

**Present Regulations Concerning  
the Foreclosure of Mortgage  
and the Possible Ways  
of Solving the Arising Problems**

In the course of housing crediting with a mortgage collateral, how can the mortgaging bank assert its claim if the debtor of the loan continues not to pay for a longer period of time?

The crediting bank has two titles for the assertion of a claim secured by a mortgage.

1. On the basis of its mortgage, it may demand from the court to oblige the obligor of the mortgage to tolerate for the bank to satisfy its claim through the auctioning of the mortgaged real estate in a judicial process, from the price paid at the auction [CC subs. (1), Sect. 251]. Thus the obligation is not aimed at the payment of the money. It is another question that, in the case of the larger part of housing loans, the real debtor (mortgage obligor) and the personal debtor (the debtor of the borrowing agreement) are usually one person.

2. The other title is that the creditor may lay a claim for a pecuniary claim. If the obligor fails to meet the extended time limit set in the request for payment, the creditor may abandon the borrowing agreement [CC subs. (1) and (2), Sect. 300] or may terminate the borrowing agreement with immediate effect [CC point e), subs. (1), Sect. 525] - because of the serious breach of contract of the debtor.

The Civil Code lists a rather broad scope of reasons for termination, in the case of which the crediting bank may terminate the legal relationship unilaterally, immediately if the financial situation of the debtor deteriorates to an extent which endangers repayment.

It is the judicial proceedings which usually serve for the foreclosure of mortgages and the assertion of pecuniary claims. As an exception, Act LIII of 1994 on Judicial Execution (in the following: AEx) makes the direct judicial execution of claims contained in public notary documents possible even without a non-appealable court decision stating the lawfulness of the claim - be it a mortgage claim or a pecuniary claim - (with a payment warrant in the case of the latter). However, this exceptional procedure only saves the action at law, or the payment warrant, the judicial execution procedure is still necessary in these cases for the assertion of the right (in the lack of voluntary performance).

However, foreclosure of mortgage has ways through which the party entitled may completely evade the long and costly procedures (implying especially large losses for the debtor) of the assertion of his right in front of the authorities, including both the court procedure establishing the lawfulness of the claim (and the above public notary procedure), and the judicial execution procedure. Today the amended regulations of the

right of lien chapter of the Civil Code already make it possible for the party entitled to the mortgage - in case of the existence of certain conditions - to ensure for himself in advance the utilization of a specific way of the assertion of his right - resulting from the security character of the mortgage - in the case of the termination of the borrowing agreement.

This legal possibility - in the case of the existence of other non-legal conditions - may play a great role in the foreclosure of mortgage securing housing loans, in the faster and thus more advantageous arrangement of these (for the creditor and the debtor as well).

We shall present the official ways of the assertion of rights in the following Chapter I, while showing the special way of the foreclosure of mortgages outside of the official procedures in Chapter II.

## **The Foreclosure of Mortgage and the Assertion of Pecuniary Claims through the Different Official Procedures (Judicial, Public Notary and Judicial Execution Proceedings)**

### **A)**

#### **The Procedures Preceding the Execution**

For the assertion of a claim through judicial execution, even through enforcement, the entitled party needs an executory document on the basis of which the judicial execution may begin. The types of such documents are established by the AEx (Sect. 10). From the point of view of the foreclosure of a mortgage securing a housing loan or the assertion of a pecuniary claim based on a borrowing agreement it is the executory page (AEx Sect. 15) and the judicial executory clause which may be relevant.

The executory page is usually (as well as from the point of view of our theme) issued by the court on the basis of the condemning resolution of the court in the civil matter. This resolution, thus, is a court ruling; in the case of a mortgage: for the toleration of the auction of the real estate and the satisfaction of the claim from the auction purchasing price; while in the case of a pecuniary claim: the court ruling for its payment; or it is - only in the case of the latter, pecuniary, claims a non-appealable payment warrant. Thus the party entitled shall obtain these for the court to issue an executory page.

An executory clause is issued by the court on the basis of a special public notary document, which document shall contain:

- the assumption of a responsibility,
- the name of the party entitled and the obligee,
- the subject of the obligation, the quantity (amount) and the title,

- the way and the due date of performance (AEx subs. (1), Sect. 21).

