the mortgaged real estate, may sell the real estate by direct arrangement, at a price referred to in Article 34, paragraphs 4 and 5 of the present Law.

Creditor and mortgagor, i.e. owner of the mortgaged real estate, when those are not the same person, may during the whole course of extrajudicial sale proceedings, agree on sale by direct arrangement and the terms of such sale, in line with Article 34, paragraphs 4 and 5 of the present Law.

The creditor may sell the real estate on his own, or hire a person professionally engaged in sale of real estate, in line with the law.

If the sale is conducted by a person referred to in paragraph 3 of this Article, the usual fee may be included in the sale price.

Not later than 15 days prior to conclusion of the real estate sale contract, the creditor shall provide information to the debtor, the owner of the real estate and the persons having other rights over the real estate, which includes the following:

- 1) Total amount of the claim;
- 2) Assessed value of the real estate;
- 3) Material elements of the real estate sale contract;
- 4) Estimated date for conclusion of the sale contract;
- 5) Manner of distribution of the sale proceeds;
- 6) Date when the real estate shall be moved out and emptied;
- 7) Statement of the period in which the total debt may be settled, in order to avoid the sale of real estate;
- 8) Statement providing for any person to pay a price higher than the one envisaged by the direct arrangement contract, prior to expiry of the date referred to in item 4) of this paragraph.

## Obstruction of the Extrajudicial Settlement

### Article 37

In the course of the extrajudicial settlement procedure, the competent interior affairs authority shall give without delay, in accordance with the Law on Police, the mortgagee or his representative all assistance necessary for the implementation of the settlement procedure, should the owner or holder of the real estate fail to allow the access to the real estate in the procedure for its sale or refuse to vacate the real estate voluntarily, within the term specified in Article 15, paragraph 3, item 1, of the present Law, unless a longer term is stipulated by the sales contract.

The competent interior affairs authority renders the assistance referred to in paragraph 1 of this Article after having an insight in the writ on the annotation of foreclosure, i.e. the real estate sales contract.

## Sales Price Falling Short of the Debt

### Article 38

If the price achieved at auction or by direct arrangement falls short of the creditor's total claim, the debtor remains in debt to the creditor for the remaining debt that accounts to the difference between the total claim and the price achieved.

The remaining debt referred to in paragraph 1 of this Article shall be reduced by the amount of the difference between 75% of the estimated price of real estate and the price achieved, if the price achieved is lower than 75% of the estimated price, in the both methods of sale.

If the mortgagee is settled by acquiring the title to the mortgaged real estate, the claim is deemed settled at the moment of acquisition of that title.

If the price achieved for the mortgaged real estate at auction or by direct arrangement is higher than the claim made, the mortgagee shall pay the difference to the debtor.

## Chapter Three SATISFACTION WHEN THE SUBJECT OF MORTGAGE IS A BUILDING UNDER CONSTRUCTION

### Assignment of a Building Permit

#### Article 39

If the subject of mortgage is a building under construction, its sale for the sake of settlement is effected by assigning with compensation the right to build established by a final building permit, and by selling the things incorporated in the building under construction.

At the request by the buyer of the building under construction, the authority that issued the building permit shall issue to the buyer, without any delay, an identical building permit in his name and revoke the old building permit.

In the case referred to in paragraph 2 of this Article, the buyer acquires, by operation of law, all of the seller's rights and duties defined by law based on the permit even before the permit is issued to the buyer.

# Chapter Four

## ORDER OF SATISFACTION

### Order of Satisfaction of Mortgagees

#### Article 40

When a single subject of mortgage is pledged to several mortgagees, the order in which their claims are satisfied out of the proceeds of sale of the subject of mortgage is determined in accordance with the day, hour and minute of the institution of mortgage, counting from the receipt of the request for registration of the first mortgage.

### Distribution of Funds Obtained by Extrajudicial

#### Sale of Real Estate

#### Article 41

The mortgagee conducting the sale of the mortgaged real estate shall include in the real estate sale contract, in addition to the amount of the sale price, the provision or appendix to the contract which specifies the distribution of the sale proceeds in the following order:

- 1) Sale costs, including the costs and fees of third parties;
- 2) Claims of mortgagees in order of registration referred to in Article 40 of the present Law;
- 3) Amount of the sale proceeds that remains after satisfaction of mortgagees belongs to the debtor, i.e. owner of the mortgaged real estate, when they are not the same person.

