

**LAW OF THE KYRGYZ REPUBLIC**

**On Mortgage**

(amended as of June 28, 2001, # 61)

CHAPTER I. GENERAL PROVISIONS

CHAPTER II. EMERGENCE OF MORTGAGE

CHAPTER III. TRANSFER OF RIGHTS TO THE MORTGAGED PROPERTY TO  
OTHER PERSONS AND ENCUMBRANCE OF THIS PROPERTY WITH  
THE RIGHTS OF OTHER PERSONS

CHAPTER IV. FORECLOSURE OF THE SUBJECT OF MORTGAGE

CHAPTER V. SALE OF THE SUBJECT OF MORTGAGE TO BE FORECLOSED

CHAPTER VI. PARTICULARITIES OF MORTGAGE OF LAND PLOTS

CHAPTER VII. PECULIARITIES OF MORTGAGE OF RESIDENTIAL HOUSES AND  
APARTMENTS

CHAPTER VIII. FINAL PROVISIONS

CHAPTER I  
GENERAL PROVISIONS

Article 1. Concept of Mortgage

1. Mortgage is a method of securing performance of a monetary obligation or an obligation expressed in the monetary form against pledge of the ownership right or other real right to the immovable property.

2. Under a mortgage agreement, one party (the mortgagee) being an obligee under mortgage obligation (the principal obligation) shall have the priority right to satisfy his monetary claims to an obligor under this obligation from the value of the mortgaged immovable property or property rights (the subject of mortgage) of the other party (the mortgagor) over any other obligee of the mortgagor, except as provided by this Law.

The mortgagor (obligor) is the person who holds the right of ownership or other real right to the subject of mortgage. The mortgagor may be the obligor himself or a person other than a participant in the principal obligation.

The mortgagee (obligee) is the person whose claims under principal obligation are secured by mortgage.

3. The immovable property being subject of the mortgage shall remain with the mortgagor in his possession and use.

4. Mortgage shall remain effective in the event of bankruptcy of an obligor (mortgagor) and with respect to a third party which comes into possession of the mortgaged property or acquires a share in the mortgaged property.

Article 2. Mortgage Legislation in the Kyrgyz Republic

1. Legal relationships on mortgage shall be regulated by the Civil Code of the Kyrgyz Republic, this Law, the Law of the Kyrgyz Republic "On Pledge" and other laws and normative legal acts issued on the basis and in compliance therewith.

2. Where an international treaty of the Kyrgyz Republic ratified in the procedure established by law, sets forth the rules other than those provided herein, the rules of the international treaty shall apply.

Article 3. Subject of Mortgage

1. The subject of mortgage may be the title or other real right to immovable property including the following:

- 1) land plots, including agricultural land;
- 2) buildings, installations;
- 3) residential houses, apartments in a block of flats and/or parts of residential houses and apartments consisting of one or several isolated rooms;
- 4) dacha, summer houses, garages, and other constructions of consumption designation;
- 5) other property referred by legislation to the immovable property, except buildings and installations of hydropower stations and water reservoirs.

2. The rules of this Law shall apply to mortgage of unfinished construction of the immovable property, including buildings and installations.

3. Unless otherwise provided by agreement, the main thing, which is the subject of mortgage shall be deemed mortgaged together with the appurtenances as a single whole.

4. The part of property, division of which in kind is impossible without changing its qualities and purpose (indivisible thing) may not be an independent subject of mortgage.

5. The rules on mortgage of the immovable property shall respectively apply to the pledge of the lessee's rights under the agreement on lease of such property (right of lease), unless otherwise provided by law and unless it contradicts to the essence of the lease relationships.

#### Article 4. Obligation Secured by Mortgage

1. Mortgage may secure obligations under credit, loan agreement or other obligation, including the obligation based on the purchase and sale, lease, work contract, other contract, infliction of harm, unless otherwise provided by law.

2. Where one obligation is fulfilled, mortgage may also secure other secondary obligations without lifting the ban, provided the parties to an agreement are the same and this condition is provided for by the mortgage agreement.

#### Article 5. Claims Secured by Mortgage

1. Mortgage shall secure repayment of the principal to the mortgagee under credit agreement or other mortgage obligation either in full or in the part provided by the mortgage agreement.

The mortgage securing performance of the credit agreement or loan agreement with the condition of interest payment, shall also secure the payment to the obligor (lender) of the due interest for use of the credit (borrowed funds).

2. Unless otherwise provided by the agreement, the mortgage shall also secure the payment to the obligee of the amounts due to him:

1) as reimbursement of expenses in connection with the maintenance and/or safekeeping of the subject of mortgage (taxes, charges, payments for utilities, etc.);

2) as an interest provided for by the principal obligation or by law for illegal use of monetary funds belonging to another person;

3) as reimbursement for losses and/or forfeits or fines caused by default, deferral, or any other improper performance of the principal obligation;

4) as reimbursement of judicial expenses and other expenses caused by foreclosure of the subject of mortgage;

5) as reimbursement of expenses on realization of the subject of mortgage.

#### Article 6. Mortgage-backed Securities

The rights under principal obligation secured by mortgage and the mortgage agreement may be certified by the mortgage certificates being securities. Issuance and circulation of mortgage certificates shall be regulated by law.

#### Article 7. Right to Mortgage Property

1. Property that belongs to a mortgagor on the right of ownership may be mortgaged. The property which belongs to the mortgagor on the right of economic management or other real right may be subject to mortgage with the owner's consent.

2. Mortgage of the property withdrawn from or limited in the civil turnover, of the property which privatization is prohibited or which is subject to compulsory privatization in accordance with the procedure established by law, as well as of the property which may not be foreclosed pursuant to law, shall not be allowed.

3. Where the subject of mortgage is immovable property for which alienation the consent or permission of other person or agency is required, the same consent or permission shall be required for mortgage of that property.

4. Lease rights may be subject of mortgage with a lessor's consent, unless otherwise provided by law or by agreement.

#### Article 8. Participants of Mortgage Relationships

1. The participants of the mortgage relationships shall be citizens, legal entities and the state.

2. Commercial banks and specialized credit institutions shall conduct transactions related to mortgage in compliance with the requirements established by the National Bank of the Kyrgyz Republic.

#### Article 9. Mortgage of Property in Common Ownership

1. Property in common joint ownership (without determination of the share of every owner in the joint title to the property) may be mortgaged, provided that all the owners give their consent to the mortgage.

The consent to the mortgage shall be given in writing, unless otherwise provided by law.

2. A participant in common shared ownership may mortgage his share in common property without consent of other owners, provided the interest of each owner in the right of ownership is defined.

Should this interest be foreclosed at the mortgagee's request, in the event of sale of the interest, the respective provisions of the Civil Code of the Kyrgyz Republic on other owners' priority right to purchase and on foreclosure of an interest in the right of common ownership shall apply.

## CHAPTER II EMERGENCE OF MORTGAGE

### Article 10. Mortgage Agreement

1. Mortgage shall emerge by virtue of the agreement. Mortgage agreement shall be entered into with the observance of general rules of the Civil Code of the Kyrgyz Republic on entering into agreements and also of provisions of this Law.

2. The mortgage agreement shall be entered into in writing by compiling the document signed by the parties.

3. The mortgage agreement must be notarized if the mortgage secures the obligations under agreement subject to notarization, and also in cases provided by the agreement of parties.

4. The mortgage agreement shall be deemed entered into and shall become effective from the moment of state registration of mortgage defined in accordance with the legislation on state registration of rights to immovable property.

The property mortgaged under mortgage agreement shall be deemed encumbered with mortgage from the moment of registration of the mortgage.

5. Failure to comply with the rules on the form of the mortgage agreement shall entail its invalidation. Such agreement shall be deemed void.

