

THE LAW OF THE REPUBLIC OF AZERBAIJAN

on Mortgage

This Law shall encompass incurrence and state registration of mortgage in support of performance under civil law contracts, provide guidance on satisfaction of secured debt and other civil law liabilities using mortgage, determine rights and responsibilities of the parties involved, and govern other issues in this context.

Chapter I

GENERAL PROVISIONS

Article 1. **Main definitions**

1.0. Definitions used in this Law shall have the following meanings:

1.0.1. mortgage – pledge of real estate and movable assets with officially registered titles as a means of satisfaction of a liability;

1.0.2. mortgage paper – a registered security affirming a mortgage right. *A mortgage security documenting a mortgage right to a real estate shall be registered as a dematerialized security;*

- legal owner of a mortgage – a person who acquired the right of possession of a mortgage paper;

1.0.3-1. *the owner of the mortgage paper establishing the mortgage right on real estate – the person whose ownership right to the mortgage paper is formalized in the electronic system of the mortgage paper (hereinafter – the electronic system);*

1.0.4 mortgageor – a person pledging mortgaged property as collateral. The mortgageor may be both a debtor and a third party;

1.0.5. mortgage holder – a person with a mortgage right and a precedence over mortgageor's other creditors with respect to foreclosure on mortgaged property, including the legal owner of the mortgage paper;

1.0.6. mortgage right – mortgage holder's right of foreclosure on mortgaged property, *whenever so specified under Article 34 hereof;*

1.0.7. mortgage agreement – a contractual arrangement between the mortgageor and the mortgage holder to ensure fulfillment of the underlying liability;

1.0.8. underlying liability – debt and other liabilities arising from the underlying agreement and satisfied by mortgage in full or in part;

1.0.9. starting sale price – the sale (marketable) price of mortgaged property given a limited time available for a proper marketing exercise to determine the market value of the mortgaged property as specified hereunder.

Article 2. **Mortgage related legal framework**

2.1. Mortgage-related issues shall be governed by this Law, the Civil Code of the Republic of Azerbaijan and other normative legal acts, as well as international treaties seconded by the Republic of Azerbaijan.

2.2. *Mortgage-related matters in the Alat Free Economic Zone shall be subject to the Law of the Republic of Azerbaijan 'on the Alat free economic zone'.*

Article 3. Scope of application of mortgage

3.1. Mortgage may be used to satisfy real claims arising from debt, purchase, contractor and other civil law agreements.

3.2. Future claims may also be satisfied with mortgage. Provisions of Article 10.5 hereof shall apply in this case.

Article 4. Scope of a mortgage-satisfied claims

4.1. Unless otherwise provided in the mortgage agreement, the mortgage holder's claim shall be fully covered, including:

4.1.1. principal debt;

4.1.2. interest;

4.1.3. fees for failure to perform or properly perform, or perform in a timely manner and/or indemnification for damages;

4.1.4. *enforcement inscription*, legal costs and other expenses related to foreclosure of mortgaged property.

4.2. Except as otherwise provided under Articles 4.1.4 or 5 hereof, if the mortgage agreement particularly specifies value of an underlying liability (*claims specified under Articles 4.1.1 - 4.1.3 hereof*), the liability shall be deemed satisfied only to the extent of such amount.

Article 5. Mortgage holder's additional costs covered by mortgage

If the mortgage holder is responsible for maintaining and safe-keeping the mortgaged property under the mortgage agreement or this Law, mortgage holder's reasonable maintenance and safe-keeping costs, including taxes and utility bills shall be deducted from the value of the mortgaged property

Article 6. Mortgaged property

6.1. Mortgaged property may be real estate owned by the mortgagor, including construction in progress and officially registered movable assets under the legislation.

6.2. Assets removed from civil circulation, as well as assets non-eligible for encumbrance or alienation may not be mortgaged.

6.3. Indivisible assets may not be mortgaged in parts.

6.4. Mortgage may be general. General mortgage is a kind of mortgage where mortgaged property comprises several assets, each of which is used to cover the overall claim. The creditor's claim may be covered by any of the assets, at the creditor's discretion

6.5. Unless otherwise provided in the mortgage agreement, the mortgaged property may be replaced with the mortgage holder's approval. ~~At that changes shall be made in the mortgage agreement.~~

Article 7. **Characteristics of mortgage**

7.1. The mortgage holder's security interest in the mortgaged property shall apply to the fixtures, unless otherwise provided for in the mortgage agreement. The mortgage right shall apply to any benefits, products and profits generated from the use of the mortgaged property, if so specified under the mortgage agreement.

7.2. Buildings, edifice and installation or other real property shall only be mortgaged with the land they are located or operated upon. If a piece of real property is foreclosed, the acquiring party shall also acquire the previous owner's right to the land whereupon the real property is located.

7.3. If mortgagor's other assets are insufficient to fulfill liabilities due to third parties, the third party's claim on the mortgaged property may be made after the mortgage holder's claims are satisfied in accordance with this Law.

7.4. *Claims of the real property mortgage holder and the creditor of an encumbrance on a movable asset to a piece of real property shall be satisfied in accordance with the order of priority as defined in the Law of the Republic of Azerbaijan 'on Encumbrance of Movable Property.*

Article 8. **Mortgage of jointly owned assets**

8.1. Jointly owned assets may be mortgaged with a notarized consent from all owners.

8.2. Any shareholder in a shared property may mortgage their respective shares in the property without consent from other owners. If the mortgage holder makes a claim to the share and such a share is sold, proceeds from the sale shall be subject to the order of priority as specified under the Civil Code of the Republic of Azerbaijan.

Article 9. **Subsequent mortgage**

9.1. Unless otherwise provided by law or a previous mortgage agreement, the mortgagor may re-mortgage (subsequent mortgage) an already mortgaged asset in order to satisfy other *liabilities*.

9.2. The mortgagor shall provide each subsequent mortgage holder with all information specified in Article 10.8 hereof with respect to the mortgaged property.

9.3. Subsequent mortgage holder's claims shall be payable from the mortgaged property under an order of priority after previous mortgage holder's claims are satisfied in full, irrespective of their due date.

9.4. The previous mortgage holder's priority shall be established upon state registration of the mortgaged property.

9.5. Mortgage holders may contractually renegotiate among themselves priority rights with respect to mortgage claims. If there are more than two mortgage holders, any changes to the priority right shall be made with consent from the mortgage holders whom such changes affect.

9.6. If mortgage is documented by a mortgage paper, subsequent mortgage shall not be allowed.

9.7. Failure to comply with subsequent mortgage regulations set forth herein shall entitle the mortgage holder to demand premature execution of the underlying liability, and

seek foreclosure of the mortgaged property, if such a demand is not satisfied.

Chapter II

INCURRENCE AND STATE REGISTRATION OF MORTGAGE

Article 10. **Mortgage agreement**

10.1 A mortgage agreement shall not be independent and shall be entered into with an aim to ensuring fulfillment of the underlying liability. A mortgage agreement may be entered into at any point in time while the underlying liability still exists. Invalidation of the mortgage agreement shall not cause the underlying liability to lose effect. Invalidity of the underlying liability shall cause the mortgage agreement to lose effect.