On the basis of this, both types of claims may be asserted, if the due date of performance has lapsed [subs. (3), Sect. 21].

In the course of marking the documents to which a clause may be added, the AEx also contains a provision specially for the foreclosure of mortgages [point c), Sect. 22]. Basically both places of the Act designate an identical public document, there is no difference in content between them.

We can summarize the official procedures preceding the executory procedure as follows.

1. In the payment warrant procedure, the payment of the pecuniary debt may be demanded. The foreclosure of mortgages is not possible in this procedure. This is so as according to the Civil Procedure [subs. (1), Sect. 313 of Act III of 1952] only pecuniary claims and claims for the delivery of chattels may be asserted in this procedure. The assertion of pecuniary claims through a payment warrant may take place

- on the basis of the declaration of the payment warrant as non-appealable (if the obligor does not contradict this) or

- in the case of the contradiction of the obligor, on the basis of a non-appealable resolution in the procedure thus transformed into a lawsuit.

2. In legal proceedings, the mortgagor, on the basis of his action, may assert his claim both on the basis of

- pecuniary claims and

- mortgages. On the basis of the non-appealable court verdict, on the demand of the creditor bank, the judicial execution may be initiated.

3. The inclusion of the obligation in a public notary document. If the contract concerning the loan was included in a public notary document, then both the payment warrant procedure or the legal proceedings may be spared. After such antecedents, if the obligor has not fulfilled his obligation and the party entitled demands this, then the court may add a clause to the public document. On the basis of this, the judicial execution may already be initiated. A separate working group deals with the regulations concerning the content and the issuing of the public document, therefore we do not discuss this here.

4. The inclusion of the mortgage contract in a public document. In practice, this is not a provision in force as inclusion in public documents is entrusted to the public notaries and to other authorities (e.g. courts, administrative bodies) which presently do not have as their task the preparation of contracts, thus, actually, the public notary document form remains.

## **B)**

### **The Judicial Executory Procedure**

The foreclosure of mortgage, as the assertion of the right of lien, usually takes place in a judicial executory procedure [CC Sect. 262].

The judicial execution of the non-appealable judgment of the mortgage claim or the pecuniary claim (in the latter case the payment warrant declared non-appealable) takes place in a different way, though in the end it leads to the same result. We shall add that principally - because of the outstanding role of the mortgage claim as a security - the mortgage obligee shall be much more protected by execution law, enforcing the relevant prescriptions of substantive law [CC sentence 1, subs (1), Sect. 251; sentence 1, subs (2), Sect. 263]. The legal exemptions, phrased here, from the exclusive possibility of asserting the mortgage obligee's right are limited only to really justified cases - e.g. the assertion of the claim for maintenance - and may not injure the interests of the mortgage obligee substantially.

The judicial foreclosure of the mortgage demand, according to regulations, is concentrated on the seizure and the auctioning of the mortgaged real estate, omitting the seizure of other chattels and the income of the debtor. This is favorable from the point of view of the timespan of the procedure, and it is worth choosing this when the income and other chattels of the debtor do not ensure sufficient coverage, but the value of the pledged property is certainly sufficient for this purpose.

In the course of the judicial execution of pecuniary claims, the principle of gradualism is effectuated. The seizure is first made concerning the wage, other incomes and chattels of the obligor, and if these do not prove or foreseeably do not prove sufficient, then the bailiff extends this to the other assets constituting the property of the obligor (in our case to the mortgaged real estate).

In order to support the enforcement of the security character of the right of lien, judicial execution shall enforce two substantive law regulations in the course of the foreclosure of the mortgage claim:

- the right of lien shall ensure satisfaction preceding other claims in order [CC sentence 1, subs (1), Sect. 251];
- rights originating after the mortgaging shall not effect the right of satisfaction of the mortgage obligee [sentence 1, subs (2), Sect. 263].

These regulations naturally mean a further advantage in the course of the assertion of the mortgage claim, as compared to the assertion of the simple - not founded - pecuniary claim.

