

## SUMMARY

**Key Words:** loan, loan, contract, mortgage, security of obligations

**Subject matter:** the legal norms regulating the mortgage agreement (pledge of real estate) in the modern civil legislation, law enforcement practice.

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**The relevance of the research topic** This topic is interesting from a practical point of view, since mortgage lending is one of the leading areas for solving the housing problem. Therefore, the mortgage lending system should today become a necessary institution in Russia, which in the conditions of a market economy, the state would use both in economic and social policies. The number of people applying to commercial organizations (banks) for a mortgage loan is growing every year. Mortgage loan helps to solve the eternal housing problem.

In the Russian Federation today, not only economic, but also legal prerequisites are being created for the implementation of the mortgage lending system: the Civil Code of the Russian Federation, the Federal Law "On Mortgages (Real Estate Pledges)" are in place, laying the legal basis for the functioning of the mortgage lending system; legislatively formalized the activities of all professional subjects of the mortgage market (appraisal, real estate, insurance companies); mortgage legal relations between the subjects of mortgage schemes begin to form and regional systems of mortgage lending develop. In world practice, there are two schemes of mortgage lending - banking and non-banking. Non-bank mortgage lending mechanisms should receive government support.

**The purpose of the work:** generalization of the theoretical and practical foundations of the institution of mortgage lending, identifying the main trends in the development of a mortgage agreement at the present stage.

**Objective:** - conduct a comprehensive analysis of the legal framework of the mortgage lending system in the Russian Federation;

- analyze the legal status of the subjects of mortgage relations;
- identify the general conditions and features of the contracts in the mortgage system;
- analyze the specifics of the mortgage agreement under Russian law..

**The theoretical and practical significance of the research** The theoretical significance of the study is that the paper analyzes the legal problems of foreclosure for mortgaged housing under a mortgage agreement and suggests ways to solve them that are of particular interest to all participants in this type of legal relationship. The practical significance of the study lies in the fact that the work comprehensively examined the theoretical and practical problems of the institute of mortgages in civil law, analyzed the features of the mortgage agreement from various points of view, which made it possible to highlight the problems of regulation of this institution and the practice of their application.

**Results of the study:**

1. The main feature of the legal construction of a mortgage agreement under Russian law is that it is formulated as an accessory agreement, the existence of which depends on the validity of the underlying obligation.
2. The accessory nature of the Russian mortgage is a significant obstacle to the circulation of collateral rights, since the debtor under the main obligation can counter the requirements of the new pledge holder with a large number of objections related to the invalidity and other legal defects of the main contract. P. 2, Art. 13 of the Federal Law "On Mortgage", having established that a mortgage certifies the right to receive performance on monetary obligations secured by a mortgage without presenting other evidence of the existence of these obligations, does not exclude the debtor to challenge the mortgage itself, the lawfulness of its compilation, issuance and other circumstances that, as a result again, they may lead to the need to study the validity of

the underlying obligation.

3. A mortgage agreement on property that the mortgagor was not the owner of should be recognized as a void transaction, because in accordance with Art. 335 of the Civil Code of the Russian Federation and Art. 6 of the Federal Law "On Mortgage", the pledger of the property may be its owner or, with the consent of the owner, a person who has the right to economic management, and on the basis of Art. 168 of the Civil Code of the Russian Federation, a transaction that does not comply with the law is void.

4. The content of Art. 354 of the Civil Code of the Russian Federation and Art. 42 of the Federal Law "On Mortgage" allows us to conclude that the absence of the right of ownership of the mortgaged property of the mortgagor does not affect the legal force of the mortgage agreement and it ceases to be valid only in case of seizure of property from this person upon satisfaction of the vindication claim. The issuance of the loan amount prior to registration of the mortgage agreement entails the risk of leaving the issued loan (loan) unsecured due to the recognition of the mortgage agreement as not concluded.

5. If the violation of obligations made is insignificant with respect to the value of the mortgaged housing, the court may also refuse to foreclose the property mortgaged under the mortgage agreement.

6. A mortgage agreement may be concluded only to secure an obligation of a monetary or property nature. A pledge transaction that does not meet these requirements of the law cannot be the basis for foreclosure on pledged property in case of failure to fulfill the basic obligation.

7. The proceeds from the sale of the pledged asset may not be enough to cover the entire amount of the borrower's debt on the loan. However, by virtue of paragraph 5 of Art. 61 of the Federal Law "On Mortgage", the obligations of the borrower may terminate. The same risk that the creditor does not receive the full amount of the loan debt arises when the pledge holder leaves the pledged item with him.

#### **Recommendations:**

1. It is necessary to amend the provisions on the legal structure of the mortgage agreement itself, as enshrined in the Federal Law "On Mortgage", providing, along with the "security", the legal structure of the "negotiable" mortgage. The latter should be intended for the circulation of collateral rights and contain rules on the release of the pledge holder from the need to prove the validity of the main obligation.

2. In Art. 352 of the Civil Code of the Russian Federation, providing for the grounds for termination of the pledge, the seizure of property by its current owner is not indicated. The contradiction of the norms of legislation in this case should be resolved in favor of Art. 335 of the Civil Code of the Russian Federation and Art. 6 of the Federal Law "On Mortgage", on the basis of which a mortgage agreement on property not belonging to the mortgagor should be a void transaction that does not cause legal consequences, regardless of whether the real owner claimed his property from someone else's illegal possession or not.