

Azerbaijan

Civil Code

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(Extracts)

Chapter 12.

The Right to use Property as Security and the Pledge and The Right to Mortgage

Part 1. General Provisions

Article 269. The Legal Concept of the Pledge and Mortgage.

1. The right to pledge and mortgage means a property right of a pledgee with respect to the property of a pledger, and at the same time a method of securing performance of a financial or other commitment of a debtor before a pledgee.
2. The right to pledge and mortgage consists of a limitation of the property right.
3. A pledge is a limitation of the movable estate proprietary interests (except for the movables, subject to mortgage).
4. A mortgage is a limitation of the real estate proprietary interests, as well as of the movable estate, not being subject to registration in an official register.
5. The pledge and mortgage are additional (accessory) commitments to secure the pledger's (debtor's) main requirements before the pledgee (creditor).
6. The property pledge and mortgage extends to all, relating to the ownership right with respect to property.
7. With respect to the commitment, secured by a pledge or a mortgage, the creditor (pledgee or mortgagee) shall have the right, in the event of the debtor's non-performance of such commitment, to receive security from the value of the property pledged or mortgaged, on the basis of priority against other creditors of the person (pledger or mortgager), who own such property.
8. Based on the principle, set forth in Article 266.6 hereof, the pledgee (mortgagee) shall have the right to acquire security against a loss of or damage to the property pledged or mortgaged, irrespective of the fact, who is the beneficiary of the property's insurance, provided, however, that such a loss or damage is not caused by the reasons, for which the pledgee (mortgagee) is responsible.
9. The right to pledge or mortgage is provided with respect to each property and rights, which can be assigned to some another person.

10. In the event of a destruction or damage of the pledged or mortgaged property, or in the event of termination of the right, pledged before a pledgee (mortgagee) of such a right, or in the event of a violation of such a right, there occurs a right to indemnity.
11. The right to pledge and mortgage may be provided with respect to both, a current and a future claim. The claim can be nominal, registered or anonymous. It can also be advanced with respect to the pledger (mortgager), or the owner himself, as well as with respect to another person. The claim raised under the right to pledge or mortgage must be sufficiently clear.

Article 270. The Basis for the Pledge and Mortgage Origin

1. 270.1 The pledge and mortgage occur on the basis of an agreement.
2. The rules of this Code on the pledge and mortgage, arising on the basis of an agreement, are applicable to the pledge and mortgage, originating on the basis of other reasons in a relevant order.

Article 271. The Pledger (Mortgager)

1. Only the owner of the property can be the pledger (mortgager) thereof.
2. A debtor, as well as any third person, can be a pledger (mortgager).
3. The pledger of the right can be a person, possessing such a right.

Article 272. The Pledgee (Mortgagee)

The pledgee (mortgagee) shall be the person, possessing the right to pledge or mortgage, on the grounds stipulated in the agreement, relating to the property of the pledger, provided for the performance of the financial and other commitments of the debtor before the pledger.

Article 273. The Inadmissibility of Appropriation of the Pledged or Mortgaged Property

Any agreement, providing the pledgee or mortgagee with the right to appropriate the pledged or mortgaged property, shall be deemed invalid.

Article 274. The Consequences of the Change of the Owner of the Pledged or Mortgaged Property

Any change of the owner of the pledged or mortgaged property shall not change the right to pledge or mortgage.

Article 275. Termination of the Right to Pledge or Mortgage

The right to pledge or mortgage shall be terminated with the elimination of the claim for the security thereof.

Part 2. The Pledge

Article 276. The Subject of the Pledge

1. The property, being subject of the mortgage, including goods and proprietary rights (claims), except for the property removed from the turnover, the claims indissolubly linked to the personality of the creditor, in particular the claims of alimony, indemnification of damages to life and health, as well as other rights, which assignment to any other person is prohibited by law, can be subject to the pledge.
2. Indivisible objects can not be pledged in parts.
3. The lease right can not be included in the pledge without property owner's permission.

Article 277. The Pledge of an Object, Entering a Common Ownership

1. An object, being subject of a common or mutual ownership, can be pledged only upon an agreement of all the owners.
2. Any of the owners of the common property can pledge his share within the right to the common object, without the consent of the other owners. In the event a recourse is taken upon such a share under the pledgee's claim, and in the event of its sale, the rules of the acquisition priority rights of this Code shall apply.