6. Upon inclusion of the mortgage agreement in the credit or other agreement containing the mortgage obligation, with respect to the form of this agreement the requirements should be met which are set forth for the mortgage agreement.

### Article 11. Contents of Mortgage Agreement

1. A mortgage agreement must contain:

1) name and location (place of residence) of parties;

2) principal obligation secured by mortgage;

3) name, appraised value, composition and location, and description sufficient to identify the subject of mortgage;

4) the right under which the property being the subject of mortgage belongs to the mortgagor, and the necessary information from the title establishing document;

5) the amount and term of performance of the obligation secured by mortgage.

The parties may provide in the mortgage agreement other conditions as well.

2. Where the obligation secured by mortgage is to be fulfilled in parts, the mortgage agreement shall specify the schedule (periodicity) of the corresponding payments and their amounts or the conditions which enable to determine these amounts.

3. Where the mortgagee rights are certified by a mortgage certificate, this must be specified in the mortgage agreement.

4. The appraised value of the subject of mortgage shall be determined by the agreement of a mortgagor with a mortgagee and an owner of the property. The estimate value shall be specified in the agreement in the monetary form.

Where the communal property is mortgaged, appraisal thereof shall be performed as required by legislation.

The parties in a mortgage agreement may entrust appraisal of the subject of mortgage upon an independent appraiser.

5. Where the mortgage obligation is based on an agreement, the parties in the agreement, the date and the place of the agreement must be specified.

6. Where the amount of the obligation secured by the mortgage is to be determined in future, the procedure and other necessary conditions for such determination must be specified in the mortgage agreement.

7. Where the subject of mortgage is the mortgagor's right of lease, the leased property and the term of lease must be specified in the mortgage agreement.

### Article 12. State Registration of Mortgage

1. Mortgage shall be subject to state registration in the single state registry of rights to immovable property in accordance with the procedure established by the law on state registration of the rights to immovable property.

2. Upon registration of notices provided by this Law, the fee in the amount of 0,5 of the minimum wage established as of the day of registration shall be collected.

#### Article 13. Notifying a Mortgagee of the Rights of Third Parties to the Subject of Mortgage

A mortgagor while entering into a mortgage agreement must notify the mortgagee in writing of any rights of third parties to the subject of mortgage (pledge, lease, easement, and /or other rights) known to him by the moment of entering into the mortgage agreement. Failure to fulfill this obligation shall give the mortgagee the right to demand early performance of the obligation secured by mortgage or alteration of the terms of the agreement or cancellation of the agreement and indemnification of damages.

A mortgagor who has entered into a subsequent mortgage agreement must immediately notify mortgagees under previous mortgages, and at their request inform them about the subsequent mortgage.

The provisions of this Article shall not apply where the same persons are the parties in the previous and subsequent mortgage agreement.

#### Article 14. The Concept of Subsequent Mortgage and the Conditions under which it May Be Allowed

1. Property mortgaged under mortgage agreement to secure one obligation (preceding mortgage) may be pledged to secure another obligation (subsequent mortgage).

The order of priority of mortgagees shall be established on the basis of the information in the single state registry of rights to immovable property referred to the moment of emergence of the corresponding mortgage determined in accordance with the law on state registration of rights to immovable property.

2. Subsequent mortgage may be allowed, unless it is forbidden by preceding agreements on mortgage of the same property being effective by the moment of conclusion of the subsequent mortgage agreement. Where the preceding mortgage agreement provides certain terms and conditions for a subsequent mortgage, the latter must be concluded in compliance with such terms and conditions.

#### Article 15. Maintenance and Repair of Mortgaged Property

Unless otherwise provided by the mortgage agreement, the mortgagor must keep the mortgaged property in order and must pay for the maintenance and repair (routine and major repair) of this property until termination of the mortgage.

The mortgagee shall have the right to check by the documents and in fact the availability, state and the conditions of storage of the property mortgaged under the mortgage agreement.

#### Article 16. Insurance of Mortgaged Property

1. Insurance of the property mortgaged under mortgage agreement shall be performed in accordance with the terms and conditions of this agreement.

2. Unless otherwise provided by the mortgage agreement, the mortgagor must insure the full value of this property against risks of loss and damage, and where the full value of the property exceeds the amount of the obligation secured by the mortgage, - the mortgagor must provide insurance for the amount not less than the amount of this obligation.

3. The mortgagee shall have the right to satisfy its claim under the obligation secured by the mortgage directly from the insurance indemnity for loss of or damage to the mortgaged property irrespective of the fact in whose favor this property was insured. This claim shall be subject to satisfaction prior to the claims of other obligees of the mortgagor and of the persons in whose favor the property is insured except as provided by law.

The mortgagee shall lose his right to satisfy his claim from the insurance indemnity, where the mortgagee himself is responsible for the loss or damage of that property.

### CHAPTER III TRANSFER OF RIGHTS TO THE MORTGAGED PROPERTY TO OTHER PERSONS AND ENCUMBRANCE OF THIS PROPERTY WITH THE RIGHTS OF OTHER PERSONS

#### Article 17. Alienation of the Mortgaged Property

1. The mortgaged property may be alienated by the mortgagor to other person by the way of sale, donation, exchange, contribution to the assets of a partnership or a company or share contribution to the assets of a cooperative or by any other means, - only with the written consent of the mortgagee, unless otherwise provided by the mortgage agreement.

2. The mortgagor shall have the right to bequeath the mortgaged property. The provisions of the mortgage agreement or other agreement restricting this right of the mortgagor shall be void.

#### Article 18. Retention of Mortgage upon Assignment of Rights to Other Person

1. The person who acquired the mortgaged property as a result of its alienation or in the course of universal legal succession including reorganization of legal entity or by the way of succession, shall replace the mortgagor and shall bear all mortgage liabilities of the latter, including those which were not properly performed by the original mortgagor, unless otherwise provided by the agreement.

2. Where the mortgaged property is transferred to several persons on the grounds specified in point 1 of this Article, each of the legal successors of the original mortgagor shall bear consequences of default of obligation secured by the mortgage pro rata to the part of mortgaged property transferred to him. Where the subject of mortgage is indivisible or is received for the common ownership of legal successors of the mortgagor on other grounds, the legal successors shall become joint and several mortgagors.

3. Mortgage of property under the mortgage agreement shall remain effective regardless of whether the rules established for such transfer were violated upon transfer of this property to other persons.

#### Article 19. Consequences of Violation of Rules on Alienation of the Mortgaged Property

1. Upon alienation of the property mortgaged under the mortgage agreement with violation of rules of Article 17 of this Law, the mortgagee shall have the right to demand at his discretion:

- invalidation of the transaction on alienation of the mortgaged property and enforcement of consequences provided by the Civil Code;
- early performance of the obligation secured by mortgage and foreclosure of the mortgaged property regardless of who owns it.

2. In the latter case if it is proved that the acquirer of the mortgaged property at the moment of its acquisition knew or should have known that the property is alienated with violation of rules of Article 17 of this law, such acquirer shall be held liable within the limits of value of the said property for default of the obligation secured by mortgage jointly with the obligor under this obligation. If the mortgaged property is alienated with violation of the said rules by the mortgagor other than obligor under the obligation secured by mortgage, the acquirer of the property and the former mortgagor shall bear joint and several liability together with this obligor.

#### Article 20. Encumbrance of the Mortgaged Property with the Rights of Other Persons

1. Unless otherwise provided by law or the mortgage agreement, the mortgagor may without the mortgagee's consent lease out the mortgaged property, transfer it for temporary gratuitous use or in agreement with other person provide to the latter the right of limited use of this property (easement) provided that:

- the term for which the property is provided for use does not exceed the term of the obligation secured by mortgage;
- the property is provided to be used for the purposes corresponding to the designation of the property.