The contract referred to in paragraph 1 of this Article shall include the instruction regarding the method of payment of the sale price to the fiduciary or other appropriate account (escrow account, special-purpose account, public notary account, etc.) that is not subject to forced collection, from which the persons referred to in paragraph 1 of this Article shall be satisfied according to determined distribution.

Within seven days as of the day of conclusion of the contract referred to in paragraph 1 of this Article, the creditor shall deliver a copy of the contract to the debtor i.e. owner of the mortgaged real estate, other mortgagees, all third parties having the right on the real estate, and to the bank where the account referred to in paragraph 2 of this Article is opened, based on which he shall draw the belonging funds from the account referred to in paragraph 2 of this Article without subsequent approval of other persons included in the distribution, which shall be allowed by the bank where the account is opened, without the right to request additional documents, except the documents that prove the capacity of the person included in distribution that is referred to in this Article.

Persons referred to in paragraph 1 of this Article bear the costs of opening and maintaining the account referred to in paragraph 2 of this Article, in proportion to the amounts foreseen for distribution in relation to the achieved sale price.

Method of distribution of the mortgaged real estate sale proceeds specified in this Article is applied mutatis mutandis to distribution of direct arrangement sale proceeds, in line with the present Law.

### Bankruptcy

#### Article 42

If the subject of a mortgage is subject to bankruptcy proceedings, the creditor has the right of priority and separate satisfaction from the value of the real estate.



# Part Five CESSATION OF MORTGAGE

## Chapter One ERASING

### Article 43

A mortgage ceases to exist by erasure from the real estate registry where it was inscribed, in conformity with law (hereinafter: the erasure of mortgage).

The erasure of mortgage is carried out at the request of the debtor, owner or creditor, if the secured claim ceases to exist in the way permitted by law.

### Erasure at Owner's Request

### Article 44

Erasure of the mortgage is carried out at the request of the owner or buyer of the mortgaged real estate in the procedure of extra-judiciary sale for the purpose of satisfying the mortgage claim.

Along with the request referred to in paragraph 1 of this Article the following is submitted:

- 1) Mortgagee's written statement of agreement with the mortgage being erased; or
- 2) Final court decision establishing that the mortgagee's claim ceased; or
- 3) Contract on sale of the mortgaged real estate concluded upon conclusion of the extra-judiciary sale procedure by which the claim of the mortgagee is satisfied, contract on sale by direct arrangement (both along with the evidence of payment of the sale price) or subsequent contract.

The mortgagee shall allow the erasure of mortgage if his claim has been paid in full, or if the conditions stipulated under the present Law have been met.

The mortgagee shall issue to the debtor and the owner of mortgaged real estate a certificate of satisfaction of debt, without any delay, upon the payment of debt, and provide him with consent for erasure of the mortgage.

In case of existence of multiple mortgagees, if only a part of mortgagees is satisfied from the value of the mortgaged real estate sold in extra-judiciary procedure, a competent real estate registry shall erase all mortgages registered on the respective real estate, based on the request and attached document referred to in paragraph 2 of this Article.

### Destruction of Real Estate

### Article 45

A mortgage also ceases when the subject of mortgage is destroyed completely and the owner may request the mortgage to be erased.

The mortgage may be renewed if the owner restores the subject of mortgage and its re-registration is carried out by operation of law.

The mortgage is limited to the residual part, if the subject of mortgage has been destroyed partially and the correction of registration is carried out by operation of law.

## **Article 46**

In the case of destruction or partial destruction of the subject of mortgage, the mortgagee acquires by operation of law a lien on the claim for insurance indemnity, or on the paid out indemnity.

The amount obtained pursuant to paragraph 1 of this Article is distributed among the mortgagees according to the order of registration of their mortgage rights.

## **Public Interest**

### **Article 47**

A mortgage also ceases to exist when, with the aim of satisfaction of the public interest (expropriation and the like), and in conformity with law, and based on the decision of a competent authority, the right of the owner over the subject of mortgage is transferred to a third party,

In the case referred to in paragraph 1 of this Article:

- 1) Erasure is carried out at the request of the new real estate owner;
- 2) Mortgagee acquires a lien on the claimed indemnity, or the indemnity paid out, i.e. registers the mortgage on the real estate which was transferred into the ownership of the owner instead of the real estate that was seized in public interest.

