Ukraine
Law on Mortgage
(adopted in 2003, entered into force on 1 January 2004)

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Section I
GENERAL PROVISIONS

Article 1 Terms and Definitions
In this Law, the terms given below shall have the following meanings:

“immovable property” (immovables) – land parcels and also the objects located thereon and inseparably linked thereto, whose displacement without disproportionate damage to their designated purpose is impossible. Legal regime of immovable property covers aircraft and sea-going craft, riverboats, spacecraft;

“mortgage” – type of security of an obligation fulfillment with immovable property that remains in possession of the mortgagor, whereby the mortgagee shall have the right – in case of default of the debtor on the main obligations secured by a mortgage – satisfy its claims at the expense of the mortgaged immovable property prior to other creditors of such debtor, per the procedure established by this Law;

“main obligation” – a debtor’s obligation under loan, credit, purchase and sale, lease agreements, as well as an obligation arising on other grounds, whose performance is secured by mortgage;

“overlying mortgage” – transfer on mortgage of immovable property, which has already been the subject of mortgage under a previous mortgage agreement;

“mortgagor” – a person that mortgages immovable property to secure performance of his/her own obligations or other person’s obligations to the mortgagee. A debtor or property guarantor may be a mortgagor;

“property guarantor” – a person that mortgages immovable property to secure obligation of the other person – a debtor;

“mortgagee” – a creditor on the main obligation;

“debtor” – a mortgagor or another person liable to the mortgagee for the fulfillment of the main obligation;

“priority” – preferential right of one entity in respect to the right of the other entity in the same real estate;

“highest priority” – the precedence established prior to any other precedence in respect of the same real estate;

“lowest priority” – the precedence established later to any other precedence in respect of the same real estate.

Article 2 Legislation on Mortgage
The Ukraine mortgage legislation shall be based on the Constitution of Ukraine and shall comprise the Civil Code of Ukraine, the Economic Code of Ukraine, the Land Code of Ukraine, this Law, and other regulatory acts as well as international treaties of Ukraine.
Article 3 Arising, Application and Priority of Mortgage

Mortgage arises by the agreement, the law or the court judgment. The mortgage that arises by the law or the court judgment shall be governed by the rules that apply to the mortgage that arises by the agreement, unless otherwise stipulated by the law.

Mutual rights and obligations of the mortgagor and the mortgagee under the mortgage agreement shall arise sine the moment the agreement is notarized. In case of mortgage that arises by the law or court judgment, mutual rights and obligations of the mortgagor and the mortgagee shall arise since the day a respective transaction is concluded being the basis for mortgage, or since the day the court judgment enters into legal force.

Performance of any current obligation or satisfaction of a claim that may arise in future, but conditioned by the contract that took legal effect may be considered a mortgage.

A mortgage shall have a derivative nature from the main obligation secured thereby and shall be valid till the main obligation is terminated.

In case a debtor violates the principal obligation on mortgage, the mortgagee shall have the right to satisfy claims secured by such mortgage at the expense of the subject of mortgage prior to other persons, whose rights or claims in the immovable property transferred on mortgage are not registered per the law-established procedure or registered after the mortgage state registration. In case the priority of a specific right or claim in the immovable property transferred on mortgage arises pursuant to the law, such right or claim shall have a priority against a mortgagee’s claim only in case it is arisen prior to the mortgage state registration.

Priority right of the mortgagee to satisfy the claims secured by mortgage at the expense of the object of mortgage against the rights or claims of the other persons in the immovable property transferred on mortgage registered per the law-established procedure shall arise since the moment of the mortgage state registration. The registered rights and claims in the immovable property shall be satisfied according to the priority of their state registration.

Article 4 State Registration of Mortgage

Encumbrance of the immovable property by mortgage shall be subject to state registration per the legally established procedure. In case this condition is not observed, the mortgage agreement shall be valid, but the mortgagee’s claim shall not acquire priority against the registered rights or claims of the other persons in the immovable property transferred on mortgage.

State registration shall be performed based on the mortgagee’s notification containing the following information:

1) information about the mortgagor and the mortgagee:

for legal entities of the mortgagor and the mortgagee:

- residents: name, location place and identification code in the Unified State Registry of Ukrainian enterprises and organizations;
- non-resident: name, location place and state of the entity registration;

for physical entities of the mortgagor and the mortgagee:
- citizens of Ukraine: name, first name and patronymic name, permanent residence address and personal identity number in the State Registry of physical entities – taxpayers and payers of the other compulsory payments;

- foreigners and persons without citizenship: name, first name and patronymic (if any), permanent overseas residence address;

2) description of the subject of mortgage sufficient for its identification and/or its registration data;

3) amount of principal obligation;

4) term of the principal obligation complete fulfillment;

5) reference to issuance of a mortgage bond or its absence.

The law may establish additional requirements to the form and substance of notification.

**Article 5 Subject of Mortgage**

One or several objects of immovable property may be a subject of mortgage on the following terms:

immovable property belongs to the mortgagor on the ownership right or the right of full economic management, in case the mortgagor is a state or municipal enterprise, institution or organization;

immovable property may be alienated by the mortgagor and foreclosed as established by the law;

immovable property duly registered as a separate object of the ownership right allocated in kind, unless otherwise provided by this Law.

An object of unfinished construction or other immovable property that will become the mortgagor’s property upon signing a mortgage agreement, provided the mortgagor may prove with documents the acquisition of the ownership right in such immovable property in the future, may also be a subject of mortgage. Encumbrance of such immovable property with mortgage shall be subject to state registration per the legally established procedure irrespective of the owner of this property at the moment the mortgage agreement is concluded.

A part of the object of immovable property may be a subject of mortgage only after its allotment in kind and registration of the ownership right in it as in a separate immovable property object, unless otherwise established by this Law. Mortgage shall extend to the part of an immovable property object, which cannot be allotted in kind and is attached to the subject of mortgage after a mortgage agreement is concluded without registration of the ownership right in it as in a separate object of immovable property.

Immovable property shall be mortgaged with all its accessories, unless otherwise stipulated by the mortgage agreement.

The risk of accidental loss or damage of the subject of mortgage shall be incurred by the mortgagor, unless otherwise provided by the mortgage agreement.
The value of the subject of mortgage shall be determined by the consent between the mortgagor and the mortgagee or by way of appraisal of the subject of mortgage by the respective entity of appraisal activity in cases established by the law or the agreement.

**Article 6 Conditions for Transfer of Immovable Property on Mortgage**

Where the consent of the owner of immovable property or the authorized state or local self-government body is required to restrict the legal capacity in immovable property disposition, a similar consent shall be required for mortgaging such property.

Property in joint ownership may be mortgaged only with the notarized approval of all co-owners. A co-owner of immovable property shall be entitled to mortgage his/her share of the joint property without the consent of other co-owners subject to its allotment in kind and registration of the ownership right in it as in a separate object of immovables.

The mortgagor, prior to entering into a mortgage agreement, shall be obliged to notify the mortgagee of all rights and claims of the third persons in the subject of mortgage being to its knowledge, including those not duly registered. In case of this obligation violation the mortgagee shall be entitled to claim early fulfillment of the main obligation and reimbursement for the incurred losses by the mortgagor.

In the event a building (a structure) is mortgaged, the mortgage shall also cover a land parcel or its part owned by the mortgagor, on which such building (structure) is located to be used per its targeted designation. In case a land parcel belongs to another person and is transferred to the mortgagor on lease/use, upon the foreclosure, its new owner shall acquire the mortgagor’s rights and obligations under a transaction that established the conditions for lease/use.

In case a land parcel is transferred on mortgage, the buildings (structures) located on such parcel and unfinished construction objects owned by the mortgagor under the ownership right shall be also mortgaged.