10.2 A mortgage agreement shall be executed in the form of a written document signed by the mortgagor and the mortgage holder, and, if the mortgagor is not the debtor, by the debtor. The *mortgage agreement* shall be notarized.

10.3 In the event of any discrepancies between the mortgage agreement and the contract, from which the underlying liability arises, if the mortgagor is the debtor, such a contract shall prevail, or, if the mortgagor is not the debtor, the mortgage agreement shall prevail.

10.4 The mortgage agreement shall be subject to state registration. The mortgage agreement shall take effect upon state registration.

10.5 The mortgage agreement shall specify names and residences (locations) of parties, the mortgaged property, its name, location and other description sufficient for identification, the substance, size (value), grounds for incurrence and maturity of the underlying liability, parties to the contract from which the underlying liability arises, the place and the date of signing thereof, *also in consideration of the imperative legal provisions terms of the mortgage holder's claim to the mortgaged property, the method of sale of the mortgaged property, the starting sale price of the mortgaged property or independent appraisers to evaluate the mortgaged property, the selling party if the mortgaged property is to be disposed of in the open market and a procedure and an order of priority for distribution of sale proceeds, and the mortgagor's electronic mail address.* If the value of the underlying liability is to be established at a future point in time, the mortgage agreement shall identify the valuation procedure.

10.6 If the mortgage-satisfied liability is to be fulfilled in installments, the mortgage agreement shall specify due dates or frequency of payments, their amounts or conditions enabling determination of such amounts.

10.7 The mortgage agreement shall specify the title under which the mortgaged property belongs to the mortgagor, and the state registry of such a title.

10.8 When a mortgage agreement is signed, the mortgagor shall inform the mortgage holder in writing of any third party rights to the mortgaged property, pledges and other encumbrances, third party claims and court disputes, as well as the nature and value of liabilities satisfied with any previous mortgage that the mortgagor is aware of. Failure to do so shall enable the mortgage holder, including any subsequent mortgage holder, to demand premature fulfillment of the underlying liability or modification of the mortgage agreement, or termination thereof and compensation for damages.

Article 11. State registration of mortgage

11.1. Mortgage agreements involving real property shall be subject to registration with the state real estate registry, and mortgage agreements involving movable assets shall be subject to registration with the official movable assets registry.

11.2. The mortgage right arises upon state registration of the mortgage agreement. The mortgage agreement shall be deemed to have attained state registration upon entry of the details specified in Article 11.3 and, in certain cases, Article 11.4 hereof, in a relevant registry.

11.3. State registration of the mortgage agreement shall involve indication of the mortgaged property, the nature, *size*, maturity of the underlying liability and the mortgage holder.

11.4. If the mortgage agreement provides for issuing *or formalization of* a mortgage paper, state registration of the mortgage agreement shall, along with the above information, involve indication of issuance *or formalization of* a mortgage paper.

11.5. If there are several mortgage holders (creditors) for the same liability, they shall be registered with the state registry as joint mortgage holders.

11.6. If a construction project in progress is mortgaged, such mortgage may be preregistered with the state real estate registry.

11.7. If, upon completion of a mortgaged construction project in progress, the now completed (newly created) asset is state registered, the mortgage shall remain in effect, if the mortgage has not been terminated hereunder at that point.

Article 12. State registration procedures for mortgage

12.1. State registration of real property mortgage shall be conducted under the Law of the Republic of Azerbaijan 'on State Registry of Real Estate'.

12.2. The competent executive body managing the state registry for such assets shall conduct *state registration* of the mortgage of a movable asset with ownership rights recorded in an official registry.

12.3. The following supporting documents shall accompany the application to the official registry for *state registration* of a movable asset's mortgage:

12.3.1. a notarized copy of the mortgage agreement;

12.3.2. proof of payment of the state registration fee.

12.3-1. *In case of possibility to obtain documents necessary for state registration of mortgage of movable property from the relevant public authority (institution) through the Electronic Government Information System, those documents shall not be required from the applicant. In the cases of impossibility to obtain such documents through the Electronic Government Information System, their submission shall be required from the relevant public authority (institution) upon request at the consent of the applicant or provided by the applicant.*

12.4. If the mortgage holder's rights are ascertained by a mortgage paper, the mortgage paper and its notarized copy shall be submitted to the state registry.

12.4-1. *If the mortgage holder's rights to a piece of real property are ascertained by a mortgage paper, the state registry shall obtain mortgage paper's details via the electronic system.*

12.5. The movable asset registry shall, within no more than 5 business days, state register the movable asset mortgage and issue a registry extract to the mortgage holder. Submissions

for state registration shall be kept by the registry.

12.6. The extract shall specify the mortgage registry, its location, time (date and time) of registration, registration number, other identification details for the mortgage holder and mortgagor, and a summary of the mortgaged property.

12.7. If the mortgage holder's rights are ascertained by a mortgage paper, the mortgage paper shall be inscribed to indicate the registry, the time (date and time) of registration and registration number, signed and stamped by the registry's executive officer, and returned to the mortgage holder.

12.7-1. If the mortgage holder's rights to a piece of real property are ascertained by a mortgage paper, the mortgage paper shall be inscribed so as to indicate the registry, time of registration (date and time) and registration number, signed by the registry's executive officer electronically, with a notification issued to the mortgage holder and mortgagor via the electronic system.

12.8. The registry shall form a mortgage database to store information. A copy of the registered mortgage agreement, if a mortgage paper is issued, a copy of the mortgage paper, (*except for mortgage-backed securities ascertaining the mortgage rights on real property*) shall be archived and stored by the registry.

12.9. An official registry statement concerning registered rights and any encumbrances thereupon with regards to a movable asset shall be furnished to the title holder, the title holder's assignee, legal heirs to the title holder's property under the law or will and the competent government agencies, per their respective purviews, within 3 calendar days.

12.10. The registry or extract from registry shall be subject to relevant corrections within no more than 3 business days from receipt of a concerned party's written request on correction of any technical errors made during state registration of a movable asset's mortgage.

12.11. The registry, its executive officers and employees shall be liable under the law for any damages incurred by concerned parties as a result of breach of registration regulations by the said registry, its executive officers and employees.

Article 13. Refusal and suspension of state registration of a movable asset mortgage

13.1. State registration of a movable asset mortgage may be denied if:

13.1.1. registration documents are incomplete (*taking into account the requirements of Article 12.3-1 of this Law*);

13.1.2. the mortgagor has no authority to dispose of the asset or such a right is legally restricted.

13.2. If the right to the mortgaged property is judicially disputed, the court may order a suspension of the state registration of the mortgaged property until the dispute is resolved.

13.3. If state registration is refused or suspended, the registry shall provide a written reply to the applicant reasoning the refusal or suspension no later than within the registration timeframe.

13.4. Mortgage shall attain state registration after the circumstances warranting refusal or suspension of registration have been removed.

13.5. Concerned parties shall have the right to pursue administrative and/or judicial appeals against ungrounded rejection or suspension of state registration of mortgage or unlawful registration of mortgage.