⊗ Examining Act LIII of 1994 on Judicial Execution (in the following: AEx) from these aspects, we have to take a look at the procedures initiated upon the demand of

- the mortgage obligee and
- a third person outside of the borrowing agreement.

The judicial executory procedure and other administrative procedures - especially the tax collecting procedures - initiated by third persons belong to the latter, that is we shall

examine what the situation of the mortgage obligee - namely the mortgage obligee of the real estate - is in these procedures.

⊗ The other important aspect is how the right of the real estate mortgage obligee is effected by the rights of the obligees of the registered and non-registered real rights and contractual obligations.

⊗ Finally, the regulations of the order of satisfaction also effect the effectiveness of the above substantive law regulation.

### *The Procedure Initiated upon the Demand of the Mortgage Obligee*

In this procedure we shall examine the effects of the rights of other parties concerned.

#### a) Proprietary Rights

Usually the subject-matter of the mortgage is the condition of the real estate, as usually it is the proprietary right which is contracted as the collateral. Thus the execution is aimed at the proprietary right. Therefore in the course of the auction the auction buyer usually acquires unencumbered property, as the encumbrances remaining concerning the real estate are listed specially with a taxative character (Sect. 137) and this right - naturally - does not figure among these.

Still, it is a quite debated question whether the owner - who is at the same time the mortgage obligee - may keep the real estate occupied after the auction as well, and how the auction buyer may obtain the vacation of the real estate, and whether he has to tolerate at all that the former owner remain in the real estate.

Neither the AEx, nor any other substantive law regulation ensures such a title. The judicial practice (PK. standpoint 70) was developed with the observance of the previous housing regulations, and consists in that the former owner may continue to occupy the flat after the auction as well, as a utilizer, a quasi tenant.

When this approach is utilized in the course of the execution, the real estate is designated as inhabited in the auction conditions, and the auction price is also set by the court according to this (as the half of the vacant possession value), thus with regard to this, the auction buyer may not demand the vacation of the flat, as he has only paid the inhabited value in the purchasing price. However, this does not create a title of inhabitation for the former owner, thus the auction buyer tries to "put him out", as there are many sad examples of this.

Usually it can be stated that it is the interest of both parties, if the real estate falls under execution, to have the auction fast, and to sell it at the highest price possible. The time span of the sale - including the time span of the foreclosure - increases the time

during which the unpaid - presently rather high, 29% - transaction interest and the interest on default (a further 6%) unnecessarily burden the real estate. This also has the effect that it is not possible to grant loans to a high proportion with respect to the value of the real estate as in the process of the foreclosure procedure the interest accrued usually totals to a very high amount, to three times the value of the capital debt, as the experiences of the banking working group have showed. In the course of the average complete period - ca. 4 years - of the procedure for the assertion of the claim, the arrears of interest reach the total value of the real estate, therefore the owner does not receive any part of the auction purchasing price. He may only trust the presently still general practice that the real estate is not delivered vacant to the auction buyer.

Today, however, such speculators also appear at the auctions who purchase the real estate with the intention of obtaining its possession through illegal means later on. We find numerous pieces of information - and even primary information from a legal advisor of a bank - showing that by now these methods are used not only by the "real estate sharks". These illegal placements result in a situation where the former owner has no possibility of habitation, while the auction buyer acquires the difference between the vacant possession value and the inhabited value of the real estate, which is usually one half of the value of the real estate.

As an amendment we may propose that the auction of the real estate shall be advertised at vacant possession value and the executor shall hand the real estate over to the auction buyer vacantly, within a time limit after the termination of the auction determined in rules of law.

Legal proceedings prolong the time of satisfaction from the collateral extremely. Therefore, the possibilities of satisfaction outside of the legal proceedings shall be examined.

The revision of Section 48 of the Civil Code shall be raised, as it was created, or more precisely prepared, based on information which is contradictory to the present AEx. The gradualism which was basic for it was not introduced into the provisions of neither the Act on Flat Rental (Act LXXVIII of 1993) nor the AEx. As opposed to these latter two laws, the mentioned provision of the Civil Code maintained the previously prevailing uncertainty, for contracts concluded before its coming into effect, concerning by what title the owner losing his legal title may remain in the real estate. While for contracts concluded later on, this provision prescribed - with a cogent character - that the real estate may be auctioned as vacant only in the case of a special clause for this in the contract.

