

**Concerning the mortgage of immovable property
Edict of the President of the Republic of Kazakhstan,
having authority of law, of December 23, 1995 N 2723**

In accordance with Article 1 of the Law of the Republic of Kazakhstan, dated December 10, 1993 Concerning the Temporary Delegation of Additional Powers to the President of the Republic of Kazakhstan and the Heads of Local Administrations, I issue this Edict:

CHAPTER 1. GENERAL PROVISIONS

Article 1. The Fundamental Terms and Definitions

The terms and definitions employed in this Edict shall have the following meanings:

- 1) trustee means an entity which carries out registration of mortgages in a non-judicial procedure;
- 2) pledger means the entity whose immovable property or the share therein are subject to mortgage;
- 3) pledge holder means an entity whose interests relating to the principal are secured with a mortgage;
- 4) mortgage of immovable property (hypotheca) means a type of pledge under which the pledged property or share therein remain in the possession and use of the pledger or a third party;
- 5) mortgage agreement means an agreement of parties to establish the principal obligation;
- 6) immovable property (immovables) means land plots and also buildings, installations and any other assets firmly attached to land, that is the items the translocation whereof is impossible without unreasonable damage to their assignment;
- 7) the principal obligation means a debt or any other liability which is fully or partially secured with mortgage;
- 8) realisation of mortgage means selling of the property which is mortgaged.

Article 2. The Sphere of Application of This Edict

1. This Edict shall regulate relations which emerge in applying the mortgage of property as a means of securing obligations. The general rules concerning pledge, which are contained in the Civil Code of the Republic of Kazakhstan shall apply to mortgage of property, unless this Edict sets forth different rules. In the case of contradiction between this Edict and other legislative acts in respect of regulating mortgage of property, the provisions of this Edict shall apply.

2. The rules of this Edict on mortgage arising by virtue of an agreement, shall apply to mortgage arising on the basis of a legislative act.

3. Special considerations in mortgaging of land plots and rights relating thereto may be stipulated in land legislation.

Article 3. The Limits of Securing of the Principal Obligation with Mortgage

1. Mortgage shall secure payment to the pledge holder of the principal amount of debt under a credit agreement or any other obligation, in full or to the extent stipulated in the mortgage agreement.

Unless it is otherwise stipulated in the agreement, a mortgage established to secure a credit agreement, shall also secure the payment of interest to the creditor, which is due the creditor for use of the loan.

2. Unless it is otherwise stipulated in the agreement, a mortgage shall secure the claims of the pledge holder in the volume they have at the moment of their satisfaction, including the following:

- 1) indemnification from losses inflicted by a failure to execute, delay, or by any other improper execution of the principal obligation;
- 2) forfeit (fine, penalty) for a failure to execute, delay in execution or any other improper execution of the principal obligation;
- 3) interest for unlawful use of somebody else's monetary resources, as stipulated in the principal obligation or legislative acts.

3. Mortgage shall also secure the following:

- 1) indemnification of court expenses and other costs incurred by imposition of claims on pledged property;
- 2) reimbursement of costs associated with realisation of mortgage.

4. When a mortgage agreement stipulates the total fixed amount claimed by the pledge holder, secured with the mortgage agreement, the liabilities of the debtor to pledge holder in excess of that amount shall not be deemed to be secured with the mortgage, except for the requirements stipulated in paragraph 3 of this Article and Article 4 of this Edict.

Article 4. Securing with Mortgage of Extra Costs of Pledge Holders

In the cases where the pledge holder in accordance with the terms of the mortgage agreement or by virtue of necessity to retain pledged immovable property is forced to incur the costs associated with its maintenance and security or with repayment of liability of the pledger relating to taxes, levies, utility payments associated with that immovable property, the reimbursement to the pledge holder of such needed costs shall be secured at the expense of the pledged immovable property.

Article 5. Mortgage of Immovable Property Which is in Common Ownership

1. A mortgage agreement shall be concluded in writing, signed by the pledger and pledge holder as well as the debtor where the pledger is not the debtor (estate guarantor).