Article 278. The Object, to Which the Right to Pledge is Applicable

The pledgee's right to the property, being subject to the pledge (right to pledge), shall extend to the accessories thereof, provided nothing to the contrary is stipulated in the agreement. In cases, envisaged by the agreement, the right to pledge shall extend to the results, goods and income, received in the course of the utilisation of the pledged property.

Article 279. The Claim Secured by the Pledge

If nothing to the contrary is stipulated in the agreement, the pledge shall secure the pledgee's claim to the extent it had as of the time of the relief. Such claim shall also include interest, forfeit, compensation of the loss, caused by the delayed performance, as well as compensation of the pledgee's necessary costs for the pledged object's maintenance and preservation, and the recovery costs.

Article 280. The Pledge Agreement

1. The pledge agreement must be done in a written form.

2. The pledge agreement must indicate the names and the parties' location, the subject of the pledge, the substance, volume and term of the performance of the commitment, secured by the pledge.
3. In cases, stipulated in this Code, the pledge agreement must be confirmed by the notary, and the pledge right must be entered into the state registration.
4. Non-compliance with the rules of this article shall make the pledge agreement invalid. Such agreement shall be deemed void.

Article 281. The Origin of the Right to Pledge

1. The right to pledge occurs from the execution of the pledge agreement, while in the event, when the pledge right must be entered into the state registration, such right occurs from the time of the registration.
2. If according to the agreement, the subject of the pledge must be held by the pledgee, the right to pledge shall occur at the time of the transfer thereto of the subject of the pledge, while in the event the subject of the pledge is provided prior to the execution of the agreement, the right to pledge occurs from the time of the execution thereof.

Article 282. The Subsequent Pledge

1. The property under the pledge may be subject to another pledge.
2. The subsequent pledge is permitted, provided it is not prohibited by the previous pledge agreement.
3. In the course of the subsequent pledge, the claims of the subsequent pledgee shall be relieved from the value of the subject of the pledge, after the relief of the previous pledgee.

Article 283. The Maintenance and Preservation of the Pledged Property

1. The pledger and the pledgee, depending on which one of them holds the pledged property, shall be obliged to perform the following actions, provided nothing to the contrary is stipulated in the agreement:
2. To insure the pledged property at the expense of the pledger, to its complete value, against any risks of loss or damage, and in the event the full value of the property exceeds the amount of the claim secured by the pledge, the insurance shall be made in the amount no lesser than the amount of the claim;
3. To take measures, necessary to provide for the preservation of the pledged property, including those for the protection thereof from the infringements and claims of any third party;
4. Immediately notify the other party if any threat of loss or damage of the pledged property occurs;

5. The pledgee and the pledger shall be entitled to examine the documentary and actual availability, amount, status and storage conditions of the pledged property, held by the other party.
6. In the event of any gross violation of obligations by the pledgee, creating a threat of loss or damage to the pledged property, the pledger shall be entitled to demand early termination of the pledge.

Article 284. The Utilisation and Disposal of the Subject of the Pledge

1. The pledgee shall have the right, if nothing otherwise is stipulated in the agreement, to utilise the subject of the pledge in accordance with its purpose, and derive benefits and profits therefrom.
2. In the event nothing otherwise is stipulated in the agreement, the pledger shall be entitled to alienate the subject of the pledge, lease or assign it for a gratis utilisation to another person, or otherwise dispose thereof, only upon the pledgee's consent. An agreement, limiting the pledger's right to devise the pledged property, is deemed void.
3. The pledgee shall be entitled to utilise the subject of the pledge assigned thereto, only in cases stipulated by the agreement. Upon a request of the pledger, he must submit a report of such utilisation. Under the agreement, the pledgee may be obliged to derive benefits and profits from the subject of the pledge, for the purpose of cancelling the main commitment, or in the interests of the pledger.