2. In case of foreclosure of the mortgaged property by the mortgagee on the grounds provided by law or by the mortgage agreement, all rights of lease and other rights of use of this property provided by the mortgagor to third parties without the mortgagee's consent after entering into the mortgage agreement shall terminate from the moment the court's judgment on foreclosure of the property becomes effective, and if the mortgagee's claims are satisfied without applying to the court - from the moment of notarization of the agreement between the mortgagor and the mortgagee on foreclosure of the subject of mortgage in accordance with this law.

3. The mortgaged property may be provided by the mortgagor to third parties for use for the term exceeding the term of obligation secured by mortgage or for the purposes not corresponding to the designation of the property only with the written consent of the mortgagee.

4. Transfer of the mortgaged property to the third party for use by the mortgagor shall not excuse the mortgagor from performance of obligations under the mortgage agreement, unless otherwise provided by the mortgage agreement.

#### Article 21. Consequences of Eminent Domain of the Mortgaged Property by the State

1. If the right of ownership of the mortgagor to the property which is the subject of mortgage terminates on the grounds and in the procedure established by law in the result of taking (redemption) of the property for state or communal needs, requisition thereof or nationalization, the mortgagor shall be given the other property or relevant compensation, the mortgage shall extend over the property provided as a replacement or the mortgagee shall acquire the priority right to satisfaction of his claims from the amount of the compensation payable to the mortgagor.

2. The mortgagee whose interests may not be protected by the rights provided in point 1 of this Article to the full extent may claim early performance of the obligation secured by mortgage, and foreclosure of the property provided to the mortgagor as a replacement for the taken one.

3. In case when the property which is the subject of mortgage is taken from the mortgagor by the state as a penalty for commission of crime or other offense (confiscation), the mortgage shall remain effective and the rules of Art. 18 of this law shall apply. However, the mortgagee whose interests may not be protected to the full extent by enforcement of these rules may claim early performance of the obligation secured by mortgage and foreclosure of the confiscated property.

#### Article 22. Consequences of Vindication of the Mortgaged Property

In cases when the property which is the subject of mortgage is taken from the mortgagor in the procedure established by law on that ground that actually the other person is the owner of this property (vindication), the mortgage of this property shall be terminated. The mortgagee, after the respective court ruling is effective, may claim early performance of the obligation secured by mortgage.

#### Article 23. Assignment of Rights and Transfer of Debt under the Mortgage Agreement

1. The mortgagee may assign his rights under the mortgage agreement to other person, unless other is provided in the agreement.

2. The person to whom the rights under the mortgage agreement are assigned shall replace the former mortgagee under this agreement. Assignment of rights under the mortgage agreement must be performed in accordance with the rules established by the Civil Code of the Kyrgyz Republic.

3. The assignment of rights under the mortgage agreement by the mortgagee to other person shall be valid if the rights of claim to the obligor under obligation secured by mortgage are assigned to the same person.

Unless other is proven, the assignment of rights under the mortgage agreement shall mean the assignment of rights under the obligation secured by mortgage.

4. The mortgagor may transfer his debt to other person with the mortgagee's (obligee's) consent. Transfer of debt shall be performed in accordance with the rules established by the Civil Code of the Kyrgyz Republic.

### CHAPTER IV FORECLOSURE OF THE SUBJECT OF MORTGAGE

#### Article 24. Grounds for Foreclosure of the Subject of Mortgage

1. Foreclosure of the subject of mortgage to satisfy the mortgagee's (obligee's) claims indicated in Article 5 of this law may be effected in case of default and/or improper performance by the obligor of the mortgage obligation, in particular:

- 1) violation of the procedure and term of payment of interests established by the agreement;
- 2) violation of the procedure and term of repayment of the principal established by law or agreement;
- 3) default of the obligor of the mortgagee's claim on early performance of the mortgage obligation in cases provided by Art. 25 of this law;
- 4) in other cases provided by legislation of the Kyrgyz Republic or agreement.

2. Where there is an inconsistency between the conditions of the mortgage agreement and conditions of the mortgage obligation with respect to claims which may be satisfied by foreclosure, the conditions of the mortgage agreement shall prevail.

Article 25. Foreclosure of the Subject of Mortgage upon Failure  
to Satisfy the Claim for Early Performance  
of Obligation Secured by Mortgage

The mortgagee may claim early performance of the obligation secured by mortgage, and should his claim be unsatisfied, foreclose the subject of mortgage in case of:

- 1) violation of rules on disposal of the subject of mortgage by the mortgagor or if the subject of mortgage was withdrawn from the mortgagor's possession;
- 2) violation of rules on replacement or restoration of the subject of mortgage by the mortgagor;
- 3) forfeiture of the subject of mortgage under circumstances beyond the mortgagor's control, if the mortgagor failed to use the right of replacement or restoration of the subject of mortgage;
- 4) violation of the rules on subsequent mortgage by the mortgagor;
- 5) violation of the obligations on maintenance and safe-keeping of the subject of mortgage by the mortgagor;
- 6) violation of the obligations on notifying the mortgagee of the rights of third parties to the subject of mortgage by the mortgagor;
- 7) systematic (more than once) violation by the mortgagor of obligations on payment of interests or other fees provided by the mortgage obligation which became the ground for sending notice on initiation of foreclosure of the subject of mortgage and sale thereof;
- 8) in other cases provided by law or mortgage agreement.

Article 26. Foreclosure of the Subject of Mortgage at Claims  
Secured by Preceding or Subsequent Mortgage

1. In case of foreclosure of the subject of mortgage at claims secured by the subsequent mortgage this subject of mortgage may be simultaneously foreclosed at claims secured by the preceding mortgage the time of foreclosure of which has not ensued yet. If the mortgagee under preceding mortgage agreement failed to use this right, the subject of mortgage which is foreclosed at claims secured by the subsequent mortgage shall be transferred to the acquirer thereof encumbered with the preceding mortgage.

2. In case of foreclosure of the subject of mortgage at claims secured by the preceding mortgage, a simultaneous foreclosure of this subject of mortgage at claims secured by the subsequent mortgage the time of foreclosure of which has not ensued yet, shall be allowed.

Claims secured by the subsequent mortgage shall not be subject to early performance if to satisfy the claims secured by the subsequent mortgage, foreclosure of the part of the subject of mortgage is enough.

3. Upon foreclosure of the subject of mortgage, claims of the mortgagee under subsequent mortgage agreement shall be satisfied from the value of the subject of mortgage after claims of the mortgagee under the preceding mortgage agreement are satisfied.

4. Provisions of this Article shall not apply if the mortgagee under preceding and subsequent mortgages is one and same person. In this case, claims secured by each of the mortgages shall be satisfied in the priority order corresponding to the time of performance of the respective obligations, unless otherwise provided by law or agreement of the parties.

Article 27. Notice on Default of Obligation

1. In the event of default and/or improper performance of the obligation on the part of the obligor (mortgagor), the mortgagee shall:

- 1) fill in the notice on default of the obligations on the part of the obligor (mortgagor);
- 2) deliver it to the obligor (mortgagor). If direct delivery is impossible the notice shall be sent to the obligor (mortgagor) via registered mail at his address indicated in the agreement.