Article 14. *Additional state registration of mortgage*

14.1. *Additional state registration* of mortgage shall be conducted in the state real estate registry and the official movable asset registry within 3 business days from submission of documents if:

14.1.1. the nature, size or maturity of the underlying liability changes in the mortgage agreement;

14.1.2. the right of claim on the underlying liability has been transferred to another party;

~~14.1.3. the subject of mortgage has been changed;~~

14.1.4. mortgage property has been alienated.

14.2. The application on *additional state registration of mortgage* shall be supported with a notarized copy of an agreement to change the mortgage agreement, transfer the claim and dispose of the mortgaged property.

14.2-1. *In case of possibility to obtain documents or information necessary for additional state registration of mortgage through the Electronic Government Information System from the relevant public authority (institution), those documents or information shall not be required from the applicant. In the cases of impossibility to obtain such documents or information through the Electronic Government Information System, their submission shall be required from the relevant public authority (institution) upon request at the consent of the applicant or provided by the applicant.*

14.3. If, when the mortgage holder's rights are ascertained with a mortgage paper, the nature, size, maturity of the underlying liability changes, the mortgaged property is replaced or alienated, the mortgage paper shall be appropriately modified and subjected to *additional state registration*.

14.4. *Additional state registration* of a mortgage documented by a mortgage paper shall be conducted at the relevant registry where the mortgage paper was *state registered*.

14.5. *Additional state registration* of mortgage shall be certified with an official extract from the state real estate registry or the official movable asset registry respectively, or, for a *mortgage paper*, with a relevant enforcement inscription.

Article 15. **Termination of state registration of mortgage**

15.1. State registration of a mortgage shall be terminated by the registry at the mortgage holder's written request or under a court order.

15.2. If state registration of the mortgage is terminated, the mortgage paper shall be terminated as specified hereunder.

Article 16. **State fee**

16.1. A state fee shall be payable in a manner and amount specified in applicable laws for notarization of a mortgage agreement, *state registration and additional state registration* of mortgage.

16.2. Unless otherwise provided for in the agreement signed by the mortgagor and the mortgage holder, the mortgagor shall cover a state fee for state registration of mortgage.

16.3. Except as otherwise provided under Article 14.1.2 hereof, the mortgagor shall cover the state fee for *additional state registration* of mortgage, unless otherwise provided for in the mortgage agreement.

16.4. *When mortgage is terminated, the mortgagor shall cover the fee for termination of encumbrance charges on real property.*

Chapter III

MORTGAGE PAPER

Article 17. **Mortgage paper**

17.1. A mortgage paper may be *issued or formalized* during the term of the mortgage agreement. If a mortgage paper is developed, rights and responsibilities of the mortgagor, the mortgage holder, as well as other *owners* shall be exercised in consideration of special characteristics of mortgage paper as specified hereunder.

17.2. A mortgage paper shall ascertain its legal *owner's* following rights:

17.2.1. the mortgage right on the mortgaged property;

17.2.2. request execution of the underlying liability without provision of other evidences;

17.2.3. right of foreclosure on the mortgaged property whenever specified in Article 34 hereof.

17.3. A mortgage paper shall be executed in a single counterpart to be provided to the mortgage holder

17.3-1. *A mortgage paper ascertaining the mortgage right to a piece of real property shall be executed by a person specified in Article 17.4 hereof electronically in the electronic system, which shall issue an electronic notice to this effect to the mortgage holder.*

17.4. The mortgage paper shall be executed by the mortgagor, or, if the latter is a third party, by the debtor on the underlying liability. The signature of the person executing the mortgage paper (*except for the mortgage paper ascertaining the mortgage right to real estate*) shall be subject to notarization.

17.4-1. *The authority to be defined by a competent executive body shall be responsible for determining how mortgage paper that ascertain the mortgage right on real property is to be executed.*

17.5. If there are several mortgage holders on the same liability, mortgage paper may not be *issued or formalized*.

17.6. Rights on the mortgage paper may be transferred as specified in Article 20 hereof.

Article 18. **Content of a mortgage paper**

18.1. If a mortgage paper is issued to, or *formalized in the name of the original mortgage holder*, it shall specify:

18.1.1. the words 'mortgage paper' in the document's name and the place of execution;

18.1.2. the mortgagor's name and address, or, if the mortgagor is a legal entity, its name and location;

18.1.3. the mortgage holder's name and address, or, if the mortgage holder is a legal entity, its name and location;

18.1.4. the place and date of signing of the mortgage agreement;

18.1.5. if the mortgagor is not the main debtor, the debtor's name and address, or, if the debtor is a legal entity, its name and location;

18.1.6. the nature, size (amount), grounds for incurrence, maturity of the underlying liability, parties to the agreement the liability is based on, the place and the date of signing thereof. If the mortgage-backed liability is to be executed in installments, the mortgage paper shall specify due dates or frequency of payments, their amounts or requisites enabling determination of such amounts.

18.1.7. the description and location of the mortgaged property;

18.1.8. the right under which the mortgaged property belongs to the mortgagor and the registry that has registered such a right, the registration number, the date and the place, and other encumbrances thereupon;

18.1.9. a note on mortgage holder's rights to foreclose on the mortgaged property are exercised through an *enforcement inscription of a notary*;

18.1.10. the mortgagor's signature, or, if the mortgagor is a third party, the main debtor's signature as well;

18.1.11. the date the mortgage paper was issued *or formalized*.

18.2. A mortgage paper may not have an inscription prohibiting subsequent transfer or *formalization in other people's names*.

18.3. The form of the mortgage paper shall be defined by the competent executive body.

18.3-1. *The form of the mortgage paper ascertaining the mortgage right to a piece of real property shall be determined in the electronic system. The electronic system shall be managed by the authority to be determined by the competent executive body.*

18.4. If there are any discrepancies between a mortgage paper and a mortgage agreement, the legal *owner* of the mortgage paper may demand termination thereof, and issuance *or formalization* of a new one. If the legal *owner* of the mortgage paper identifies such a discrepancy it shall notify the mortgagor immediately, if the legal owner is a third party, it shall notify the main debtor to this effect as well.

18.5. The person who executed the mortgage paper shall be liable for any damages incurred as a result of the discrepancy and elimination efforts.

Article 19. **State registration of a mortgage paper**

19.1. A mortgage paper shall be state registered in accordance with the legislation.

19.1-1. *State registration of mortgage-secured securities ascertaining mortgage rights to real property shall be conducted by the authority to be determined by the competent executive body.*

19.2. If rights to a mortgage paper are transferred to another person, the endorsement shall be subject to *additional state registration* by the registry where the mortgage paper was *state registered*.

Article 20. **Transfer of rights to on mortgage paper**

20.1. Rights to mortgage secured securities shall be transferred with an endorsement and transfer of the mortgage paper in transferee's favor. If the endorsement is made by an individual, such individual's signature shall be subject to notarization.

20.1-1. *Rights to a mortgage-backed security ascertaining mortgage rights to real property shall be transferred by making an electronic signature-powered endorsement in transferee's favor in the electronic system, and issuing a notice to such a transferee through the electronic system.*

20.2. The mortgage paper shall be transferred to another person together with the mortgage agreement, and the transferee shall thus acquire all rights and responsibilities of the mortgage holder under the mortgage agreement.