Article 285. Consequences of the Destruction, Loss or Damage of the Pledged Property

1. The pledger shall bear the risk of an accidental destruction, loss or an accidental damage of the pledged property, if nothing otherwise is stipulated in the pledge agreement.
2. The pledgee shall be responsible for the entire or partial destruction, loss or damage of the subject of the pledge assigned thereto, in the event he does not prove, that he can be indemnified in accordance with Article 455 of this Code.
3. The pledgee shall be liable for the loss of the subject of the pledge in the amount of its real value, and for the damage thereof, the pledgee shall be liable in the amount, by which such value was reduced, irrespective of the amount, at which the subject of the pledge was assessed at the time of the assignment thereof to the pledgee.
4. If in the event of a damage of the subject of the pledge, it changes to such an extent, that it could not be utilised in accordance with its direct purpose, then the pledger shall have the right to refuse it and demand compensation for its loss. The agreement may envisage an obligation of the pledgee to compensate to the pledger other damages as well, caused by the loss or damage of the subject of the pledge. The pledger, being a debtor under the commitment secured by the pledge, shall be entitled to include the claim to the pledgee to compensate damages caused by the loss or damage of the subject of the pledge, into the settlement of the commitment secured by the pledge.

Article 286. Substitution of the Subject of the Pledge

Substitution of the subject of the pledge is allowed upon a consent of the pledgee, provided nothing otherwise is envisaged by the law or the agreement.

Article 287. Substitution and Restoration of the Subject of the Pledge

In the event the subject of the pledge is destroyed or damaged, or the right of ownership thereto, or the right to conduct business management thereof, is terminated, the pledger shall be entitled, within a reasonable term, to restore the subject of the pledge or substitute it by another property of an equal value, provided the agreement does not envisage otherwise.

Article 288. Protection by the Pledgee of its Right to the Subject of the Pledge

1. The pledgee, which held or was supposed to hold the pledged property, shall have the right to reclaim it from someone else's illegal possession, including that of the pledger.
2. In the event when under the agreement, the pledgee is granted the right to utilise the subject of the pledge assigned thereto, he may demand elimination of any violations of his right from other persons, including the pledger, even although such violations were not linked to a deprivation of possession.

Article 289. Preservation of the Pledge at a Transfer of the Right to the Pledged Property to Another Person

1. In the event of a transfer of the ownership right to the pledged property, or of the right to conduct business management thereof, from the pledger to another person in the result of a paid or an unpaid alienation of such property, or in the course of a universal continuity, the right to pledge shall remain in effect. The successor of the pledger shall become the pledger and shall bear all the obligations of the pledger, provided nothing otherwise is envisaged by the agreement with the pledgee.
2. In the event the pledger's property, being the subject of the pledge, is transferred in the course of continuity to several persons, each of the successors (acquirers of property) shall bear the subsequences, resulting from the pledge, of any non-performance of the commitment secured by the pledge, to the extent of the part of such property transferred to him. However, in the event the subject of the pledge is indivisible or, under other grounds, remains within the common ownership of the successors, they become joint pledgers.

Article 290. Consequences of the Forced Removal of the Pledged Property

1. In the event the pledger's ownership right to the property being the subject of the pledge, is terminated on the grounds and in accordance with a procedure set forth by the law, resulting from a removal (redemption) for the state or municipal needs, a requisition or nationalisation, and the pledger is provided with some other property or a relevant compensation, the right to pledge shall

extend to the property provided in return, or accordingly, the pledgee shall acquire the right of priority relief of his commitment from the amount of the compensation due to the pledger.

2. In the event when the property, being the subject of the pledge, is removed from the pledger in accordance with the procedure set forth by the law, on the basis of a recovery, or as a sanction for the offence committed, the pledgee shall acquire the right of priority relief of his commitment from the cost of such property.
3. In the event when the subject of the pledge is removed from the pledger on the grounds, that the actual owner thereof is some other person, the pledge over such property shall terminate.
4. In cases, envisaged by this article, the pledgee may demand early performance of the commitment secured by the pledge.

Article 291. Assignment of Rights under the Pledge Agreement

1. The pledgee shall have the right to assign its rights under the pledge agreement to another person in compliance with the rules on the creditor's rights transfer by way of assigning the claim.
2. Assignment by the pledgee of its rights under the pledge agreement to another person shall be deemed effective, if the same person is assigned with the chose of action to the debtor under the main commitment secured by the pledge.