2. A mortgage agreement shall be subject to state registration. The right to mortgage shall be subject to state registration. The right of mortgage shall emerge from the moment of registration of the mortgage agreement.

3. The notarial certification of a mortgage agreement shall be carried out at the discretion of the parties.

4. The rights of the pledge holder may be confirmed (documented) with the issue of the mortgage certificate.

CHAPTER 2. A MORTGAGE AGREEMENT

Article 6. Pro-forma of the Mortgage Agreement

1. A mortgage agreement shall be concluded in writing, signed by the pledger and the pledge holder and also by the debtor where the pledger is not the debtor (estate guarantor).
2. A mortgage agreement shall be subject to state registration. The right to mortgage shall emerge from the moment of registration of the mortgage agreement.
3. Notarial certification of a mortgage agreement shall be carried out at discretion of the parties.
4. The rights of the pledge holder may be confirmed (documented) by issuing of the mortgage certificate.

Article 7. The Contents of the Mortgage Agreement

1. The following must be indicated in the mortgage agreement:
 - 1) name (commercial name) and residential address (location) of the pledger and pledge holder, as well as of the estate guarantor where the pledger is not the debtor;
 - 2) the essence of the principal obligation, its amount and deadlines for execution;
 - 3) the list and location of pledged immovable property;
 - 4) the title of the right by virtue of which immovable property are subject to mortgage (the right to own, the right to business authority and other);
 - 5) other conditions on which according to application of either party consensus must be reached in the mortgage agreement, and which are not prohibited by legislation.
2. When the principal obligation is subject to execution by parts, the deadlines must be indicated in the mortgage agreement or periods of the relevant payments and their amounts, or conditions which allow to determine those amounts.

Article 8. The Consequences of Violating the Rules for Alienation of Pledged Immovable Property

1. When alienating immovable property pledged under a mortgage agreement in violation of the rules contained in paragraph 2 of Article 315 of the Civil Code of the Republic of Kazakhstan, the pledge holder shall have the right at the pledge holder's discretion to claim the following:
 - 1) recognition as invalid of the transaction to alienate immovable property;
 - 2) premature execution of the principal obligation and imposition of claim upon pledged immovable property, irrespective of to whom it belongs.
- In the latter case, if it is proved that the acquirer of the pledged property at the moment of its acquisition knew or should know that the immovable property is alienated in violation of the rules, such acquirer shall bear the responsibility for the failure to execute the obligation secured with the mortgage jointly with the pledger, within the limits of the value of the indicated immovable property.
2. When the pledger issues the mortgage certificate, the alienation by the pledger of pledged immovable property shall not be allowed.

When the pledger alienates immovable property, the consequences shall emerge which are stipulated in paragraph 1 of this Article.

Article 9. Transfer of Rights Under a Mortgage Agreement

Transfer of rights under a mortgage agreement shall be carried out in compliance with the rules for assignment of claims, and in the case of issuing of mortgage certificate, - in the procedure established by Article 16 of this Edict, and it shall be subject to state registration.

Article 10. Warning of the Pledge Holder of the Rights of Third Parties In Respect of the Mortgaged Item

When concluding a mortgage agreement, the pledger shall be obliged to warn the pledge holder on all the rights of third parties in respect of the mortgaged item, which are known to the pledger at the moment of the agreement registration, even when those rights are not registered in accordance with the established procedure. A failure to comply with that right shall to the pledge holder the right to claim a premature execution of the principal obligation or alteration of the terms of the mortgage agreement.

Article 11. Supplements to Mortgage Agreements

Documents which defined the terms of the mortgage and/or conditions which are necessary for the exercise by the pledge holder of the pledge holder's rights under that agreement may be attached to the mortgage agreement.

CHAPTER 3. THE MORTGAGE CERTIFICATE

Article 12. The Concept of the Mortgage Certificate

1. The mortgage certificate shall be an order security certifying the following rights of its legitimate owner:
 - 1) to receive execution of the principal obligation;
 - 2) to impose claims upon pledged immovable property for the purposes of receiving the execution of the principal obligation.
2. The mortgage certificate shall be compiled in one copy and it shall be passed to the pledge holder.
3. The note on issuing of the mortgage certificate shall be made upon all copies of the mortgage agreement.