20.2-1. *If rights to a mortgage paper ascertaining mortgage rights to real property are formalized in another person's name, the mortgage agreement shall be delivered to such a person and the latter shall thus acquire all rights and responsibilities of the mortgage holder under the mortgage agreement.*

20.3. Through transfer of rights under a mortgage paper, the claim on the underlying liability shall be assigned to the new *owner* of the mortgage paper. If, when rights under a mortgage paper are transferred, the underlying liability has been executed in part, the legal *owner* of the mortgage paper shall make a note on the mortgage paper to this effect, and the outstanding portion of the underlying liability shall be deemed assigned.

20.4. The endorsement shall clearly and precisely name the transferee of the rights under the mortgage paper. Endorsement shall not be permitted unless the legal holder is named on the mortgage paper.

20.5. The endorsement shall be signed by the mortgage holder as specified in the mortgage paper, or, if that endorsement is not the first one, the *owner* of the mortgage paper as specified in the previous endorsement.

~~20.6. A person who has acquired a mortgage paper that was stolen or taken away from the endorser against such endorser's will shall not be considered the legal holder of the mortgage paper, providing that evidence has been provided that such person knew or had to have known about this.~~

20.7. The transferor of rights under a mortgage paper shall notify the main debtor to this effect in writing. Failure to do so shall give rise to legal consequences under the Civil Code of the Republic of Azerbaijan with respect to assignment of claims.

Article 21. Exercise of rights under a mortgage paper

21.1. The legal *owner* of the mortgage paper shall, as soon as they start to exercise rights under the mortgage paper, make notes on the mortgage paper on execution of the underlying liability. Such notes shall be clear and comprehensible for both the mortgagor, and any subsequent possible *owners*.

21.1-1. *The mortgagor shall make notes on execution of the underlying liability on the mortgage paper in the e-system. A notice on such notes shall be issued via the e-system to the mortgagor.*

21.2. Unless any other evidence is available, the fact that the mortgage paper is held by the legal *owner* or there is no note or any other confirmation on the mortgage paper on partial execution of the underlying liability, such a liability or the portion thereof shall be deemed unexecuted. Unless otherwise provided, the fact that the mortgagor has the mortgage paper confirms execution of the underlying liability.

21.2-1. *If there is a note or any other form of confirmation of partial execution of the underlying liability on the mortgage paper in the electronic system, this shall be construed as if this liability or a portion thereof has been executed. Termination of the mortgage paper in the electronic system shall be the confirmation of execution of the underlying liability.*

21.3. Foreclosure on the mortgaged property on a mortgage paper shall be conducted in line with the provisions hereof.

21.4. The mortgagor may not make any objections against the legal *owner's* claims not based on the mortgage paper.

21.5. If the mortgage paper is terminated hereunder, the registry shall immediately upon receipt of the mortgage paper terminate it by stamping 'terminated' thereupon, and archive the terminated security.

21.5-1. If a mortgage paper that ascertains the mortgage right to real property is terminated hereunder, the state registry shall make appropriate entries in the registry.

Article 22. Reinstatement of rights under a lost or damaged mortgage paper

22.1. Rights under lost mortgage paper or mortgage paper damaged due to improper storage or any other reasons whatsoever shall be reinstated by issuing a duplicate of the lost (damaged) mortgage paper referencing the copy of the security in the registry based on the legal *owner's* written request. The duplicate shall have the word 'duplicate' written on it, shall be signed by the registry's executive officer, stamped, and given to the legal *owner* of the mortgage paper, with a relevant entry made in the registry.

22.2. The duplicate mortgage paper shall be identical with the lost (damaged) mortgage paper. Otherwise, the registry that issued the duplicate mortgage paper shall be liable for any damages resulting from any inconsistencies.

Article 23. Termination of a mortgage paper

23.1. Mortgage paper shall be terminated upon voluntary transfer to the mortgagor or as specified in Article 48 hereof.

23.2. Mortgage paper that ascertains mortgage rights to real estate shall be voluntarily terminated in the electronic system by the mortgage holder or as specified in Article 48 hereof.

Chapter IV

INTERACTIONS OF THE MORTGAGOR AND MORTGAGE HOLDER

Article 24. Rights and responsibilities of the mortgagor and the mortgage holder

The mortgage agreement between the mortgagor and mortgage holder may determine additional rights and responsibilities in addition to the rights and responsibilities arising hereunder.

Article 25. Rights and responsibilities of the mortgagor

25.1. The mortgagor shall:

25.1.1. own and use the mortgaged property per its designation, except for the case when ownership and/or use of the mortgaged property is transferred to the mortgage holder on the mortgage agreement;

25.1.2. bequeath the mortgaged property;

25.1.3. dispose of the mortgaged property under Article 30 hereof;

25.1.4. pursue judicially the mortgage holder's acceptance of termination of the mortgage and premature execution of the underlying liability, if the mortgage holder fails to enable proper storage and use of the mortgaged property.

25.2. The right specified in Article 25.1.3 shall be terminated upon a notice on foreclosure.

25.3. The mortgagor shall:

25.3.1. ensure storage and safety of the mortgaged property;

25.3.2. put arrangements in place to provide protection of the mortgaged property against third party claims and actions;

25.3.3. pay taxes, utilities and similar charges on the mortgaged asset;

25.3.4. *provide access to prospective purchasers to the mortgaged property for onsite visual inspection, if foreclosure is claimed upon the mortgaged property;*

25.3.5. *retrieve a statement on total value of the underlying liability from the mortgage holder, whenever so specified in Articles 30.6 and 38.2 hereof, to be furnished to the notary public.*

Article 26. Rights and responsibilities of the mortgage holder

26.1. The mortgage holder shall:

26.1.1. conduct a documentary and actual verification of existence, status and storage conditions of the mortgaged property;

26.1.2. request the mortgagor to take actions to ensure proper maintenance conditions for the mortgaged property;

26.1.3. pursue judicially handover of the mortgaged property, if the mortgagor is found to be unable to discharge duties;

26.1.4. request persons whose actions damage or deteriorate the mortgaged property to cease such actions;

26.1.5. assign or sell the claim on the underlying liability to another person;

26.1.6. pledge the mortgage right;

26.1.7. *direct foreclosure on the mortgaged property under the notarial enforcement inscription if a claim of foreclosure on the mortgage has not been appealed in court under Article 37.1 hereof.*

26.2. If possession and/or use of the mortgaged property is transferred to the mortgage holder under the mortgage agreement, mortgagor's relevant responsibilities shall be transferred to the mortgage holder.

26.3. *The mortgage holder shall, as specified in Articles 30.6 and 38.2 hereof, issue a statement on value of the underlying liability to the mortgagor to be forwarded to the notary public.*

Article 27. Maintenance and insurance of mortgaged property

27.1. If the mortgage agreement so specifies, the mortgagor shall procure destruction and damage insurance coverage for the mortgaged property referencing the mortgaged property's market value at conclusion of the mortgage agreement, while an *individual debtor* shall also procure life and competency insurance coverage to an extent not less than the size of the claim satisfied by the mortgage.

27.2. The mortgagor shall immediately notify the mortgage holder of any potential risk

of destruction of, or damages to the mortgaged property.