After seizure of the land parcel transferred on mortgage on which the buildings (structures) that belong to a person other than the mortgagor are located, a new owner of this land parcel shall be obliged to ensure to the owner of the mentioned buildings (structures) the conditions for the land parcel lease/use similar to those provided by the mortgagor.

**Article 7 Claims Secured by Mortgage**

A mortgagee shall be entitled to satisfy at the expense of the subject of mortgage its claim under the main obligation in full or in part determined by the mortgage agreement, specified by the moment of actual satisfaction including interest, forfeit, principal debt and any other increase of this amount that was directly provided for by the terms of agreements, stipulating the main obligation.

In case a claim under the main obligation is subject to fulfillment in monetary form, the amount of such claim shall be determined based on the agreement in a precise sum or by way of establishing the criteria that allow to determine the amount of this claim at a specific time during the main obligation validity.

Unless otherwise provided by the law or the mortgage agreement, mortgage shall also secure claims of the mortgagee to compensate for:

the expenses connected with the raising claim under the main obligation and foreclosure on the subject of mortgage;
cost of maintenance and safekeeping of the subject of mortgage;

cost of insurance of the subject of mortgage;

losses incurred by violation of the main obligation or the terms of the mortgage agreement.

**Article 8 Insurance of the Subject of Mortgage**

A mortgagor shall be obliged to insure the subject of mortgage in full amount against the risks of accidental destruction, loss or damage, unless this obligation is vested in the mortgagee by the mortgage agreement. Insurance of the subject of mortgage shall not be required in subsequent mortgages. An insurance agreement shall be concluded in favor of the mortgagee, who, in the event of occurrence of insurance event, shall acquire the legal claim to the insurer.

In case of occurrence of an insurance event pertinent to the subject of mortgage, the mortgagee shall take priority in satisfying his/her claim under the main obligation from the value of insurance compensation. After the first mortgagee’s claim is satisfied from the value of the amount of insurance compensation, any excess of the amount of insurance compensation over the amount of the first mortgagee’s claim shall be distributed among the subsequent mortgagees according to their priority and the amount of their registered rights or claims, and the mortgagor in the last place.

Upon the agreement between the mortgagor and the mortgagee having the highest priority the insurance compensation may be allocated for the purposes of restoring the subject of mortgage.

A mortgage agreement may vest a mortgagor with the obligation to perform other types of insurance in connection with the immovable property transfer on mortgage.

**Article 9 Possession, Use and Disposition of the Subject of Mortgage**

A mortgagor shall be entitled to possess and use the subject of mortgage in accordance with its targeted designation, unless otherwise established by this Law. While using the subject of mortgage, the mortgagor shall not allow deterioration of condition of the mortgaged property, nor a decrease of its value in excess of the norm of its regular depreciation (wear).

A mortgagor shall have the right to gain benefits, products and income from the subject of mortgage, unless otherwise stipulated by the mortgage agreement.

A mortgagor shall have the right exclusively based on the mortgagee’s consent contained in the mortgage agreement or in amendments/addenda made thereto to:

construct, demolish or arrange for capital repairs of the building (structure) located on the land parcel being the subject of mortgage, or make other significant improvements of such land parcel;

transfer the subject of mortgage into subsequent mortgage;

alienate the subject of mortgage;

transfer the subject of mortgage into joint operation, lease, rent, use.
A mortgagor shall have the right to bequeath the immovable property transferred on mortgage. A transaction that restricts the mortgagor’s right to bequeath the immovable property transferred on mortgage shall be deemed void.

**Article 10 Safekeeping of the Subject of Mortgage**

Unless otherwise provided by the law or the mortgage agreement, the mortgagor shall be under obligation at its own expense to take all necessary actions for due safekeeping of the subject of mortgage, including timely regular repairs, fixing minor damages, efficient use operation and protection of the subject of mortgage against unlawful encroachments and claims of third persons.

A mortgagor shall be obliged to inform the mortgagee duly in time of any threat of destruction, damaging, spoiling or deterioration of the subject of mortgage condition, as well as of such other circumstances that may have a negative effect on the ownership right of the mortgagee under the mortgage agreement.

A mortgagee shall have the right at any time throughout the mortgage agreement validity and upon prior written notification of the mortgagor to examine, in documents and in kind, the availability, condition and terms of storage and use of the subject of mortgage. The mortgagor shall be obliged not to put obstacles for exercising of such mortgagee’s right, provide the latter with all documents required for examination of availability, condition and terms of storage and use of the subject of mortgage, and, at the mortgagee’s request, provide him/her with the physical access to the subject of mortgage. Conducting the said examination by the mortgagee may not suspend the use of the subject of mortgage according to its designation or violate in other way the rights of the mortgagor or the other person that uses the subject of mortgage on a temporary basis.

**Article 11 Property Guarantor**

In case the fulfillment of the main obligation is secured by the mortgage of immovable property owned by the third person (the property guarantor), the property guarantor shall act as a mortgagor pursuant to the mortgage agreement and shall be liable to the mortgagee for performance of the main obligation by the debtor. In case the debtor violates the main obligation, the property guarantor shall be liable for satisfaction of the mortgagee’s claim with the immovable property being the subject of mortgage.

In the event of satisfaction of the mortgagee’s claims at the expense of the subject of mortgage, the creditor’s rights under the main obligation shall be acquired by the property guarantor.

**Article 12 Legal Consequences for Violation of the Mortgagor’s Obligations**

In the event the mortgagor violates obligations established by the mortgage agreement, the mortgagee shall have the right to claim early fulfillment of the main obligation or in case of default – to seize the subject of mortgage.

In the event the mortgagor violates obligations on safekeeping or insurance of the subject of mortgage, the mortgagee may use the rights specified by part one of this Article, or take measures to preserve or insure the subject of mortgage in its own interests and at its own expense. The mortgagor shall be obliged upon the mortgagee’s request to reimburse the latter for all the expenses incurred in connection with undertaking steps to safekeeping and insurance of the subject of mortgage.
The transaction on the mortgagor’s alienation of the property transferred on mortgage, or passing it for subsequent mortgage, joint operation, lease, rent or use without the mortgagee’s consent shall be deemed null and void.

Article 13 Subsequent Mortgage
The subject of mortgage may be subsequently mortgaged upon the consent of underlying mortgagees, unless otherwise provided by the previous mortgage agreement. The underlying mortgage shall have priority against the overlying. The overlying mortgage, where several objects belong to different persons and are the subject of underlying mortgage, shall be admissible upon the consent of the owners of all other objects of immoveable property transferred on joint mortgage.

In the event immoveable property is a subject of several mortgages, the mortgagee initiating foreclosure on the subject of mortgage shall be obliged to notify in writing all other mortgagees of its intention to seize the mortgage 10 days before the foreclosure.

In the event of foreclosure on the subject of mortgage by the overlying mortgagee, the underlying mortgagee shall be also entitled to foreclose, even if the main obligation to the underlying mortgagee has not yet matured. If the underlying mortgagee did not use this right, the underlying mortgage shall be valid until full satisfaction of the claim of underlying mortgagee under the main obligation, the ownership right in the subject of mortgage shall pass to the new owner along with the encumbrance of this property with the underlying mortgage.

The underlying mortgagee shall have the right, based on a written application, to terminate seizure of the subject of mortgage initiated by the overlying mortgagee, provided such seizure implicates incomplete satisfaction of claims of the underlying mortgagee. In this case claims of the overlying mortgagee shall be subject to satisfaction after the seizure of the subject of mortgage by the underlying mortgagee and full satisfaction of its claims secured by mortgage.

In the event of seizure of the subject of mortgage by the underlying mortgagee, the overlying mortgagee shall also have the right to seize the subject of mortgage, even if the main obligation to the overlying mortgagee has not yet matured.

