

Registered Real Estate Mortgage Law

Chapter 1: Creation of Mortgage

Article 1

1. **Registered Real Estate Mortgage:** A contract registered in accordance with the provisions of this Law, by which the mortgagee acquires a right *in rem* in a certain registered real estate. Pursuant to such right, the mortgagee's debt shall be met in preference to other creditors with respect to the price of that property irrespective of who possesses it.
2. (a) If the property is registered in accordance with the provisions of the Real Estate Registration Law, the mortgage shall be registered pursuant to the provisions of such Law.

(b) A real estate mortgage not registered under the provisions of the Real Estate Registration Law shall be registered by marking an entry into the record with the competent court or notary public.
3. Real estate mortgage shall have no effect *vis-à-vis* third parties unless registered under the provisions of paragraph (b) of this Article. The mortgagor shall bear the costs of the mortgage contract and registration. If paid by other than the mortgagor, such costs shall be part of the mortgage debt and preference unless agreed otherwise.

Article 2

1. The mortgagor must be the owner of the mortgaged property and shall have the capacity to dispose of the property.
2. The mortgagor may be the debtor himself or a real guarantor presenting a property to be mortgaged for the interest of the debtor even without the latter's permission.

Article 3

If the mortgagor is other than the owner of the mortgaged property, the mortgage shall be subject to an official authorization by the owner, and the mortgage shall be created from the date of the authorization. In the absence of such authorization, the right to mortgage shall be enforceable with respect to the property only from the time said property is owned by the mortgagor.

Article 4

1. The mortgaged property must be defined and existing or likely to exist, and it must be legally saleable.
2. The mortgaged property must be clearly defined and described in the mortgage contract itself or in a subsequent contract, and it must be independently saleable in public auction.
3. The usufruct of the property may be mortgaged separately from the property, and the provisions relating to mortgage and registration of the mortgaged property shall apply.

Article 5

Mortgage shall include all appurtenances to the mortgaged property such as annexes, plants, and other facilities serving said property as well as any other constructions or improvements added thereto after concluding the contract unless agreed otherwise, without prejudice to third party rights related to such appurtenances.

Article 6

Mortgage established by the owners of a commonly owned property shall remain effective irrespective of whether the mortgaged property is divisible or not.

Article 7

1. If a partner mortgages part or all of his commonly owned share, the mortgage shall apply to the part allocated to him after division.
2. If a partner mortgages part or all of his commonly owned share and his share, after division, includes property other than the mortgaged, then the mortgage shall apply to a portion of said property equivalent to the value of the portion originally mortgaged. Such portion shall be determined and registered pursuant to a decision issued by the competent judge.
3. Amounts due to the mortgagor, in lieu of his share or resulting from the price of the mortgaged property, shall be allocated to pay off the debt secured by the mortgage.

Article 8

Prior to maturity of debt, the mortgagee in a common mortgaged property may not demand division of said property without the consent of the mortgagor. Upon maturity of debt, however, the mortgagee may demand sale of the mortgaged share in its common status or demand division without the consent of the mortgagor.

Article 9

The consideration for mortgage must be an established debt, a specified debt promised to be paid, a real property secured by the debtor, or a debt certain to be realized such as a conditional debt, future debt, or probable debt, provided that the amount of the secured debt or the maximum limit of such debt shall be specified in the mortgage contract.

Article 10

Each part of the mortgaged property shall secure the entire debt, and each part of the debt shall be secured by the mortgaged property unless agreed otherwise.

Chapter 2: Effects of Mortgage

Mortgagor

Article 11

1. If the property is registered in accordance with the provisions of the Real Estate Registration Law, it may be disposed of;
2. If the property is not registered in accordance with the provisions of the Real Estate Registration Law, the mortgagor may not dispose of such property, unless agreed otherwise, and this is documented in the deed and register of such mortgaged property.

Article 12

1. The owner shall be entitled to the proceeds of the mortgaged property and shall bear the expenses thereof. He shall also have the right to manage said property without prejudice to the right of the mortgagee.
2. The proceeds shall not be part of the mortgaged property unless otherwise stipulated by the mortgagee.
3. The mortgagor and mortgagee may agree that the matured debt be deducted from the proceeds of the mortgaged property.