27.3. In the event the mortgagor breaches seriously procedures for use of the mortgaged property or maintenance responsibilities with respect to such property, and such a breach poses a risk of destruction of, or damages to the mortgaged property, or the mortgagor fails to procure necessary insurance coverage, the mortgage holder may demand pre-mature execution of the underlying liability. If such a request is not satisfied, the mortgage holder may claim foreclosure on the mortgaged property.

27.4. If possession and/or use of the mortgaged property is transferred to the mortgage holder, the mortgage holder shall, if so specified in the mortgage agreement, procure the insurance coverage.

Article 28. Transfer of mortgage-backed claims

28.1. If the mortgage-backed claim is transferred to another party, underlying mortgage shall also be transferred. The transferee shall thus acquire rights and responsibilities of the mortgage holder.

28.2. *Transfer of a claim shall be executed through an assignment agreement or endorsement of the mortgage paper in transferee's favor. Transfer of a claim shall be subject to additional state registration hereunder. Otherwise, transfer of the claim shall be deemed invalid.*

Article 29. Transfer of mortgage-backed debt

If the debt encompassed by the underlying liability is transferred to another party (*except for bequeathals*), the mortgage shall be terminated unless the mortgagor gives the mortgage holder a written consent to keep the mortgage in effect.

Article 30. Disposal of the mortgaged property

30.1. Unless otherwise provided for in the mortgage agreement, the mortgaged property may be alienated by the mortgagor only with the mortgage holder's written consent, or related *powers of attorney (except for motor vehicle proxies)* and other disposals (use, rental, etc.) may be issued. Any arrangement that in any way restrains the mortgage holder's right to bequeath the mortgaged property shall be deemed invalid.

30.2. If, pursuant to provisions hereof, the mortgaged property is transferred to another party as a result of alienation, reorganization of a legal entity or bequeathal, the mortgage shall remain intact, and the transferee shall thus acquire original mortgagor's responsibilities under the mortgage agreement, including those not properly performed by the original mortgagor.

30.3. If the mortgaged property is transferred to several parties under Article 30.2 hereof, each of the mortgagor's heirs (legal successors) shall be liable for failure to fulfill to the extent of the mortgaged property's portion transferred to him/her.

30.4. If mortgaged property is an indivisible asset or jointly owned by the mortgagor's legal successors on other grounds, legal successors shall become joint mortgagors.

30.5. If the mortgaged property is transferred in violation of the provisions hereof, the mortgage shall remain in effect and give rise to legal consequences under Article 31 hereof.

30.6. *If alienation of the mortgaged property is sufficient to cover claims on the underlying liability, then, notwithstanding the provisions of Article 30.1 hereof, the mortgagor may alienate the mortgaged property and use proceeds to repay the mortgage holder. The mortgagor shall furnish the statement on value of the underlying liability as per Article 25.3.5 hereof to the notary public. The notary shall then proceed to certify the alienation agreement, and follow through a complete transfer of the amount assessed as sufficient to cover mortgage holder's claims to the mortgage holder's account. When mortgage holder's claims have been paid in full, the mortgage holder (joint mortgage holders) shall petition the state registry to terminate the state registration of the mortgage.*

Article 31. Consequences of breaching rules of disposal of the mortgaged property

31.1. If the mortgaged property is disposed of in a manner that is in breach of the regulations set forth in Article 30 hereof, the mortgage holder may request:

31.1.1. nullifying the disposal arrangement for the mortgaged property and invoking consequences set forth in Article 337 of the Civil Code of the Republic of Azerbaijan;

31.1.2. premature execution of the mortgage-backed liability, and, if the liability is not satisfied, foreclosure of the mortgaged property.

31.2. If evidence is made available that proves beyond doubt that the acquirer of the mortgaged property knew or must have known that the mortgaged property was disposed of in breach of Article 30 hereof, the acquirer shall be additionally liable for failure to execute or properly execute the mortgage-backed liability to the extent of the value of the mortgaged property.

Article 32. Consequences of forced acquisition of the mortgaged property

32.1. If the mortgagor's ownership rights to the mortgaged property are terminated owing to alienation, requisitioning or nationalization for state ~~or public~~ needs on the grounds and in the manner established by law and the mortgagor is provided with a replacement and/or substitute asset, the mortgage right shall apply to the replacement asset or the mortgage holder shall acquire the right of precedence insofar satisfaction of the mortgage holder's claim from the value of the compensation payable to the mortgagor is concerned. If the mortgage holder's such rights are not protected in full (the replacement and/or substitute asset is below the value of the mortgaged property), the mortgage holder may request premature execution of the underlying liability, if the request is not satisfied, claim foreclosure on the replacement asset.

32.2. If the mortgaged property is seized by court for committing a crime or any other offence, the mortgage shall be terminated. In this case, the mortgage holder may request premature execution of the underlying liability.

32.3. If the mortgaged property is legally seized from the mortgagor because its actual owner is a different person, the mortgage shall be terminated. At that, the mortgage holder may request premature execution of the underlying liability after the relevant court order takes effect.

Chapter V

FORECLOSURE AND TERMINATION OF THE MORTGAGED PROPERTY

Article 33. Grounds for foreclosure of the mortgaged property

~~In the event the debtor fails to execute the underlying liability or executes improperly, the mortgaged property may be foreclosed to cover the mortgage holder's claim.~~

Article 34. Incurrence of the right to foreclose the mortgaged property

34.1. The cases that give rise to the right for foreclosure by the mortgage holder are as follows:

34.1.1. the underlying liability or a portion thereof is *delinquent for 90 calendar days or more*;

~~34.1.2. interest payments are violated two consecutive periods;~~

34.1.3. *occurrence* of the condition stipulated in the mortgage agreement, that gives the mortgage holder the right to foreclose on the mortgage;

34.1.4. in any other circumstances as may be defined hereunder.

Article 35. ~~Foreclosure of the mortgage property~~

~~35.1. Payment of the mortgage holder's claim without going to court at the expense of the mortgaged property shall be allowed if:~~

~~35.1.1. the mortgage agreement specifies foreclosure of the mortgage property without going to court;~~

~~35.1.2. the mortgage paper is issued or formalized;~~

~~35.1.3. there is a notarized agreement between the mortgage holder and the mortgagor after the basis for foreclosure arises;~~

~~35.1.4. there is a notarized agreement between the mortgage holder and all owners on foreclosure of jointly owned mortgaged property without going to court.~~

~~35.2. In the absence of the cases specified in Article 35 herein or in case it is impossible to locate the mortgagor the mortgaged property may be foreclosed only at a court decision.~~

Article 36. Foreclosure procedures

36.1. *The mortgage holder shall send a notice detailing the information specified in Article 36.2 hereof to the address of the mortgagor and another person specified in the mortgage agreement, and a copy of the same to the subsequent mortgage holder, including joint mortgage holders, as well as to encumbrance owners as defined in the Law of the Republic of Azerbaijan on Encumbrance of Movable Property via registered mail and electronically. An official notice via registered mail shall be deemed to have been delivered after 5 calendar days from handover to the post office, while an electronic notice shall be deemed to have been delivered after 3 calendar days from dispatch.*

36.2. The notice on foreclosure of the mortgaged property shall specify:

36.2.1. the foreclosed mortgaged property referencing to the registration time and number of the mortgage in the relevant registry;

36.2.2. information on the liability to be executed;

36.2.3. *notice on foreclosure of the mortgaged property under a notarial enforcement inscription;*

36.2.4. the date of notice, name and signature of the notifying person.