2. The notice on default of obligations shall be filled in writing and shall contain the following data:

- 1) name and location (place of residence) of the obligor (mortgagor);
- 2) name and location (place of residence) of the mortgagee;
- 3) synopsis of defaulted obligations of the obligor (mortgagor);
- 4) the amount of indebtedness on interest and/or principal to be paid by the obligor;
- 5) the amount of all fees, costs, expenses to be paid by the obligor (mortgagor) as of the moment of filling in the notice;
- 6) proposal on voluntary performance of obligations including the amount of all indebtedness within the definite period not to be less than 30 days from the moment of receipt of the notice by the obligor (mortgagor); the definite term shall be established by the mortgagee independently or by the agreement of parties (if possible);

- 7) other data which the mortgagee considers necessary;
- 8) date of notification and mortgagee's signature.
3. Registration of notice on default of the obligation in the body which has performed state registration of mortgage, as well as sending of the copy of the notice to the mortgagees under preceding and subsequent mortgages, shall not be required.
4. The obligor, after receipt of the notice shall satisfy all lawful mortgagee's claims arising from the notice and terminate circumstances which caused the notice.
5. In the event of dispute, the obligor (mortgagor) may take measures on settlement of dispute via non-judicial procedure or apply to the court for withdrawal of the notice by the mortgagee.

Article 28. Notice of the Initiation of the Procedure  
of Foreclosure of the Subject of Mortgage

1. In the event if the obligor (mortgagor) within 30 days from the moment of receipt of the notice on default of obligation or other period established in accordance with subpoint 6 of point 2 of Art. 27 of this Law fails to satisfy the mortgagee's claims arising from the notice, the mortgagee may initiate the procedure of coercive foreclosure of the subject of mortgage.
2. To initiate foreclosure of the subject of mortgage via non-judicial procedure or judicial procedure the mortgagee shall:
  - 1) write the notice of initiation of the procedure of foreclosure of the subject of mortgage;
  - 2) register this notice with the body where state registration of mortgage was performed;
  - 3) deliver it to the obligor (mortgagor). Where the direct personal delivery of the notice is impossible, the notice shall be sent to the obligor (mortgagor) via registered mail at the address indicated in the mortgage agreement;
  - 4) the copy of the notice must be sent to the mortgagees of the preceding and subsequent mortgages except the case when they are the same persons.
3. The notice shall be in writing and shall contain following data:
  - 1) data envisaged in subpoints 1-5 of point 2 of Art. 27 of this Law;
  - 2) proposal on voluntary performance of obligations including repayment of all indebtedness within a definite time period which may not be less than 30 days from the moment of sending the notice to the obligor (mortgagor); a specific time period shall be established by the mortgagee independently or by the agreement of the parties (where possible);
  - 3) proposal on entering into agreement on satisfaction of the mortgagee's claims via non-judicial procedure in compliance with Art. 30 of this Law or notification about possible foreclosure of the subject of mortgage via judicial procedure;
  - 4) other data which the mortgagee considers necessary;
  - 5) date of notification and signature of the mortgagee.

Article 29. Obligor's (Mortgagor's) Actions After Receipt  
of Notice on Initiation of Procedure of Foreclosure  
of the Subject of Mortgage

1. Obligor (mortgagor) in accordance with subpoint 2 of point 3 of Art. 28 of this Law shall satisfy the mortgagee's claims indicated in the notice and terminate circumstances underlying the notice. In this case the procedure of initiation of foreclosure of the subject of mortgage shall terminate and the mortgagee shall produce actions envisaged by point 2 of Art. 41 of this Law.
2. Upon receipt of the notice, the obligor (mortgagor) may:
  - 1) enter into notarized agreement with the mortgagee on satisfaction of his claims via non judicial procedure;
  - 2) petition to the court for the foreclosure procedure and sale of the subject of mortgage via judicial procedure;
  - 3) in the event of a dispute, take measures to settle the dispute via non-judicial procedure or apply to the court with the claim for withdrawal of the notice by the mortgagee.

Article 30. Foreclosure of the Subject of Mortgage via  
Non-Judicial Procedure

1. Foreclosure of the subject of mortgage via non-judicial procedure shall be allowed in absence of dispute between the parties.
2. Foreclosure of the subject of mortgage must be enforced via judicial procedure in the event of:
  - 1) dispute between the parties;



2) if the mortgaged property is referred to the property having significant historical, artistic and other cultural value for the society in the established procedure.

3. Foreclosure of the subject of mortgage via non-judicial procedure shall be enforced on the basis of certification of judgment of the notary or notarized agreement between the mortgagee and the mortgagor.

4. The mortgagee may apply for commission of certification of judgment of the notary after filling in the notice in accordance with Art. 28 of this Law and given the mortgagor (obligor) has no intent to satisfy the mortgagee's claims and to enter into agreement on satisfaction of the mortgagee's claims via non-judicial procedure.

5. Agreement on satisfaction of the mortgagee's claims via non-judicial procedure shall be entered into after emergence of grounds for foreclosure of the subject of mortgage and filling in the notice envisaged by Art. 28 of this Law.

The agreement on satisfaction of the mortgagee's claims via non-judicial procedure between the parties must indicate:

1) the name and location (place of residence) of parties;

2) name, initial (starting) sale price of the subject of mortgage which is determined on the basis of the agreement between the mortgagor and the mortgagee, composition and location, as well as description of the subject of mortgage sufficient to identify it; in case of disagreement the parties may appoint an independent appraiser to determine the initial (starting) sale price;

3) amounts payable to mortgagee by the obligor under obligation secured by mortgage and mortgage agreement, and if the mortgagor is the third party, also by the mortgagor;

4) consent of the parties to foreclosure and sale of the subject of mortgage via non-judicial procedure;

5) covenant that the mortgagor has the powers to conclude transactions connected with sale of the subject of mortgage;

6) sale of the subject of mortgage by one of the methods indicated in this Law or acquisition of the subject of mortgage by the mortgagee for himself or third parties with accrediting the mortgagee's claims towards the obligor, secured by mortgage, to the purchase price;

7) procedure for distribution of proceeds from sale of the subject of mortgage;

8) name of preceding and subsequent mortgagees of the subject of mortgage (if they are available and known to the parties at the moment of entering into the agreement);

9) name of third parties holding real rights and rights of use with respect to the subject of mortgage (if they are available and are known to the parties at the moment of entering into the agreement);

10) other conditions which the parties consider necessary to indicate in the agreement.

6. The agreement on satisfaction of the mortgagee's claims under the subsequent mortgage agreement shall be valid if it is entered into with participation of the mortgagees under the preceding mortgage agreements.

An agreement on satisfaction of mortgagee's claims via non-judicial procedure may be invalidated by the court at the claim of the person whose rights are violated by this agreement

7. In the event if the amount received from sale of the mortgaged property is not sufficient for recovery of the mortgagee's claims, he shall lose the right to receive the missing amount from other property of the obligor, unless otherwise provided by the agreement on satisfaction of mortgagee's claims via non-judicial procedure.

#### Article 31. Transfer of the Subject of Mortgage to be Foreclosed via Non-Judicial Procedure

1. After entering into the agreement on satisfaction of mortgagee's claims via non-judicial procedure, the mortgagor must ensure transfer of the subject of mortgage to the mortgagee or to his authorized representative, including the person organizing sale, unless otherwise provided by the agreement of parties.

2. In case if the third party impedes the transfer of the subject of mortgage, the mortgagor, mortgagee or their authorized representatives may undertake any legal actions necessary for transfer of the subject of mortgage.

3. From the moment of receipt of the subject of mortgage and until the moment of its sale, the mortgagee shall have the rights with respect to the subject of mortgage established by law or agreement, including the right to improve the subject of mortgage or to reduce expenses on its sale by the way of cleaning, reconstruction, repairs and etc.

The mortgagee shall also bear liabilities with respect to the subject of mortgage established by law or the agreement including the obligation to ensure its safety.

#### Article 32. Foreclosure of the Subject of Mortgage via Judicial Procedure

1. Foreclosure of the subject of mortgage may be enforced via judicial procedure on the basis of the court decision.

2. The right to apply to the court with the claim for foreclosure of the subject of mortgage via judicial procedure shall be vested in the mortgagee (obligee) or mortgagor (obligor).

The mortgagee (obligee) may file a claim after expiration of the period envisaged by subpoint 2 of point 3 of Art. 28 of this Law.