Article 13

The mortgagor shall maintain the integrity of the mortgaged property until the debt settlement date. The mortgagee may object to any measure that may reduce the value of the mortgaged property or expose it to loss or defect, and he may take legal preventive measures to protect his right, and he shall have the right of recourse to the mortgagor with respect to expenses.

Article 14

1. If the value of the mortgaged property decreases or the mortgagee is unable

to collect his dues due to loss, defect, or third party rights which result from trespassing, negligence, or deceit by the owner or possessor of the mortgaged property, the mortgagee may demand an increase of the mortgage proportionately to the decreased value or present a similar or a substitute mortgage; otherwise, the person holding the mortgaged property may be required to repay the debt in accordance with the provisions adopted for early repayment as specified in the Finance Companies Control Law;

2. If the loss or decrease in value result from other than trespassing, negligence, or deceit by the person holding the mortgaged property, the remainder of the mortgaged property or its substitute shall replace the mortgaged property according to its preference.

Article 15

1. If the mortgagor is a guarantor rather than the debtor, enforcement may not extend to property other than the mortgaged property.
2. If the mortgaged property is used as a surety, its owner shall have recourse to the debtor, and he may not do so before enforcement takes place on the mortgaged property.

Article 16

In the event of works which may cause loss or defect to the mortgaged property or render it inadequate as a security, the mortgagee may petition the court to suspend such works and take measures to prevent damage in accordance with the provisions of summary proceedings.

Mortgagee

Article 17

Without prejudice to the provisions governing disposition of debts, the mortgagee may transfer to a third party his right to receive payment together with the mortgage, unless agreed otherwise.

Article 18

Debt must be paid off upon maturity. If the debt is paid off, the debtor shall redeem his mortgaged property. Otherwise, the mortgaged property shall be sold at the request of the mortgagee who shall be given priority vis-à-vis all other creditors in receiving payment from the price of the mortgaged property based on debt preference under the law. If the debt is not paid off in full, the mortgagee shall be treated as other creditors with regard to the remainder of the debtor's property.

Article 19

A mortgage contract may not include any of the following conditions:

1. The mortgagee has the right to the benefits of the mortgaged property. However, the mortgagee may, with the consent of the mortgagor, collect the proceeds of the mortgaged property but not benefit therefrom.
2. The mortgagee has the right to own the mortgaged property in consideration of the debt if the mortgagor fails to pay it off at the maturity date.

In either case, the mortgage is valid but the condition is invalid.

Article 20

1. If the mortgaged property is registered in accordance with the provisions of the Real Estate Registration Law, the lease contract made by the mortgagor shall not be enforced *vis-à-vis* the mortgagee unless it is registered prior to the registration of the mortgage contract. However, if the term is less than five years, a lease contract shall be enforced even if registered after the mortgage contract.
2. If the mortgaged property is not registered in accordance with the provisions of the Real Estate Registration Law, the mortgagor is obliged to declare, in the mortgage contract, any right *in rem* or accessory to the mortgaged property. In case of the emergence of any rights affecting the right of the mortgagee as a result of non-declaration, the mortgagor shall compensate

the mortgagee for any incurred damage. If the mortgagor acts in bad faith, a criminal action may be initiated against him in accordance with the provisions of Anti-Forgery Law.

Right of Third Parties

Article 21

The registered mortgage shall be effective against a third party from the date of registration, unless the third party has acquired a right in rem to the mortgaged property prior to mortgage registration.

Article 22

The effect of the mortgage shall be limited to the debt specified in the mortgage document.

Article 23

Assignment of the debt secured by registered mortgage or waiving its preference shall not be taken into consideration against non-contracting parties except after recording the same in the original mortgage document and the property registry.

Preference Right

Article 24

The registered property may be mortgaged to multiple mortgagees in succession. The mortgage preference shall be determined according to its entry number and date of registration. The mortgage shall maintain its preference rank until it is settled and entered into the registry of the competent authority.

The mortgagees' entitlements shall be satisfied from the proceeds of the sale of the mortgaged property or from the substitute property, pursuant to the rank of each mortgagee.

Article 25

A mortgagee may assign his mortgage preference, in proportion to his debt, to another mortgagee of the mortgaged property pursuant to the provisions governing the assignment of rights.

Tracing Right

Article 26

The mortgagee may trace the mortgaged property irrespective of the person in possession thereof for the purpose of satisfying his dues therefrom upon maturity based on its preference rank.