It would be reasonable, therefore, to state *expressis verbis* in the AEx that the debtor cannot keep the real estate (and thus the flat as well) occupied after the auction.

A further reason for this is that, according to the general provisions concerning real estate execution, there is no provision which requires the auction of the real estate as

inhabited. And in the case of a mortgage operating as a security, it is even less reasonable to establish auctioning in an inhabited form as a general rule.

Neither is maintaining gradualism justified by the fact that borrowing agreements concluded earlier are also involved. The danger of non-payment may also arise much later, within consolidated conditions, as these loans may have a maturity extending over several decades, and it is definitely unjustifiable, in the by then completely changed conditions, to maintain the regulation favoring the owner.

Finally, we have to underline a non-legal type of question which on the other hand greatly influences the effectiveness of the executory regulations. And this is the social dimension of the flat, that is that the placement on the street implies the subsequent impossibility of the debtor's family. The debtor no longer receives an amount, from the executory auction purchasing price, from which he could, even within more modest conditions, solve his habitation (because of the interest on default, the transaction interests and the costs).

Therefore it is definitely necessary to examine the possibility of the establishment of a system which ensures the sale of the real estate outside judicial executory procedure, and, more than that, ensures a flat in exchange - naturally a more modest one - for the owner, with more easy loan conditions.

#### b) Usufruct and other personal and land easement

Here, the AEx does not assert the rule of sentence 1, subs. (2), Sect. 263 of the Civil Code providing that the rights originating later shall not effect the mortgage.

It may be suggested that in this question as well, the prevailing rule shall be the date of the registration, or, in the case of legal usufruct, the date of the originating of the usufruct, and any rights thereafter shall be null and void after the auction. It seems reasonable, however to accept that, as a countervalue for the rights "swept off" in the real estate execution, the party entitled shall be ensured some kind of satisfaction. Thus, the party entitled to this right shall be enlisted in the distribution plan, and shall receive satisfaction on the basis of expert estimation.

Further studies are necessary concerning land easement, whether they shall definitely continue to exist on the basis of the provision of the law, regardless of the date of their origination.

#### c) Lease

The act on flat rental regulates this question adequately, the change of the owner does not effect the right of the tenant. This question, that is to say the exercise of the right of disposal of the new owner shall be regulated by the regulations on the right of notice. Presently, free notice to quit also exists, but notice may be given without ensuring an exchange flat only if this has been stipulated in the flat rental contract. This is obviously

a disadvantage if the owner later on - after the conclusion of the mortgage contract - lets his flat which is mortgaged.

*2. Executory procedure  
launched by another person against the loan debtor*

Two kinds of such procedures are possible:

- a) judicial execution
- b) administrative, typically tax collecting procedure

a) In the course of the judicial execution initiated upon the demand of a third person, the security character of the mortgage debiting the real estate breaks. The mortgage ceases to exist - on the basis of the referred Section 137 of the Civil Code - , and the demand of the obligee of the mortgage is not even included in the distribution plan, contrary to the preferential claim of the obligee of the chattel mortgage (AEx Sect. 114).

If, in the course of the execution, the obligee of the mortgage does not dispose of a non-appealable document, according to which the debtor is obliged to tolerate the satisfaction of the obligee from the auction purchasing price, the mortgage is lost, and the mortgage obligee does not receive any security, satisfaction in exchange.

As against this obviously inequitable measure, the judicial practice grants the possibility for a mortgage obligee to await for the court to back this document only in the case of a mortgage contract included in a public document. (Here, actually, the lending credit institution cancels the borrowing agreement with immediate effect with regard to the deterioration of the financial situation of the debtor, and on the basis of this there is a possibility for the condemnation of the complete amount of the loan in arrears.)

This discrimination is conflicting with the general security character of the right of lien, relating to all its cases. It is difficult to accept as a general argument, it may be expected only from a mortgage contract included in a public document to serve as an exclusive security for satisfaction [CC subs (1), Sect. 251]. It is so as this limitation is not contained by the substantive law regulation, as it would reverse the relation of the general rule and the exception and it would establish the effectiveness of the general rule only exceptionally. And the procedural law regulation shall not lead to a result just contrary to the substantive title: contrarily the ways for the effectiveness of the substantive law regulation shall be created.