36.3. The notice on foreclosure shall be subject to registration by the mortgage registry at the mortgage holder's application *within 1 business day*. The application shall specify the *day of dispatch* of the notice to the mortgagor, and shall be submitted to the registry in two copies. The registry shall accept the notice upon receipt, and return a copy thereof, signed and sealed by the registry's executive officer to the applicant.

36.3-1. *If the mortgage holder's application on registration of the foreclosure notice by the mortgage registry is submitted as an electronic signature-powered electronic document, the mortgage registry's executive officer shall electronically sign and return the request to the applicant.*

36.4. Foreclosure may not proceed if:

36.4.1. *no application is submitted to the mortgage registry within 3 business days from service of the foreclosure notice under Article 36.1 hereof;*

36.4.2. a court of law finds the foreclosure notice to be invalid hereunder.

36.5. If the mortgage holder fails to furnish the registry with a foreclosure notice as specified hereunder, the mortgage holder shall be legally liable for any damages incurred by the mortgagor, any other mortgage holder and other parties with interests in the mortgaged property as a result of such a failure.

36.6. The mortgage holder may petition the registry to nullify the foreclosure notice before proceeding to sell the mortgaged property.

Article 37. Foreclosure remedies

37.1. The mortgagor, another mortgage holder or any other party with an interest in the mortgaged property may appeal the foreclosure in a court of law within 21 calendar days from receipt of the foreclosure notice. ~~A court shall review a complaint on foreclosure within one month upon receiving a related application.~~

~~37.2. In case of a complaint on the decision made, the said complaint shall be reviewed at subsequent courts within one month upon receiving the application.~~

37.3. When a complaint is filed with court on foreclosure of the mortgaged property, interests, fines, penalties, and other fees stipulated in the mortgage agreement shall be calculated accordingly.

Article 38. Foreclosure under an enforcement inscription

38.1. *If foreclosure is not appealed in a court of law under Article 37.1 hereof, the foreclosure shall proceed under a notarial enforcement inscription on the mortgage holder's claim under the mortgage agreement or the mortgage paper.*

38.2. *If the mortgage agreement allows open market sale of the mortgaged property, the notary shall, at request from either party, dispatch the party's notarized request with an enforcement inscription for sale of the mortgaged property in an open market setting to the enforcement agency within 1 business day. The Law of the Republic of Azerbaijan 'on Execution' shall allow 2 months for voluntary execution of the claim via open market sale of the mortgaged property. At that, the mortgaged property shall be sold based on the mortgagor's statement on the value of the underlying liability submitted to the notary. If the mortgaged property is sold during this period in the open market, the notary shall cause proceeds from sale to be transferred from the deposit account to the enforcement agency's deposit account and the amount shall be distributed as specified in Article 47*

hereof. If the mortgaged property is not sold during this period in the open market, the enforcement officer shall enforce the claim. If the mortgage agreement does not specify the starting sale price of the mortgaged property, then, as the parties agree, the starting sale price shall be appraised by one of the independent appraisers identified under the mortgage agreement, or, if such independent appraisers cease their business or are terminated under the law while they were in the process of determining the sale price, by another appraiser to be thereafter appointed by the parties. Services of independent appraisers shall be covered by the mortgage holder to be reimbursed from sale proceeds.

Article 39. Court resolution of disputes arising from the mortgage agreement

39.1. The court shall review and rule upon petitions related to disputes arising from the mortgage agreement within 1 month from submission. If the ruling is appealed, the higher instance courts shall review and rule upon the appeal within 1 month from submission.

39.2. The mortgage holder shall provide evidence to satisfy the court that a foreclosure notice has been served on the parties specified under Article 36.1 hereof.

39.3. The court's foreclosure ruling shall specify:

39.3.1. sums due to the mortgage holder from the mortgaged property value, except for security and sale costs. Security and sale costs shall be set after the sale is completed.

39.3.2. the description of the mortgaged property;

39.3.3. a starting sale price of the mortgaged property. The starting sale price shall be negotiated by the mortgagor and the mortgage holder, or, in the event of disagreement, set by the court based on an independent appraiser's evaluation;

39.3.4. pre-sale security arrangements for the mortgaged property, if necessary.

39.4. If the foreclosed mortgaged property is the mortgagor's sole place of residence and the mortgagor has no means to reside elsewhere, the court may, at the mortgagor's petition, defer foreclosure by not more than one year. The deferral shall not change rights and responsibilities of the parties with respect to the mortgage-backed liability, and interests, fines, penalties and other charges shall continue to be accrued during the period of deferral.

39.5. Except as otherwise provided for in Article 39.4 hereof, the mortgage holder's approval shall be required for the court's grant of deferral on foreclosure, incremental enforcement of the court's judgment, change of the enforcement method and procedure, as well as a suspension of enforcement.

Article 40. ~~Sale of the mortgaged property~~

~~*After at least 30 calendar days from the notice on foreclosure to the persons provided for in Article 36.1 of this Law, the mortgaged property may be sold in the manner established by this Law.*~~

Article 41. Methods for sale of the mortgaged property

41.1. Mortgaged property foreclosed under the mortgage agreement may be sold at the open market or the auction, including an electronic auction.

41.2. Enforcement officers shall proceed to foreclosing under a court order or a notarial enforcement inscription as specified under the Law of the Republic of Azerbaijan 'on Execution'. The

enforcement officer shall commission a specialist auctioning entity (hereinafter referred to as the auctioneer) to be mutually agreed upon by the mortgage holder and the mortgagor with at least five years of relevant experience to conduct the auction. If parties fail to agree upon an auctioneer within 5 calendar days, the enforcement officer shall outsource the order as specified in the Law of the Republic of Azerbaijan 'on Execution'.

41.3. The auctioneer's commission shall be processed in line with the Law of the Republic of Azerbaijan 'on Execution' and shall specify the starting sale price of the mortgaged property. ~~In the event the commission is developed on the basis of the notary's enforcement inscription, the mortgage holder shall cover expenses related to the use of services of the independent appraiser.~~

41.4. The method of sale and the party to carry out sale of the foreclosed mortgaged property in an out-of-court procedure based on a notarized arrangement between the parties shall be negotiated and determined by parties. If the mortgaged property is offered at an auction under such an agreement, the mortgage holder or the mortgagor may commission an auctioneer.

41.5. Auctions shall be held as open auctions.

Article 42. Auctioning procedures

42.1. The auctioneer shall, within 5 business days from acceptance of the enforcement officer's commission, advertise the auction in mass media outlets and its own website and notify the mortgage holder and mortgagor to this effect via registered mail. The auction announcement and the notification shall be made (dispatched) at least 20 calendar days before that auction. The auction shall be conducted no later than 30 calendar days from acceptance of commission. The auction announcement and notification shall specify the auction time, venue, format, location and description of the mortgaged property offered, a starting sale price, an auction interval (no more than 3 percent of the starting sale price), security deposit, when and how the deposit is paid, a list of documents required for admission to auction, as well as when and how the purchase price is to be paid. Each bidder shall pay a security deposit of 5 percent of the starting sale price of the auctioned item.