The indemnity referred to in paragraph 2, item 2), of this Article is distributed among the mortgagees according to the order of registration of their mortgage right.

## **Judicial Public Sale**

### **Article 48**

A mortgage also ceases when a judicially public sale of the object was carried out.

In the case referred to in paragraph 1 of this Article, the erasure is carried out on the basis of a final court decision on the satisfaction of mortgages.

## **Extrajudicial Sale**

### **Article 49**

A mortgage also ceases when, on the basis of an enforceable document, pursuant to the present Law, the subject of mortgage has been sold in the extrajudicial manner, when the mortgagee has been satisfied based on the contract on sale by direct arrangement, or on the basis of a subsequent contract, pursuant to the present Law.

In the case referred to in paragraph 1 of this Article:

- 1) Erasure is carried out at the request of the buyer of the subject of mortgage, mortgagee, mortgagor or owner of the mortgaged real estate, when that is not the same person, based on subsequent contract, sale contract, or the contract on sale by direct arrangement and evidence of paid sale price;
- 2) All registered mortgages, as well as other encumbrances (entered into the registry after the mortgage for whose satisfaction the sale was carried out, or subsequent contract concluded) shall cease by operation of law and the competent real estate registry carries out erasure ex officio, irrespective of the fact whether the claim has been satisfied in full, partially, or remains unsatisfied.

Notwithstanding paragraph 2, item 1) of this Article, in case of conclusion of a subsequent contract, there is no possibility to submit evidence of the paid sale price.

## Confusion and Consolidation

### Article 50

A mortgage also ceases by erasure when:

- 1) The same person becomes both a mortgagee and a mortgagor; or
- 2) Mortgagee acquires the title to mortgaged real estate.

In the case referred to in paragraph 1 of this Article, the erasure is carried out at the request of the owner, debtor or creditor.

## Renunciation of Mortgage

### Article 51

A mortgage may also cease on the basis of a mortgagee's unilateral declaration of intent made in the form specified in Article 10, paragraph 1 of the present Law, at his own request, or at the request of the owner of the mortgaged real estate that contains the attached statement of the creditor.

## Amortization of Secured Claim

### Article 52

A mortgage also ceases on the basis of a final court decision establishing the amortization, in conformity with law, at the proposal of the owner, joint tenant or holder of title to joint ownership if:

- 1) Twenty years have elapsed from maturity of the secured claim (old mortgages);
- 2) Neither the registered mortgagee exists any more or may be found, nor his heirs (universal successors) or the persons who were subsequently registered as transferees (cessionaries) of the claim secured by mortgage;
- 3) During the time passed neither the registered mortgagee has requested or received the payment of either the principal claim or interest, nor that has not been requested by any of the authorized persons entered in the real estate registry.

In the case referred to in paragraph 1 of this Article, the erasure is carried out at the request of the owner, joint tenant or joint owners.

## Chapter Two INSTITUTION OF A NEW MORTGAGE

### Disposal of Mortgage that was not erased

### Article 53

If a secured claim has ceased, the mortgage that was not erased may be transferred to a new creditor within the term of 3 years from the day when the claim ceased, for the purpose of securing another claim, to the old creditor, up to the amount of the claim that was secured by the mortgage that was not erased.

In the case specified in paragraph 1 of this Article, the transfer is carried out at the owner's request attached to which is the evidence that the claim ceased.

## Article 54

The owner's renunciation of the right of disposal of the mortgage that was not erased does not produce legal effect, unless:

- 1) The owner gives a contractual undertaking to a third party, particularly to a mortgagee holding a junior priority order, to request in the latter's favor the erasure of the mortgage;
- 2) The obligation in connection with that mortgage is annotated in the real estate register.

The following applies to junior mortgagees:

- 1) They may not object to a new mortgagee being registered in the vacated position of the mortgage that was not erased;
- 2) They retain the position in which their mortgages are.

### Annotation of the Priority Order

## Article 55

The owner of the subject of mortgage may request, together with the request for erasure, the annotation of the priority order with regard to the inscription of a new mortgage:

- 1) Up to the amount of claim secured by the old (earlier) mortgage;
- 2) At the position held by the old (earlier) mortgage;
- 3) Within the term of three years from the day when the annotation was permitted.

