

The current law determines basics of the formation of mortgage, regulations of payment of state registration, secured debt and other civil legal commitments at the expense of mortgage, the rights and duties of the sides connected with the provision of execution of commitments coming out from civil-legal contracts, as well as other relations in this sphere.

I Chapter

General provisions

Article 1. Main conceptions

1.0. The conceptions used in this law carry the following meanings:

1.0.1. Mortgage – is the pledge of immovable property and also movable property the rights over which are noted in the official register as the method of the execution of commitments.

1.0.2. Mortgage paper - is a named security defining the hypothec right;

1.0.3. Legal owner of the hypothec paper - is the person obtaining ownership right over hypothec;

1.0.4 Mortgagor – is a person pledging what is the object to mortgage. Hypothec setter can be both a debtor and the third person;

1.0.5. Mortgagee – is the person who has the mortgage right and the right to demand the execution of the main commitment at the expenses of mortgage object in an relatively eminent way compared to other creditors of the mortgage setter;

1.0.6. Mortgage right – is the right directing the mortgage keeper to the mortgage objects when the debtor does not execute its main commitment;

1.0.7. Mortgage contract - is an act concluded between the hypothec keeper and setter for the execution of the main commitment;

1.0.8. The main commitment - the debt and other commitments coming out of the main contract and the execution of which is secured in a complete or partial manner by mortgage;

1.0.9. Initial sale price, in accordance with the requirement of this law, is the selling price (liquid) of the mortgage object in case of the time restriction of the implementation of the appropriate marketing to determine the market value of it.

Article 2. Legislation on Mortgage

Mortgage relations are regulated by this law and the Civil Code for Azerbaijani republic as well as the international contracts tats other Azerbaijan supports.

Article 3. The area of application of mortgage

3.1. With mortgage, real demands derived from debt, trade, podrate and other civil-legal contracts can be secured.

3.2. Mortgage can also be set for the execution of the any possible demands that might appear in the future. In this case, the conditions indicated in the article 10.5 of this law must be followed.

Article 4. The amount of the secured demand

4.1. If no other regulation is considered by the mortgage contract the demand of the mortgage keeper is fully paid including the following:

4.1.1. Main debt;

4.1.2. Rates;

4.1.3. Compensation of the recession charge and/or imposed damage as a result of non-execution or improper execution of the obligation, also its delay;

4.1.4. Payment of the court expenses and other expenses in connection with the directing to the mortgage object charging;

4.2. Except from the requirements considered with the articles 4.1.4 and/or 5 of this law, if the amount of the main obligation is indicated in the mortgage contract, the obligation is not regarded as secured only to this amount;

Article 5. Security of the side expenses of the mortgage keeper

According to the condition of the mortgage contract and this law in case of mortgage keeper's duty to maintain and provide safety of the mortgage object, the expenses, also taxes and municipal charges that he carries for the maintenance and safety of the mortgage object are paid in value of the mortgage object.

Article 6. Mortgage object

6.1. A mortgage object, according to the law, can be the immovable object in property of the mortgage setter, also the immovable object not yet constructed up and movable property the property rights of which is registers in the official register.

6.2. The object that is taken out of the civil turnover, that can not be focus for the demand and con not be privatized, is not allowed to be subject to mortgage.

6.3. An undividable object can not be pledged in pieces.

6.4. Mortgage can be common. Common mortgage is the mortgage that its object can be several objects and all of which is used to meet the common demand. Creditor's demand can be paid with any object upon his wish.

6.5. If no other regulation is considered with the mortgage contract mortgage object can be changed upon the agreement of the mortgage keeper. In this case amendments are applied to the mortgage contract.

Article 7. Characteristics of the mortgage

7.1. The right of the mortgage keeper over the mortgage object, if no other regulation is considered in the mortgage contract, is also applied to his implements. The mortgage right over the harvest, product and income is applied in cases considered in the mortgage contract.

7.2. Building, constructions or other immovable object is mortgaged only together with the land where it locates or that secures its functioning. When deduction is applied to mortgage object, the person who purchased it gets the rights of the ownership over the land where immovable property is located.

7.3. If other property is not enough for the execution of the mortgagor's obligations, third party's demand to the mortgage object can be applied only after full commitment of mortgagee's claims according to this Law.

Article 8. Mortgage of joint (collective) property

- 8.1. Joint (collective) property might be mortgaged only by consent of all owners.
- 8.2. Putting in pledge by the owner of its share in joint property does not require consent of the other owners. If deduction on that share is applied by demand of mortgagee, and if it is sold, then preference rules of Civil Code of Azerbaijan Republic can be applied.

Article 9. Following mortgage

- 9.1. If no other regulation defined by this law, or previous mortgage contract doesn't indicate any other regulation, then mortgagor to provide other obligations can leave as a deposit previously mortgaged object.
- 9.2. Mortgagor should provide any information about mortgage object as defined by this law under the Article 10.8 to the every next mortgagee.
- 9.3. Claims of the next mortgagee are paid from the value of mortgage object not depending on execution period.
- 9.4. Previous mortgagee's rights preferences are defined by state registration of mortgage.
- 9.5. The preference rights of mortgagees about the indemnification of their claims can be changed at any time by an agreement among mortgagees. When the numbers of mortgagees are more than 2, then changes in preference rights is conducted by a consensus of mortgagees.
- 9.6. When mortgage is made official by a hypothec paper, then the next mortgage is prohibited.
- 9.7. Any disorder of rules defined by this Article, gives rights to mortgagee to demand early commitment of the main obligation, and if demand is not satisfied, it gives right to mortgagee to apply deduction on mortgage object.