Article 13. Contents of the Mortgage Certificate

1. The mortgage certificate must contain the following:
 - 1) the words Mortgage Certificate, included in the title of the document;
 - 2) the name (commercial name) and residential address (location) of the pledger;
 - 3) the name (commercial name) and residential address (location) of the pledge holder;
 - 4) the name (commercial name) and residential address (location) of the debtor, where the debtor of the principal obligation is not the pledger;

- 5) the date and place of conclusion of the mortgage agreement;
 - 6) the indication of the amount of the principal obligation and interest, if any;
 - 7) the indication of the date of repayment of the principal obligation and of interest, if any, and if that amount and/or interest are subject to repayment in instalments, - the dates or periods for the relevant payments and amount of each of them or conditions which allow to determine them;
 - 8) the list and location of pledged immovable property;
 - 9) the title of the right by virtue of which the property which is subject to the mortgage is held by the pledger;
 - 10) the indication of whether mortgage certificates exist in relation to the immovable property which is mortgaged or to part of that property, whether that immovable property or its part is leased, encumbered or not encumbered in any other manner;
 - 11) signature of the pledger;
 - 12) the issue date of the mortgage certificate.
2. A failure to comply with the requirements established in paragraph 1 of this Article, as well as existence of erasures and corrections shall render the mortgage certificate invalid.

Article 14. The Terms of Exercising the Rights and the Execution of Obligations Under a Mortgage Certificate

1. In the exercise of the rights stipulated in this Edict or the mortgage agreement, the owner of the mortgage certificate shall be obliged to present it to the pledger.
2. The pledger which executed the principal obligation shall have the right to claim the transfer to the pledger of the mortgage certificate, and where the obligation is executed part-by-part, the note in the mortgage certificate of execution of the appropriate part of the obligation.
3. When the mortgage certificate is held by its legitimate owner, or in the mortgage certificate there is not mention of any partial execution of the principal obligation, that shall witnesses, unless it is proved otherwise, that obligation or accordingly its part are not executed.
4. Holding of the mortgage certificate by the pledger shall witness, unless it is proved otherwise, that the obligation secured by the mortgage is executed.
5. The rules of Article 133 of the Civil Code of the Republic of Kazakhstan shall apply to execution of obligations under mortgage certificates.

Article 15. Registration of a Mortgage Certificate

Issue of a mortgage certificate and its subsequent transfer to other owners shall be subject to local state registration where the immovable property which is subject to mortgage is located, in accordance with the procedure established for registration or the rights to immovable property.

Article 16. Transfer of Rights Under Mortgage Certificates

1. Transfer of rights under the mortgage certificate shall be carried out by way making on it of the transfer note for the benefit of the other entity and transfer of the mortgage certificate to that entity. In the transfer note the name of the entity to which the rights are transferred under the mortgage certificate, must be indicated clearly and adequately. Blank transfer notes in a mortgage certificate shall be deemed to be invalid.
A transfer note must be signed by the pledge holder which is indicated in the mortgage certificate, and where that signature is not the first one, - by the owner of the mortgage certificate indicated in the preceding transfer note.
2. The transfer of the rights under a mortgage certificate to any other entity shall mean the transfer thereby to the same entity of the rights under the principal obligation.
The legitimate owner of a mortgage certificate shall have all the rights which ensure from its contents, including the rights of the pledge holder and the rights of the creditor in relation to the principal obligation.
3. An owner of a mortgage certificate shall be deemed to be legitimate one when the rights of the owner in respect of the mortgage certificate are based on a complete sequence of transfer notes on it.
An owner of a mortgage certificate shall be deemed to be illegitimate if it is proved that the certificate was lost by an entity which made transfer notes, as a result of theft or in any other manner against the will that entity, of which the owner knew when acquiring the mortgage certificate or should have known.
4. Notes on a mortgage certificate which prohibit its transfer to any other entities shall be invalid.

