

On the basis of Article 88, item 2 of the Constitution of the Republic of Montenegro I hereby pass the

**ENACTMENT PROCLAIMING
THE LAW ON MORTGAGE
(Official Gazette of the Republic of Montenegro, No 52/04 dated 2 August 2004)**

I hereby proclaim the Law on Mortgage, adopted by the Parliament of the Republic of Montenegro at the seventh meeting of the first regular session in 2004, held on the 28th of July 2004.

Number: 01-1075/2
Podgorica, 30 July 2004

President of the Republic of Montenegro
Filip Vujanovic, signed

LAW ON MORTGAGE

**Concept
Article 1**

Immovable property may be encumbered by a security interest (mortgage) to secure a claim for the benefit of a creditor who is authorized, in the manner prescribed by this Law, to demand satisfaction of his claim by foreclosing the mortgaged property with priority over creditors who do not have a mortgage created on that particular property, as well as over any subsequently registered mortgage, regardless of a change in the owner of the encumbered immovable property.

**Mortgaged Property
Article 2**

A mortgage can be created on an individual property that has the capacity to be monetarily valued, as well as on a percentage (share) of that property.

If the immovable property is improved during the effectiveness of the mortgage, the mortgage shall also relate to the improvements (extensivity of a mortgage).

A mortgage agreement may be secured by a future property, but the mortgage can be registered in the real estate registry only when the property comes into existence.

The provisions of this Law shall be applied to the security interest in ships and aircrafts, unless otherwise prescribed by a special law.

Possession of Mortgaged Property Article 3

A mortgagee shall neither have the right to possession of the mortgaged property, nor to collect or usurp fruits and other benefits from the mortgaged property or use it in any manner, unless otherwise prescribed by this Law.

Attachment of a Mortgage to the Property Article 4

A mortgage cannot be separated from the encumbered immovable property even when a third party acquires ownership of the property.

A mortgage cannot be transferred from one immovable property to the other unless the mortgagee and mortgagor agree otherwise.

Immovable Property Owned by Several Persons Article 5

A co-owner of immovable property can mortgage his share of the property without the consent of the other co-owners.

The consent of all co-owners shall be required for a contractual mortgage on the entire property that is under co-ownership.

If immovable property is under joint ownership, the entire immovable property can be mortgaged only with the consent of all joint owners.

Scope of Mortgage Article 6

A mortgage shall attach to the entire immovable property, and to its fruits until they are separated, and to its constituent and accessory parts.

If the mortgaged property is divided, the mortgage shall continue to encumber all parts.

A mortgagee shall have the right to collect fruits of the immovable property when only the right to the fruits is pledged under the mortgage agreement.

The value of the fruits the mortgagee collected shall set off his claims, in the following sequence: the costs entitled to be compensated, interests and the principle amount.

Obligations Secured by a Mortgage Article 7

The mortgage shall secure the entire claim, interest and other ancillary claims and enforced collection costs.

A mortgage can be created to secure conditional or future claims.

If at the moment of creation of the mortgage the exact amount of the claim is not known, the maximum amount of the claim secured by the mortgage must be specified in the mortgage agreement.

A mortgage shall be used to secure the satisfaction of an obligation based on the value of the encumbered property which obligation must be a financial obligation or an obligation that can be monetarily valued.

A claim is specific enough if the creditor and debtor, the legal grounds and the amount, i.e. the maximum secured amount, are determined.

Conditional Mortgage and Credit Mortgage Article 8

In the Real Estate Registry, a mortgage securing a claim that does not have to occur can be registered (conditional mortgage).

If a mortgage secures claims that could arise from approved credit, management take over, guarantee or compensation of damage or other claims, after some time or after meeting a certain requirement, the maximum amount that credit or liability can reach should be stated (credit mortgage) in a document on the basis of which the registration is allowed.

Continuing Mortgage (Continuing Security Clause) Article 9

A mortgage securing the fulfillment of certain obligation may be extended to contractual obligations occurring between the mortgagee and mortgagor upon conclusion of the mortgage agreement, which are due before satisfaction of obligation secured by the mortgage.

The mortgagor shall not conclude with the same mortgagee a new mortgage agreement on the same property for a new loan agreement or liability up to the amount stated in a mortgage agreement (continuing mortgage).

Creation of a Mortgage Article 10

A mortgage may be created on the basis of an agreement between the parties, a court decision or when requirements prescribed by law are met.

A mortgage shall be created by registration in the real estate registry.

If all requirements for the registration are not met, a mortgage can be created by pre-registration, provided that the pre-registration notes are justified later on and that all requirements for pre-registration are met.

Pre-registration of a mortgage shall be allowed if the claim and legal ground for creation of the mortgage are proved to exist.