If immoveable property, a subject of several mortgages is seized, claims of each overlying mortgagee shall be satisfied after complete satisfaction of claims of each underlying mortgagee according to the priority and the amount of such claims.

Article 14 Specifics of Mortgaging the Objects of Right Being in State or Municipal Property
Subject of mortgage may be immoveable property being the object of state or municipal ownership right, and assigned to a respective state or municipal enterprise, institution, organization upon the right of economic management. Such property shall be transferred on mortgage after receipt per the legal procedure of the consent of the state authority or local self-government, in whose economic jurisdiction is such state or municipal enterprise, institution or organization.

Mortgage of state property not subject to privatization shall be prohibited.

National, cultural and historical values being the objects of state ownership right, which are or to be entered into the State Registry of national cultural heritage may not be the subject of mortgage.
**Article 15 Specifics of Mortgage of Land Parcels**
Agricultural land parcels shall be mortgaged pursuant to this Law. Bans and limitations on alienation and targeted use of agricultural land parcels established by the Land Code of Ukraine shall be valid during their mortgage.

Agricultural land parcels transferred on mortgage shall be sold during foreclosure through public bids. Entities specified by the Land Code of Ukraine may be the buyers of agricultural land parcels.

This law shall not apply to the land parcels being in state and municipal ownership, until the decision on their privatization is made.

**Article 16 Specifics of Mortgage of Unfinished Construction Objects**
In case of mortgage of unfinished construction objects a person who will own a relevant building/structure, a residential house or a flat upon its construction is completed and the ownership right to it is registered per the legally established procedure, may be a mortgagor. A developer may also be a mortgagor in the event of financing of residential or non-residential buildings with the purpose of selling those to third persons.

Unfinished construction objects shall be mortgaged by way of transfer on mortgage of a land parcel under construction or by way of transfer on mortgage of immovable property with the future ownership right of the mortgagor in it.

Encumbrance of unfinished construction object with mortgage shall be subject to registration per the legally established procedure.

After the construction is completed, the building/structure shall remain the subject of mortgage pursuant to the mortgage agreement.

In the event an unfinished construction object is transferred on mortgage by the developer, and the finished building/structure is seized, the mortgage shall not extend to the part that was allotted in kind and acquired by any person (buyer) based on a civil and legal agreement through full payment of its value by the moment the decision of seizure was made, unless otherwise is established by the agreement with the buyer. Once the mortgage is foreclosed all the rights and obligations of the developer with regard to the third persons – the buyers shall be transferred to the new owner of finished or unfinished building/structure.

**Article 17 Grounds for Mortgage Termination**
Mortgage shall be terminated in the following cases:

- termination of the main obligation;
- sale of the subject of mortgage according to this Law;
- acquisition of the ownership right in the subject of mortgage by the mortgagee;
- invalidation of the mortgage agreement;
- destruction (loss) of the building/structure transferred on mortgage, unless it is restored by the mortgagor. In case the subject of a mortgage agreement is a land parcel and a building/structure located on it, and the building/structure is destroyed (lost) the land parcel’s mortgaged shall not be terminated.
- on the other grounds envisaged by this Law.

Overlying mortgages shall be terminated in the result of foreclosing on the underlying mortgage.

Information about termination of mortgage shall be subject to state registration per the procedure established by the law.

**Section II**

**MORTGAGE LEGALIZATION**

**Article 18 Mortgage Agreement**

A mortgage agreement shall be concluded between one or more mortgagors and a mortgagee in writing and shall be subject to notarization. A mortgage agreement shall contain the following essences:

1) for the mortgagor and the mortgagee – legal entities – information on:
   - for the residents - name, location, and identification code in the Unified State Registry of Enterprises and Organizations of Ukraine;
   - for nonresidents - name, location, and the country in which the entity is registered;

2) for the mortgagor and the mortgagee – individuals - information about:
   - for citizens of Ukraine - surname, name, patronymic, permanent resident address, and the identification number in the State Registry of Individual Taxpayers;
   - for foreigners, persons without citizenship – surname, name, patronymic, (if any), permanent resident address outside Ukraine;

3) contents, amount of the main obligation, deadline and procedure of its performing;

4) description of the subject of mortgage sufficient for its identification and/or its registration data. If a land parcel is mortgaged its target use shall be indicated;

5) reference to issuing a mortgage bond or the absence thereof.

In case a mortgage agreement does not contain any of the above-mentioned material provisions, the agreement shall be deemed non-concluded.

A mortgage agreement may contain other provisions, in particular, information on the value of the subject of mortgage, a reference to the document certifying property rights of the mortgagor to the subject of mortgage, and the data on any limitations and encumbrances of such rights, indication of the method of seizure of the subject of mortgage.

A mortgage agreement and the agreement stipulating the main obligation shall be drawn as a single document. This document by its form and contents shall comply with the requirements provided by this Article, as well as with the requirements established by the law for the agreement stipulating the main obligation.
In case the mortgage secures repayment of a loan, a credit for acquisition of immovable property to be transferred to mortgage, a purchase and sale agreement for this immovable property and a mortgage agreement may be concluded simultaneously.

**Article 19 Amendments and Addenda to the Mortgage Agreement**

Amendments and addenda to the mortgage agreement shall be subject to notarization. Respective information about the change of conditions for encumbrance of immovable property with mortgage shall be subject to state registration per the legally established procedure. After a mortgage note is drawn up, amendments and addenda to the mortgage agreement and the agreement that stipulates the main obligation may be made only after cancellation of a mortgage note and issuance of a new mortgage note per the procedure established by part four, Article 20 of this Law.

Any increase of the main obligation or interest under the main obligation, except when such increase is directly provided by the mortgage agreement, shall become effective after the state registration of respective information about the change of conditions for the immovable property encumbrance with mortgage. Such increase shall be subordinated to the priority of a claim under any other secured obligation registered prior to the registration of a respective change of conditions for the immovable property encumbrance with mortgage.

**Article 20 Mortgage Bond**

A mortgage bond shall be a debt security certifying its holder’s absolute right to obtain the performance of the main obligation from the debtor, provided it is to be effected in monetary form, and in the event of default on the main obligation – the right to seize the subject of mortgage. A mortgage bond shall be issued if it is directly provided by the mortgage agreement.

A mortgage bond may be transferred to another person by the owner by endorsement pursuant to this Law. The subsequent holder of the mortgage bond shall have the rights of the mortgagee pursuant to the agreement stipulating the main obligation and the mortgage agreement, which is the basis for issuing the mortgage bond.

In case of a mortgage bond issuance, the debtor’s monetary obligations under the agreement stipulating the main obligation shall be terminated and the debtor’s monetary obligations on payment under a mortgage bond shall arise. After the mortgage bond is issued, performance of the main obligation and seizure of the subject of mortgage may be effected only on the basis of the claim of the mortgage bondholder. The subject of mortgage may be seized by the mortgage bondholder per the procedure established by Section V of this Law.

Cancellation of a mortgage bond and issuing of a new mortgage bond shall be effected upon an agreement between the mortgagor, the debtor, if it is different from the mortgagor, and the mortgage bondholder. Information on cancellation of a mortgage bond and issuing of a new mortgage bond shall be subject to state registration per the procedure established by the law.

A mortgage bond may not be issued if the mortgage secures monetary obligation, the amount of debt under which is not determined, and which contains no criteria enabling to determine this amount as of a specific moment.

A mortgage bond shall be subject to state registration according to the procedure established by the law, along with the state registration of the encumbrance for the respective immovable property with mortgage. Once the issue of a mortgage bond is registered, its original shall be handed over to the mortgagee.
Article 21 Format and Content of Mortgage Bond

A mortgage bond shall be issued in writing in one copy on a standard format established by the State Commission on Securities and Stock Market. A mark on of the mortgage bond issuance shall be made on all originals of the mortgage agreement.