Article 17. Restoration of the Rights Under a Lost Mortgage Certificate

1. Restoration of the rights under a lost mortgage certificate shall be carried out by the court in accordance with the procedure established by procedural legislation.
2. The rights under a mortgage certificate which [certificate] was transferred by the pledge holder to a third party, may be restored if all the transfer notes are identified which were made on the lost mortgage certificate.
3. On the basis of the court decision, the pledger shall issue the duplicate of the mortgage certificate with the note on it A duplicate.

Article 18. Pledge of a Mortgage Certificate

1. A mortgage certificate may be pledged by way of its transfer to any other entity to secure a credit agreement or any other obligation between such an entity and the legitimate owner of the mortgage certificate.
2. When an obligation secured with a pledge of a mortgage certificate is not executed, the pledge holder of the mortgage certificate shall have the right to claim the transfer to that pledge holder of the rights under the principal obligation secured by the mortgage, in accordance with the procedure, on the terms and with the consequences stipulated in Article 16 of this Edict. In the case of refusal to transfer those rights, the pledge holder of the mortgage certificate may claim the transfer to the pledge holder of such rights in the judicial procedure.
3. A pledge holder of a mortgage certificate, to whom the rights relating to the mortgage certificate are transferred by the

court, shall have the right to impose a claim upon the mortgaged item in accordance with the terms of the mortgage certificate and the principal obligation.

Amounts received from realisation of mortgages shall be used to repay the debt to the pledge holder of the mortgage certificate, and an outstanding amount shall be transferred to the entity which pledged the mortgage certificate, subject to requirements of Article 36 of this Edict.

4. With the consensus of the pledge holder of a mortgage certificate and the pledger of the mortgage certificate, in the mortgage certificate the special-purpose pledge transfer note may be made, which gives to the pledge holder the right to sell mortgaged property upon expiry of a definite term in order to withhold the amount of obligation secured with the pledge of the mortgage certificate out of received money.

Article 19. Termination of a Mortgage Certificate Validity

1. Validity of a mortgage certificate shall cease as follows:

- 1) when the rights ensuing from it are executed;
- 2) when it is voluntarily transferred to the pledger;
- 3) if the requirement ensuing from it are not claimed from the debtor in relation to the principal obligation, prior to expiry of one month after the arrival of the date of execution of the principal obligation;
- 4) in the case of loss of the mortgaged item.

2. When validity of a mortgage certificate ceases on the bases stipulated in subparagraphs 3 and 4 of paragraph 1 of this Article, the rights of the owner of the mortgage certificate in respect of execution of the principal obligation shall remain.

CHAPTER 4. REALISATION OF A MORTGAGE

Article 20. The Methods of Mortgage Realisation

In the case of the debtor's a failure to execute the principal obligation, the pledge holder shall have the right to satisfy the pledge holder's claims as follows:

- 1) by way of selling the mortgage in the judicial procedure;
- 2) by realisation of mortgage in the judicial procedure where it is stipulated in legislative acts or in the mortgage agreement, or subsequent agreement of the parties;
- 3) by conversion into the pledge holder's own property of pledged assets in the case of announcement of the sale as invalid, in accordance with Article 32 of this Edict.

Article 21. Realisation of Mortgage in the Judicial Procedure

1. Realisation of mortgage in the judicial procedure shall be carried out in accordance with the court decision in pursuance of the pledge holder's action. In that case, selling of immovable property which is the mortgaged item, shall be carried out by way of selling from public auctions in the procedure established by procedural legislation.

2. Imposition of claims upon the property pledged under a mortgage agreement may be denied if the violation of the principal obligation committed by the debtor is extremely insignificant and therefore, the amount claimed by the pledge holder is in disproportion with the value of the pledged property.

3. Adopting the decision to impose claims upon immovable property pledged under the mortgage agreement, the court must define and indicated in its decision the following:

- 1) all amounts which are subject to payment to the pledge holder out of the value of the pledged property, except for the amount of expenditures on security and realisation of immovable property, which are identified upon completion of its realisation. In the case of amounts calculated as percentage, also the amounts used as the base for calculation of percentage must be shown, the rate and the period during which they are assessed;
- 2) mortgaged immovable property out of which value the claims of the pledge holder are satisfied;
- 3) the initial selling price of pledged immovable property for its realisation;
- 4) steps to secure the safety of immovable property until the moment of its realisation, if necessary.

