

Disposition methods of mortgaged property

According to the social and economic policy led successfully by the government, as market economy relations develop, there appears an issue of establishing different legal arrangements that will provide main participation of a person in the property right of another person. One of such legal forms, the mortgage institution, has a major importance in the development of civil turnover in the circumstances where market economy relations are ruling.

It is very important to learn specific features of the mortgage institution as an element of law that serves to improve living standards and housing conditions of the population in the country, as well as disposition methods of mortgaged properties in order to form and improve the mortgage system in the country.

In the current legislation of the Republic of Azerbaijan, the mortgage institution covers not only laws and regulations related to civil law relations, but also legislative acts regulating entrepreneurship activities. The fact that mortgage relations are connected to entrepreneurship activities increases its relevance in market economy. The reason is that market economy in dynamics cannot be available or act without mortgage. The main and prior role of mortgage is that, it is an important and significant credit instrument. Thus, in order to realize economic activity, the subjects of economic turnover mortgage their properties and get a loan from banks. In this way, notary's activity, improvement of rights of secured creditors, its efficiency, remove of restrictions and uncertainties in current secured transactions system contributes to a more accessible, flexible, unobstructed, efficient implementation of operations of individuals and legal entities.

Implementation of right to dispose which is the component of property right is a legal fact aimed at changing the ownership, condition or destination of the property. Right to dispose allows the owner to sign any civil law transaction, as well as a pledge or mortgage agreement on his/her property in the manner prescribed by law. In this regard, pledge or mortgage of an object is an implementation of the owner's right to dispose.

According to Article 269.1 of the Civil Code, a pledge and mortgage right is an ownership right of a mortgagee on the property of a mortgagor, at the same time it is a method of providing monetary or other liability of a mortgagor before mortgagee.

The Law of the Republic of Azerbaijan on "Mortgage" regulates the grounds of occurrence of mortgage related to ensuring the fulfillment of obligations arising from the civil law agreements, its state registration, payment rules of secured debt

and other civil law liability on the base of the mortgage, rights and duties of the parties.

The mortgage right arises from the agreement. There are two parties in the mortgage agreement: a mortgagor and a mortgagee. Only the owner of a property can be a mortgagor and he/she usually acts as a debtor on the principal obligation. The second party – a mortgagee is a person who has a mortgage right and he/she is called a creditor. In order to provide the fulfilment of monetary or other liability of the debtor, a mortgagee has a right to make a demand for a thing that is the subject of the mortgage. In all cases a creditor and mortgagee is the same person, it means, only a creditor can be a mortgagee.

The main purpose of pledge and mortgage right is that, if a debtor (pledger or mortgagor) fails to carry out his/her liability, in comparison with other creditors, a creditor (pledgee or mortgagee) has an advantage in payment of its debt from the amount of pledged or mortgaged property.

If a subject of a mortgage is impartible or common property of owners, the owners of the property become joint mortgagors. While mortgaging the common property, in order to protect rights and legal interests of all owners, disposition of the common property is carried out with the consents of all owners. Thus, the common property is jointly owned and disposed of by all owners. But common shareholders may mortgage their shares without a consent of other shareholders.

Article 30 of the Law on “Mortgage” regulates the realization of disposition right on mortgaged property.

According to Article 30.1 of the same Law, except as otherwise provided in mortgage agreement, only with the written consent of a mortgagee, a mortgagor may dispose (use, lease, etc.) of the subject of mortgage or give a power of attorney on it (except power of attorney for driving a vehicle).

When selling the subject of mortgage with the consent of mortgagee, as well as with the notarized agreement of mortgagee and mortgagor, the obtained amount is shared through notary’s deposit account in accordance with the legislation and with the consents of both parties.

According to the last amendments made in the Law on Mortgage, in case alienation of the subject of mortgage is enough as a payment of claims on principal obligation, the mortgagor may alienate the subject of mortgage and pay his/her debts on principal obligation to mortgagee. The mortgagor submits a certificate on the amount of principal obligation to a notary. In this case, a notary confirms the

agreement on alienation of the subject of mortgage and provides the transfer of the amount determined for complete payment of claims of mortgagee to the account of mortgagee. The obtained amount is shared through notary's deposit account in accordance with the legislation and with the consents of both parties.

Thus, in order to strengthen the legal correctness and enforcement of real estate agreements, prevent future disputes and stimulate the cashless settlements, it is a significant and efficient way to transfer money through deposit account, make payments by bank and register the payment in this method.

One of the realization methods of mortgaged property is seizure of property by a writ of execution of notary. By the writ of execution of notary there appears a legal basis for selling the subject of mortgage and the income obtained by selling is shared in compliance with the Law of the Republic of Azerbaijan on "Mortgage". Recently, writs of execution are provided electronically and the number of writs of execution has increased significantly.

In order to ensure rights and interests of parties, during notarizing writ of execution or documents on disposition of mortgaged property, "Electronic notary" information system provides more flexible and quality legal services to individuals and legal entities to obtain necessary documents and certificates, removes the necessity to collect several documents from other organizations and makes this process more convenient and efficient.

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