42.2. If the auction fails or is denied, the auctioneer shall refund security deposits within 7 calendar days.

The winning bidder who fails to pay the purchase price within the timeframe specified hereunder shall not be eligible for a deposit refund. The deposit shall be disposed of as specified in Article 47 hereof.

Security deposits of losing bidders shall also be subject to refund within 7 calendar days. The winning bidder's contract price shall include the security deposit as well.

42.3. Any person, including the mortgage holder and the mortgagor may bid at the auction. Officers of the enforcement agency ordering the auction and the auctioneer, as well as property appraisers may not directly or indirectly bid at the auction.

42.4. A bidding mortgage holder shall not place a security deposit. If the mortgage holder wins the auction, the mortgage holder shall be relieved of paying the purchase price to the extent of the mortgage holder's claim.

42.5. The highest bidder shall win.

42.6. The winning bidder and the auctioneer shall sign a legally binding memorandum to formalize auction's results on the day of the auction. Refusal to sign the memorandum

shall invoke consequences under Article 415 of the Civil Code of the Republic of Azerbaijan.

42.7. The winning bidder shall, within no more than 7 calendar days from winning the auction, pay the purchase price, less the security deposit. *If the winning bidder fails to pay the purchase price within that timeframe, the second highest bidder may purchase the mortgaged property at that price. The auctioneer shall approach the second highest bidder to this end, and if the latter agrees to purchase the mortgaged property in writing, such a bidder shall get the status of the auction winner.*

Failure to pay the purchase price shall invoke legal consequences specified hereunder.

42.8. The memorandum on auction results shall be deemed as grounds for the mortgage registry to proceed with terminating the mortgage and making appropriate entries to record the new owner in the registry.

Article 43. **Declaring an auction failed**

43.1. The auctioneer shall declare an auction failed in mass media outlets where the auctioneer has previously advertised the auction *and its own web site* if:

43.1.1. fewer than two buyers showed up at the auction;

43.1.2. the auction had no bidders;

43.1.3. the winning bidder refuses to sign the memorandum on auction results;

43.1.4. the winning bidder fails to pay the purchase price in full within the timeframe specified hereunder, provided that the timeframe has not been extended with the mortgage holder's prior approval.

43.2. Announcement on an auction failure, to be made per Articles 43.1.1 - 43.1.4 hereof, shall be published no later than 3 calendar days from the date originally set for the auction or payment of the purchase price accordingly.

43.3. The mortgage holder may, under an agreement with the mortgagor, purchase the mortgaged property at the starting sale price within 10 calendar days from the announcement on auction failure.

43.4. If the mortgage holder's arrangement to purchase the mortgaged property as described in Article 43.3 hereof fails, a repeat auction shall be conducted within no more than 20 calendar days from the first auction.

43.5. The repeat auction shall follow the procedure outlined in Article 42 hereof. *The auctioneer may offer the mortgaged property at the starting sale price, or, if the auction failed due to lack of bidders, at 15 percent off the starting sale price, provided that the lowest sale price of the mortgaged property is sufficient to satisfy claims of another mortgage holder with precedence over the mortgage holder selling the mortgaged property at a public auction in respect of at least registration priority of costs and rights.*

43.6. If there is a single bidder at the repeat auction, the auction shall be deemed successful, and the bidder shall be the auction winner.

43.7. Except as otherwise provided for in Article 43.1.1 hereof, if the auction is announced failed for any other reasons, the mortgage holder may purchase the mortgaged property at no less than 25 percent off the repeat auction's ~~starting~~ sale price *provided that the lowest sale price of the mortgaged property is sufficient to cover claims of other mortgage holders with precedence over the mortgage holder who purchased the mortgaged property in respect of at least registration priority of rights.*

43.7-1. *In the event the repeat auction is announced failed, the mortgagor and the auctioneer shall sign a legally binding memorandum on acquisition of the mortgaged property by the mortgagor within 30 calendar days; the memorandum shall have a force of a contract.*

43.8. If the mortgage holder fails to take over the mortgaged property within 30 calendar days from the announcement on auction failure, the mortgage shall be terminated.

43.9. If the mortgage holder keeps a mortgaged property that cannot belong to the mortgage holder owing to its nature and designation, the mortgage holder shall alienate the asset as specified under the law within one year.

Article 44. Invalidation of an auction

Any auction conducted in breach of the regulations set forth herein shall invoke legal consequences specified in Article 416 of the Civil Code of the Republic of Azerbaijan.

~~Article 45. Sale of the mortgaged property at an open market under a contract~~

~~45.1. The purchase and sale agreement for sale of the mortgaged property at an open market shall be the basis for termination of the mortgage by the state registration authority of the mortgage and the entry of records about the new owner into the relevant register.~~

~~45.2. If the mortgaged property is not sold at an open market under the contract, according to the agreement between the mortgage holder and the mortgagor, the asset may be auctioned at a starting sale price or purchased by the mortgage holder.~~

~~45.3. In the event of no agreement, any of the parties may apply to court to sell the mortgaged property at an auction. The court shall consider such cases within 1 month from the date of receipt of the application.~~

Article 46. Termination of sale of mortgaged property

46.1. The main debtor and/or the mortgagor or any third party may, by satisfying the mortgage holder's full claim on the underlying liability before the mortgaged property is sold at an open market or an auction (before the purchase is notarized or auction results are formalized in a memorandum) or before the mortgage holder takes over the mortgaged property hereunder (until the purchase agreement is notarized *or the repeat auction is announced failed, until a memorandum is signed on acquisition of the mortgaged property by the mortgage holder*) may terminate the foreclosure and the sale of the mortgaged property by covering all claims of the mortgage holder on underlying *liability*. Any arrangement that purports to restrain this right shall be invalid.

46.2. The person claiming termination of the foreclosure and sale of the mortgaged property shall cover the mortgage holder's foreclosure and sale expenses.

Article 47. Distribution of proceeds from sale of mortgaged property

~~47.1. Proceeds from sale of the mortgaged property under the notarized agreement shall be distributed as per Article 38.2.6 herein.~~

47.2. If the mortgaged property is foreclosed under a court order or a notarial

enforcement inscription, proceeds from the sale of the mortgaged property shall, within no later than 7 calendar days from crediting to the enforcement officers' deposit account, be distributed by the enforcement officer as follows:

47.2.1. cover the mortgage holder's mortgage-backed claim, including the principal amount, interest, delinquency charges and/or damages for failure to perform or properly perform, or perform in a timely manner (payments shall be made in the above order);

47.2.2. cover costs specified in Articles 4.1.4 and 5 herein;

47.2.3. if a subsequent mortgage holder exercises the mortgage right, cover such a mortgage holder's claim;

47.2.4. *after the claims specified in Articles 47.2.1 - 47.2.3 hereof are paid in full, to cover the enforcement fees as specified in the Law of the Republic of Azerbaijan 'on Execution'.*

47.3. Joint mortgage holders' claim shall be distributed as specified in the mortgage agreement, or, otherwise, prorated to their respective claims.