The provisions of this Law on creation of mortgage by registration in the real estate registry shall be applied to changes and termination of the mortgage.

A mortgage cannot be created on the basis of a will.

Records on mortgages registered in the real estate registry shall be published on the web site of a body in charge of mortgage registration.

Mortgage Agreement Article 11

A mortgage agreement shall oblige a debtor or a third party (mortgagor) to register his security interest in the real estate registry in order to secure creditor's claims, whereas a creditor shall be obliged to issue a certificate to delete the mortgage from the public book upon satisfaction of his claims.

A mortgage agreement must be concluded in writing and authenticated by a competent body.

A mortgage agreement shall include:

- the name and address, or headquarters of the mortgagor;
- the name and address, or headquarters of the mortgagee;
- description of the obligation secured by the mortgage, or, if the obligation is set forth in a separate principal agreement, a precise reference to the principal agreement;
- the mortgaged property, cadastre number of the mortgaged property, cadastre parcel and the designation of the cadastre municipality in which the immovable property is located;
- rights and obligations of the contractual parties;
- maturity date and manner of satisfaction;
- the date of conclusion of the mortgage agreement;

- name and address or headquarters of a person to whom extra-judicial sale shall be delegated to;
- the signatures of the parties.

Mortgage as a Guarantee for the Debt of Another Article 12

Based on a mortgage agreement, immovable property can be mortgaged in order to secure the debt of a third person.

Joint Mortgage Article 13

To secure a claim, a mortgage can be created on several immovable properties.

If a mortgage is created to secure a claim from the value of several properties, a mortgagee can choose from where to satisfy his claim, unless otherwise agreed-upon, i.e. established by a decision of a competent body.

Several Mortgages on the Same Immovable Property Article 14

In the case there are several mortgages on the same immovable property, the priority of a mortgage shall be established according to the moment of submission of the request for its registration.

Creditors shall be satisfied in the order of priority.

Alteration of Priority Article 15

The priority of a mortgage cannot be changed without the agreement of all persons whose rights will be affected by the change.

Assignment of Mortgage Article 16

A mortgage can be assigned to another person only together with an assignment of the secured obligation.

A mortgage may be assigned as referred to in paragraph 1 of this Article without the consent of the debtor, but the debtor must be informed of the assignment.

The notice of assignment shall include:

- the name and address or headquarters of the assignee;

- the date the assignment was or will be completed;
- the number of the account and the name of the bank where all future payments are to be made.

The assignment of a mortgage to a third person shall be done by registration in the real estate registry.

Disposal of Mortgaged Property Article 17

A mortgagor shall have the right to keep and use the mortgaged property, to lease it or divest of it without the consent of the mortgagee, but the right of a mortgagee shall not be diminished.

A mortgagor shall be authorized to use the property according to its common purpose.

A mortgage agreement can restrict the right of mortgagor to divest of mortgaged property, or it can restrict the use of the mortgaged property.

In case of sale of the mortgaged property to a new owner, the obligation secured by the mortgaged property shall not be transferred, unless otherwise agreed by the mortgagee.

Obligations of a Mortgagor Article 18

A mortgagor shall be obliged to maintain the mortgaged property with the diligence of a conscientious custodian, i.e. due care.

A mortgage agreement can oblige the mortgagor to insure the mortgaged property.

The mortgagor shall be obliged to inform the mortgagee of all changes in the property, and especially on deterioration of its condition or loss in value. He shall be liable for any damages.

Protection of Mortgage Article 19

A mortgagee shall be authorized to protect his right against all third persons, as well as mortgagor, and especially to request the following:

- protection of violated security interest by means used for the protection of registered rights;
- that a mortgagor or a third party restrains from actions on the mortgaged property that can endanger it or diminish its value or make its condition worse in another manner;

- that he gets fruits of the mortgaged property, if he holds the security interest in the fruits in accordance with a mortgage agreement.

Rules on the protection of ownership rights shall be applied to the requests set forth by a mortgagee for the protection of a mortgage.

Sale of Mortgaged Property Before It is Due Article 20

If a mortgagor endangers the mortgaged property or diminishes its value or in another manner makes its condition worse, a mortgagee can request the mortgagor to restrain from such actions. In the case he does not obey, the mortgagee can realize on the mortgaged property in accordance with this Law, even before the claim becomes due.

A court may, at the request of a mortgagee, order that the property be seized from the mortgagor and handed over to a third person in possession, if a debtor does not maintain the property in accordance with the agreement and law.

Void Provision of the Agreement Article 21

The provision of a mortgage agreement stating that a mortgagee shall be entitled to satisfy his claim in the case of default by acquiring the ownership right on the mortgaged property, to collect fruits of the mortgaged property and use the property in another manner shall be void.