A mortgage bond must indicate the following details:

1) the word "Mortgage Bond" as a component of the document title and the formulation of the debtor's obligation to fulfill the main obligation to the mortgagee within the established period;

2) for the mortgagor, the debtor (if different from the mortgagor) and the mortgagee, which are legal entities:
   - residents - name, location, and the identification code in the Unified State Registry of Enterprises and Organizations of Ukraine;
   - nonresidents - name, legal address, and the country in which the entity is registered;
   - for the mortgagor, the debtor (if different from the mortgagor) and the mortgagee, who are individuals:
     - citizens of Ukraine – last name, name, patronymic, address of permanent residence, and the identification number in the State Registry of Individual Taxpayers;
     - foreigners, persons without citizenship - surname, name, patronymic, (if any), address of permanent residence outside Ukraine;

3) reference to the details of the mortgage agreement and the agreement stipulating the main obligation;

4) description of the subject of mortgage sufficient for its identification, and/or its registration data;

5) content and amount of the main obligation, term and procedure for its performing;

6) the method of the subject of mortgage seizure, in case it is provided by the mortgage agreement;

7) a note of the registration number, date and the place of the state registration of the immovable property encumbrance with mortgage (this shall be made by the keeper of a relevant state registry).

Upon an agreement between a mortgagor and a mortgagee the mortgage bond may contain other provisions reflecting the content of the main obligation and the mortgage. In case of differences between the content of the mortgage bond and the provisions of the mortgage agreement or the agreement stipulating the main obligation, the provisions of the mortgage bond shall prevail.

A mortgage bond shall be signed by the mortgagor and the debtor, if different from the mortgagor. Legal entities of a mortgagor and a debtor shall witness the signature of the authorized person with a seal.
Article 22 Conditions to Exercise the Rights and to Perform Obligations Resultant from the Mortgage Bond

To exercise his/her rights under the mortgage bond, the holder thereof shall be obliged to claim the debtor in writing to perform the main obligation and to present a notary witnessed copy of the mortgage bond. This claim shall specify the banking account of the mortgage bondholder for the debtor to transfer the required amount of money. Upon the debtor’s request the mortgage bondholder shall be obliged to produce an original of a mortgage bond without its transfer to the debtor.

A mortgage bond shall be transferred to the debtor in the event of his due performance of the main obligation. Debtor’s possession of the mortgage bond shall evidence to the performance of the main obligation, unless the opposite is proven. In case of performance of a main obligation by the debtor, a mortgage bond held by the debtor shall be cancelled. Other person’s possession of the mortgage bond shall evidence to the default on the main obligation, unless otherwise is proven.

In the event the main obligation is subject to performance in parts, the mortgage bondholder shall be under obligation to provide the debtor with written receipts of payments, and keep due records (register) of payments under the mortgage bond, which are to be provided to the debtor upon the latter’s request. In case of discrepancy between payment receipts and the register, the payment receipts shall prevail.

Section III
TRANSFER OF RIGHTS UNDER MORTGAGE AGREEMENT AND MORTGAGE BOND

Article 23 Consequences of Transfer the Ownership Right in the Subject of Mortgage to a Third Person

In the event the ownership right (the right of full economic management) in the subject of mortgage passes from the mortgagor to another person, including heritage or legal succession, the mortgage shall remain effective for the acquirer of relevant immovable property even in the event he/she was not notified of the property encumbrances with the mortgage.

A person whom the ownership right in the subject of mortgage is passed to, shall acquire the status of a mortgagor and shall hold all the mortgagor’s rights and obligations under the mortgage agreement in the scope and upon the conditions that existed prior to his/her acquisition of the ownership right in the subject of mortgage.

In the event the ownership right in the subject of mortgage passes to the successor of an individual – the mortgagor, such successor shall not be liable to the mortgagee for the performance of the main obligation and in case of its violation by the debtor he will be liable for the claim satisfaction only within the value of the subject of mortgage.

In the event of issuing of the mortgage bond, transfer of ownership right in the subject of mortgage shall not be allowed until full satisfaction of the claim under the mortgage bond, except for transfer of the ownership right in the subject of mortgage to the successor or heir.

Article 24 Assignment of Rights under Mortgage Agreement

Assignment of rights under a mortgage agreement shall not require the mortgagor’s consent, unless otherwise provided by the mortgage agreement, provided the claim right on the main
obligation is assigned simultaneously. Unless otherwise proved, assignment of rights under a mortgage agreement shall witness to the assignment of the claim right under the main obligation.

A mortgagee shall be obliged to inform a debtor in writing within a five-day’s term about the rights assignment under a mortgage agreement and the claim right under the main obligation.

Transaction on the assignment of rights under a mortgage agreement shall be notarized. Information about such assignment shall be subject to state registration per the procedure established by the law.

Assignment of rights under a mortgage agreement and the main obligation shall not be allowed in the event a mortgage bond is issued. After a mortgage bond is issued, transfer of the mortgagee’s rights under a mortgage agreement and the main obligation to another person shall be effected by way of transfer of a mortgage bond per the procedure established by this Law.

**Article 25 Transfer of Mortgage Bond**

A mortgage bond shall be transferred by way of its endorsing by its holder (endorser) in favor of another person (endorsee) and transferring the mortgage bond original. Transfer of a mortgage bond shall not require any consent from the mortgagor or a debtor if different from the mortgagor.

The endorsement shall indicate a surname, name, patronymic name and address of an individual, or the name and address of a legal entity, to which a mortgage bond is being transferred. The endorsement shall be signed by a mortgagee indicated in a mortgage bond, and if this endorsement is not the first – by the holder of a mortgage bond indicated in the previous endorsement. A legal entity – an endorser shall witness the signature of an authorized person with a seal.

The text of the endorsement may contain the conditions under which a mortgage bond is transferred. Endorsements on a mortgage bond forbidding its subsequent transfer shall be null and void.

If a mortgage bond has no space for endorsements or the other necessary notes, an additional sheet is attached to the mortgage bond. The endorsements shall be made in such a way that to begin on a mortgage bond and to end on this sheet. All sheets of a mortgage bond shall contain a single whole; they shall be enumerated and notarized. Separate sheets of a mortgage bond shall be null and void.

An endorser shall be obliged to inform a debtor in writing about transfer of a mortgage bond to an endorsee and shall make all the efforts to prevent the debtor from the performance of the main obligation to his benefit. In case of non-fulfillment of this obligation by an endorser, transfer of a mortgage bond shall be valid and an endorsee shall be entitled to claim reimbursement of the incurred losses by the endorser.

In case the main obligation is subject to fulfillment in parts, an endorser shall be obliged to transfer to the endorsee copies of receipts on the payments received and their registry under a mortgage bond.

**Article 26 Legal Consequences of the Mortgage Bond Transfer**

Transfer of a mortgage bond by endorsement shall vest in the endorsee all the mortgagee's rights under the mortgage agreement and the main obligation. Transfer of a mortgage bond shall not
require state registration. However, in the discretion of an indorsee, transfer of a mortgage bond may be registered per the procedure established by the law.

The endorser shall be responsible to the endorsee for the authenticity of data contained in a mortgage bond and the legal validity of a mortgage bond; however, he/she shall not be liable for performance of claims under a mortgage bond by a mortgagor or a debtor if different from a mortgagor.

The fact of a mortgage bond transfer shall be the representation of the endorser to the endorsee that at the time of a mortgage bond transfer a debtor continues duly fulfillment of the main obligation and the bond has been paid in accordance with its terms to the date of the bond transfer, unless otherwise disclosed to the endorsee in writing. The endorser shall be liable to the endorsee for any damages caused due to non-observation of this condition.