Chapter II. Occurrence of mortgage and its registration

Article 10. Agreement on mortgage

- 10.1. Agreement on mortgage is not a separate act and is concluded with the purpose of fulfilment of obligations under the main agreement.

Mortgage contract can be signed at any time during the validity period of the main obligation. Invalidation of mortgage contract can not be cause to invalidity of the main obligation. However, invalidity of the main obligation can be cause to invalidity of mortgage contract.

10.2. Mortgage contract is a document signed by mortgagee, mortgagor, and even if mortgagor is not debtor, then by debtor as well. Contract about the real estate should be approved by notary.

10.3. If there is any discrepancy between mortgage contract and the main obligation, then in the case when mortgagor is a debtor, the main obligation, or when mortgagor is not a debtor, then terms of mortgage contract is superior to that of others.

10.4. Mortgage contract needs to be registered at state registration. Mortgage contract is valid after being registered at state registration.

10.5. Agreement on mortgage should specify names and addresses (where they now live) of the parties, pledged property, its name, location and other description enough for its identification, essence of the claim secured with mortgage, its value, occurrence basics, term of fulfilment, the parties of the agreement that this claim bases on, place and date of signing of the agreement. If the value of the main claim secured with mortgage is to be determined in the future, the way of the determination of that value should be indicated in the agreement of mortgage.

10.6. If the main obligation provided by mortgage should be executed partially, then date of appropriate payments, periodicity of payments, amount of payments, and other terms associated with it should be reflected in contract.

10.7. Agreement on mortgage of immovable property should include rights of the mortgagor for property which is a subject of mortgage (mortgageation) and state body registering these rights.

10.8. When mortgage contract is signed, mortgagor should warn mortgagee in a written form about the rights over the mortgage object of the third person, guarantees of the mortgage object, claims of third persons, even the characteristics of previous obligations, amount of these obligations and court disputes. Failure of this duty gives to mortgagee, and as well as following mortgagees rights to claim on early commitment of the main obligation, or to change terms of contract, and in the case of disorders to demand reimbursements for damage and lost.

Article 11. State registration of mortgage

11.1. Agreement on the mortgage of immovable property should pass registration in the state register of immovable property; agreement on the mortgage of movable property should pass registration in the official register of movable property.

11.2. Mortgage right becomes valid from the moment of state registration of the agreement on mortgage.

Mortgage contract can be esteemed as registered at state registration, if information defined by this law, under the Articles 11.3 and 11.4 is entered to the registration system.

11.3. During the state registration of the mortgage contract, information such as mortgage object, the subject of the main obligation, execution period, and information about the mortgagee is taken into consideration.

11.4. If there is any notification about the hypothec paper then, besides the information shown above, information about the hypothec paper must be given.

11.5. Whenever there are several mortgagors under one secured loan, they are registered as joint mortgagors in the state registration body of mortgage.

11.6. If unconstructed real estate is mortgaged, then mortgage can be registered at real estate registration.

11.7. After full construction of real estate which is the mortgage object, then that property can be registered at state registration as a newly created property. In this case that property still reserves rights as a mortgage object.

Article 12. Regulations of the state registration of the mortgage

12.1. State registration of real estate is conducted according to the law of Azerbaijan Republic about the “State registration of real estate”.

12.2. Mortgage of movable property that specify its property rights is registered by relevant executive power body accomplishing state registration of this property.

12.3. The following documents are submitted together with the application to the official register for the registration of mortgage of movable property:

12.3.1. Notarial certified copy of mortgage contract

12.3.2. Documents to approve the payment of state duty for registration.

12.4. When rights of mortgagee are confirmed by hypotech paper, then hypotech paper and notarial certified copy of it should be introduced to registrar office.

12.5. The body carrying the official register of the movable property accomplishes the registration of the mortgage of movable property not later than 5 (five) working and hands the extract from the register to the mortgage creditor. The documents submitted for the state registration are kept in the state registration body.

12.6. The extract specifies name of the state registration body, location, time (date and hour), number of the registration, other information introducing the mortgage creditor and mortgagor and the description of the mortgage subject.

12.7. When rights of mortgagee is approved by hypotech paper, then hypotech paper is confirmed by sign and special seal of authorized person of registrar office by showing the name of registrar office, date of registration (day, hour) and the number of registration and then returned to mortgagee.

12.8. The registration body should provide the maintenance of the information forming data base on mortgage. The copy of the registered mortgage contract or mortgage paper, when it is granted, should be kept in the archive of the registration body.

12.9. Certificate about the rights of registered movable property is given in three calendar days to owner of these rights, to authorized person by him, and to appropriate state agencies defined by this law.

12.10. Correction of technical errors occurred during the state registration of movable properties appears no late than in three business days after submitting a petition by interested sides, and correction are made in extracts.

12.11. Registrar office, authorized persons of it bears responsibility defined by the legislative for damage and lost.

Article 13. Suspension or refusal of the mortgage of movable property from state registration.

13.1. State registration of movable property hypotech can be rejected in situations when:

13.1.1. The documents submitted for registration are not complete;

13.1.2. The mortgager has not a right over the mortgage object or this right is limited according to legislation;

13.2. If argument arises on right over mortgage object, the state registration of movable property can be stopped based on arbitrage decision until disputes are solved.

13.3. If suspension or refusal of state registration emerges, registration office should give written information about the suspension or refusal no later than intended time for registration process.

13.4. After dispute resolution about suspension or refusal of state registration is given, mortgage is legally registered at state registration.

