

# PLEDGING IN CIVIL LAW AND ITS SPECIFIC FEATURES ON THE EXAMPLE OF A MORTGAGE AGREEMENT

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## Abstract

The article analyzes the pledge in civil law and its features using the example of a mortgage agreement. The opinions of domestic legal scholars regarding the legal nature of the mortgage, as well as the features and advantages of the mortgage as a type of pledge are considered.

**Keywords:** Mortgage, obligation, creditor, debtor, real estate, pledge, agreement.

## Introduction

The civil legislation of the Republic of Uzbekistan establishes measures aimed at ensuring guarantees of fulfillment by the debtor of the obligations assumed by him within the framework of a civil law contract, in order to ensure protection of the interests of the creditor. The said measures are intended to stimulate the debtor to properly fulfill the main obligation. As a general rule, these measures lead to the creation of unfavorable material consequences for the debtor. The legislator calls these measures methods of securing the obligation; they impose additional obligations (encumbrances) on the debtor in the event of non-fulfillment or improper fulfillment of the obligation [4].

In accordance with the current legislation, the creditor, under the obligation secured by the pledge, has the right, if the debtor fails to fulfill or improperly fulfills the obligation, to receive satisfaction of his claims at the expense of the value of the pledged property, and the pledgees are granted a preferential right to satisfy the obligation before other creditors of the debtor [2]. As for the legal nature of the mortgage, there is no consensus among domestic legal experts. Some scholars believe that the right of pledge relates to the institution of property law. For example, E.V. Vaskovsky [3] in his works considers mortgage as a property right, which provides its owner with the opportunity to satisfy their claims for the value of the pledged property in the event that the debtor does not fulfill or improperly fulfills the main obligation. At the same time, other scholars in their works indicated that the right of pledge is a property right and relates to the rights to someone else's thing. He also notes that the property nature of the pledge is manifested in the fact that the pledge has a thing as an object, the pledge follows the thing everywhere, regardless of who the ownership right passes to. At the same time, these same scholars point out that the right of pledge, although it relates to the group of property rights, is nevertheless not devoid of features that distinguish it from other property rights. As the main feature, he highlights the fact that the right of pledge does not have an independent meaning, but depends on the main obligation.

Since the formation of property relations in human society, measures have been developed to ensure the fulfillment of obligations assumed by debtors: "The transfer of property or the right to it by one person to another person to secure obligations is considered a pledge" [1]. In particular, a pledge is one of the most reliable and effective methods of ensuring the fulfillment of obligations. Pledge has a long history of development. The essence of the pledge has always been the same, it is aimed at securing obligations, but its retention has changed.

"In the event that the debtor fails to fulfill the obligation secured by the pledge under the pledge, the creditor (pledgee) shall have the right to have his claim under this obligation satisfied from the value of the pledged property in a preferential manner compared to other creditors of the person who owns this property (pledgee), in the manner prescribed by law" [1].

Thus, the essence of the pledge is that the debtor gives the creditor his property intended to secure the fulfillment of his obligations. The property given as a pledge can belong to both the debtor and another person. The person who pledges his property is called the pledgor. The creditor whose claims are secured by the pledge is the pledgee. The pledge does not imply the transfer of ownership of the property to the creditor. The pledge only gives the creditor the opportunity to satisfy his claims against other creditors of the debtor from the value of the pledged property. In the event of the debtor's failure to fulfill his obligations, the pledged property is sold and the creditor's claims secured by the pledge are preferentially satisfied from the proceeds.

As for the types of pledge, according to Article 265 of the Criminal Code, there are the following types of pledge:



1. pledge (in which the pledged object is kept by the pledgee);
2. mortgage (in which immovable property is pledged);
3. pledge of property rights [4].

Let us consider a mortgage agreement as an example: a mortgage agreement is concluded in compliance with the provisions of the legislation. A mortgage agreement must be notarized and state registered. The mortgage agreement must necessarily indicate the mortgage object, its price, nature, amount, the term for the performance of the obligation secured by the mortgage, and which of the parties owns the pledged property, as well as other information agreed upon by the parties. The mortgagor, when concluding a mortgage agreement, must notify the mortgagee in writing of all rights of third parties to the mortgage object known to him at the time of state registration of the mortgage (pledge, life tenure of the land plot, lease rights, easements and other rights) [2].

Failure to fulfill this obligation gives the mortgagee the right to demand early fulfillment of the obligation secured by the mortgage or a change in the terms of the mortgage agreement. The obligation secured by the mortgage must be indicated in the mortgage agreement, specifying its amount, grounds for its occurrence and term of fulfillment. In cases where this obligation is based on any other agreement, the parties, date and place of conclusion of this agreement must be indicated. If the amount of the obligation secured by the mortgage is to be determined in the future, the mortgage agreement shall specify the procedure for determining the amount of the obligation secured by the mortgage and other necessary conditions. If the obligation secured by the mortgage is to be performed in parts, the mortgage agreement shall specify the terms (periodicity) of the relevant payments and their amounts or the conditions allowing to determine these amounts.

In the event of the termination of the mortgage as a result of the performance of the obligation secured by the mortgage or at the request of the mortgagor (Part Three of Article 274 of this Code), the mortgagee, who has the mortgaged property at his disposal, shall be obliged to immediately return it to the mortgagor.

At present, a mortgage is recognized as the most reliable way to ensure the fulfillment of the main obligation in civil circulation. All this is explained by several factors:

- a mortgage specifies a specific real estate property, the value of which exceeds the cost estimate of the main obligation, which guarantees the repayment of the main obligation in the event of its non-fulfillment or improper fulfillment;
- the parties are initially aware of the fact that the value of the mortgaged property exceeds the value of the main obligation, which creates guarantees for the creditor and encourages the debtor to properly fulfill the obligation;
- the pledgee gets the opportunity to preferentially satisfy his claims against the debtor at the expense of the mortgaged property;
- the property transferred as collateral under the mortgage agreement often has not only a high value, but also is of high value to the debtor, which serves as an additional incentive for the proper fulfillment of the main obligation;

According to researchers and scholars in the field of economics and law, the main distinguishing feature of the subject of a mortgage pledge is not only the high cost of real estate, but also a special regime for the circulation of real estate, which does not allow the pledged property to be alienated unnoticed by the pledgee.

It is also necessary to note the special features that allow us to distinguish a mortgage as a special type of collateral:

- property nature, since the subject of the mortgage is exclusively real estate, both owned by the debtor under the obligation and that which he will acquire in the future [5];
- high economic value and cost of real estate, which makes it significant in economic activity and in the life of citizens;
- a high incentive effect, which is aimed at forcing the debtor to voluntarily and properly fulfill the main obligation;
- a special procedure for the circulation of real estate, which does not allow the debtor (without violating the norms of the law) to sell the already pledged property without the consent of the pledgee [3]. In general, a mortgage, as a way to ensure the fulfillment of the main obligation, is currently the most preferable method for creditors, since it not only stimulates the debtor to properly fulfill the obligation, but also in the event of non-fulfillment or improper fulfillment of the main obligation, is able to fully ensure the fulfillment of the main obligation, thereby reducing the risks of the creditor to incur losses. At the same time, a mortgage is able to secure any civil-law obligation, because a mortgage can ensure the fulfillment of an obligation under a credit agreement, a loan agreement or other obligation, including an obligation arising from a sale and purchase agreement, a contract, or another agreement, unless otherwise provided by the state legislation of the Republic of Uzbekistan.

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