Satisfaction of Mortgage Right Article 22

A mortgagee shall be entitled to demand the satisfaction of his claims from the value of the mortgaged property regardless of whether the mortgagor or a third party owns it.

Commencement of Foreclosure Article 23

A mortgagee shall be obliged to inform in writing a debtor and mortgagor, when they are not the same person, and any third party keeping the property, that there has been a default on the secured obligation and that if the default is not cured within 15 days of registration of the notice that the mortgagee intends to initiate foreclosure proceedings under the agreement and this Law.

The notice of commencement of foreclosure must be registered in the real estate registration office in which the mortgage agreement was registered.

A copy of the notice shall be delivered to other persons who hold encumbrances on the mortgaged property that were registered after registration of the mortgage.

The notice stating that the payment of debt is due shall contain:

- a description of the mortgage agreement, and the principal agreement, if any, under which the default has occurred;
- the name and address or headquarters of the mortgagee;
- the name and address or headquarters of the mortgagor, and the debtor, if that is not the same person;
- the address, cadastre number and the name of the cadastre municipality of the mortgaged property;
- a statement that a default has occurred and a description of the default;
- a manner of claim satisfaction and the time period during which the default must be cured, which shall be not less than 15 days after the date of registration of the notice.

Prohibition Against Disposal Article 24

Upon the submission of a mortgagee's notice, a mortgagor cannot dispose of the mortgaged property without the approval of a mortgagee.

Manner of Claim Satisfaction Article 25

If a default has occurred and is not cured within the 15-day period provided for in the notice, the mortgagee may pursue one of the following remedies determined by the agreement:

- extra-judicial foreclosure in accordance with this Law.
- judicial enforcement of the mortgage according to the law regulating executive procedures.

Extra-Judicial Foreclosure Article 27

The mortgagee may commence the extra-judicial foreclosure procedure upon the expiration of the 15-day cure period identified in the notice of commencement of foreclosure.

The mortgagee shall commence the process by registering a notice of sale in the real estate registry in which the mortgage agreement was registered and by delivering a copy of the notice to the mortgagor, or to the debtor from the agreement secured by the mortgage, if not the same person.

A copy of the notice shall be delivered to all persons who hold encumbrances on the mortgaged property that were registered after registration of the mortgage.

Contents of the Notice of Sale Article 27

The notice of sale shall contain the following:

- the date and time of the sale;
- the location where the sale will be conducted, which shall be in the municipality in which the mortgaged property is located;
- the number of extract from the real estate registry, cadastre parcel number and the name of the cadastre municipality of the mortgaged property, and a type of the property;
- the total amount of the unpaid balance of the mortgage;
- estimate of the real costs, and other expenditures made since the commencement of foreclosure procedure;
- terms of sale; and
- the name, address or headquarters and phone number of the authorized person who will be conducting the sale.

Publishing the Notice of Sale Article 28

The notice of sale shall be published at least once a week for two consecutive calendar weeks, the first publication to be at least 15 days prior to the date of sale, in two separate daily newspapers published and distributed on the territory of the Republic of Montenegro.

At least 15 days before the date of sale, the notice of sale shall be posted in a visible place on the property to be sold.

Satisfaction of Contractual Obligation Before Sale Article 29

The debtor, or the mortgagor if they are not the same person, or the person holding any registered encumbrance on the mortgaged property that has a lower level of priority than the mortgage which is the subject of the foreclosure may cure the default at any time before the sale of the mortgaged property by paying the amounts stated in the notice of sale.

If the default is cured, the mortgagee shall deliver to the mortgagor a notice of rescission of sale and register the notice in the real estate registry in which the mortgage was registered.

**Notice of Change of Address
Article 30**

The persons referred to in paragraphs 1 and 3 of Article 23 of this Law shall be obliged to register a notice of change of address in the registry in which the mortgage was registered, and inform the debtor and the other parties on whose behalf an encumbrance on the mortgaged property is registered in writing of any change in address.

**Deadline for Extra-Judicial Sale
Article 31**

The extra-judicial sale may be held no earlier than 30 days following registration of the notice of sale.

The mortgagee and mortgagor can agree to shorten the 30-day period between the registration of the notice of sale and commencement of the sale provided that the requirements for publishing the notice of sale have been met.

**Extra-Judicial Public Sale by Auction
Article 32**

Extra-judicial sale shall be done through auction carried out by a person determined by a mortgage agreement.

A person authorized to conduct the procedure cannot be a buyer of the property subject to extra-judicial sale.

The property subject to extra-judicial sale shall be sold to a person who offers the highest price.