13.5. Interested person has the right to apply court connected with illegally conducted mortgage registration or non valid suspension and refusal of state registration.

Article 14. Additional registration of the mortgage

14.1. Additional registration of the mortgage is conducted accordingly in state registration of immovable property and official registration of movable property in three business days from submission date of documents in following cases mentioned below:

14.1.1. When the main subject, size and execution period of liability in mortgage contract is changed;

14.1.2. When the right of demand for the main liability is transferred to another person;

14.1.3. When the mortgage object is changed;

14.1.4. When the mortgage object is entirely changed.

14.2. Notarially certified copy of contract which includes changes to mortgage contract, transition of demand to another person and changes in ownership rights of mortgage object is attached to additional registration of mortgage application.

14.3. If mortgager rights are approved by hypothec paper, and the essence of main liability, size, execution period, the object of mortgage are changed or ownership rights of mortgage object is shifted to another person, changes should conduct accordingly in hypothec paper and additional mortgage is registered.

14.4. The additional registration of mortgage is conducted at real estate registration office where hypotech paper is officially registered.

14.5. The additional registration of mortgage is accordingly approved by extract at real estate registration office and by extract at official registration of movable property.

Article 15. Cancellation of state registration of mortgage

15.1. State registration of mortgage is revoked by registrar office based on either decision of court or claim of mortgagor.

15.2. When state registration of mortgage is canceled the hypotech paper is revoked in the way approved by this law.

Article 16. State duty

16.1. State duty is paid for affirming mortgage contract at the notary office, for passing registration and additional registration at the state registrar office.

16.2. If there is no other regulation between mortgagee and mortgagor in contract, then mortgagee should pay out of state duty for state registration of mortgage.

16.3. Except cases determined by this law under the 14.1.2 Article, for additional registration of mortgage, state duty is paid by mortgagee if no other rules are subject to this regulation.

III Section

Hypotech paper

Article 17. Hypotech paper

17.1. Hypotech paper can be given during validity period of mortgage contract. Hypotech paper is conducted by paying attention to the rights of mortgagor, mortgagee, as well as its other legal owners' rights and duties which are determined by this law.

17.2. Hypotech paper approves its legal owner's following rights:

17.2.1. Hypotech rights over mortgage object;

17.2.2. To demand execution of the main obligation without placing any disposals;

17.2.3. To apply deductions of mortgage object based on the cases determined by this law under the Article 34.

17.3. Hypotech paper is compiled in one copy and given to mortgagee.

17.4. Hypotech paper is compiled by mortgagor, or by debtor on the main obligation. The physical person, who prepared hypotech paper, needs to certify his or her sign at notary.

17.5. If more than one mortgagee, hypotech paper can not be given.

17.6. Rights on hypotech paper as defined by this law, under Article 24, can be given to other persons.

Article 18. The Content of hypotech paper

18.1. Hypotech paper should possess followings when given to preliminary mortgagees:

18.1.1. "Hypotech paper" word included in the name of document and place of arrangement;

- 18.1.2. The name and address of mortgagor, if the mortgagor is juridical person then his name and location;
- 18.1.3. The name and address of mortgagee, if the mortgagee is juridical person then his name and location;
- 18.1.4. The date and location where hypotech agreement was concluded;
- 18.1.5. If mortgagor is not debtor on main obligation, then the name and address of debtor. If the debtor is juridical person then his name and location;
- 18.1.6. The essence of main obligation, its amount, the basis of its formation, execution period, and the parties of agreement, the date and place where the agreement was concluded must be indicated. If obligation provided by hypotech must be executed in parts, then the dates and periodicity of payments, their amounts and terms determining these amounts must be shown in hypotech paper.
- 18.1.7. The description and location of property being hypotech object;
- 18.1.8. Information about the registration number, place and date, and registrar office which registered the rights of mortgagor over the mortgage object.
- 18.1.9. Note about realization of mortgagee's rights on application of deduction to mortgage object without applying to court;
- 18.1.10. The signature of mortgagor, if he is third person then additionally the signature of debtor must be included;
- 18.1.11. The issue date of hypotech paper.
- 18.2. Notes prohibiting the shift of hypotech paper to other persons are invalid.
- 18.3. The form of hypotech paper is determined by corresponding executive power bodies.
- 18.4. In case of discrepancies between hypotech paper and hypotech agreement, the legal owner of hypotech paper can demand its cancellation and issue of new hypotech paper. When the legal owner discovers such discrepancies, he must immediately inform the mortgagor. If mortgagor is the third party then debtor on main obligation must be informed too.
- 18.5. The person preparing the hypotech paper is bearing responsibility for discrepancies and damages connected with it.

Article 19. State registration of hypothec paper

19.1. The state registration of hypothec paper is realized in order determined by legislation.

19.2. When the rights on hypothec paper are shifted to another person, endorsement note is registered in registration office where hypothec paper was registered.

Article 20. The endorsement of rights by hypothec paper

20.1. The endorsement of rights by hypothec paper is realized by making note about endorsement of rights to another person on hypothec paper and by giving the hypothec paper to him.

If the physical person makes the endorsement note, his signature must be certified by notary.

20.2. Hypothec paper is given to another person together with hypothec agreement and this person gets all rights and duties of mortgagee by hypothec agreement.

20.3. By endorsement of rights on hypothec paper, demand on main obligation is compromised to new owner of hypothec paper. If main obligation is partially executed while endorsement of rights, the legal owner of hypothec paper must make notes about it on hypothec paper and not executed part of main obligation is compromised.