4. In the following cases: by request of the pledge holder, the court, if there are good reasons, shall have the right to defer its decision the implementation of its decision to impose claims upon pledged immovable property for a period up to one year:

- 1) where the pledger is a citizen, irrespective of what immovable property is pledged by him under the mortgage agreement, provided the pledge is not associated with the performance by that citizen of entrepreneurial activities;
- 2) where the mortgaged item is a land plot which is part of land of agricultural designation.

The deferral of the realisation of pledged immovable property shall not impact the rights and obligations of the parties under the main obligation and it shall not exempt the debtor from reimbursement of losses of the creditor, which increased during the period of the deferral, of interest and forfeit due the creditor.

If the pledger within the limits of time granted to the pledger by a deferral satisfies the claims of the pledge holder, the court in pursuance of the pledger's petition shall abolish that decision.

5. A deferral of realisation of a mortgage shall not be allowed in the following cases:

- 1) if it may entail a significant deterioration of financial position of the pledge holder;
- 2) if in respect of the pledger or pledge holder a case is instituted to recognise as bankrupt.

Article 22. Termination of Realisation of a Mortgage

The debtor and/or pledger which is a third party (estate guarantor), shall have the right at any time until the sale of the pledged item takes place, to terminate the imposition on it of claims and its realisation, upon executing the obligation secured with the pledge or that part of it whose execution is deferred. An agreement to restrict this right shall be invalid.

Article 23. Reimbursement of Costs Associated with Realisation of a Mortgage

Costs incurred by the pledge holder, associated with the realisation of a mortgage shall be reimbursed to the pledge holder out of the value of pledged property.

Article 24. The Procedure for Realisation of a Mortgage in the Non-Judicial Procedure

1. Realisation of a mortgage in the non-judicial procedure shall be carried out by way of holding auctions of pledged property, to be organised by a trustee.

2. The trustee shall be appointed by the parties in the mortgage agreement. In the case where in the mortgage agreement the trustee is not appointed, it shall be appointed by the pledge holder.

3. Satisfaction of the pledge holder's claims in the non-judicial procedure shall not be allowed in the following cases:

- 1) consent of any other entity or body was required for mortgaging immovable property;
- 2) the mortgaged item is immovable property which has major historic, art or cultural significance for the society;
- 3) the mortgaged item is immovable property which is in common ownership, or some of its owners do not provide the written consent to satisfaction of the pledge holder's claims in the non-judicial procedure.

In the indicated cases, claims upon pledged property shall be imposed only upon the court's decision.

Article 25. Requirements to Holding of Non-Judicial Auctions

1. Prior to holding of an auction, the following procedures must be executed:

1) the trustee shall compile the note of non-execution of an obligation, register it at the body where the mortgage agreement was registered and hand it to the pledger. Where the possibility of direct handing of the notice does not exist, the note shall be sent to the pledger by registered mail to the pledger's address as indicated in the mortgage agreement;

2) in the event that the claims ensuing from the notice of non-execution of obligation are not satisfied, but not earlier than two months from handing in or dispatching of the indicated notice to the pledger (subparagraph 1 of this paragraph), the trustee shall compile the notice of auction of pledged property, register it with the body where the mortgage agreement was registered, hand it to the pledger, and also to pledge holder and officially publish the announcement of the auction in compliance with Article 28 of this Edict;

3) from the moment of the first publication of the announcement of the auction any transactions in relation to the immovable property put to the auction shall be prohibited, and if they are committed, then they shall be recognised as invalid;

4) from the moment of the first publication of the announcement of the auction and until the moment of their holding there must be not less than one month.

2. Upon receiving the notice of non-execution of obligation, the pledger shall have the right to appeal to the court with the action on the invalidity of the bases for realisation of the mortgage.

The pledge holder shall have the right to appeal to the court with the petition to be granted a delay in the realisation of the mortgage on the terms stipulated in paragraph 4 of Article 21 of this Edict.