47.4. Any sum of proceeds from sale of the mortgaged property remaining after all payments specified in Article 47.2 hereof are made in full shall be returned to the mortgagor.

47.5. If proceeds from the sale of the mortgaged property are insufficient to cover the mortgage holder's claim, the mortgage holder shall have the right to claim missing amount from debtor's other assets, unless otherwise provided by the mortgage agreement. At that, the mortgage holder shall not have a mortgage-based precedence. *If proceeds from the sale exceed mortgage holder's claims, the excess shall be returned to the mortgagor.*

Article 48. Termination of mortgage

48.1. Mortgage shall be terminated if:

48.1.1. the mortgage holder and the mortgagor have agreed to do so;

48.1.2. the underlying obligation has been terminated;

48.1.3. the mortgaged property has been sold through foreclosure;

48.1.4. the mortgaged property is destroyed;

48.1.5. other circumstances as may be defined hereunder.

48.2. Under the circumstances referenced in Articles 48.1.1 - 48.1.3 hereof, the mortgage holder shall, within 5 calendar days from termination of the mortgage, furnish an application to this effect with the mortgage registry. The mortgage holder shall be liable for any damages incurred by the mortgagor as a result of mortgage holder's failure to file the application.

Chapter VI

CHARACTERISTICS OF LAND MORTGAGE

Article 49. Mortgageable land lots

49.1. Land lots owned by legal entities and individuals may be mortgaged.

49.2. State or municipality-owned land lots may be mortgaged, except for common lands in residential areas, as well as other lands not eligible for mortgage under the land laws.

49.3. Agricultural lands may be mortgaged to guarantee liabilities in connection with agricultural production and processing, as well as designated use of this category of lands

as specified under the land laws.

Article 50. Indivisibility of mortgaged lands

In consideration of a land lot's size and class, as per the land laws, a portion of a land lot that cannot be used as a separate parcel may not be mortgaged. If a portion of a land lot is mortgaged, boundaries of the portion shall be clearly delineated before mortgaging.

Article 51. Mortgage of land lots where the mortgagor's buildings, edifices and installations are located

51.1. Unless otherwise provided for in the mortgage agreement, the mortgage right arising from the mortgage of a land lot shall not apply to the mortgagor's building, edifice and installation located or under construction on that land.

51.2. If, when the agreement does not have a provision stipulating a mortgage of building, edifice and installation located or under construction on a land lot to the same mortgage holder, the land lot is foreclosed, the mortgagor shall preserve the rights to the building, edifice and installation, and also acquire a limited right of use (easement) of a portion of the land to allow access and use of such building, edifice and installation. Terms and conditions of access to and use of that portion of land shall be determined under the agreement between the mortgagor and the mortgage holder, and any disputes shall be settled in court.

51.3. If the mortgagor's property, plant or equipment located or under construction on a mortgaged piece of land are mortgaged with the same mortgage holder, the mortgagor's rights with respect to such property, plant or equipment, and terms and consequences of transfer thereof shall be defined with this Law.

Article 52. Construction on a mortgaged land lot

The mortgagor shall have the right to build property, plant or equipment, as specified under the law, on a vacant mortgaged land lot without the mortgage holder's consent. In this case, the mortgage right shall apply to the building, edifice and installation and the mortgagor, unless otherwise provided for in the mortgage agreement, shall not have the right to dispose of them without the mortgage holder's consent.

Article 53. Mortgage of the land lot where third party's building, edifice and installation are located

If, when a land lot is mortgaged whereupon building, edifice and installation are located owned not by the mortgagor but by a third party, the mortgage holder forecloses on the land lot and the latter is sold, the mortgagor's rights and responsibilities with respect to such a party shall be transferred to the purchaser of the land.

Article 54. Appraisal of the mortgaged land lot

If a mortgaged land lot is foreclosed hereunder, the starting sale price shall be set based on the market value.

Article 55. Characteristics of alienation of a mortgaged land lot

55.1. The purchaser of a mortgaged land lot may re-purpose the land only if and how specified under the laws on land.

55.2. Mortgaged land lots may not be sold to foreign persons. If a foreign legal entity, a foreigner or a stateless person as a mortgage holder exercises the rights provided in *Article 43*, they shall alienate the land lot no later than within one year.

55.3. When agricultural lands are offered for sale at an open market, farmers, or persons among such farmers who own neighboring land lots shall have precedence among persons who offer similar terms of purchase of such land.

Chapter VII

CHARACTERISTICS OF RESIDENTIAL AND HOUSING MORTGAGE

Article 56. Scope of application of residential mortgage provisions

56.1. Privately owned houses and apartment buildings, as well as apartments may be mortgaged.

56.2. State or municipality-owned houses and apartments may not be mortgaged.

56.3. Hotels, recreation areas, summerhouses and other similar buildings and houses may be mortgaged on a general basis. Residential mortgage rules shall not apply in this case.

Article 57. Apartment mortgage

When an apartment is mortgaged in an apartment building co-owned by the mortgagor and other parties, the mortgagor's share in the joint ownership right to the apartment building shall also be pledged as collateral along with the individual apartment.

Article 58. Mortgage of houses and apartments under construction

58.1. When a loan is granted to build a house or an apartment building, as well as to purchase an apartment in an apartment building under construction, the mortgage agreement may allow the house under construction or an apartment in the apartment building to be used as securitization for the liability.

58.2. A house under construction or an apartment in an apartment building under construction (share in a residential cooperative) may be mortgaged based on the mortgagor's right to such a house or an apartment pre-registered with the state real estate registry under Article 11.6 hereof.

58.3. Upon completion of the mortgaged house or apartment building, the preregistered mortgage shall remain legally binding as per Article 11.7 hereof.

Article 59. Foreclosure of a mortgaged house or apartment

59.1. If a house or an apartment is mortgaged, foreclosed and sold, this, except as otherwise provided for in Article 59.3 hereof, shall not constitute grounds for eviction of legally registered tenants of the house or the apartment.

59.2. The new owner of the house or the apartment shall sign a rental agreement with the previous owner of the house or the apartment. If the new owner refuses to sign a rental agreement, the previous owner (the mortgagor) may petition the court to pursue the agreement.

59.3. If a mortgaged house or apartment is foreclosed and sold, the mortgagor and his/her co-habitant family members and other individuals shall vacate premises within no later than one month, provided that:

59.3.1. the house or the apartment is mortgaged with a view to repaying a loan under the mortgage agreement; or

59.3.2. mortgagor's co-habitant family members and other persons of legal age had committed in a notary way to vacate the premises when the mortgage agreement was signed if the house (apartment) is foreclosed and sold. Any persons registered as legal tenants of the house or the apartment after the mortgage agreement was signed shall be deemed to have assumed such an obligation.

59.4. If the mortgagor and the mortgagor's co-habitant family members and other persons fail to vacate the mortgaged residential area *and de-register as legal tenants of the residence* within the timeframe specified under Article 59.3 hereof, *such persons shall be evicted and removed from the house (apartment) and de-registered as legal tenants within 10 calendar days based on an enforcement foreclosure document without a court order.*

Ilham ALIYEV,
President of the Republic of Azerbaijan

Baku city, 15 April 2005
№ 883-IIQ