20.4. The name of person obtained rights by hypothec paper must be indicated completely and exactly in endorsement note. Endorsement is not allowed if the name of right owner is not indicated in hypothec paper.

20.5. Endorsement note must be signed by mortgagee specified in hypothec paper. If the note is not initial one, it must be signed by owner of hypothec paper who was indicated in previous note.

20.6. The person who obtained the hypothec paper by stealing it or by other ways without consent of person who wrote the endorsement notes is not considered legal owner of hypothec paper.

20.7. The person shifting his rights by hypothec paper must give written notification to debtor about it. Failure in fulfillment of this task causes results specified in Civil Code of Azerbaijan Republic about concessions of demands for debtor and new mortgagee.

Article 21. The realization of rights by hypotech paper

21.1. By beginning to realize the rights by hypotech paper, the legal owner of hypotech paper must make notes on hypotech paper about execution of main obligation. These notes must be clear for both mortgagor and next possible owners.

21.2. If there is no other proof about the ownership of hypotech paper or partial commitment of the main obligation, it implies that this obligation or part of it is not committed. If no other cases are defined, the fact that hypotech paper belongs to mortgagor approves the fulfillment of the main obligation.

21.3. The application of deduction on mortgage object by hypotech paper is realized as per rules intended by this law.

21.4. The mortgagor can not raise objections without grounds on hypotech paper against demand of legal owner of hypotech.

21.5. According to this law, when the hypotech paper is cancelled, bodies conducting state registration of hypotech abolish the hypotech paper by sealing it as “terminated” on cover paper and keep it in archive.

Article 22. Restoration of rights on lost or deteriorated hypotech paper

22.1. The rights on lost or deteriorated hypotech papers can be restored based on petition of legal owner of hypotech paper by giving duplicate of lost or deteriorated hypotech paper according to copy of paper kept in archive of state registration office where the initial hypotech paper was registered. The duplicate must be marked as “duplicate” on cover page, must be signed and sealed by authorized official of state registration office, must be given to legal owner of hypotech paper and recorded in registration.

22.2. The duplicate of hypotech paper must be conformed completely with lost (deteriorated) hypotech paper. Otherwise, state registration office giving the duplicate of hypotech paper will bear responsibility for damages connected with any discrepancies.

Article 23. The termination of hypothec paper

The hypothec paper can be terminated if it is given to mortgagor voluntarily or in cases specified in Article 48 of this law.

Chapter 4

Mutual relations between mortgagee and mortgagor

Article 24. Rights and duties of mortgagee and mortgagor

Besides rights and duties taken into account by this law, additional rights and duties of parties can be determined by mortgage agreement signed between mortgagee and mortgagor.

Article 25. Rights and duties of mortgagee

25.1. Mortgagee possesses the following rights:

25.1.1. To have ownership rights on mortgage property and use it in accordance with its excluding the case when ownership and/or utilization right of mortgage object is given to mortgagor as per mortgage agreement;

25.1.2. To precept the mortgage object;

25.1.3. To make orders on mortgage object according to Article 30 of this law;

25.1.4. To demand by arbitrage the termination of mortgage and acceptance of execution of main obligations when mortgagor does not provide the maintenance and usage of mortgage object properly

25.2. The right specified in Article 25.1.3 of this Law will be terminated after sending notification on deductions.

25.3. The mortgagee possesses the following duties:

25.3.1. To provide the maintenance and safety of mortgage object;

25.3.2. To protect the mortgage object from claims of third persons and to take necessary measures for proper maintenance of mortgage object;

25.3.3. To pay taxes, communal expenses and other commitments connected with mortgage object.

Article 26. The rights and duties of mortgagor

26.1. The mortgagor possesses the following rights:

26.1.1. To check the availability, state and maintenance conditions of mortgage object by documents and factually;

26.1.2. To demand from mortgagee taking necessary measures for proper maintenance of mortgage object;

26.1.3. To claim by arbitrage ownership over the mortgage object if it is discovered that mortgagee can not execute his duties;

26.1.4. To demand persons to put an end to their actions which are intended to deteriorate or harm mortgage object

26.1.5. To compromise or sell the demand on the main liability;

26.1.6. To leave a deposit

26.2. According to conditions of mortgage agreement, when the mortgage object is given to ownership and/or usage of mortgagor, corresponding duties of mortgagee is shifted to mortgagor.

Article 27. The maintenance and insurance of mortgage object

27.1 If it is considered in mortgage contract, mortgagor must insured mortgage object from the risks of being lost, destructed and damaged at existing price of object on current market demand. If mortgagor is physical person, then he or she must insured the risk of his or her life and the lost of labor capacity no less than hypotech demand.

27.2. The mortgagor must inform the mortgagee immediately when emerges risk of destruction or damage to mortgage object.

27.3. If usage rules from mortgage object are roughly disturbed by mortgagor and if these break outs can seriously cause damages or destroys of mortgage object or insurance duties are not done, mortgagee can claim on early execution of obligations. If these claims are not fulfilled, mortgagee reserves rights to apply deduction of mortgage object.

27.4. When the mortgage object is given to ownership or usage of mortgagor, it must be insured on account of mortgagor in cases determined in agreement.

Article 28. Shift of demand provided by mortgage

28.1. When the demand provided by the mortgage is shifted to another one, this person obtains the mortgage and gets the rights and duties of mortgagor.

28.2. In connection with shift of demand to another person, appropriate amendments must be made in mortgage agreement and mortgage must be registered in state registration additionally according to this law (the shift of demand to another person by hypothec paper is made according to this law). If this term is avoided, the shift of demand will be considered invalid.