Article 292. Assignment of the Debt under the Commitment Secured by the Pledge

At the assignment of the debt under the commitment secured by the pledge to another person, the pledge shall terminate, if the pledger does not give the creditor his consent to respond for the new debtor.

Article 293. Early Performance of the Commitment Secured by the Pledge and Enforcement of Recovery Upon the Pledged Property

1. The pledgee shall have the right to demand early performance of the commitment secured by the pledge in the following cases:
 - 1.1.1. in the event the subject of the pledge was removed from the ownership of the pledger, with which it had been left, contrary to the provisions of the pledge agreement;
 - 1.1.2. in the event the pledger violates the rules of substitution of the subject of the pledge;
 - 1.1.3. in the event of a loss of the subject of the pledge under circumstances, for which the pledgee is not responsible, provided the pledger does not use the right, envisaged by Article 287 of this Code.

1.2. The pledgee shall be entitled to demand early performance of the commitment secured by the pledge, and, in the event his demand is not satisfied, shall have the right to enforce a recovery upon the subject of the pledge, in the event of:

1.2.1. the pledger's violation of the rules of the subsequent pledge;

1.2.2. the pledger's non-performance of the commitments, envisaged by Article 283.1 and 283.2 of this Code;

1.2.3. the pledger's violation of the rules of utilisation and disposal of the pledged property.

Article 294. Termination of the Pledge

1. The pledge shall be terminated in the following cases:

1.1.1. in the event of termination of the commitment secured by the pledge;

1.1.2. upon the pledger's demand under the grounds, envisaged by Article 283.3 of this Code;

1.1.3. in the event of a destruction of the pledged object or termination of the pledged right, provided the pledger did not use the right, envisaged by Article 288.2 of this Code;

1.1.4. in the event the pledged property is soled through public sales.

1.2. In the event of the pledge termination in result of the performance of the commitment secured by the pledge, or under the demand of the pledger, the pledgee, holding the pledged property, shall be obliged to return it immediately to the pledger.

Article 295. Grounds for the Enforcement of Recovery upon the Pledged Property

The recovery upon the pledged property, for the relief of the pledgee's (creditor's) demands, may be enforced in the event of non-performance or improper performance by the debtor of the commitment secured by the pledge, under circumstances, for which he is not responsible.

Article 296. Recovery Enforcement Procedure upon the Pledged Property

1. Satisfaction of the pledgee's demand at the expense of the pledged property, without appealing to the court, is allowed on the basis of an agreement between the pledgee and the pledger, certified by a notary. Such an agreement may be deemed invalid by the court, upon a claim of a person, whose rights were violated by such an agreement. The pledgee's (creditor's) demands shall be relieved at the expense of the pledged property under the court's award, provided nothing otherwise is stipulated in the agreement between the pledger and the pledgee.

1.1. The recovery upon the subject of the pledge may be enforced only under a court's award in the following cases:

1.1.1. in the event a consent or a permission of another person was required for the execution of the pledge agreement;

1.1.2. in the event the subject of the pledge is a property having significant historic, artistic or other cultural and social value.

Article 297. Realisation of the Pledged Property (Sale)

Realisation (sale) of the pledged property shall be performed by way of public sales by specialised organisations.

Article 298. Distribution of the amount, Received From the Sale of the Pledged Property

1. The amount received from the sale of the pledged property, minus the amount necessary to cover the costs, incurred for the recovery enforcement upon such a property and for its loss, shall be used to pay for the pledgee's demands. The remaining amount shall be given to the pledger.
2. In the event the amount received from the sale of the pledged property, is not sufficient for the relief of the pledgee's demands, he will be entitled to receive the remaining amount from the another debtor, if nothing otherwise is stipulated in the agreement. In this event the pledgee shall not have the priority right, based on the pledge.

Article 299. Termination of the Recovery Enforcement and the Pledged Property Sale

1. The debtor and the pledger, being a third person, can at any time terminate the recovery enforcement and sale of the subject of the pledge, by way of performing the commitment secured by the pledge or part of the commitment belated for the performance. The agreement, limiting such right, shall be deemed void.
2. The person, demanding termination of the recovery enforcement or the sale of the pledged property, shall be obliged to compensate to the pledgee for the costs, incurred in connection with the recovery enforcement and the sale of such property.