A debtor may refuse payment under a mortgage bond in favor of an endorsee who acquired a mortgage bond by payment of value, in good faith, and without knowledge of inadequate information contained in the bond, or the bond’s invalidity or other objections of the debtor against payment of the bond, only in case the debtor duly performed the main obligation or a mortgage bond is issued as a result of fraud, violence, threat or malevolent agreement of the parties. Other circumstances may not be the reason for refusal to make payments under a mortgage bond.

Until notified by an endorser on transfer of a mortgage bond in writing, a debtor may continue to make payments to the endorser. In this case a debtor shall not be held liable to the endorsee for effecting such payments in favor of an endorser.

**Article 27 Restoration of Rights under Mortgage Bond**

In the event of loss of a mortgage bond, the mortgagor and the debtor, if different than the mortgagor, shall issue a duplicate mortgage bond, provided the person requesting issuance of a duplicate can prove its ownership right to the lost mortgage bond by reproducing all prior endorsements. Mortgagor’s (debtor’s) refusal to issue a duplicate mortgage bond may be appealed against at the court.

A duplicate mortgage bond shall be clearly marked as such on each page of the text of the duplicate of a mortgage bond and information about its issuance shall be subject to state registration per the procedure established by the law.

**Section IV. USE OF MORTGAGE BOND FOR REFINANCING**

**Article 28 Methods of Refinancing**

Prior to maturity of the debtor’s obligation fulfillment under a mortgage bond, a mortgagee (a mortgage bond owner) can carry out operations with the mortgage bonds belonging to him/her to refinance own activity by way of attracting additional funds from the other persons. The following methods of refinancing may be applied:

alienation (sale) of a mortgage bond by endorsement pursuant to Article 25 of this Law with the reimbursement to the endorser for the mortgage bond value in the amount established by the parties;

sale of a mortgage bond with the repo obligation;
transfer of a mortgage bond on mortgage to secure fulfillment of obligations to the other creditors;

issuance of mortgage securities;

another method that does not contradict the law.

**Article 29 Sale of Mortgage Bond with the Obligation of Reverse Purchase**

Sale of a mortgage bond under a repo condition shall be a transaction pursuant to which any person – creditor is obliged to pay monetary funds to a mortgagee (a mortgage bond owner), and a mortgagee (a mortgage bond owner) is obliged to transfer a mortgage bond to this creditor and to buy it out at a price agreed upon between the parties at a definite term in the future but not later than the term of complete fulfillment of the main obligation by the debtor.

Sale of a mortgage bond under a repo condition shall be performed by way of endorsement in which a repo term for a mortgage bond is specified. A mortgagee (a mortgage bond owner) and a creditor may enter into agreement to specify the other sales terms of a repo mortgage bond. For example, an agreement may specify an obligation of a mortgagee (a mortgage bond owner) to buy out a mortgage bond prior to the term established in the endorsement in case of occurrence of circumstances specified by the agreement.

**Article 30 Mortgaging of Mortgage Bond**

A mortgage bond may be transferred on mortgage to secure performance of obligations of its holder to another person - a creditor. Mortgaging of a mortgage bond shall be effected by endorsement, which states that a mortgage bond is transferred on mortgage only and identifies the obligation secured by mortgage. During mortgage a mortgage bond shall be transferred to a mortgagee’s possession.

A mortgagee (a mortgage bond owner) shall be obliged to notify a debtor in writing about a mortgage bond transfer on mortgage. In the event of violation of an obligation secured by a mortgage of a mortgage bond, a mortgagee shall acquire all the rights under the mortgage bond with the consequences established in Section III of this Law.

**Article 31 Mortgage Securities**

Mortgage bonds may secure issuance of mortgage securities – mortgage obligations (debentures) and mortgage certificates.

Banks and other financial institutions licensed per the legally established procedure may be the issuers of mortgage securities.

Procedure for issuance and circulation of mortgage securities shall be specified by the law.

**Article 32 Refinancing Procedure**

A mortgagee (a mortgage bond owner) shall be entitled to carry out operations with mortgage bonds to refinance its own activity independently or by way of attracting specialized finance institutions. Based on the agreement with the mortgagee (the mortgage bond owner) these finance institutions provide respective refinancing by way of operations with mortgage assets of such mortgagee (mortgage bond owner) that secure monetary funds from any other entities – creditors.
Section V
SATISFACTION OF THE MORTGAGEE’S CLAIMS AT THE EXPENSE OF THE SUBJECT OF MORTGAGE

Article 33 Grounds for Seizure of the Subject of Mortgage
A mortgagee shall have the right to satisfy his/her claims under the main obligation by seizure of the subject of mortgage in the event of the debtor’s default on the obligation secured by a mortgage, or unduly performance thereof. A mortgagee’s right to seize the subject of mortgage shall also arise on the grounds envisaged by Article 12 of this Law.

In the event an action is brought to restore the mortgagor’s solvency or declare it bankrupt or liquidation of a legal entity - a mortgagor, a mortgagee shall acquire the right to seize the subject of mortgage irrespective of maturity of the main obligation, unless the mortgagee and the mortgagor’s legal successor reach an agreement otherwise.

The subject of mortgage shall be seized based on a court decision, a notary’s writ of execution or an agreement to satisfy the mortgagee’s claims.

Property, being the subject of mortgage of a state-owned or a municipal enterprise, or an enterprise with over 50 percent of stock (shares) owned by the state, shall be seized based on a court decision.

In case two or more real estate objects are the subjects of mortgage, they shall be seized in the scope necessary for complete satisfaction of the mortgagee’s claims. In case the objects owned by various persons are the subject of mortgage and the satisfaction is received at the expense of part of the property transferred on mortgage, then the mortgagors whose property was seized shall be entitled to a pro rata compensation from the mortgagors whose property was not seized and shall acquire the rights of a mortgagee to a part of property that was not seized to ensure such compensation.

Article 34 Transfer of the Subject of Mortgage into Administration
After making a decision to seize the subject of mortgage, aimed at obtaining results, products and income, ensuring duly economic use of a real property transferred on mortgage, in accord to its targeted use, based on the agreement between a mortgagor and a mortgagee or a court decision the subject of mortgage can be transferred into administration to a mortgagee or to another person for a period till its realization per the procedure established by the law.

Results, products and income obtained as a result of administration of a subject of mortgage shall be directed to satisfy the mortgagee’s claims secured by mortgage, unless otherwise established by the agreement or the court decision.

Article 35 Notification about Breach of the Main Obligation and/or the Mortgage Agreement
In the event of breach of the main obligation and/or terms and conditions of the mortgage agreement, a mortgagee shall send a written request to eliminate such a violation to a mortgagor and a debtor, if different from a mortgagor. This document shall contain a brief content of defaulted obligations; a claim to fulfill the violated obligation within a ten-day’s term and a notification to seize the subject of mortgage in case of non-observing of this claim. If the
violation is not eliminated within the established term, a mortgagee shall have the right to initiate seizure of the subject of mortgage pursuant to this Law.

Provisions of part one of this Article shall not prevent from exercising the mortgagee’s right to any time address the court per the legally established procedure for protection of its violated rights.

Article 36 Extrajudicial Regulation

The parties to a mortgage agreement may resolve the issue of seizure on the subject of mortgage by way of applying extrajudicial regulation based on the agreement. Extrajudicial regulation shall be made based on the caveat to satisfy the mortgagee’s claims contained in the mortgage agreement or based on a separate agreement between a mortgagor and a mortgagee that shall be notary witnessed and may be concluded any time prior to the court decision on seizure of the subject of mortgage enters into legal force.