This kind of arrangement is also contrary to the regulation of the substantive law declaring the protection of right of lien, and in which it is stated that the vested rights acquired later concerning the real estate do not effect this security [CC sentence I, subs (2), Sect. 263].

Undoubtedly, both mentioned substantive law regulations allow for legal exceptions. However, these may be only really justified exceptions, as, concerning the order of satisfaction, e.g. the allowance or the costs of the execution are well founded.

### Proposals for Solution

It is correct that in the course of the executory procedure, before the preparation of the distribution plan, the mortgage obligee - and other registered, or known though not registered obligees - shall be notified according to the regulations. The problem is how the mortgage obligee may join the course of the execution if he does not dispose of a non-appealable document. In this respect the requirements included in Resolution No. 46/1991. (IX. 10.) AB of the Constitutional Court shall be taken into consideration, without keeping these the procedure cannot be regulated constitutionally. According to the resolution of the Constitutional Court, generally executory procedure may only be started if the demand of the party requesting the execution has been adjudged by the court, and in the course of the procedure the debtor was informed about the claim against him, and he has had the adequate possibility for defending himself (Reasons, Chapter II).

However, the body also found a constitutional possibility e.g. for the distraining decree of the public notary to be an enforceable document, if the debtor can get to know this claim before the start of the execution and if he can resort to a legal remedy against the decree, on the basis of which legal remedy the court - adjudging his objection on the merits - may even change the public notary's decree (Reasons, para. 3-4, Chapter III).

Though the present AEx does not regulate this executory form, still, the possibility of the mortgage obligee to join into the procedure shall be sought in this direction, with the introduction of the court decision.

The existence of the mortgage and the lawfulness of the claim have to be clarified in the procedure.

The existence of the mortgage may, in principal, be certified securely by the real estate registration of public authenticity. However, we have to mention that up to date registration and an apparatus disposing of adequate legal expertise are necessary for this.

The justifiedness of the claim may be clarified in an abridged procedure in a way that the court (possibly the executory court, as the real estate probably lies in its area of competence) hears the debtor, the parti(es) demanding execution.

- If the debtor acknowledges the debt, then the involvement of the mortgage obligee's demand into the execution is without problems. If, in such a case, one of the obligees, e.g. one of the creditors, in the case of several mortgagees, objects to the existence of the claim - fearing that this would effect the satisfaction of his claim detrimentally - then another creditor presenting this objection is to be ordered to initiate a lawsuit.

- If the debtor does not acknowledge the claim, then the mortgage obligee is to be ordered to initiate a lawsuit.

It shall also be examined whether the bailment of one of the securities may be demanded for the objecting declaration of the debtor to become effective, as the obligee may lose the part of the difference between the contractual interest and the court bailment interest falling on the enforcement procedure. Furthermore, the seriousness of the declaration shall also be helped. The bailment of a security of the amount required by old Hungarian law (going for a two year period) may also be raised. It may be raised, as against this latter, that this claim reached the path of execution just because the debtor could not pay. Naturally the amount of the security shall not go near the amount of the debt.

It was also raised among the proposals, how it could be reached for the mortgage to continue to remain in the executory procedure initiated by another party, and thus for the debtor, who otherwise is regularly paying his debt, not to go bankrupt. It shall be remarked that in this matter we do not have a concrete proposal for solution.

b) The relation of other types of executory procedures, decisively the administrative procedure, with judicial execution.

According to the AEx's general rule on the scope of its authority, the AEx's prescriptions shall be used in the course of real estate executions effected in administrative executions as well, except if the law provides otherwise. And if the real estate was seized in both procedures, then the procedure shall be continued according to the rules of the AEx.

A real problem arises if only the administrative procedure has started, and the mortgaged real estate was seized only there, typically for the collection of tax arrears. In these cases, it would be reasonable to proceed similarly as we have signaled in the case of the judicial proceedings initiated by third persons.