Article 27

A person shall be deemed in possession of a mortgaged property if he is assigned ownership of such property or any other right in rem which can be mortgaged for any reason without being personally liable for the debt secured by the mortgage.

Article 28

The mortgagee may apply for foreclosure of the mortgaged property if the debtor fails to pay off his debt upon maturity, provided that the debtor and possessor of the property are duly notified in accordance with the Enforcement Law.

Article 29

Upon notice, the possessor of the mortgaged property may pay off the debt and expenses with the right to recourse to the mortgagor, and he may assume the rights of the creditor who has been paid off.

Article 30

1. The possessor of the mortgaged property may clear it from any registered

mortgage.

2. This right shall be retained by the possessor until the sale of the mortgaged property, and he may recourse to the debtor for the payments he made.

Article 31

The procedures for the foreclosure and sale of the mortgaged property upon the debtor's failure to repay the debt shall be subject to the provisions of the Enforcement Law.

Article 32

The possessor of the mortgaged property may bid at the auction, and if he is the winning bidder and he makes the payment, he shall be deemed the owner of the mortgaged property by virtue of the original title. The mortgaged property shall be cleared from any registered right if the possessor pays the amount determined by the auction or deposits it with the court's bank account.

Article 33

If the winning bidder of the mortgaged property is not the possessor, he shall become the owner by virtue of the decision awarding him the bid and he shall receive his right from the possessor whether the possessor enters the bid or not.

Article 34

If the sale price of the mortgaged property exceeds the value of registered debts, the difference shall be for the owner.

Article 35

The possessor of the mortgaged property may object to the debt causing the sale of the mortgaged property by all possible means available to the debtor if the debt was registered subsequent to the title deed of the possessor.

Article 36

1. The possessor may file a guarantee action against the previous owner within the limits allowing the new owner the right of recourse to the previous owner whether as compensation or gift.
2. The possessor may have the right of recourse to the debtor for any excess payment irrespective of the reason giving rise to such payment, and he shall assume the right of the creditors that he had paid off, including securities provided by the debtor but not securities provided by any other person.

Chapter 3: Termination of Mortgage

Article 37

1. Mortgage is subordinate to debt, and shall terminate upon repayment of all related debts.
2. If the debt is paid and becomes due again for any legitimate reason, the mortgage will be reinstated without prejudice to the rights of *bona fide* third parties during the period between the termination and reinstatement of the debt.

Article 38

1. If the debt is paid, in whole or in part, prior to its maturity date by agreement of the contracting parties, pursuant to a contract, a court order, or the law, part of the debt shall be reduced pursuant to the provisions governing the criteria of prepayment as stipulated in the Finance Companies Control Law.
2. If the debtor defaults, and the court sells the mortgaged property prior to its maturity date, the court shall order the payment of installments due to the creditor and deposit the remainder in the court's bank account. The debtor may request the release of the amount if he makes a prepayment or presents a bank guarantee for the payment of the remainder of the debt.

Article 39

The registered mortgage shall terminate by foreclosure of the mortgaged property in accordance with the law and upon payment of its sale proceeds to the mortgagees' creditors according to their respective ranks or depositing such proceeds into the court's bank account.

Article 40

Registered mortgage shall terminate upon merger where the same person becomes the mortgagor and owner, whether by conveying ownership of the mortgaged property to the mortgagee or by transferring the mortgage right to the mortgagor. If the reason for such merger terminates with a retrospective effect, the mortgage shall be reinstated.

Article 41

The registered mortgage shall terminate if the mortgagee waives his right to the mortgage and such waiver is documented, and he may waive the right to the mortgage without effect on the debt.

Article 42

The registered mortgage shall terminate upon the total loss of the mortgaged property, and the provisions governing loss of mortgage provided for in this Law shall apply.

Article 43

The mortgagor and the possessor may apply for redemption of the mortgage after the lapse of the period for hearing the action relating to the debt subject of the mortgage provided for in other laws.

Article 44

The mortgage shall not terminate upon the death of the mortgagor or mortgagee, nor by losing legal competence. In case of the death of either of

them, his heir shall succeed, and in case of incompetence, his guardian shall represent him.

Article 45

The competent court shall decide disputes arising from the implementation of the provisions of this Law.

Article 46

This Law shall enter into force 90 days from the date of its publication in the Official Gazette.