In the case of transfer of the right over the subject of mortgage, the annotation of reservation of the right of priority order produces legal effect in favor of the new holder of right.

This Article applies *mutatis mutandis* when a new mortgage is intended to enter into the position of two or more mortgages which come one after another in the order of priority.

### Prior Annotation of New Mortgage

## Article 56

At the owner's request, a new mortgage may be registered in the position of an already registered mortgage, with the same order of priority and up to the amount of the claim secured by the already registered mortgage.

In the case referred to in paragraph 1 of this Article:

- 1) Registration produces legal effect if the old mortgage gets erased within the term of one year from the day when the permission for registration of the new mortgage was issued;
- 2) Erasure of the old mortgage is carried out at the request of the owner or creditor in whose favor the new mortgage is registered.

The new mortgage is erased by operation of law if the old mortgage is not erased within the term referred to in paragraph 2, item 1), of this Article.

If a super mortgage is established on the old mortgage, the new mortgage produces legal effect:

- 1) If the super mortgage is also erased; or
- 2) The super mortgagee and the creditor in whose favor the new mortgage is inscribed give their consent for the transfer of the super mortgage to the new mortgage.

If the old mortgage is established on multiple immovables (simultaneous mortgage), the new mortgage produces legal effect only if the old mortgage is erased from all real estate registries where it has been inscribed.

The provisions of this Article apply *mutatis mutandis* when a new mortgage is to replace two or more mortgages which come one after another in the order of priority.

## **Articles 57-62**

(Deleted)

## **Part Seven TRANSITIONAL AND FINAL PROVISIONS**

### **Repealing Other Regulations**

#### **Article 63**

On the day the present Law becomes applicable the provisions of Articles 63 through 69 of the Law on Basics of Property Right Relations ("Official Gazette of the SFRY, Nos. 6/80 and 36/90 and "Official Gazette of the SRY", No. 29/96) are repealed.

### **Application of the Law**

#### **Article 64**

The present Law does not apply to the mortgages instituted prior to the day of its entry into force, unless otherwise agreed on by contracting parties.

The appropriate registries shall submit to the Real Estate Registry, within the term of three months as of the day this Law starts applying, all data on the mortgages instituted prior to the starting date of application of the present Law, which are entered in the Central Mortgage Register pursuant to the present Law.

The Real Estate Registry shall enter the data submitted pursuant to paragraph 2 of this Article, within the term of four months as of the day of submission.

### **Entry into Force**

#### **Article 65**

The present Law enters into force on the eighth day upon its publication in the "Official Herald of the Republic of Serbia", and shall apply as of the sixtieth day of the day of its publication.

## ***INDEPENDENT ARTICLES OF THE LAW ON AMENDMENTS AND ADDITIONS TO THE MORTGAGE LAW***

*("Official Herald of RS", No. 60/2015)*

#### **Article 29**

In the territory of the basic court where a public notary has not yet been appointed, until such appointment of the public notary with the official seat located in the seat of the basic court, the mortgage agreements or mortgage deeds shall be drafted by a basic court in line with the provisions of the present Law and the law that governs activities of public notaries.

If a public notary with the official seat outside the seat of the basic court is appointed for the territory of the basic court, until the appointment of a public notary with the official seat located in the seat of the basic court, the basic court is authorized to draft documents referred to in paragraph 1 of this Article only for the territory of the city or municipality where the official seat of the appointed public notary is not located.

## Article 30

For the writs on annotation of foreclosure that became final until the day this Law entered into force, the term set out in Article 18 of the present Law (amended Article 34, paragraph 6) starts on the day the present Law entered into force.

## Article 31

The present Law enters into force on the eighth day from the day of its publication in the Official Herald of the Republic of Serbia.

### NOTE OF THE PUBLISHER:

\* By the Decision of the Constitutional Court IUz No. 799/2012 as of the April 9th, 2015 published in the "Off. Herald of RS", No. 63/2015 as of July 17th 2015, it is determined that the provision of Article 31, paragraph 7 of the Mortgage Law ("Off. Herald of RS", No. 115/2005), in the part which reads as follows: "and no claim or legal remedy is allowed against it" is not in compliance with the Constitution. Stated Article of the Law (after adoption of the Decision of the CC, and prior to its publishing) was amended in whole by the Law on Amendments to the Mortgage Law ("Off. Herald of RS, No. 60/2015).



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