The mortgagee, who bids at the sale, shall have the right to offset its bid to the extent of the full amount of the secured obligation, including unpaid interest, late charges, costs of sale, fees and other expenses related to the mortgage.

**Complaint by the Mortgagor
Article 33**

The mortgagor may contest the right of the mortgagee to foreclose the mortgage using the extra-judicial sale procedure, if within 15 days of receipt of the notice of sale, he submits a complaint to the competent court.

Submission of the complaint does not postpone the foreclosure, except if the mortgagor submits evidence that secured claim has been fulfilled or is not due, that there has been a breach of the procedures prescribed by this Law, or that the mortgage has not been registered in accordance with this Law.

When determining deadlines and hearings on the complaint, the court shall pay special attention to the urgency of these disputes.

Good Faith Buyers in Extra-Judicial Public Sale Article 34

Ownership of the mortgaged property which a good faith person acquires at an extra-judicial sale is acquired subject to any encumbrances that were registered prior to the mortgage and free of any encumbrances that were registered after the mortgage, except as otherwise provided by law.

Ownership right acquired by a good faith buyer cannot be contested due to potential deficiencies in the sale procedure.

Transfer of Ownership After Public Sale Article 35

Upon full payment of the purchase price by the winning bidder at the public sale, the person authorized to conduct the sale shall be authorized to sign a purchase and sale agreement on behalf of the mortgagor transferring the property to the buyer and to authenticate his or her signature on the agreement.

Informing Tax Authority Article 36

The regional body of the Real Estate Directorate shall be obliged to inform the competent tax authority within 8 days of the moment of acquisition of the ownership right on the mortgaged property.

Satisfaction of the Main and Subordinated Claims and Reimbursement of the Surplus Article 37

The proceeds of the sale shall be distributed in the following order:

1. to property taxes on the mortgaged property;
2. to reimburse the costs of the sale, including compensation of the person authorized to conduct the sale in accordance with this Law;
3. to the mortgagee to satisfy the amount of the main and other subordinated claims secured by the mortgage;
4. to pay amounts related to other encumbrances on the mortgaged property that were registered after the mortgage ;
5. any remainder to the mortgagor within 8 days.

If the mortgagee does not pay the remainder to the mortgagor within 8 days, he shall pay the mortgagor default interest provided by law.

Foreclosure in the Case of Bankruptcy Proceedings Article 38

In the case of bankruptcy proceedings, the satisfaction of claims from the value of mortgaged property shall be done in accordance with the regulations governing bankruptcy.

Termination of a Mortgage Article 39

A mortgage terminates when:

- the mortgagee renounces the mortgage in writing and when the mortgage is deleted from the real estate registry;
- the obligation secured by the mortgage ceases to exist or is satisfied together with interests and other subsidiary claims, as well as by deletion of the mortgage from the real estate registry;
- the mortgaged property is sold at a judicial or extra-judicial sale to fulfill the secured claim;
- the mortgaged property is completely destroyed;
- a decision ordering termination of the mortgage becomes final;
- the same person is both mortgagee and mortgagor or a mortgagee acquires the ownership right on the mortgaged property and when the mortgage is deleted from the real estate registry.

Within 8 days after termination of a mortgage, the mortgagee, or in the case of a judicial sale, the court shall execute and deliver to the mortgagor a certificate of termination of mortgage.

The mortgagor shall be entitled to submit a request for deletion of mortgage based on the acquired certificate to the body competent for registration of mortgages.

If the mortgagee has not delivered to the mortgagor a certificate of termination of mortgage within 8 days of termination of the mortgage, the court may be requested, by the mortgagor, to determine that a claim is satisfied and order deletion of the mortgage from the real estate registry.

A mortgagee who fails to execute and deliver a termination of mortgage shall be liable for any damages caused as a result of such failure.

Destruction of the Property Article 40

If the mortgaged property is completely destroyed and is not replaced by other property or right, the mortgage shall cease to exist.

If a mortgaged property was insured, a security interest shall be established in the insured amount that is deposited in a court deposit in the amount of the creditor's claim in order to secure it.

**Transitional Provision
Article 41**

Provisions of this Law shall not apply to mortgage agreements concluded before the effective date of this Law, unless parties to the agreement determine otherwise.

**Mortgage Records on the Internet
Article 42**

The records referred to in paragraph 7, Article 10 shall be established within a year upon the effective date of this Law.

**Superseding
Article 43**

By coming into force this Law shall supersede the provisions of Articles 63-69 of the Law on Basic Ownership and Proprietary Relations (Official Gazette of the Socialist Federal Republic of Yugoslavia, No 6/1980, 36/1990 and 29/1996).

**Coming into Force
Article 44**

This Law shall come into force on the eighth day after its publication in the Official Gazette of the Republic of Montenegro.