The mortgagor (obligor) may file a claim in the case envisaged by subpoint 2 of point 2 of Art. 29 of this Law.

3. The claim for foreclosure of the subject of mortgage shall be filed and the case on foreclosure of the subject of mortgage shall be considered by the court of the area where the immovable property is located in accordance with the norms of the civil or arbitration procedural legislation of the Kyrgyz Republic subject to peculiarities established by this Law.

4. The mortgagee must submit to the court where the respective claim is filed, evidence of sending notices envisaged by this Law to the obligor (mortgagor).

The mortgagee must also submit to the court where the respective claim is filed, evidence of notification of the preceding and subsequent mortgagees about initiation of the procedure of foreclosure of the subject of mortgage, except where they are the same persons.

5. If the materials of the case on foreclosure of the subject of mortgage prove that mortgage was or should have been realized with the consent of other person or agency, the court where the claim was filed shall notify the relevant person or agency of this and shall provide them with the opportunity to participate in this case.

6. Persons who hold the right of use of the mortgaged property based on law or agreement (lessees, tenants, adult members of the family of the owner of the residential premises and other persons) or the real right to this property (easement, right of lifetime use and other rights), may participate in consideration of the case on foreclosure of the subject of mortgage.

#### Article 33. Issues Settled by the Court upon Review of the Case on Foreclosure of the Subject of Mortgage

In addition to general issues envisaged by the procedural legislation upon review of the case on foreclosure of the subject of mortgage the court shall determine and indicate in the decision:

1) all amounts payable to the mortgagee from the value of the subject of mortgage, except expenses on safeguard and sale of the subject of mortgage which are determined after completion of its sale. For the amounts calculated in percentage that amount to which the interests, interest rate are charged and the period for which they are to be charged must be indicated;

2) subject of mortgage from the value of which the mortgagee's claims are to be satisfied;

3) the method of sale of the subject of mortgage which is foreclosed;

4) the initial (starting) sale price of the subject of mortgage upon its sale which is determined on the basis of the agreement of the mortgagor with the mortgagee, and in case of a dispute by the court itself on the basis of the statement of an independent appraiser;

5) measures on ensuring safety of the subject of mortgage before its sale if such are necessary.

6) procedure and order of priority of distribution of proceeds from sale in accordance with the requirements of this Law.

### CHAPTER V SALE OF THE SUBJECT OF MORTGAGE TO BE FORECLOSED

#### Article 34. Methods of Sale of the Mortgaged Property

1. Subject of mortgage foreclosed in accordance with this Law shall be sold by public sale or purchased by the mortgagee in accordance with the requirements of this Law.

2. Public sale shall be held in the form of open auction or tender. The form of sale shall be determined by the court decision (in case of judicial foreclosure) or by the agreement on satisfaction of the mortgagee's claims (in non-judicial foreclosure).

3. The procedure of holding public sale shall be determined by relevant articles of the Civil Code, this Law and other normative acts as well as agreements on satisfaction of the mortgagee's claims via non-judicial procedure.

4. In case of foreclosure of the mortgaged right of lease of immovable property it shall be enforced in accordance with the rules of this Law with subsequent formalizing of assignment of this right. In this case the right of entering into a respective agreement (lease, rent, etc.) shall be the subject of public sale.

#### Article 35. Appointment of the Person Organizing Sale

1. Upon foreclosure of the subject of mortgage in judicial procedure, the person organizing public sale shall be appointed by the court decision. The court may independently or at petition of a party (parties) appoint following as the person organizing sale:

- 1) a person which in accordance with the procedural legislation is imposed with execution of court decisions;
- 2) an independent person who organizes sale.

2. The mortgagee, obligor (mortgagor) may propose the nominee for the person organizing the sale abiding to the requirements established by Art. 36 of this Law.

Where there are several nominees, the appointment of the person organizing the sale shall be produced on the competitive basis. The conditions, term and procedure of competition shall be defined by the court.

3. Upon foreclosure of the subject of mortgage via non-judicial procedure, the person organizing public sale shall be defined by the agreement of parties.

The person organizing sale may act via non-judicial procedure on the basis of the agreement on satisfaction of mortgagee's claims via non-judicial procedure or separate civil law agreement.

4. Upon organization and conducting sale, the person organizing sale may act on behalf of the owner of the property (holder of the property right) or on his own behalf on the basis of the court decision or agreement.

5. The person organizing sale shall be under protection of law in the process of his activity and shall be governed by legislation of the Kyrgyz Republic, shall have the rights and obligations established by legislation of the Kyrgyz Republic and agreement.

#### Article 36. Independence of the Person Organizing Sale from the Parties

1. The court may appoint any legal entity or individual (individual entrepreneur), except for the official working in the bodies of executive power and governance, local self-government and in court bodies of the Kyrgyz Republic, an independent person organizing sale.

Foreign legal entities and individuals may be appointed the person organizing sale on general grounds, unless otherwise provided by law.

2. Appointment of the person which is imposed with execution of court decisions in accordance with procedural legislation or an independent person as the party organizing sale shall not be allowed, if this party has a property interests, in particular:

- 1) he is a participant (founder, shareholder, member and etc.) or the owner of the property or the manager of the obligor (mortgagor) or mortgagee;
- 2) he is a creditor, obligor, insurer of the obligor (mortgagor) or mortgagee;
- 3) he is in close kinship or affinity with the obligor (mortgagor) or mortgagee.

3. A person in whose respect there are restrictions in performance of the activity related to management of affairs and (or) the property of other persons and a person having an unrepealed (unexpunged) conviction may not be appointed a person organizing sale.

4. The size and procedure of payment of remuneration to the independent person organizing sale shall be determined:

- 1) upon foreclosure in the judicial procedure - by the court and shall be indicated in the decision;
- 2) upon foreclosure via non-judicial procedure - by the agreement of parties and shall be indicated in the agreement on satisfaction of the mortgagee's claims via non-judicial procedure or in the separate legal agreement.

5. The person on which execution of court decisions is imposed in accordance with the procedural legislation, shall be paid the remuneration in accordance with the requirements of the procedural legislation.

#### Article 37. The Procedure of Sale

1. Public sale shall be conducted at the place where the immovable property is situated.

2. The person organizing sale shall notify of the forthcoming public sale not less than one month prior to the sale through announcement published in the newspaper.

Sale announcement must be published once in the newspaper of the national level and once in the newspaper of the local (rayon, city) level.

3. Sale announcement must contain following data:

- 1) name, description and characteristics of the subject of mortgage to be sold;
- 2) an exact location of the subject of mortgage;
- 3) initial (starting) sale price of the subject of mortgage;
- 4) size, term and procedure of payment of the guarantee deposit (advance) of the bidder, if such is envisaged by the conditions of sale;

- 5) procedure and period of time during which the purchase price is to be paid;
- 6) time and place of conducting sale;
- 7) name and location (place of residence) of the person organizing the sale, his telephone number and payment particulars.

In case if the subject of sale is the right to enter into agreement according to Art. 34 of this Law, the notice on forthcoming sale must indicate the period of time provided for entering into such agreement.

4. One copy of the announcement shall be affixed in a conspicuous place right on the immovable property subject to sale if it is possible and there are no impediments thereto, not later than one month before the actual date of its effectuation.

5. Following persons may not participate in sale as buyers:

1) person organizing sale and persons being in close kinship or relationships with him as well as legal entities, 5 % and more shares of the authorized capital of which are owned by the person organizing sale;

2) court officials;

3) state enterprises, institutions of organizations if the subject of sale is the state property or property rights;

4) persons which in accordance with legislation may not be the owners of property traded at sale or the holders of property rights.

