

SUMMARY

Key Words: agreement, loan, bank, borrower, mortgage, consumer loan

Subject matter: Credit agreement under the laws of the Russian Federation: problems of theory and practice.

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The relevance of the research topic Currently, both in the legal doctrine and in practice, there are many questions regarding the process of lending to citizens and legal entities in our country, including due to non-performance of loan agreements, as well as in case of abuse by subjects of the rights granted to them. In recent years, in Russia there has been a significant increase in banking operations of credit organizations for lending.

At the same time, quantitative growth does not correspond to the qualitative level of lending. This applies both to high interest rates for all types of loans issued, and to the high risk of default on loans and an increase in arrears.

Despite the traditionally great attention paid to the loan agreement in the literature, the topic is still relevant to this day. Russian legislation lags far behind in regulating credit relations. A number of issues remain unresolved, including regarding the responsibility of the parties for failure to fulfill obligations under the loan agreement, it is not clear what is meant by circumstances that clearly indicate that the loan will not be repaid on time, and which are the basis for the bank to refuse to grant a loan, the uncertainty of the wording “interest due” used in the event a creditor submits a request for early performance by a borrower of obligations under a loan agreement, etc. Russian commercial banks are quite formal in their approach to concluding a loan agreement, without paying due attention to the wording of conditions that can ensure repayment of funds.

Thus, the economic and legal significance of the loan agreement, its insufficient theoretical and practical development, the debatability of a number of issues, the need to analyze the provisions of modern civil law, study and generalize judicial and arbitration practice in disputes from credit relations justify the relevance of the chosen topic.

The purpose of the work: to analyze the legal nature of the loan agreement, identifying problems of theory and practice.

Objective:

- consider the general theoretical and legal foundations of lending;
- disclose the features of the content, execution and termination of the loan agreement;
- to characterize the types of loan agreement;
- explore the features of consumer and mortgage lending;
- identify urgent problems that arise during the conclusion, execution and termination of a loan agreement and suggest ways to solve them.

The theoretical and practical significance of the research results is that the conclusions and provisions of the work can be used to further improve the current legislation governing the loan agreement, the practice of its application, the development of educational and methodological literature on the issues highlighted, in the process of teaching civil and banking law courses at universities, and also become the basis for subsequent scientific research on the problems of concluding and executing a loan agreement.

Results of the study.

1. Based on the general legal principle of justice and the provisions of the Civil Code of the Russian Federation on the reasonableness of the actions of participants in civil relations, he proposes to qualify as a violation of a credit obligation a unilateral refusal of a creditor to execute a loan agreement due to circumstances indicating the possibility of a borrower not repaying a loan if such circumstances existed and were known to the creditor even before the

conclusion of a loan agreement between the parties. It seems that such a legal approach could be one of the components for improving the provisions of civil and business legislation and the formation of judicial practice in this direction.

2. The absence in the law of special rules governing the maximum allowable interest rates, taking into account the requirements of legal norms on freedom of contract, leads to the abuse by the creditor of the right to determine the size of such rates.

3. The only essential condition of the loan agreement is the condition on its subject, which should be understood as the actions of the lender to provide a sum of money to the borrower and the actions of the borrower to repay the received amount of money to the creditor and pay interest on its use on the terms of the loan obligation on the loan amount, interest rate for using it, the period and procedure for providing it to the borrower, the period and procedure for repaying the loan and paying interest for using the loan.

4. In the absence of a clear legal mechanism for the early repayment of a loan (interest payment) at the request of a creditor, regardless of the basis of such a requirement, the necessity of a dispensative extension to the indicated relations of the procedure for returning funds issued on demand, including the moment the repayment period begins and ways of notifying the borrower about the return, in order to exclude disputes regarding the date of demand for the fulfillment of the borrower's obligations under the loan agreement is required.

Recommendations:

1. To fix in Art. 809 of the Civil Code of the Russian Federation, the right of the borrower-entrepreneur to appeal to the court with a request to reduce the interest rate under the loan agreement in the case when the rate is significantly (one and a half or more times) higher than the amount of interest charged for lending on similar conditions.

2. In order to increase the efficiency of legal regulation of the loan agreement, amend the wording of paragraph 2 of Art. 821 of the Civil Code of the Russian Federation, excluding from it “unless otherwise provided by law, other legal acts or a loan agreement”, adding the words: “If the creditor is not notified about the refusal to receive the loan in whole or in part before the deadline for the provision of the loan established by the agreement, the creditor has the right to demand from the borrower of compensation for losses caused to him by non-notification, unless otherwise provided by the contract. ”