Article 399. Types of the Pledge

1. There could be the following types of the pledge:
2. a pawn;
3. a pledge at a pawn-shop;
4. a pledge of a right;

5. a pledge of cash resources;
6. a stable pledge;
7. a pledge of commodities in a turnover.

Article 301. The Pawn

The pawn is a type of pledge, under which its subject is transferred to the pledgee's ownership.

Article 302. The Pledge at a Pawn-Shop

1. Acceptance from private persons of the pledged movable estate, aimed at personal consumption as a security of short-term loans, can be performed in a form of business activity by specialised organisations, the pawn-shops, having a special permission (license) thereto.
2. The pawnshop pledge agreement is made by way of the pawnshop issuing a pledge ticket.
3. The pledged objects are transferred to the pawnshop.
4. The pawn-shop shall be obliged to insure at its own expense the accepted pledged objects for the benefit of the pledger, from the time of their acceptance, to the extent of the full amount of their value, set in accordance with the market prices for the goods of similar type and quality.
5. The pawnshop shall not be entitled to utilise and dispose of the pledged objects.
6. The pawnshop shall be liable for the loss and damage of the pledged objects.
7. In the event the amount of the loan, secured by the objects pledged in the pawnshop, is not returned in time, the pawnshop shall have the right to realise (sell) such property, by way of public sales. After that the pawnshop's claims to the pledger (debtor) shall be terminated, even though the amount, received from the sale of the pledged property, is insufficient for the complete relief of such claims.
8. The rules of the pawnshops' lending funds to private persons upon a pledge of the goods belonging thereto, is set forth by the law.
9. The terms of the pawnshop pledge agreement, limiting the pledger's rights in comparison with the rights, provided thereto by this Code, shall be deemed void.

Article 303. The Pledge of Right

1. In the event of the pledge of right, the object of the pledge shall constitute the claim for the right, which can be alienated, in particular the claim for the tenant right of a land site, a building, a mechanism, a house (apartment), or a claim for a share of property, or a claim for debt.

2. A right with a certain term can be subject of a debt, only prior to the expiration of the term thereof.
3. The debtor of the pledged right shall have to be immediately notified of the pledge.
4. The pledge of right, subject to the state registration, shall be effective from the time of its registration with the state authority, performing such registration.
5. In the event a right, secured by stock, is being pledged, it will be transferred for storage in a form of a deposit to the pledgee, a bank, or a public notary, if nothing otherwise is set forth by the agreement.

Article 304. The Pledge of Cash Funds

The cash funds, being the subject of the pledge, shall be kept at a deposit account of a bank or a public notary. The interest, accrued on such an amount, shall belong to the pledger, if nothing otherwise is set forth by the agreement.

Article 395. The Stable Pledge

The stable pledge is a type of pledge, which subject is kept by the pledger, locked up, or marked by symbols, indicating the pledge.

Article 396. The Pledge of Commodities in a Turnover

1. The pledge of commodities in a turnover is a type of pledge, when the commodities are left with the pledger, and the latter is entitled to change the contents and the natural form of the pledged property (commodities in stock, raw materials, materials, semi-products, final product, etc.), provided their total value does not become less than the one set forth in the pledge agreement. Reduction of the value of the commodities in the turnover shall be permitted in proportion to the performed part of the commitment secured by the pledge, if nothing otherwise is set forth by the agreement.
2. The commodities in the turnover, alienated by the pledgee, shall no more be the subject of the pledge from the time of their transfer to the acquirer's ownership, while the commodities, indicated in the pledge agreement, acquired by the pledger, become the subject of the pledge from the time of the occurrence of the pledger's ownership right thereto.
3. In the event the agreement does not stipulate anything otherwise with respect to the control over the pledger's activity, the pledger of the commodities in the turnover shall be obliged to keep a pledge record book. Such book shall contain entries on the terms of the commodities pledge, the contents of the commodities pledged, as well as on all the transactions, leading to a change in the natural form of the goods, including a note of their processing as of the date of the last transaction.
4. In the event of a violation of the term of the pledge of the commodities in the turnover by the pledger, the pledgee shall be entitled to hold up transactions therewith, by way of putting its marks and seals at the pledged commodities, until the violation is eliminated.