6. Before beginning of the sale, those who is willing to participate in it shall pay a guarantee deposit, if such is envisaged by the conditions of the sale, in the procedure established in the sale announcement. The size of the guarantee deposit may not exceed 5 % of the initial sale price of the subject of mortgage.

7. The mortgagee participating in sale shall be excused from payment of the guarantee deposit, and in case of winning the sale from payment of the purchase price within the limits of the amount of his claims.

8. Guarantee deposits of the participants of sale shall be returned if:

1) the participant who paid guarantee deposit failed to participate in sale for some reasons;

2) the participant of sale participated in sale but failed;

3) sale was acknowledged uneffected.

Guarantee deposit of the participant who won the sale shall be accredited to the purchase price.

Guarantee deposit of the participant who won the sale but failed to pay purchase price shall remain at the disposal of the person organizing sale and shall be used by him in the procedure established by Art. 42 of this Law.

9. The person shall be acknowledged the winner of the sale if he had offered the highest price for the property subject to sale at the public auction, in case of tender the person shall be acknowledged the winner if he offered the best conditions in accordance with the resolution of the tender commission previously appointed by the person organizing sale. This participant and the person organizing sale shall sign a protocol on the day of conducting the sale about the results of the public sale. Evasion of any of them from signing the protocol shall entail consequences envisaged by Art. 409 (5) of the Civil Code of the Kyrgyz Republic.

10. The participant who won the public sale shall, within the period of time established by the person organizing sale, but not more than one week, pay the amount for which he had bought the subject of mortgage, less the amount of the previously paid guarantee deposit.

Realization of foreclosed mortgage with the purpose of satisfying the obligation secured by mortgage shall not constitute trade transaction.

11. The protocol on the results of sale shall be the ground for entering necessary records in the single state registry of rights to immovable property.

12. In case if the subject of sale constitutes only the right to enter into agreement such agreement must be signed by the parties not later than twenty days or other period indicated in the notice after completion of sale and formalizing of the protocol. This agreement and protocol on results of sale shall be the ground for entering necessary records in the single state registry of rights to immovable property.

In case of evasion of either of them from entering into agreement, the other party may apply to the court with the claim on compelling to enter into agreement and on indemnification of damages incurred.

#### Article 38. Declaration of Public Sale Uneffected

1. The person who organized the sale shall declare public sale uneffected in cases when:

1) less than two purchasers appeared at sale;

2) no participant added mark-up against the starting sale price of the subject of mortgage (absence of competition);

3) the participant who won the sale failed to pay the purchase price within the established period.

Declaration of sale uneffected shall be formalized by the act which is promulgated by the person organizing sale on the day of conducting sale when less than two participants appeared at sale or the mark-up was not added to the initial sale price of the subject of mortgage.

Sale must be declared uneffected not later than on the day following the date when the winner of sale failed to pay purchase price within established period.

2. Upon declaration of the public sale uneffected the mortgagee may in agreement with the mortgagor purchase the subject of mortgage at its initial sale price at public sale and set off his claims secured by mortgage to the account of the purchase price. Mortgage in this case shall be terminated.

3. If the agreement on purchase of the property by the mortgagee provided in point 2 of this Article was not effected, the repeated sale shall be conducted not later than in a month after first public sale.

Repeated sale shall be declared and conducted in the procedure provided by Art. 37 of this Law. The initial (starting) sale price of the subject of mortgage at repeated sale shall be determined by the person organizing sale. The person, organizing sale may set up initial (starting) sale price of first sale or new (appraised) price.

4. Upon declaration of repeated sale uneffected for the reasons indicated in point 1 of this Article the mortgagee may retain the subject of mortgage at the appraised price not more than 10% lower than the initial (starting) price at repeated sale by signing the protocol on the results of sale which has the force of agreement. In this case the value of the subject of mortgage fixed in the protocol shall be accredited to the mortgagee's claims secured by mortgage.

If the mortgagee retained the mortgaged property which may not belong to him by its nature and purpose he must alienate this property in accordance with the procedure established by law.

5. If the mortgagee fails to use the right for retention of the subject of mortgage during a month after declaration of the repeated public sale uneffected, the mortgage shall terminate.

#### Article 39. Acknowledgment of Sale Invalid

1. Sale may be acknowledged invalid by the court on its own initiative or at the claim of the interested person in the event if:

- 1) sale was conducted with violation of rules established by this law;
- 2) subject of mortgage is sold to the person that is not eligible to participate in sale;
- 3) the person organizing sale, the mortgagee or the buyer committed offenses subject to administrative or criminal liability.

2. Acknowledgment of sale invalid shall entail invalidation of the agreement entered with the person who won the sale, as well as other consequences provided by legislation.

#### Article 40. Right of Recourse to the Court

1. In case of grounds envisaged in point 1 of Art. 39 of this Law, the mortgagor may contest the results of sale in court of area where the immovable property is located.

Filing of the claim shall not suspend the commission of actions arising from the results of the sale.

2. In case of refusal of the mortgagor to transfer (vacate) the immovable property which was bought at public auction to the purchaser, the purchaser may apply to the court of area where the property is situated.

All arising court expenses shall be reimbursed by the mortgagor with the proceeds received from sale of mortgage.

#### Article 41. Termination of Sale of the Subject of Mortgage

1. Any time prior to the moment of sale of the subject of mortgage or purchase thereof by the mortgagee in the procedure established by this law, the foreclosure procedure of the subject of mortgage and sale thereof may be terminated, if the obligor and/or mortgagor that is a third party:

1) performs obligation secured by mortgage in full or in part, default or improper performance of which served as a ground for foreclosure by paying on the mortgagee's claims to the extent of those claims at the moment of payment of corresponding amounts;

2) reimburses the mortgagee the amounts of court expenses and other expenses caused by foreclosure of the subject of mortgage and sale thereof.

The agreement restricting the right indicated in this point shall be invalid.

2. After receipt of amounts indicated in point 1 of this Article the mortgagee shall:

- 1) write a notice on termination of the procedure of foreclosure of the subject of mortgage and sale thereof;
- 2) register this notice with the body which performed state registration of mortgage;
- 3) at the request of the obligor's (mortgagor's) or mortgagees of preceding or subsequent mortgage provide them with the copies of the notice.

3. The notice shall be in writing and must contain the following data:

- 1) the name and location (place of residence) of the obligor (mortgagor);
- 2) name and location (place of residence) of the mortgagee;

3) amounts paid by the obligor (mortgagor) under mortgagee's claims secured by mortgage, default of which caused foreclosure of the subject of mortgage, as well as amounts of court expenses and other expenses caused by foreclosure of the subject of mortgage and sale thereof;

4) indication on termination of the procedure of foreclosure of the subject of mortgage and sale thereof;

5) other data which the mortgagee considers necessary;

6) date of notification and the mortgagee's signature.

#### Article 42. Distribution of Proceeds from Sale

1. Guarantee deposits of participants of sale as well as money paid by the buyer as the purchase price must be kept on the deposit of court, notaries or on the bank account of the person organizing sale.

2. The person organizing sale must distribute proceeds from sale within not less than ten days from the moment of their receipt.

3. The person organizing sale shall distribute proceeds from sale in the following order of priority:

1) to cover expenses and costs of conducting sale;

2) to pay for mortgagee's claims secured by mortgage (Art. 5 of this Law);

3) to pay for mortgagees' claims secured by subsequent mortgages;

4) to return to the mortgagor the amount remaining after satisfaction of all above stated claims.

#### Article 43. General Requirements to Report of the Person

##### Organizing Sale

1. Proper performance by the person organizing sale of his duties on sale of the subject of mortgage shall include the writing and transfer of the report.

2. The report shall be done in writing and shall be transferred to the court (in judicial procedure) or to the parties (in non-judicial procedure) within the period not to exceed ten days:

1) from the day of final distribution of proceeds from sale if the sale was effected;

2) from the day the mortgagee decided to purchase the subject of mortgage in accordance with the requirements of this Law.