The agreement to satisfy the mortgagee’s claims shall establish the possible method of seizure on the subject of mortgage pursuant to this Law. The method of satisfaction of the mortgagee’s claims established by the agreement shall not prevent the mortgagee from applying of the other methods of seizure on the subject of mortgage envisaged by this Law.

The agreement to satisfy the mortgagee’s claims may provide for:

- transfer to a mortgagee of the ownership right in the subject of mortgage against fulfillment of the main obligation per the procedure stipulated by Article 37 of this Law;
- the mortgagee’s right to sell the subject of mortgage on its behalf to any person based on a purchase and sales agreement per the procedure stipulated by Article 38 of this Law.

After completion of extrajudicial regulation, any further claims of a mortgagee regarding fulfillment of the main obligation by a debtor shall be invalid.

Article 37 Transfer to a Mortgagee of Ownership Right in the Subject of Mortgage

The agreement to satisfy the mortgagee’s claims that provides for transfer to a mortgagee of an ownership right in the subject of mortgage against fulfillment of the main obligation shall be a legal ground to register the mortgagee’s ownership right in a real property being the subject of mortgage.

Decision to register the mortgagee’s ownership rights in the real property, being the subject of mortgage, can be appealed against in the court by a mortgagor, if he/she proves that the main obligation and terms and conditions of the mortgage agreement were not violated.

In case of transfer to a mortgagee of the ownership right in real property transferred on mortgage, the rights and claims of the other persons in this real property registered per the legally established procedure shall remain valid. A mortgagee shall be liable for satisfaction of the rights or claims of the other persons in the subject of mortgage having the highest priority. The rights or claims of the persons having the lower priority shall be satisfied within the limits of the real property value excess over the amount of the mortgagee’s claim secured by mortgage established by its valuation after satisfaction of the rights or claims having the highest priority.

Article 38 The Mortgagee’s Right to Sell the Subject of Mortgage

In the event the court decision or the agreement on satisfying the mortgagee’s right provide for the mortgagee’s right to sell the subject of mortgage to any person - a buyer, a mortgagee shall
be obliged at least 30 days prior to concluding a buy-sell agreement to notify in writing a mortgagee and all persons having the rights or claims in the subject of mortgage registered per the established procedure about his/her intent to conclude such an agreement. In case of non-observation of this condition a mortgagee shall be liable to such persons for reimbursement of the suffered damages.

Within a thirty-day’s term since such notification is received, a person having registered rights or claims in the subject of mortgage shall be entitled to notify a mortgagee in writing about his/her intent to buy the subject of mortgage. The mentioned person shall acquire the preferential right in buying the subject of mortgage from the mortgagee since the day of this notification receiving by the mortgagee. If there are several such notifications, a person having the highest priority of his/her registered rights or claims shall have the right to buy the subject of mortgage from the mortgagee.

In case a person that expressed his/her intent to buy the subject of mortgage evades or otherwise does not perform actions to conclude a buy-sell agreement for the subject of mortgage with the mortgagee within 5 days after the mentioned thirty-day’s term is over, he/she shall lose the right to buy the subject of mortgage. This right shall be transferred to the other persons who expressed their intent to buy the subject of mortgage according to the priority of their rights and claims.

In case the persons having registered rights or claims in the subject of mortgage did not express the intent to buy it, a mortgagee shall be entitled to sell the subject of mortgage to any other person at the own discretion.

The sales price of the subject of mortgage shall be determined upon the agreement between the mortgagor and the mortgagee, or based on the property valuation, at the level not lower than usual market prices for the specific type of property. If this requirement is not met, the mortgagee shall be liable to the other persons pursuant to the priority and the amount of registered rights or claims and to the mortgagor in the last turn for reimbursement of the difference between the sale price of the subject of mortgage and the conventional price thereof.

Proceeds from sale of the subject of mortgage shall be distributed between the mortgagee and the other persons having registered rights or claims in the subject of mortgage according to the established priority and the size of these rights or claims. The rest of the proceeds shall be returned to the mortgagor.

A mortgagor and a debtor, if different from the mortgagor, shall be entitled to fulfill the main obligation within a thirty day’s term stipulated by part one of this Article pursuant to terms and conditions and under the consequences established by Article 42 of this Law.

A purchase and sale agreement for a subject of mortgage concluded pursuant to this Article shall be a legal ground to register the buyers’ title in real estate being the subject of mortgage.

**Article 39 Sale of the Subject of Mortgage Upon the Court Decision**

In the event of satisfaction of an action on seizure of the subject of mortgage, the court decision shall indicate:

- total amount of claims and its all components that are subject to payment to the mortgagee from the subject of mortgage’s value;
- description of real property, at the expense of which the mortgagee’s claims are to be satisfied;
arrangements to assure safe keeping of the subject of mortgage or transfer it to administration for the period preceding its sale, if they are necessary;

method of sale of the subject of mortgage by way of holding a public auction or by application of the sale procedure established by Article 38 of this Law;

a priority and the amount of other creditors’ claims that are subject to satisfaction from the subject of mortgage’s value;

initial price of the subject of mortgage for its further sale.

Simultaneously with the decision to seize the subject of mortgage, the court upon the mortgagee’s application shall be entitled to make a decision on the tenants’ eviction in case an apartment house or living quarters are the subject of mortgage.

The court may refuse to satisfy the mortgagee’s action on early seizure of the subject of mortgage provided that breach of the main obligation or a mortgage agreement committed by the debtor or the mortgagor, if different from the debtor, causes no losses to the mortgagee and does not change the scope of his/her rights.

Article 40 Eviction of Tenants

Seizure on the apartment house or living quarters transferred on mortgage shall be the ground to evict all tenants, except for the lessees and their families. Eviction shall be effected per the procedure established by the law.

After approval of the decision on seizure of the apartment house or living quarters transferred on mortgage, upon the written demand of a mortgagee or a new owner, all tenants shall be obliged to voluntarily evict the apartment house or living quarters within a month after receiving such a demand. In case the tenants do not evict voluntarily the apartment house or living quarters within the established term or the other term agreed upon by the parties, their forced eviction shall be effected based on the court decision.

Persons living in the mentioned premises upon the lease agreement shall not be evicted, provided:

- a lease agreement was concluded prior to concluding of the mortgage agreement and the mortgagee was informed accordingly on the existence thereof or such an agreement was registered per the procedure established by the law;

- a lease agreement was concluded after concluding of the mortgage agreement upon the mortgagee’s consent.

Article 41 Sale of the Subject of Mortgage at a Public Auction

The subject of mortgage being seized based on the court decision or the notary’s writ of execution, may be sold through a public auction within the limits of the enforcement procedure meeting the requirements of this Law, unless otherwise established by the court decision.

Arrangements for sale of the subject of mortgage shall be placed on specialized organizations created and acting pursuant to the law. The right to choose a specialized organization shall be vested with the mortgagee. The place for holding a public auction shall be determined by a specialized organization upon the mortgagee’s consent.
Article 42 Consequences of Fulfillment the Main Obligation Prior to the Moment of Sale of the Subject of Mortgage

A debtor shall be entitled any time prior to the subject of mortgage sale at a public auction to perform a claim under the main obligation or that part thereof the performance of which is overdue, together with reimbursement for any expenses and losses, caused to the mortgagee, including legal expenses, expenses for payment of fees to the experts involved (appraisers, lawyers), expenses for preparation to a public auction holding, etc. Such performance shall be the ground to terminate the sale of the subject of mortgage at a public auction. Terms of agreements that restrict this right of a debtor shall be invalid.

Unless otherwise provided by the mortgage agreement, in the event when the main obligation is subject to performance in parts, a debtor may use the rights pursuant to part one of this Article only once a year or twice for the duration of the main obligation. Should these indices are exceeded; a debtor shall have the right to terminate the sale of the subject of mortgage only by payment of the entire remaining amount due under the main obligation.