The petitioning with the action (application) of the court shall suspend the course of the period stipulated in subparagraph 2 of paragraph 1 of this Article.

Article 26. Contents of the Notice of Non-Execution of Obligation

The notice on non-execution of obligations must contain the following:

- 1) name (commercial name) and residential address (location) of the pledger;
- 2) name (commercial name) and residential address (location) of the pledge holder;
- 3) brief outline of unexecuted obligations;
- 4) the break-up of the total of the principal obligation;
- 5) the break-up of the total of any other levies, costs and expenditures which must be paid by the pledger before the potential sale of pledged immovable assets;
- 6) suggestion of full repayment of all liabilities within two months from the moment of receiving of the notice;
- 7) warning of the possibility of auction sale of mortgaged immovable property;
- 8) name (commercial name), residential address (location) and the telephone number of the trustee.

Article 27. Contents of the Notice of Holding Auction

The notice of holding auction must contain the following information:

- 1) name (commercial name) and residential address (location) of the pledger;
- 2) name (commercial name) and residential address (location) of pledge holder;
- 3) brief outline of unexecuted obligations and total amount of all liabilities of the pledger to pledge holder which are subject to satisfaction at the expense of the mortgage;
- 4) name, description and parameters of the mortgaged immovable property which is subject to mortgage and which is put to auction;
- 5) time and place of holding the auction;
- 6) name (commercial name), residential address (location) and telephone number of the trustee.

Article 28. Announcement of Auction and Its Publication

1. Not less than one month prior to holding of the auction, the trustee shall publish in the periodical press the announcement of the auction.

2. Auction announcements must contain the following information:

- 1) name, description and parameters of the immovable property put to auction;
- 2) exact location of the immovable property;
- 3) amount of the guarantee advance payment of participants of the auction, if such amount is stipulated among the terms of the auction;
- 4) the procedure and deadlines for payment of the purchase price;
- 5) time and place of holding the auction;
- 6) name (commercial name) and residential address (location) of the trustee who conducts the auction, his telephone number for questions and payment details.

One copy of the announcement of the auction shall be posed, if possible and there are no impediments thereto, in a salient place directly upon immovable property which is put to the auction, not later than one month prior to the date of the auction.

Article 29. Organisation and Conducting of Auctions

1. Auctions shall be organised and held by the trustee.
2. Auctions shall be held in the populated area (town, district, settlement, aul, village) where the property is located.
3. Auctions shall be appointed on any week days in time from 9 to 18 hours.

Article 30. Participants of Auctions

Any legal entities and physical persons shall have the right to participate in auctions, including pledger and pledge holder. The trustee shall not participate in the auction.

Article 31. Guarantee Advance Payment and Payment of the Purchase Price

1. Prior to beginning of the auction, the trustee shall have the right to demand from each of the auction participants of the guarantee advance payment or any other proof of the participant's ability to pay the total of the intended purchase price. Prior to the completion of the auction, the trustee shall have the right to demand from the participant which offered the final price, an immediate payment of that entire amount in cash, a bank cheque or by any other method established by the legislation of the Republic of Kazakhstan for settlements, or to demand proofs of the participant's ability to pay the indicated price after the completion of the auction by methods and within deadlines indicated in the announcement of the auction.

2. In the event that the buyer refuses to pay immediately or has no proof of the ability to pay within the deadlines stipulated in the auction announcement, the buyer shall be excluded from participants of the auction, and the auction shall continue. If it is impossible to continue the auction, and also in the case of the buyer's failure to pay for the property purchased in the auction, new auction shall be appointed, which shall be carried out in the procedure established by this Edict.

3. The pledge holder participating in the auction shall be exempt from making the guarantee advance, and also in the case of winning the auction, from payment of the purchase price within the amount of the principal obligation.

4. The guarantee advances of participants shall be subject to refund upon completion of the auction. A guarantee advance of the participant which won the auction shall be reckoned against the purchase price.

The guarantee advance payments of a participant which won the auction but failed to pay the purchase price, shall remain at the disposal the trustee and it shall be used by the trustee in accordance with the procedure established in Article 36 of this Edict.