Article 29. Shift of debt provided by mortgage

If the debt on main obligation is shifted to another person, mortgagor must obtain written consent of mortgagee for continuation of validity of mortgage; otherwise the mortgage will be terminated.

Article 30. Making arrangements on mortgage object

30.1. If otherwise not determined in mortgage agreement, mortgagee can give the mortgage object to ownership of another person entirely or make other arrangements (usage, lease and etc.) on mortgage object only by written consent of mortgagor. The agreement limiting precept right of mortgagee is unimportant.

30.2. According to terms of this Law as a result of shifting the mortgage object to third persons or re-arrangement of juridical person or if mortgage property is shifted to another person by the way of inheritance, the mortgage remains in force and that person bears all responsibilities and all duties of initial mortgagee as per mortgage agreement.

30.3. When the mortgage object is shifted to another person according to basis determined in Article 30.2 of this law, each heirs of mortgagee is carrying liability determined proportionally on their share on mortgage, for execution of main liabilities.

30.4. If the mortgage object is unshared property or is under common ownership of heirs of mortgagee as per other grounds, then all heirs are considered as joint mortgagees.

30.5. When mortgage object is shifted to another person by breaking terms of this Law, mortgage will keep its validity and will cause the results determined in Article 31 of this Law.

Article 31. The results of breaking rules on making arrangements on mortgage object

31.1. If arrangements are made on mortgage object by breaking rules determined in Article 30 of this Law, mortgagor can claim one of the following:

31.1.1. To consider the deed on arrangements on mortgage object and to apply the results determined in Article 337, in Civil Code of Azerbaijan Republic;

31.1.2. Early execution of main obligation provided by mortgage, applying deductions on mortgage object when the main obligation is not executed.

31.2. If the person obtaining mortgage object knows that arrangements were made on mortgage object by breaking rules of Article 30 of this Law and this fact is proved, then the person obtaining the mortgage is bearing additional responsibility in amount of value of mortgage object if he fails to commit the obligation or commits it in insufficient way.

Article 32. The results of obligatory purchase of mortgage object

32.1. If the ownership of mortgagee on mortgage object is terminated as per basis determined by law and as a result of procurement or nationalization for government or municipality needs and if mortgagee is given another property or appropriate substitute for mortgage property then mortgage right will be turned on substitute property or mortgagor will get right to have paid his demand from substitute amount allocated for mortgagee. If these rights of mortgagee is not protected, (when the value of substitute property is low than mortgage object) mortgagor can demand early execution of the main obligation. If the demand is not provided, mortgagor can apply deductions to corresponding substitute obtained by mortgagee.

32.2. If mortgage object is expropriated by the decision of court for commitment of crime or other illegal acts, the mortgage will be terminated. In this case, mortgagor can demand early execution of the main obligation.

32.3. If it is discovered that the mortgagee is not the real owner of mortgage object and the mortgage object is expropriated from mortgagee by decision of court, mortgage on this property will be terminated. In this case, mortgagor can demand early execution of the main obligation after corresponding decision of court gets validity.

V Section

Deduction for mortgage object and termination of it

Article 33. The bases of deduction for mortgage object

If mortgagor fails the commitment of obligations or fulfils it in insufficient way, mortgagee can apply for deduction for mortgage object to execute the main commitment.

Article 34. The emergence of right of deduction for mortgage object

34.1. The emergence of Mortgagor's right of deduction for mortgage object can be applied in below mentioned situations:

34.1.1. Failure of commitment or one part of main obligation on time;

Article 35. Application of deduction for mortgage object

35.1. The indemnification of mortgagor's demand on account of mortgage object without applying to court is allowed in the following cases:

35.1.1. If the application of deductions on mortgage object without appealing to court is considered in mortgage agreement;

35.1.2. If the hypothec paper is given;

35.1.3. If mortgagor and mortgagee have agreement about deductions certified by notary after having grounds for deductions;

35.1.4. If mortgagor and all owners of mortgage object have agreement certified by notary about application of deductions on mortgage object under joint ownership without appealing to court.

35.2. Except cases considered in Article 35 of this Law, the deduction can be applied to mortgage object only based on court decision.

Article 36. The rule of application of deduction for mortgage object

36.1. The mortgagor can begin to apply deduction on mortgage object by sending notification containing information considered in Article 36.2 of this Law to mortgagee and a copy of notification to next mortgagor or joint mortgagors he knows.

36.2. Notification about application of deduction on mortgage object must contain information given below:

36.2.1. Mortgage object subjected to deduction with its registration number;

36.2.2. Information about obligations to be executed;

36.2.3. Except the cases when the application of deductions on mortgage object without appealing to court is considered in mortgage agreement and/or the hypothec paper is given,
Proposal for certification of agreement by notary for application of deduction on mortgage object without appealing to court or execution note of notary on mortgage object or notification about application of deduction by arbitrate;

36.2.4. The date of notification, the name and signature of person giving notification

36.3. Notification about deduction on mortgage object must be registered in state registration bodies based on petition of mortgagor. The date when notification was sent to mortgagee must be indicated in petition and the petition must be presented to registration office in two copies. Registration office accepts the petition on the same day and returns one copy to petitioner by certifying it with signature and seal of authorized official of registration office.

36.4. The procedure of deduction applying can not be continued in cases given below:

36.4.1. When petition about registration is not presented to state registration bodies of hypotech in 7 days since notification about application of deduction is submitted;

36.4.2. When the notification about application of deduction is considered invalid by court based on rules intended by this Law.

