

## II. QUESTIONS CONCERNING REGISTRATION AT THE NOTARIES PUBLIC

8. What constitutes the public authenticity of the notary public registration?

According to the Paragraph no. 47 of the Civil Code (CC) the registers of the notaries public are authentic. The article no (1) of the Paragraph no 2 of the government statute establishes that the mortgage registers authentically certify the validity of the data indicated and the rights and facts registered and their changes, too.

8.1 The register is capable only of limited specification of the data of the mortgaged property. In case the number of mortgaged properties is more than one or the description necessary for identification is longer than the limits of the register, how can one be sure of which properties are mortgaged? To what extent can a register be regarded as authentic in this case?

8.2 According to the article no. (3) of the paragraph no. 1 of the government statute the changes in the mortgage-relations must be indicated, too. However, failing to perform this duty is not punished by the statute. In case the changes are not reported, the authenticity of the register is corrupted. How can we avoid this and protect the interests of creditors?

8.3 In case there is a change in the person of the mortgager and this change is not indicated in the register, a new acquirer of the mortgaged property does not find any mortgage registered at the name of the previous owner. Does he purchase the property as mortgaged (which would mean that the register is not authentic since there was no indication of mortgage) or as free from mortgage (which would mean that the law of mortgage would lose its character of a law of property)?

8.4 At the registration of a mortgage the notaries public do not (and in fact could not) certify whether the property indicated as the object of mortgage does really exist and exists as a property of the mortgager. Does this mean that the registration (as opposed to real estate registration) cannot guarantee the authenticity of law of mortgage?

## 9. Procedure of the notary public

9.1 The registration of contracts to public documents makes crediting substantially more expensive. Are there possible ways of reducing the charges? We have tried to discuss the problem of charge reduction with notaries public and asked whether inclusive charges were possible instead of charges by case but they answered that the Ethical Committee of the Chamber supervises

charging and in case the notaries public make too much concessions they are punished. Is it the real situation?

9.2 The provision of law on the charges of notaries public makes the amount of charge dependent on the value of the mortgaged property. How is the amount of charge established if to insure a claim more than one mortgage is put on the same property (e.g. to insure a claim of 600 million Fts mortgage is registered on three properties worth 100 million each and for the rest of the property 300 million Fts worth property mortgage is established).

9.3 When registering a mortgage contract to public document what are the duties of the notary public, what are the facts that he must be sure about before registering the mortgage and to what extent is he responsible for his delinquencies? (E.g. is he obliged to make sure whether the mortgaged property does in fact belong to the mortgager and if he fails to do so and the property turns out to be not in his property, what are his responsibilities?)

9.4 What are the contents and extent of the responsibility of the notaries public for the foreclosure of the mortgages and declarations of debts registered to public documents?

9.5 Are there plans about extending the register of chambers to include individually identifiable properties of mortgage (e.g. cars) and certify their being mortgaged or not?

9.6 In what cases is it possible to indicate changes in the register unilaterally by the mortgager?

9.7 In case of amendments what is the beginning of the effectivity of the amendments and how does it affect the authenticity of the register? (E.g. in case instead of a claim of 500 million there was only 50 million registered and before the amendment there has been another mortgage registered, what is the ranking of the claims?)

9.8 Is the mortgage on property convertible with respect to certain objects only or for the whole of the property only?

## 10. Establishment of mortgage

What is the reason for registering the mortgage on property or in case of mobile mortgage, the mortgage contract to public document, (CC paragraph no 260, article no(2)) as opposed to mortgages on real estate when only the mortgage

contract must be registered (CC paragraph no. 260, article no. (1))?

## 11. Registration of changes

According to the effective provision of law all changes must be registered.

In case of tens of thousand of living contracts this would be impossible for the financing part to register all changes.

11.1 What is considered to be a change?

11.2 E.g. in case of varying interest rate loan contracts the changes in the interest rate must be registered or not?

11.3 In case the mortgager demands rescheduling of the original contract or makes from time to time partial repayments in advance or the loan contract is undertaken by a third party and thus the person of the debtor is changed is there an obligation to register these changes?

11.4 What can constitute the basis for the registration of a change (e.g. in case the name of the mortgagee is changed, what kind of certification is needed?)

12. In case of more than one mortgagee the identities of the mortgagees should or should not be indicated in the register?

According to the paragraph no 47. article no. (1) of the CC the register must contain the data indicated in the contract (in case of persons their personal data, too). According to the paragraph no. 4 article no. (2) point (f) of the government statute in case of more than one mortgagees only (?) the data of their representative must be registered.

## 13. Disposition over ranking place

13.1 Is there not a contradiction between the restriction of the CC (paragraph no.268. article no. (2)) that the owner of the mortgaged property can assign his ranking place to third parties only and the contractual provision that the mortgager can maintain the ranking place of the mortgaged property for the mortgagee for one more year after the withdrawal of the law of mortgage?

13.2 In case of disposition over ranking places is there a chance (in accordance with our earlier private laws) that in the place of the cancelled claim and to the extent of the cancelled amount of money could jump one of the claims ranked

lower, overtaking other claims?

13.3 In case of disposing over cancelled ranking position is it possible to establish the "not more disadvantageous" mortgage in a way that only a part of the new claim jumps to this ranking place while the rest which would make it more disadvantageous than the higher ranked ones are placed to lower positions?

### III. QUESTIONS CONCERNING THE FORECLOSURE OF MORTGAGES

#### 14. Foreclosure of mortgages

14.1 The speech given by the Under-Secretary of State of the Ministry of Justice on February 20, 1996 when discussing a modification implied that the law offers solution to the case when in case of a foreclosure demanded by a third party the mortgagee who did not have at the moment expired claims and foreclosurable documents could face cessation of the coverage for the mortgage. This problem is referred to by the preamble to the article no (1) of paragraph no. 268, too. Does this mean that the mortgagee is included in the apportionment plan as a claimant even if he does not have expired claims or foreclosurable documents?

14.2 Who can be regarded as a person issuing mortgage loans in a business-like manner?

This question is important in the case of foreclosures of mortgages without court prosecutors but it is not addressed by either the CC or any other provision of law by defining the concept of mortgage loan. There are two separate views on this matter. One regards any kind of loan granted with the coverage of mortgage as mortgage loan; the other, on the other hand, considers only those loans that were granted exclusively on the basis of a mortgaged property without assessing in any way the general creditability of the client as mortgage loans, e.g. in case of pledges when the client himself does not even become debtor and the creditor cannot seek recovery of the loan beyond the pledged object. (According to the law no. XXX of 1997 mortgage loans are the ones that were granted by financial institutions entitled to issue such credits, by the coverage of mortgages, from sources established through issuance of mortgage bills.)

14.3 What is the procedure of foreclosure in case of individual law of mortgage?

14.4 What is the procedure of foreclosure if the prosecution process was initiated by a third party against the mortgager?