Concerning the proposals phrased both in point a) and point b), we have to stress that further studies are necessary in order to make these consistent with the AEx. In the course of this, the cognition of the relevant solutions of foreign execution laws would also be necessary, to select the appropriate regulation.

### *3. The Order of Satisfaction in the Course of the Judicial Execution*

A problem of definition arose concerning whether if the claims or one of the claims figuring in a different satisfaction order or identical satisfaction order are or is secured by a mortgage, then shall the order of satisfaction change with regard to this - on the basis of subsection (2), Section 170 of the AEx.

The order of satisfaction is determined by AEx Section 165. Compared to this, Section 170 lists the claims secured by mortgages on the more favorable 4th place. From

this we may conclude that claims, which otherwise have to be satisfied in the 4th place or later on, or presently on the 5th place or later on, if these are secured by a mortgage, shall be satisfied on the 4th place.

Subsection (2) of Section 170 determines what shall be the order of satisfaction if all of these claims are founded with mortgages. In this respect, the amendment takes as its basis the regulation of the mortgage law, that is the time sequence of the establishment of the mortgage [CC sentence II, subs. (2), Sect 263]. It does not take into consideration the character of the claim which founds the mortgage.

The regulation of the mortgage law ensuring a listing more close to the beginning does not effect, however, the claims which are listed anyway in one of the first three places. Respecting these first three claims, the mortgage law does not change their order, as the general rule of Section 170 - the provision of subsection (1) - only makes possible listing on the 4th place, before that no claim may be listed on this title. From the relation of the general rule and the part rule (the provision determining the exception) it follows that the part rule may only provide within the limits set by the general rule, with respect to the claim mentioned there, thus it may refer only to the order, among each other, of the claims listed on the 4th place.

Among claims which otherwise would be satisfied on the 5th place or after, naturally securing by mortgage shall be an influencing factor. This is so as the right of lien aims just at this, that the claims secured by a mortgage shall be priority claims among the claims listed in point f), Section 165 of the AEx.

Securing by mortgage, following from the above, does not effect the order of satisfaction of the claims selected on the first three places. This may also be justified with a concrete example: it is obviously not possible to amend the allowance obligation determined for several children so that they secure the allowance of one child with a mortgage if this would decrease the amount of the collateral for the allowance for the other children.

#### *4. Other Problems Which Arose*

a) A problem of interpretation arose concerning the inclusion of the mortgage contract and the borrowing agreement into a public document, concerning the designation of certain of its content elements. This question may be a theme for the working group dealing with this theme, we shall forward this to them.

b) With regard to the AEx regulation, proposals have arrived concerning the lawful period of the executory measures: concerning the lawful period of

- the mailing of the notice of payment for the expenses advanced, which is a precondition of the executory measures;
- the first executory action after the arrival of the expenses advanced, and
- the transfer of the purchasing price received from the successful sale.

The regulation of the lawful period of the demand for the payment of expenses advanced will expectedly be solved.

However, there is no hope for the more concrete regulation, as compared to the present one, of the first executory event after the receiving of payments advanced, because this may not be increased at the level of the law. Instead of this, the complaint shall be adjudged in the course of a supervision in the given executory procedure.

## II

### **Ways of Satisfaction Outside the Judicial Executory Procedure**

The ejectment of the owner inhabiting the flat involves problems which definitely make it justified to seek solutions outside of the judicial execution.

The Civil Code contains three cases for the extension of the assertion of the right of lien claim outside the administrative procedures - as an adaptation of the private sale figuring in Anglo-Saxon laws - , when the sale may take place outside the judicial execution.

Before the opening of the satisfaction law - thus before the default - the parties may agree in that the mortgage obligee himself may sell the pledged property (in our case the real estate), if he himself deals with mortgage lending on a business basis [CC subs. (2), Sect. 264]. According to a more narrow interpretation, this circle may only involve specialized credit institutions, while according to broader interpretation this may mean any credit institution which also grants credit with a mortgage collateral.