36.5. When the mortgagee does not submit notification about application, he bears responsibility for damaged mortgage object.

36.6. Mortgagee can apply registrar office for abolishment of the notification about deduction for mortgage object before sales starts.

Article 37. Legal defense measures during application of deduction on mortgage object

37.1. Mortgagor can complain to court about application of deduction on mortgage object during 21 days after the mortgagee or any other party having right over mortgage object receives notification about application of deduction. The claim about application of deduction will be investigated by court during 1 month beginning from submission of complaint.

37.2. In case of complaint on issued decision, the complaint will be investigated in instance courts during 1 month beginning from submission of complaint.

37.3. While applying to court about application of deduction on mortgage object, interests, fault-finding amount and other fees intended in mortgage agreement are calculated.

Article 38. Application of deduction on mortgage object without applying to court

38.1. Application of deduction on mortgage object without applying to court is conducted as it is defined in mortgage contract, or if the main obligation given by hypothec paper fails to commitment in supposed time determined by this law, under the Article 40, deduction is applied by notary notification.

38.2. According to 36.2.3 Articles of this Law, application of deduction can be applied according to the agreement approved by notary. Followings are considered in the agreement:

38.2.1. The name and address of parties;

38.2.2. The name, initial sale price, description and location of the mortgage object;

Initial sale price is determined based on the agreement between mortgagee and mortgagor. In the case of disagreement, it is determined by freelance estimator.

38.2.3. Amount to be paid to mortgagee;

38.2.4. Agreement should possess initial and following mortgagees of the same mortgage object, and the rights of the third person;

38.2.5. The sales method of the mortgage object;

38.2.6. The rule of allocation of revenues gained from the sales of the mortgage object;

38.2.7. Other necessary terms.

38.3. Agreement about the indemnification of claims of mortgagee is valid if only it has been concluded with the presence of initial mortgagee.

Article 39. Deduction on mortgage object by a resolution of court

39.1. Mortgagee according to mortgage contract can apply the court to claim on indemnification of his rights. The judge hears such cases in one month.

If appeal against court decision emerges, the rule defined by this law under 37.2 Article can be applied.

39.2. Mortgagee should introduce notification about deduction which states to whom; this deduction may concerned by this law, under 36.1 Article.

39.3. Court should state followings while pronounces judgement about deduction on the mortgage object:

39.3.1. Amounts payable to mortgagee from keeping mortgage object except costs associated with security and sales of mortgage object. Costs associated with the security and sales of the mortgage object are determined only after sale of mortgage object.

39.3.2. Description of the mortgage object;

39.3.3. Initial sale price of the mortgage object. Initial sale price is determined by an agreement concluded between mortgagee and mortgagor, in the case of any disagreement between sides by decision of court.

39.3.4. If necessary, actions to provide security of the mortgage object before sales;

39.4. If deducted mortgage object is the only living place for mortgagor, and mortgagor has no other place to live, then court on the request of mortgagor can delay application of deduction for one year. Term given for deduction applied mortgage object can not change rights and duties of sides, interest rates, and other increased associated costs.

39.5. Except the case shown in 39.4 Article, termination of execution, any changes in execution, delays on the resolution of the court about the deduction on the mortgage object and partial commitment of the court judgement can be concluded only by permission of mortgagee.

Article 40. The sale of the mortgage object

Mortgage object can be sold only after notification about the deduction is given to persons defined by this law under the 36.1 Article and 30 days passed of this date.

Article 41. The sales method of the mortgage object

41.1. According to the mutual agreement between mortgagee and mortgagor, deduction applied mortgage object can be sold in an open market or by an auction.

41.2. The procedure of application of deduction is conducted by a resolution of the court and mortgage object is sold by an auction.

Officer of the Law orders auction organizations to provide auction.

41.3. Order for auction organizations can be drawn according to the Law of Azerbaijan Republic about the "Execution of court Resolutions" and reflects initial sale price of mortgage object. If order has been drawn by notary, costs associated with the usage of freelance estimator are paid by mortgagee.

41.4. The sale method of the deduction applied mortgage object without applying to the court is determined by the persons who bear responsibility for this sale by the notarially approved agreement of sides. According to this agreement when mortgage object is sold by auction, then mortgagee and mortgagor can order organizers of auction.

41.5. Auction is open for public.

Article 42. The regulation of auctions

42.1. The organizer of the auction places advertisements in mass media, concerning the planned auction. Mortgagee and mortgagor are sent notification about auction.

The first advertisement and notification must be sent maximum 30 calendar days prior to auction. The second advertisement is placed 15 calendar days prior to the auction.

The advertisement and notification must include followings: the place, date, format, object, and regulations of auction; initial price; the amount and payment terms of advance payment for participation in the auction; the list of documents necessary for participation in auction; the terms for payment of final auction price. The auction participant must pay an advance payment which equals 5% of initial auction price.

42.2. If auction is cancelled, the organizer of the auction must repay advance payments within 7 calendar day.

If the winner of the auction refuses paying the final amount in the way that is reflected in this Law, then the advance payment is not repaid. That advance payment is used according to the Article 47 of this law.

The advance payments of the participants, who lost the auction, are repaid back within 7 calendar days. Signing contract with winner of auction, the amount of advance payment is included into final auction price.

42.3. All the interested people, including mortgagee and mortgagor as a buyer, can participate in the auction. The only exceptions are the organizers of the auction and their coworkers.

42.4. Mortgagee participating in auction does not pay advance payment. If the mortgagee wins the auction then he is allowed to pay less money than the auctions final price. This allowance equals the amount of advance payment.