3. The report on effected sale must contain following data:

1) name, location, description and characteristics of the subject of mortgage to be sold;

2) time and place of conducting sale;

3) name and place of residence (location) of the purchaser, his telephone number for references and payment particulars;

4) purchase price of the subject of mortgage, payment procedure;

5) distribution of proceeds from sale;

6) date of writing report, name and place of residence (location) of the person organizing sale, his telephone number for references and payment particulars.

The report may contain other data which the person organizing sale considers material.

4. Report on uneffected sale must contain following data:

1) envisaged in sub-point 1), 2) and 6) of point 3 of this Article.

2) grounds for declaring sale (first or repeated) uneffected;

3) price at which the mortgagee bought the subject of mortgage in accordance with the requirements of this Law.

The report may contain other data which the person organizing sale may consider material.

5. The person organizing sale must attach the copies of documents related to organization and sale of the subject of mortgage to the report.

#### Article 44. Grounds for Termination of Mortgage

1. Mortgage shall be terminated in full or in part on the grounds provided by the Civil Code of the Kyrgyz Republic, this Law and the mortgage agreement.

2. In the event of termination of mortgage, the mortgagee shall:

1) write the notice on termination of mortgage;

2) register this notice with the body which performed state registration of mortgage;

3) deliver the copies of this notice to the obligor (mortgagor) or mortgagees under preceding and subsequent mortgages at their request.

3. The notice shall be in writing and shall contain the following data:

1) name and location (place of residence) of the obligor (mortgagor);

- 2) name and location (place of residence) of the mortgagee;
- 3) circumstances which caused termination of mortgage;
- 4) other data which the obligor (mortgagor) and/or the mortgagee considers necessary;
- 5) date of notification and the mortgagee's signature.

## CHAPTER VI PARTICULARITIES OF MORTGAGE OF LAND PLOTS

### Article 45. Land Plots which May be Subject of Mortgage

1. Under the mortgage agreement land plots owned by individuals, legal entities, and the right of use of the land plots may be mortgaged.

2. Land plots which are the subject of mortgage must be separated as an independent land plot.

The agreement on mortgage of the land plot must enclose obligatorily the copy of the plan (drawing of the borders) of this plot issued by the relevant authorized state body.

3. In case of common shared and joint ownership for land plots indicated in point 1 of this Article, the mortgage may be established only on the land plot owned by the individual or legal entity separated into an independent plot being in the common shared or joint ownership.

### Article 46. Mortgage of the Land Plot where Buildings or Installations are Situated

1. Upon mortgage of the land plot the mortgage right shall extend over to the building or installation situated or being constructed on this plot at the moment of entering into agreement on mortgage, including unfinished construction.

2. Upon mortgage of land plot where buildings, installations or residential constructions are located, the part of the land plot occupied with these objects, and the part of the land plot necessary for their use must be separated as an independent land plot. In this case the remained part of land plot shall not be subject to mortgage.

### Article 47. Erection of Buildings and Installations by the Mortgagor on the Mortgaged Land Plot

On the land plot mortgaged under the mortgage agreement, the mortgagor, subject to mortgagee's consent, may, in the established procedure, erect buildings or installations on which the mortgagee's rights shall not extend, unless otherwise provided by the mortgage agreement.

If the erection of the building or installations by the mortgagor on the mortgaged land plot entails or may entail deterioration of the security provided to the mortgagee by mortgage of this plot, the mortgagee may claim alteration of the conditions of the mortgage agreement, including extension of mortgage upon erected building or installation if necessary.

### Article 48. Peculiarities of Foreclosure of the Mortgaged Land Plots and Their Sale

1. The person who acquired the land plot at public sale may change the purpose of the plot only in cases provided by land legislation of the Kyrgyz Republic.

2. Sale and purchase of mortgaged land plots at public auction shall be performed with the observance of requirements provided by land legislation of the Kyrgyz Republic and this Law.

### Article 49. Peculiarities of Foreclosure of Agricultural Land Plots

1. Foreclosure of agricultural land plots may be denied, if violation of the principal obligation committed by the obligor is extremely insufficient and the amount of the mortgagee's claims in the result of this is apparently incommensurate to the value of the mortgaged land.

2. Mortgage of the agricultural land plot may secure the obligation, amount of which is not less than half of the initial (starting) price of the land plot determined in accordance with land legislation.

3. Foreclosure of the agricultural land plot which is the subject of mortgage shall be allowed in case if the mortgagor has no other property mortgaged under this mortgage agreement.

4. In case of valid reasons connected with the use of the agricultural land, which caused default of obligations including bad harvest, natural calamities, flood, hail, and other extreme weather conditions, at mortgagor's request, the court may order to postpone the sale of this land for the period up to three years.

The court, while determining the period for which postponement of foreclosure is provided, shall consider also that the amount of the mortgagee's claims subject to satisfaction from the value of the mortgaged land by the moment of expiration of the postponement, must not exceed the appraised value of mortgaged land indicated in the mortgage agreement, and shall take into account financial position of the mortgagee or initiation of the bankruptcy (insolvency) process against the mortgagor (obligor) or the mortgagee.

Postponement of foreclosure shall not affect the rights and obligations of parties to obligation secured with mortgage of this property and shall not excuse the obligor from indemnification to the mortgagee (obligee) of damages increased during the period of postponement, interests and penalties payable to the mortgagee (obligee).

5. Upon declaration of repeated public sale of agricultural land uneffected the bodies of local self-government may purchase the subject of mortgage at its initial (starting) sale price at which the subject of mortgage was traded at the repeated sale.

#### Article 50. Priority Right of the Mortgagor to Lease (Purchase) Agricultural Land Plot after Foreclosure and Sale Thereof

1. In case of lease of the agricultural land plot by the person which purchased it at sale or by the mortgagee which retained it in accordance with the requirements of this Law, the mortgagor shall have a priority right to enter into agreement on lease of the land plot during one year from the moment of its alienation at sale to the buyer (mortgagee) on equal terms with other persons.

The lessor of the land plot must notify the mortgagor in writing about the intention to lease out the land plot to other person with indication of the period of lease. If the mortgagor refuses from lease or fails to enter into lease agreement during one month from the day of notification, the lessor may lease out the land plot to other person.

Upon lease of the land plot with violation of the priority right, the mortgagor may claim in court within three months for the transfer of the lessee's right and obligations to him.

2. In case of subsequent sale of the agricultural land plot by the person which acquired it at auction or by the mortgagor which retained it as required by this Law, the mortgagor shall have the priority right to purchase this land plot during one year from the moment of its alienation at auction to the buyer (mortgagee) on equal terms with other persons.

The seller of the agricultural land plot must notify in writing the mortgagor of the intention to sell the land plot to other person with indication of price and other material conditions of sale. If the mortgagor refuses to buy or fails to buy the land plot being sold during one month from the date of notification, the seller may sell the land plot to other person.

Upon sale of the land plot with violation of the priority right of purchase, the mortgagee shall have the right to claim in court within three months transfer of the buyer's rights and obligations to him.

The rules of this point shall apply also upon alienation of the land plot under the exchange agreement.

3. Assignment of the priority right of lease or purchase by the mortgagor shall not be allowed.

4. The rules of this article shall apply also upon lease or alienation of the part of the agricultural land plot.

### CHAPTER VII PECULIARITIES OF MORTGAGE OF RESIDENTIAL HOUSES AND APARTMENTS

#### Article 51. Application of Standards of Mortgage of Residential Houses and Apartments

1. The norms contained in this Article shall apply to the mortgage of residential houses and apartments in multi-apartment houses designated for permanent residence belonging to citizens on the ownership right.