A property guarantor or the overlying mortgagee may perform the main obligation for the debtor with consequences similar to the above stated, and the underlying mortgagee shall be obliged to accept such performance. An overlying mortgagee who pays the entire amount due under the main obligation to the underlying mortgagee shall be considered an assignee of the underlying mortgagee’s rights per the mortgage agreement. A property guarantor who performed the main obligation in full or partially shall have the right to request from a debtor to reimburse for the amount paid by a property guarantor.

Article 43 Preparations for Holding a Public Auction

A public auction shall be held within a period of two months following the receipt by a specialized organization of an application from the state enforcement officer for its holding.

The initial sale price for the subject of mortgage shall be determined by the court decision or by the mortgagor’s and the mortgagee’s consent, and in case of failure to reach the consent – by a specialized organization based on professional valuation of the subject of mortgage. The initial price of this property may not be below 90 percent of its value, determined by way of appraisal.

A specialized organization not later than 15 days prior to the commencement of a public auction, shall place a notice about the public auction in at least two local printed mass media, in the area of the real property location. Such notice shall indicate the date, time and place of the public auction, description of the subject of mortgage eligible for sale, place where additional information may be obtained about the terms and conditions for a public auction holding and any other necessary information.

A specialized organization shall ensure to any concerned person access to information about terms and conditions for a public auction holding and the subject of mortgage eligible for sale.

Not later than the date of a notice publication in mass media about holding a public auction, a specialized organization shall notify in writing the state enforcement officer, the mortgagor, the mortgagee and all persons having the rights and claims to the subject of mortgage registered per the legally established procedure, about the date, time and place of a public auction holding, as well as about the initial sale price of the property.
Article 44 Participation in a Public Auction
Individuals and legal entities that paid a guarantee fee and can, pursuant to the law, be buyers of the immovable property being sold, shall have the right to participate in a public auction. The amount of guarantee fees shall be determined by a specialized organization, however, it may not exceed 5 per cent of the initial selling price of the subject of mortgage. A mortgagor and all mortgagees shall participate in a public auction without paying a guarantee fee.

Participants to a public auction shall be subject to registration by a specialized organization. Registration shall be over not earlier than an hour prior to the commencement of a public auction. For registration purposes a participant shall submit a personal identification document, an application for participation in a public auction, a document certifying payment of a guarantee fee to a specialized organization. During registration a participant to a public auction shall obtain a card indicating his/her serial number, according to which such participant shall participate in the auction.

Article 45 Procedure for Holding a Public Auction
The procedure for holding a public auction shall be transparent. A specialized organization shall provide each of the participants with the rules of holding a public auction prior to its commencement.

Any participant may be the buyer of the subject of mortgage should he/she propose the highest price. Should the mortgagee be the buyer, he/she shall be obliged to pay only the difference between the price proposed by him/her and the amount of the non-fulfilled main obligation.

A public auction shall be held, provided at least one bidder is present. In case only one bidder takes part in a public auction, he may purchase the property only at its initial price.

If no bidders were registered, or should the subject of mortgage not be sold, a public auction shall be declared invalid.

Based on the results of a public auction holding and a subject of mortgage sale, the minutes shall be drawn up and signed by the authorized representative of a specialized organization and the buyer of the subject of mortgage. The minutes shall contain:

- description of the subject of mortgage purchased by the buyer;
- initial price of the subject of mortgage;
- sales price of the subject of mortgage;
- information about the buyer of the subject of mortgage;
- date by which the buyer is to pay the sales price of the subject of mortgage in full;
- banking account of a specialized organization, to transfer the sales price of the subject of mortgage by the buyer.

Other information may be entered into the minutes as appropriate.

Copies of the minutes shall be sent to the mortgagor, all mortgagees and the state enforcement officer within 5 days since the moment of signing.
If the highest bidder refuses to sign the minutes, the subsequent bidder who offered the highest price, but not lower than the initial sales price, shall be announced the highest bidder at a public auction. In absence or refusal of the latter, a public auction shall be recognized invalid.

**Article 46 Procedure for Settlements for the Property Bought at a Public Auction**

The highest bidder of a public auction shall, within ten working days after the minutes is signed, transfer the funds for the property purchased at the auction to the bank account of a specialized organization indicated in the minutes.

A guarantee fee paid by the bidder before the commencement of a public auction shall be credited to the selling price. The other bidders shall be returned the fee within three business days following the public auction closing. A guarantee fee shall be also refundable if an auction did not take place.

Should the bidder fail to pay the whole appropriate amount within a ten-day’s period, a guarantee fee shall not be refunded to him/her and a subsequent bidder who offered the highest price not lower than the initial sales price shall be announced the highest bidder of the public auction. In absence or refusal of the latter, the public auction shall be recognized invalid. A guarantee fee shall not be refunded to the highest bidder who refused to sign the minutes of the auction.

**Article 47 Validation of Public Auction Results and Disbursement of Proceeds from Sale of the Subject of Mortgage**

Within 5 working days since the day of receipt by a specialized organization of the payment from the buyer of the subject of mortgage, a specialized organization shall send a notice of such payment effecting to the state enforcement officer.

Within 5 working days since the day of receipt of the above notice by the state enforcement officer, he/she shall send to a specialized organization a certificate on property purchase from the public auction. The certificate shall indicate:

- description of the purchased immovable property;
- information stating that a public auction took place in conformity with the requirements of this Law;
- information about the mortgagee and the mortgagor;
- information about the buyer;
- sales price of the subject of mortgage.

A certificate on property purchase from the public auction shall be signed by the state enforcement officer and sealed by the appropriate department of the state enforcement service.

A state enforcement officer may not refuse to issue a certificate on property purchase from the public auction, if a public auction took place in conformity with the requirements of this Law. In the event of the state enforcement officer’s refusal to issue a certificate on property purchase from the public auction, he/she shall be obliged within a five-day’s period to notify the specialized organization, the mortgagor, the mortgagee and the buyer thereof. The notice shall contain the grounds for the refusal. The state enforcement officer’s refusal to issue a certificate on property purchase from the public auction may be appealed against at the court.
A certificate on immovable property purchase from the public auction shall be a legal ground for registration per the procedure established by the law of the buyer’s ownership right in the property purchased at a public auction.

Within 5 working days since a specialized organization received from the state enforcement office a certificate on the property purchase from the public auction, a specialized organization shall send such a certificate to the buyer and distributes the funds obtained thereof according to the following order of priority:

- expenses for holding a public auction;
- commission fee of a specialized organization, which may not exceed 3 per cent of the selling price of the subject of mortgage;
- satisfaction of the mortgagees’ and other creditors’ claims having the rights or claims to the sold property registered per the procedure established by the law, pursuant to their priority and the amount;
- the rest shall be returned to the mortgagor.

A specialized organization shall send a report on disbursement of the sales proceeds of the subject of mortgage to the state enforcement officer, the mortgagor, the debtor and the mortgagees.

Should the amount obtained from the sale of the subject of mortgage does not cover the mortgagee’s claims, he/she shall be entitled to obtain the missing amount from the other debtor’s property per the procedure established by the law.

**Article 48 Appeal against the Results of a Public Auction**

A mortgagee, a mortgagor, a debtor and any public auction participant shall have the right within three months following the day of the auction holding to appeal its results to the court where immovable property is located.

**Article 49 Mortgagee’s Rights and Obligations in Case a Public Auction is Recognized Invalid**

Within ten days following the announcement of a public auction invalid, the mortgagees and other creditors of the debtor shall have the right, pursuant to the order of priority of their registered claims, to purchase the subject of mortgage at the initial sale price through offsetting their secured claims against the property’s sale price. In such event purchase of the subject of mortgage by the mortgagee shall be legalized by the minutes and the certificate per the procedure established by Article 47 of this Law.