Part 3. The Mortgage

Article 307. The Mortgage Agreement

1. The mortgage agreement must contain the names and location (place of living) of the parties, the subject of the mortgage, the substance, the volume and the term of performance of the commitment secured by the mortgage.
2. The subject of the mortgage is set by way of a description, sufficient for the identification, indicating its name and location.
3. The mortgage agreement must indicate the right, on the basis of which the subject of the mortgage belongs to the mortgager, and the state authority, which registered such right of the mortgager.
4. The mortgage agreement must indicate the commitment secured by the mortgage, its amount, the grounds of origin and the term of performance. In the event, when such commitment is based on some agreement, the parties, date and place of execution of such an agreement must be indicated. If the amount of the commitment secured by the mortgage is to be defined in future, the mortgage agreement must contain the procedure thereof and other necessary conditions.
5. In the event the commitment secured by the mortgage is supposed to be performed in parts, the mortgage agreement must indicate the terms and periodicity of the corresponding payments, amounts thereof or conditions allowing to define such amounts.
6. The mortgage agreement must be done in a written form between the mortgager and the mortgagee, and if the mortgager is not a debtor, the agreement must be done by way of a document, put together and signed by the debtor.
7. The mortgage agreement must be certified by a public notary.

Article 308. The Types of Mortgage

1. The common mortgage is a type of mortgage, which subject consists of several properties, each of which is used as security of the common claim. The creditor's claim can be relieved, upon his request, at the expense of any property.
2. The owner's mortgage means that the claim, for the security of which the mortgage exists, does not occur, or it is terminated, or, in the event this claim is transferred to the property's owner, the mortgage shall be transferred to him as well.

Article 309. The State Registration of the Mortgage

1. The real estate mortgage agreement must be registered in the state register of the real estate property, and the movable estate mortgage agreement must be registered in the movable estate official register, in which it is being accepted for the state registration.

2. The registration shall be performed in accordance with the established procedure, by way of the owner of the property, subject to the mortgage, presenting such property together with the creditor's documents certified by the public notary. Such documents must indicate the owner of the property, the creditor, the assumed debtor-third party, as well as the volume, the benefit and the term of performance of the secured commitment.

Article 310. The Repeated Property Encumbrance by the Mortgage

One and the same property can be encumbered by mortgage several times. The order of the encumbrance priority must be set in accordance with the time of the mortgage issuance.

Article 311. The Right of the Owner to Relieve the Creditor

1. The owner of the property can relieve the creditor at the time the commitment performance term occurs. The same can be done by the personal debtor.
2. If the owner is not a personal debtor, then the claim is transferred to him at the time the owner relieves the creditor.
3. In the course of relieving the creditor, the owner may request the documents, necessary for making relevant notes in the real estate state register or in the other official register for movable estate, and demand termination of the mortgage.

Article 312. The Duties With Respect to the Storage of the Mortgaged Property

1. The mortgager shall be obliged to preserve the real value of the property. If in result of the worsening conditions, a threat for the mortgage occurs, then the mortgagee may set a relevant term before the mortgager for the elimination of such a threat.
2. If the property is insured, the insurance company, after the conditions worsen, may pay out the insurance amount to the insured person, only at the time the mortgagee is notified of the fact of the damage. In the event the mortgagee is cautious of not utilising the amount meant for the restoration of the property, he may impede the pay-off of such amount.
3. If it becomes clear that the mortgager is unable to perform his obligations, the mortgagee may demand the property to be transferred to him. The decision over such a demand shall be taken by court.
4. The agreement, envisaging the assumption of the obligations by the mortgager before the mortgagee, not to alienate, utilise or in other way encumber the property, shall be deemed void. The effectiveness of such deals for third parties can not depend on the consent of the mortgagees.

Article 313. The Mortgage Transfer to a Third Party and the Claim Occurring Therefrom

The mortgage and the claim, resulting therefrom, can be transferred to another person only together and simultaneously. In the event the claim is transferred to a new mortgagee, the mortgage is transferred to

him as well. The claim transfer shall be deemed effective only upon a condition, that the new mortgagee is provided with a document on the pawning of the mortgage, certified by the public notary, and registered (noted) in the state register of the real estate, or in the official register of the movable estate.