42.5. The person offering the highest amount is considered the winner of the auction.

42.6. The protocol between the organizers and the winner of the auction is signed on the day of auction. This protocol is considered to replace the contract between the parties. If parties refuse signing the protocol this issue is subject to results reflected in Article 415 of Civil Code of Azerbaijan Republic.

42.7. The winner of the auction must pay the final amount of the auction price excluding advance payment within maximum 7 calendar days after auction.

Payment of the final amount brings about results reflected in this Law.

42.8. The protocol reflecting results of the auction is considered as basic document for entering mortgage abolishment notes to the state registration.

Article 43. Declaration of auction's failure

43.1. The organizer of auction publishes the failure of auction in the information bureau where the announcement of auction was declared in if any of the following situations happens:

43.1.1. Less than two buyers come to the auction;

43.1.2. No participant appears;

43.1.3. The winner of auction refuses to sign the report about auction results;

43.1.4. The winner of auction do not pay the sale price completely for a while intended on this law, on the condition that time is not extended with mortgagee's agreement.

43.2. In the situations intended on Articles 43.1.1-43.1.4 of this law declaration of auction's failure should be published not later than 3days from the day which the auction would be held on or appropriately trade price would be paid on.

43.3. After the declaration day of auction failure mortgagee can buy mortgage object in sale price from mortgagor on the basis of contract in 10 calendar days.

43.4. If the contract intended on Article 43.3 of this law about the purchase of mortgage object by mortgagee fails, re-auction should be held not later than 45calendar days from the day which first auction is held on

43.5. New auction is held under the rule intended on Article 42 of this law. The organizer of auction offers mortgage object for new auction with 15% less than initial sale price due to reasons intended on Article 43.1.2 of this law.

43.6. The new, re-auction is realized if at least one participant takes part and in this case that participant is a winner of auction.

43.7. If the auction failure is declared due to reasons excluding the situation intended on Article 43.1.1 of this law, mortgagee can buy mortgage object with not 25% less than initial sale price.

43.8. If mortgagee does not get the mortgage object in 30 calendar days after the declaration of re-auction failure, mortgage is put end to.

43.9. If mortgagee keeps in hand the mortgage object which he is not eligible to in accordance with its description and setting, he should privatize that object under the rule intended in the legislation

Article 44. Invalid consideration of auction.

The auction held with the violation of rules intended in this law causes the results intended on Article 416 of Civil Code of Azerbaijan Republic.

Article 45. Sale of mortgage object in an open market according to the contract

45.1. The trade contract which provides sale of mortgage object in an open market is a basis for state registration body in order to put end of mortgage object and enter notes to appropriate registration about new owner (proprietor).

45.2. If the sale of mortgage object in an open market according to the contract is not realized, the same object could be offered to new auction with its initial sale price appropriate to the agreement between mortgagee and mortgagor or purchased by mortgagee.

45.3. If they do not reach an agreement, any of parts could appeal to the court for sale of mortgage object in auction. The court investigates such questions in a month after the application has entered.

Article 46. Putting an end of the sale of mortgage object

46.1. Till the sale of mortgage object in an open market or auction (till the trade contract is approved under the notarial rule or the report about auction results is signed) or obtaining by mortgagee appropriate to the requirements of this law (till the trade contract is approved under the notarial rule) debtor of main obligation and (or) mortgagor or any third person meeting mortgagee's all requirements can put end of application of deduction on mortgage object and its sale.. Any agreement which restricts this right is useless.

46.2. A person who requires putting end of an application of deduction on mortgage object and its sale should pay all charges to mortgagee relating to the application of deduction on that object and its sale.

Article 47. Distribution of income earned from the sale of mortgage object.

47.1. Income earned from the sale of mortgage object based on the agreement proved under notarial rule is distributed appropriate to Article 38.2.6 of this law.

47.2. If the deduction on mortgage object is applied by the resolution of court or executive notification of notary office, after entering court executives' deposit

account, income earned from the sale of mortgage sale is distributed in not later than 7 calendar days by court executives as following:

47.2.1. To the payment for damage and (or) as result of non-execution completely or properly or delay of execution of requirement of mortgagee providing by mortgage including main debt, interests. (These payments are fulfilled with this succession)

47.2.2. To the payment for charges intended on Articles 4.1.4 and 5 of this law;

47.2.3. To the payment for the next mortgagee's requirement for hypothec right implementation.

47.3. Combined mortgagees' requirement is distributed under the rule intended in mortgage contract, otherwise proportionately to their requirements.

47.4. After the payments intended on Article 47.2 of this law are fulfilled, the residual part of income earned from the sale of mortgage object is given back to mortgagor.

47.5. If the income earned from the sale of mortgage is not satisfactory in order to meet mortgagee's requirement he has a right to take the insufficient part from debtor's other assets, if any other rule is not intended on mortgage contract. In this case mortgagee has no advantage based on mortgage.

Article 48. Termination of the mortgage

A mortgage is terminated in the following cases:

48.1.1. When both mortgagee and mortgagor agrees about this;

48.1.2. When a main responsibility is put an end;

48.1.3. As a result of the application of deduction on mortgage object when it is sold

48.1.4. When a mortgage object is abolished;

48.1.5. Other cases with respect to this law.

48.2. According to the 48.1.1-48.1.3 articles of this law, within 5 days after the mortgage is terminated, the mortgagee must apply with a petition to the state organ which registers the mortgage. The mortgagee will be responsible for the damage to the mortgagor if the petition is not written.