2. Mortgage of residential houses and apartments in state or communal ownership and of official residential premises for temporary use shall not be allowed.

3. Hotels, resorts, dachas, summer houses and other constructions and premises not designated for permanent residence may be the subject of mortgage on general grounds.

Where the part of the residential house or part of the apartment consisting of one or several isolated rooms is the subject of mortgage, such mortgage shall be respectively regulated by the rules of this Chapter.

4. Unless otherwise provided by the mortgage agreement, the mortgagor may lease out to the tenant the vacant apartment in the residential house only subject to the mortgagee's consent.



5. Unless otherwise provided in the agreement, upon mortgage of residential house or house being constructed, the right of mortgage shall extend over the land plot as well.

#### Article 52. Mortgage of Apartments in Multi-apartment Residential House

Upon mortgage of apartment belonging to the mortgagor on the right of separate ownership in multi-apartment residential house parts of which are in common shared ownership of the mortgagor and other persons, along with the apartment, the corresponding interest in the rights to common ownership and the land plot shall be deemed mortgaged.

#### Article 53. Mortgage of Residential Houses Being Constructed

Upon construction of the residential house, the mortgage agreement may provide for securing the obligation with the land plot, apartments, unfinished construction and materials and equipment belonging to the mortgagor, prepared for construction.

#### Article 54. Foreclosure of the Mortgaged Residential House or Apartment

After foreclosure of the mortgaged residential house (apartment) and sale of this property, the mortgagor and members of his family residing with him shall vacate the premises at the demand of the owner of the residential house (apartment) within a month provided that:

- 1) the residential house (apartment) was mortgaged under the mortgage agreement as a security for repayment of the credit;
- 2) members of the mortgagor's family residing with him before entering into the mortgage agreement provided notarized obligation to vacate the mortgaged house (apartment) in case of foreclosure.

#### Article 55. Lending and Saving Bank for Housing Construction

1. Lending and saving bank for housing construction is a specialized credit institution aimed at pooling of monetary funds of participants in special housing construction deposits and granting to its participants credits for individual construction or purchase of residential houses and apartments.

2. Lending and saving bank for housing construction is an independent form of the legal entity, non-profit organization and it shall be granted the status of the legal entity from the moment of state registration in accordance with legislation of the Kyrgyz Republic.

3. To begin its activity, lending and saving bank for housing construction must obtain the license of the National Bank of the Kyrgyz Republic which grants the right to conduct the following transactions:

- 1) attraction of monetary funds of its participants to the housing construction deposits;
- 2) granting of housing credits to its participants on the conditions of term, repayment and compensation.

4. The National Bank of the Kyrgyz Republic shall issue the licenses and shall maintain the registry of lending and saving banks for housing construction. The license shall be issued for unlimited term, shall be bearer's and shall not be subject to transfer to third parties.

5. Lending and saving bank for housing construction shall grant to its participants target credits for construction and/or purchase of the residential house (apartment) at the expense of the accrued saving housing deposits.

6. Capital of lending and saving bank for housing construction shall comprise of paid housing saving deposits and reserves created according to the established requirement. Requirements to the minimum size of the capital and the procedure for its formation shall be established by the National Bank of the Kyrgyz Republic.

The capital must be formed from the monetary funds of participants. Formation of the capital with fixed assets, securities and non-material assets shall not be allowed.

7. Activities of the lending and saving bank for housing construction shall be regulated by the normative acts of the National Bank of the Kyrgyz Republic defining peculiarities of the activity of such specialized credit institutions.

#### Article 56. State Specialized Mortgage Institution

1. State specialized mortgage institution is a state body which facilitates functioning of the market of debt securities, encourages circulation of debt securities under mortgage credit, enhances the mechanism of refinancing of the housing construction of mortgage crediting.

2. State specialized mortgage institution is a legal entity activities of which shall be regulated by this Law and relevant normative legal acts of the Kyrgyz Republic.

#### Article 57. Activities of the State Specialized Mortgage Institution

1. State specialized mortgage institution shall have the right to purchase debt mortgage housing obligations with the purpose of issuance of the government debt mortgage securities guaranteed by the Government of the Kyrgyz Republic.

Issuance and circulation of debt mortgage housing obligations shall be regulated by law.

2. Acquisition of debt mortgage housing obligations shall be formalized in the agreement according to the requirements established by legislation of the Kyrgyz Republic. Upon formalizing of the agreement state specialized mortgage institution may involve an independent appraiser to perform additional appraisal of the subject of mortgage.

3. Based on the redeemed debt mortgage housing obligations, state specialized mortgage institution shall issue negotiable state debt mortgage securities.

State specialized mortgage institution must redeem government debt mortgage securities in due time before their maturity date, unless otherwise established by law or agreement.

4. The government of the Kyrgyz Republic shall provide to the state specialized mortgage institution monetary funds with the purpose of redemption of debt mortgage housing obligations and/or government debt mortgage securities in the amount established by the Law on Budget for the respective year.

5. The state specialized institution on mortgage and commercial bank may enter into an agreement for serving of the mortgage credit where the commercial bank shall act as a financial agent of the state body on mortgage connected with the bank service of the mortgage credit.

#### Article 58. Participation of Local Bodies in Mortgage Crediting

Bodies of local self-government within the limits of their budgets may create special bodies on support and development of the system of mortgage crediting in the region. The activity of such bodies shall be performed with the account of peculiarities defined in this Law.

The bodies of local self-government may act as the issuers of housing certificates.

#### Article 59. Peculiarities of Housing Crediting

1. Housing credits for construction or purchase of the dwelling may be granted by the banks, specialized credit institutions and/or other persons. The conditions and procedure of granting housing credits shall be defined by the parties individually with the account of established practice and with the observance of requirements of legislation of the Kyrgyz Republic.

2. Credit for construction of residential house shall be granted according to the terms of the credit agreement.

#### Article 60. Housing Certificates

1. Housing certificate is a security certifying the right of their owners for acquisition of apartment provided the conditions defined in the prospectus are observed. The procedure of issuance and circulation of the housing certificates shall be performed in accordance with law.

2. Housing certificate shall certify the payment by the first owner (legal entity or individual purchasing the certificate) of funds for construction of the definite common space of the dwelling the size of which does not change during the established effective period of the housing certificate.

The owner of the housing certificates shall have the right to purchase the residential premises (houses, apartments) in that case if he owns the definite number of certificates of this series established in the prospectus.

The issuer of the housing certificates shall ensure the possibility of acquiring residential premises (house, apartment).

#### Article 61. Government Guarantees to the Participants of Mortgage

1. Taxation of the amounts directed by the individuals for payment of the principal amount and interests under housing mortgage credit for the purposes of saving in the saving and lending bank for housing construction designated for construction and/or purchase of dwelling, as well as for purchase of housing certificates, shall be produced in accordance with the tax legislation.

2. The State or bodies of local government may provide for certain privileges connected with repayment of housing credits.

## CHAPTER VIII FINAL PROVISIONS

### Article 62. Effectuation of this Law

1. To effectuate this law from the moment of publication.
2. Henceforward, before harmonizing other laws and normative acts of the Kyrgyz Republic with this Law, those laws and normative acts of the KR shall be applied in the part not contradicting this Law.  
The norms of the law of the Kyrgyz Republic "On pledge" shall apply to pledge of the immovable property as long as they do not contradict this law from the date of effectuation of this law.
3. With respect to relationships emerged prior to entrance into force of this Law, this Law shall apply to those rights and obligations which will arise after its entrance into force.
4. The Government of the Kyrgyz Republic :
  - shall harmonize its legal acts with his Law;
  - shall adopt legal acts which support implementation of this Law.

The President of the Kyrgyz Republic A.Akaev

Adopted by the Legislative Assembly  
of the Jogorku Kenesh April 30, 1999