Should the mortgagee fail to exercise the right, envisaged by part one of this Article, upon the results of the first public auction, the second public auction shall be appointed to be held upon similar terms and conditions, which are to take place within one month after holding the first public auction.

Should the mortgagee fail to exercise the right envisaged by part one of this Article, the mortgage shall be terminated upon the results of the second public auction.
Article 50  Termination of Rights and Claims to the Subject of Mortgage after Its Sale
After sale of the subject of mortgage from a public auction or per the procedure established by Article 38 of this Law, any rights and claims of the other parties to the real estate that was the subject of mortgage, which arose after the mortgage state registration under the mortgage agreement based on which the subject of mortgage was seized, shall be terminated. This rule shall not be applicable in case the subject of mortgage is acquired by the mortgagor.

Article 51 Implications of Withdrawal (Buy Out) of the Subject of Mortgage or its Return to the Owner
Should the subject of mortgage be withdrawn (bought out) for public or social needs according to the law, the mortgagee shall have the right to claim early fulfillment of the main obligation from the debtor, and in case of default – to get the priority right in satisfaction of his/her claims from the funds due to the mortgagor, or from the other property being acquired by the mortgagor in connection with the property withdrawal (buyout).

Section VI
CLOSING PROVISIONS

1. This Law shall become effective since January 1, 2004.

2. Legal and other regulatory acts adopted prior to the effective date of this Law, shall be applied to the extent that does not contradict this Law.

3. The following legislative acts of Ukraine shall be amended:

1) part four, Article 133 of the Land Code of Ukraine (Bulletin of the VRU, 2002, #3-4, p.27) shall read as follows:

“Banks may be the only mortgagees of agricultural land parcels”.

2) Housing Code of Ukraine (Bulletin of the VR of UkrSSR, 1983, appendix to #28, p.573) shall be amended as follows:

a) supplement Section III with Chapter 4 that reads as follows:

Chapter 4. Use of residential premises from the temporary residence funds

Article 132. Residential premises from the temporary residence funds.

Residential premises from the temporary housing funds shall be considered residential premises adjusted for temporary residence of citizens who do not have or lost permanent residence place.

Residential premises from the temporary residence funds shall be granted to citizens who lost their housing as a result of seizure of residential premises acquired by them on credit (loan) from the bank or another person and repayment thereof is secured by mortgaging of a respective residential premise per the procedure stipulated by this Code.

Residential premises from the temporary residence funds shall be also granted to refugees and citizens who are forced to leave a residential premise due to its emergency state, natural disaster or on the other grounds threatening the state and safety of the respective residential premise per the procedure established by the Law.
Residential premises from the temporary residence funds shall be regarded specialized residential premises, which are to meet sanitary and technical requirements and be granted to citizens per the norms established for hostels (dormitories).

**Article 132** Procedure for granting and use of residential premises from the temporary residence funds

Residential premises from the temporary residence funds shall be granted to citizens provided such housing is the only place for them to reside and their aggregate income is insufficient to buy or rent another residential premise. Priority in supplying temporary housing shall be granted to families with infants, pregnant women, disabled persons and persons of retirement age.

Temporary residence funds shall be created by local self-governments per the procedure established by the Cabinet of Ministers of Ukraine.

Citizens granted a residential premise from the temporary residence fund shall have no right to privatize, exchange or divide this residential premise, to lease it into subtenancy or to put other temporary tenants in it.

Residential premises from the temporary residence funds shall be granted for the term of up to one year with the possibility to extend this term in case a citizen is incapable to acquire an alternative place of residence. Grounds for early termination of a citizen’s right to use residential premises from the temporary residence funds shall be the following: granting or acquisition of another residential premise by a citizen; raising income of a citizen to the level that allows him/her to conclude a rental agreement for another residential premise; violation of the rules to use the temporary residential premise by a citizen; making a temporary residential premise useless by a citizen; other grounds established by the law.

Procedure and terms and conditions for granting residential premises from the housing fund for temporary residence and the use thereof shall be established by the Cabinet of Ministers of Ukraine”.

b) Article 109 shall read as follows:

“Eviction from the occupied residential premise shall be admitted on the grounds established by the law. Eviction shall be performed voluntarily or judicially. It is admissible to evict under administrative procedure upon the prosecutor’s sanction the persons who occupied a residential premise without permission or live in the buildings that are in emergency condition.

Citizens being evicted from residential premises shall be simultaneously provided for with the other permanent residential premise, except for eviction of citizens during seizure of residential premises purchased by them at the expense of a credit (loan) by bank or another person, repayment thereof is secured by mortgaging of a respective residential premise. A residential premise being granted to the evicted person shall be specified in the court decision or prosecutor’s resolution.

Seizure of the residential premise transferred on mortgage shall be the ground to evict all the citizens residing in, with the exceptions established by the law. After the creditor’s decision on seizure of the residential premise transferred on mortgage, all the citizens residing in it shall be obliged upon the written demand of the creditor or a new owner of this residential premise to voluntarily vacate it within a month since this demand is received. In case citizens do not vacate voluntarily a residential premise within the term established or agreed upon by the parties, their forced eviction shall be performed based on the court decision.
Eviction of citizens during seizure of residential premises purchased by them at the expense of the credit (loan) by bank or another person and repayment thereof is secured by mortgaging of the respective residential premise, shall be the ground for granting these citizens residential premises from the temporary housing funds pursuant to Article 132\(^2\) of this Code. Absence of residential premises from the temporary housing funds or refusal to grant them on the reasons specified by Article 132\(^2\) of this Code shall not result in termination of a citizen’s eviction from the residential premise being the subject of mortgage per the procedure stipulated by part three of this Article.”

3) Article 3 of the Law of Ukraine “On Securities and Stock Market” (Bulletin of the VRU, 1991, #38, p.508) shall supplement with paragraphs:

“mortgage bonds;
mortgage securities”.


5) Make the following amendment to Article 7 of the Law of Ukraine “On Valuation of Property, Property Rights and Professional Appraisal Activity in Ukraine” (Bulletin of the VRU, 2001, #47, p.251):

a) withdraw paragraph nine of part two;

b) substitute the words “its mortgage” with the words “mortgage of state and municipal property” in part three.

6) Part one Article 7 of the Law of Ukraine “On Insurance” (Bulletin of the VRU, 2002, #7, p.50, # 8, p.62, #14, p.96) shall be supplemented with paragraph 35 that read as follows:

“35) Insurance of the subject of mortgage against the risks of accidental damage, accidental destruction or loss”.

4. Before the law on the state registry for real estate titles enters into effect, procedure for the state registration of mortgages shall be established by the Temporary provision on the procedure for state registration of mortgages to be approved by the Cabinet of Ministers of Ukraine.

5. Pursuant to Article 15 of this Law, mortgaging of agricultural land parcels will be admissible since January 1, 2005.

5. The Cabinet of Ministers of Ukraine shall:

1) within two months following the effective date of this Law:

submit for the Verkhovna Rada of Ukraine consideration the draft law on reconciliation of the Law of Ukraine “On Judicial Enforcement” with this Law;

submit for the Verkhovna Rada of Ukraine consideration the draft law on the procedure of creation and operation of specialized organizations;
approve the Temporary provision on the procedure for state registration of mortgages;

approve the procedure to form housing funds for temporary residence;

approve the procedure to grant and use living quarters from the housing funds for temporary residence;

bring its regulatory acts in compliance with this Law;

ensure that the ministries and other central executive bodies bring their regulatory acts in compliance with this Law.

2) within six months following the effective date of this Law submit a draft law on mortgage securities for the Verkhovna Rada of Ukraine consideration.

L. Kuchma,
President of Ukraine

Kyiv city
June 5, 2003
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