Chapter VI. Specific nature of mortgage (mortgageation) of land sites

Article 49. Land sites that may become subject of mortgage (mortgageation)

49.1. Land sites in ownership of physical and legal persons may be given to mortgage.

49.2. Areas which are in general use in settlements and according to the land legislation exception areas which are not allowed to be mortgage, can be land sites that are in state and municipal properties can be mortgage objects.

49.3. Mortgages of agricultural lands, production and processing of agricultural crops, and also according to the land legislation the responsibilities for general use of these lands can be applicable.

Article 50. Indivisibility of the land site that is mortgage object

According to the land legislation, taking into consideration the measures of land sites and lands that are in corresponding categories cannot be mortgages if cannot be used like an independent area. If a part of a land becomes a mortgage, then the borders of that land are to be defined before being a mortgage.

Article 51. Mortgages of land sites of the mortgagor in which there are buildings, constructions and mountings

51.1 As long as there is no other rule in the mortgage contract, during the mortgage of the land site, mortgage right doesn't concern the mortgagor's buildings, constructions and mountings that are located in that land.

51.2. If the condition of making the buildings, constructions, mountings that are located or built in the land site mortgage for the mortgagee doesn't reflect itself in the contract, when there is an application of deduction on land site, the same building, construction or mounting will maintain its right and according to its assignment it gets partial right to use a part of that site. The usage conditions of that part of the site are determined according to the contract of the mortgagee and mortgagor and the disputes are solved by a resolution of the court.

51.3. If the building, construction and the mounting of the mortgagor located in the mortgage land site becomes mortgage for the mortgagee, then the rights of the

mortgagee on the same building, construction or mounting and conditions and results of their transfer to other persons are determined through this law.

Article 52. Construction in the mortgaged land site

A mortgagor can build constructions complying with the legislation in the mortgaged lands without a mortgagee's approval. In this case the mortgage right is applied to that building, construction and mountings and the mortgagor doesn't have any right to order anything without the mortgagee's approval, as long as there is no another law in the mortgage contract.

Article 53. The mortgage of the land site of the third person.

If the building, construction and mountings that are in the land site belong to the other person, not to the mortgagor, when becomes mortgage and mortgagee applies deduction to that site and when that is sold, the mortgagors rights and duties about that person are transferred to the buyer of that site.

Article 54. Evaluation of the land site which is mortgage object

According to this law, when a land site which is mortgage object is applied a deduction, its initial price is determined according to the market price.

Article 55. Alienation features of the land site which is a mortgage object.

55.1. The person, who bought the land site which is mortgage object, can change settings of that site only according to conditions in the legislation.

55.2. The land site which is mortgage object cannot be sold to foreign persons. A mortgagee who is foreigner or doesn't have a citizenship is to alienate that land within a year, through using the rights in articles 43 or 45.

55.3. The persons who own agricultural business, when selling agricultural lands in the open market, persons who are involved in agriculture activities have preferences rights to obtain lands.

Chapter 7

The properties of mortgage of dwelling houses and flats

Article 56. The application of provisions about mortgage of dwelling houses and flats

56.1. Individual and tenement dwelling houses, even flats under private property can be the mortgage object.

56.2. The mortgage of dwelling houses and flats under government or municipality property is not allowed.

56.3. The hotels, rest houses, cottages and other such constructions can be mortgage object based on general bases. Rules determined for mortgage of dwelling houses (flats) do not concern them.

Article 57. The mortgage of flats in tenement dwelling houses

In case the mortgage of flat in tenement apartment being under joint ownership of mortgagor and other persons, besides the flat, the share of mortgagor in joint ownership is considered to be given under mortgage.

Article 58. The mortgage of dwelling houses and being under construction

58.1. While issuing credit for construction of dwelling houses or tenement houses as well as for procurement of flat in tenement houses, the provision of liability by object under construction or flat in tenement house can be considered in mortgage agreement.

58.2. The mortgage of dwelling house under construction or flat in tenement house being under construction is allowed based on right of mortgagor over these objects registered in state registration of immovable property according to Article 11.6 of this Law.

58.3. When the construction of dwelling house or tenement house being mortgage object is over, the mortgage registered in advance remains its legal force as per Article 11.7 of this Law.

Article 59. Application of deduction on dwelling house or tenement apartment

59.1 When the deduction is applied on dwelling house or flat being mortgage object and it is sold, except the cases specified in Article 9.3 of this law, it does not constitutes grounds for discharging persons being in registration in that house or flat.

59.2. The agreement on lease of dwelling house or flat is concluded between new owner of dwelling house and flat and former owner of dwelling house or flat. When the new owner refuses to sign the agreement, the former owner (mortgagor) can apply to court for concluding the lease agreement.

59.3. When the deduction is applied on dwelling house or flat and it is sold, the mortgagor, family members or other persons living there must leave the dwelling house during 1 month, provided that:

59.3.1. The dwelling house or flat is left under mortgage to pay the credit as per mortgage agreement; or

59.3.2. When the mortgage agreement is concluded, the mature family members or other persons living together with mortgagor are accepting liability certified by notary to leave the house in case the house is sold as a result of application of deduction. The persons registered on this house or flat after mortgage agreement are deemed to accept such liability.

59.4. When the mortgagor, his family members and other persons living with him do not leave the dwelling area being under mortgage during the period considered in Article 5.3 of this Law, they will be removed from house or flat compulsorily based on execution statement of notary or decision of court about application of deduction.

Ilham ALIYEV,

The President of Azerbaijan Republic

Baku city, April 15, 2005