The new right of lien regulations of the Civil Code offer further possibilities in this direction. The mortgage obligee may also stipulate in the borrowing agreement that at the time of the opening of his mortgage claim (that is e.g. in the case of the cancellation of the borrowing agreement) he hands over the pledged real estate to a person (company) which deals with the organization of auctions or the granting of mortgage loans in a businesslike way [subs. (3), Sect. 264]. Therefore, even if the creditor does not satisfy either one of these two conditions, all administrative procedures may be evaded through the giving of a commission for sale.

The Civil Code mentions as a further possibility of sale by the obligee the cases where the pledged property has an officially quoted market price. The present practice of the real estate exchange, however, probably does not yet provide a sufficient base for this.

For the utilization of these authorizations, it is necessary to clarify the notion of the entrepreneur "dealing with the granting of mortgage loans in a businesslike way"; whether it is the narrower or the broader definition which is adequate. It depends on this whether the bank granting the mortgage loan may sell the real estate itself or by commission, and what type of company, in the latter case, it shall give commission to.

The utilization of the new right of lien regulations may have effect if it is possible to set up a system in which, at the time of the first payment arrears, transitory payment difficulties would be divided from lasting payment barriers. In the case of the latter, the debtor would be offered a flat which is burdened by a smaller loan, and thus by a smaller monthly amortization obligation. If the debtor can successfully be held within the limits of the housing loan system, he can be placed much more advantageously and his flat can be sold much more advantageously than through the utilization of judicial foreclosure and judicial execution. Such a system of placement is more humane, as it can offer several levels of solution for the debtor in arrears and in a difficult situation, and it maintains the possibility of keeping the family together, and the keeps up the precondition of the employment of the parents.

A rapid placement also prevents the accumulation of interest and thus the accumulation of debts debiting the real estate. This way it can also be prevented for the interest on default, during the long period of the court procedure for the assertion of the claim, to augment the amount of the debt to an extent where the part of the auction purchasing price remaining after the deduction of this amount will no longer be sufficient to purchase another flat.

However, the system outside of the official procedure can only work if, beside it, the clear system of regulations of the official procedure also exists, the utilization of which certainly gives the mortgage obligee the right that the real estate secured will be sold vacant within a relatively not too long period of time (this time, within the developed countries, is the shortest in the United States: 8 months on the average, while being the longest in France: one and a half years<sup>1</sup>). This period includes the complete assertion of the right procedure, from the default in payment to the auction.

Knowing that the official procedure is efficient, the debtor cannot hope that the mortgage obligee will not be able to assert his claim in the foreseeable future, or even that he may remain in the flat even after the auction. However, he may weigh which procedure will give him the least detrimental possibilities for further habitation. In case of an obvious difference, it can be expected that the debtor with long-term payment difficulties will choose the free market sale of the flat, giving a better perspective, and does not impede that by sticking to the possession of the flat<sup>2</sup>.

With this, one of the impediments of granting a higher ratio of credit may also be overcome. Namely, presently OTP Bank only grants credit up to one third of the value of the real estate. Naturally, one of the causes of this was the previously rather high inflation. The decrease of the rate of inflation and its expectable controlling, presently already expectable in the foreseeable future, raises the possibility of granting credit to a higher proportion. If, however, the period of the official procedure does not change, then,

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<sup>1</sup>Data from the housing loan return conference held in the Gellért Hotel in Budapest in December 1996.

<sup>2</sup>According to the practice of the Uniform Commercial Code of the United States as well, the pledgee acquiring the proprietary rights can only utilize sale outside of the judicial procedure successfully if it is "possible without the upsetting of the peace" (article 9-503; quoted by part IV, page 7, paragraph 1 of the studies prepared concerning the amendment of the right of lien regulations of the Civil Code).

together with the interest on default, even in the case of the utilization of a transaction interest rate lower than 29%, the amount of the debt may increase excessively, and the collateral may be excessively used. And this danger moves the creditor to continue to keep the ratio of the crediting low. (In the developed countries this ratio generally reaches 90-100% of the value of the real estate.) Therefore, the studying of the operation of this system in the Netherlands, and the examination of the possibilities for its establishment seems justified.

*Summarizing*, we may state that the examination of the problems which arose concerning the foreclosure of mortgages was correct, and consequently we find it justified to initiate the amendment of the rules of law.

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