Article 314. The Presumption of Authenticity of the Note Made in the State Register for the Real Estate and in the Official Register for the Movable Estate at the Transfer of the Mortgage and the Claim to a New Mortgagee

The mortgage and the claim shall be transferred to a new mortgagee in accordance with the procedure set forth for the previous mortgagee. The data, indicated in the state register for the real estate or in the official register for the movable estate, based on the mortgagee's interests, shall be deemed authentic. In this event the mortgagee can not refer to the absence of the claim. This rule shall not apply, if the new mortgagee was notified of the incorrect entries in the register.

Article 315. The Rights of the Third Parties

1. Any third party, which condition has worsened in result of the mortgage performance, shall have the right to carry out the demand, thus transferring the mortgage to itself. In the event of the mortgagee's relief, he can demand the duly certified documents and the registration of himself as a mortgagee.
2. If the personal debtor relieves the mortgagee, the mortgage shall be transferred to him. In this event he may demand compensation from the owner.

Article 316. The Mortgagee's Waiver of the Claim and the Mortgage

In the event the mortgagee waives the claim or the mortgage, the creditor shall turn into the owner. The waiver shall be effective, provided it is registered in the state register for the real estate or in the official register for the movable estate.

Article 317. The Claim for the Sale of the Mortgaged Property

1. In the event the debtor delays the payment of the claim secured by the mortgage, then the mortgagee can demand sale of the real estate.
2. The sale shall be performed in accordance with the norms and rules of the Civil Procedural Code, described in this chapter.

Article 318. The Costs for Providing the Mortgage

1. The costs for providing the mortgage shall be incurred by the debtor, if nothing otherwise is set forth in the agreement.
2. If the property is encumbered by the mortgage, and if the owner, after the mortgage is provided, makes changes and amendments therein, not being obliged to provide them as security of the claim,

then the owner may take back such changes and amendments, and restore the initial status of the property. The responsibility for the reduction of the value of the real estate property shall be placed on the owner.

Article 319. The Consequences of the Delayed Performance of the Debtor's Commitment

1. In the event the debtor delays performance of the commitments occurring from providing property to secure the mortgage, the mortgagee shall have the right to sell the object encumbered by the mortgage at public sales.
2. The mortgagee shall not be entitled to secure its claim at the expense of the encumbered object by any other way. Such agreement shall be deemed void.
3. The buyer of the mortgaged object shall be obliged to pay the purchase price. The costs of the recovery enforcement with respect to the mortgaged object shall be deducted from the purchase price.

Article 320. The Order of Priority of the Mortgagees' Claims Relief

In the event several mortgagees are available, the claim thereof shall be relieved from the clear profit, received from the sale of the mortgaged property, in accordance with the order of their rights registration.

In the event the order or the amount, belonging to each separate party, is disputable, the payment shall be performed, until the order or the amount, due payable to each of the mortgagees, is defined. The balance remaining shall be paid to the owner of the sold property.

Article 321. The Debt under the Mortgage

1. A land site can be mortgaged in such a way, that the person to whose benefit the encumbrance was defined, shall be paid an amount of money (mortgage debt) on the land site. The encumbrance may also be defined in such way, that an interest on the cash amount may be paid, and additional obligations must be performed with respect to the real estate property. With respect to the debt under the mortgage, duly set mortgage directions shall apply, provided they do not result in any assumed debt claim under the mortgage.
2. The mortgage may be turned into a debt under the mortgage, and the mortgage debt may be turned into the mortgage under the parties' agreement.

Article 322. The Loan under the Rent

The mortgage debt may be issued in such a way, that a certain cash amount shall be paid out (debt under the rent) with respect to real estate, at periodically repeating terms. In the event a loan is

provided under the rent, an amount allowing its purchase, must be defined. The loan purchase amount must be indicated in the state register of the real estate.

Article 323. The Property Encumbrance

Real estate can be encumbered in such a way, that certain periodical commitments with respect to the land site shall be performed for the person, in whose benefit the encumbrance was defined.