Article 32. Announcing an Auction as Invalid

1. The trustee shall announce auction as invalid in the following cases:

- 1) less than two buyers arrived at the auction;
- 2) the entity which won the auction failed to pay the purchase price within the established period.

2. Auctions must be announced invalid on the following day after one of the events mentioned in paragraph 1 of this Article took place.

3. When auctions are announced as invalid because of participation in them of less than two buyers, the pledge holder shall have the right either to turn the pledged property into the pledge holders ownership at its current value as established by the decision of the court or trustee on the basis of evaluation of the state body for appraisal of property, or to demand appointment of new auction.

Within ten days after announcement of an auction as invalid on a basis stipulated in subparagraph 2) of paragraph 1 of this Article, the pledge holder shall have the right to acquire pledged immovable property in agreement with the pledger.

Such an agreement shall be subject to the rules for purchase and sale, and the mortgage agreement in that case shall be terminated.

4. Announcements of new auctions shall be published in accordance with Article 28 of this Edict.

Article 33. The Right to Appeal to the Court

The pledger as well as the debtor in respect of the principal obligation where the debtor is not the pledger, within 3 months shall have the right to challenge the results of the auction in a court of law in the place of location of the immovable property in the case of violation of the procedure for conducting of auctions.

Submission of the action application shall not suspend the commission of acts which ensue from results of the auction.

Article 34. Transfer of Immovable Property to the Buyer

After the completion of an auction and payment by the Buyer of the final price and of all the other payments which are required from the Buyer, the trustee shall hand to the Buyer the document of purchase of the immovable property at the auction, which must contain the following information:

- 1) basis for holding the auction;
- 2) place and time of the auction;
- 3) name, description and parameters of the property purchased at the auction, its location;
- 4) name (commercial name) and residential address (location) of the pledger which was the preceding owner of the property;
- 5) name (commercial name) and residential address (location) of the Buyer;
- 6) purchase price paid by the Buyer;
- 7) name (commercial name) and residential address (location) of the trustee who conducted the auction.

The Document on Purchase of immovable property at an auction shall be certified with the signature of the trustee.

Where the trustee is a legal entity the signature of its representative shall be certified by the seal of that legal entity; where the trustee is a physical person, his signature shall be certified in the notarial procedure.

Article 35. The Refusal of the Pledger to Transfer Immovable Property

In the case of the pledger's refusal to transfer to the Buyer immovable property purchased by the Buyer at the auction, including the unwillingness to free residential premises, the Buyer shall have the right to appeal to the court in the place of the property's location.

All court expenses which emerge in that case, shall be reimbursed by the pledger out of resources received from selling of the mortgage.

Article 36. Distribution of Auction Receipts

The trustee shall distribute receipts from the auction in the following procedure of priority:

- 1) to cover expenditures and costs of conducting the auction;
- 2) to pay the principle obligation secured with the mortgage;
- 3) to pay deferred obligations secured with secondary pledges and overpledges, and also of any other encumbrances of immovable property in accordance with the priority procedure established by legislative acts;
- 4) to repay to the pledger the remaining amount.

CHAPTER 5. CESSATION OF A MORTGAGE

Article 37. Bases for Cessation of a Mortgage

1. A mortgage shall cease on the bases stipulated in Article 322 of the Civil Code of the Republic of Kazakhstan, unless it is otherwise stipulated in this Edict. In that case, when a mortgage ceases as a result of execution by the debtor of the principal obligation, and also of execution of the mortgage agreement either by way of selling of pledged immovable assets, or by way of turning it into ownership of the pledge holder, the latter shall issue to the pledger within 15 days after the commission of the indicated acts, a written document which witnesses the cessation of the mortgage registered by the body which registered the mortgage agreement.

2. When selling pledged property at an auction in the non-judicial procedure at a price which is lower than the amount of the principal obligation, and also in the case of transfer of pledged property into ownership of the pledge holder, the principal obligation shall cease simultaneously with the cessation of the mortgage.

Article 38. Effect of This Edict

This Edict shall enter into force from the 1st of January, 1996.

President of the Republic of Kazakhstan

N. Nazarbaev