



UNMIK/REG/2002/21  
20 December 2002

---

**REGULATION NO. 2002/21**

**ON THE PROMULGATION OF  
THE LAW ADOPTED BY THE ASSEMBLY OF KOSOVO  
ON MORTGAGES**

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under Security Council resolution 1244 (1999) of 10 June 1999,

In conformity with sections 9.1.44 and 9.1.45 of the Constitutional Framework for Provisional Self-Government (UNMIK Regulation No. 2001/9),

Taking into account a communication from the President of the Assembly of Kosovo dated 21 October 2002, concerning the Law on Mortgages (Law No. 2002/4) adopted by the Assembly of Kosovo on 17 October 2002,

Recognizing the need to ensure that mortgagors and third parties whose rights may be affected by extra-judicial foreclosure concerning a mortgaged property are given a fair opportunity to protect their rights prior to finalization of the extra-judicial foreclosure procedure under the said law,

Considering that this essential right of mortgagors and third parties can be protected through effective governmental rules, procedures or guidelines implementing the Law,

Hereby promulgates the Law on Mortgages (Law No. 2002/4) attached to the present Regulation, on the understanding that implementing rules, procedures and guidelines shall be prepared by the Government in coordination with UNMIK, to provide mortgagors and third parties whose rights may be affected an opportunity

to file objections for the protection of their legal interests prior to finalization of the foreclosure.

Signed on this 20<sup>th</sup> day of December 2002.

Michael Steiner  
Special Representative of the Secretary-General

# LAW ON MORTGAGES

## No. 2002/4

The Assembly of Kosovo,

Pursuant to Chapter 9, Section 9.1.26 (a) of the Regulation Nr. 2001/9 of 25 May 2001 on the Constitutional Framework of Provisional Self-Government in Kosovo,

Taking into account the need for mortgages at the present stage of economic development in Kosovo and taking into account the lack of sustainable mortgage foreclosure proceedings for the time being, the following Law on Mortgages shall be implemented. Its provisions shall be subject to the establishment of a comprehensive Property Code addressing the overall property related issues in Kosovo,

Hereby approves the following:

### **Chapter 1 General Provisions**

#### Section 1 Purpose and Application

1.1 This Law establishes the exclusive means for the creation of mortgages, their effects on the parties to such agreements, their effects on third persons, and the means by which certain mortgages by business organizations may be enforced through non-judicial foreclosure in cases of default under the terms of the mortgage document.

1.2 This Law shall not apply to mortgages created by operation of law.

#### Section 2 Definitions

Wherever used in this Law, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise or unless this Law clearly states otherwise:

“Business organization” means any business organization defined in Section 3 of UNMIK Regulation No. 2001/6 on Business Organizations and which is registered under the Kosovo Registry of Business Organizations and Trade Names.

“Default” is a failure of the mortgagor to perform an obligation as more specifically defined in the mortgage document.

“Financial institution” means a bank or financial institution licensed by the Banking and Payments Authority of Kosovo pursuant to UNMIK Regulation No. 1999/21 of 15 November 1999 on Bank Licensing, Supervision and Regulation.

“Foreclosure” is a procedure to sell the collateral of a mortgage in order to satisfy the obligation that the mortgage secures in cases when the mortgagor is in default under the terms of the mortgage document.

“Land parcel” means a portion of land as described in the Land Cadastre.

“Mortgage” is a lien encumbering immovable property or rights thereto in favor of a creditor that provides such creditor with the right to demand settlement of his claim from the proceeds of the sale of the immovable property or the rights thereto.

“Mortgage agreement” is the document that establishes a security interest in immovable property or the right of mortgage.

“Mortgage document” is the principal agreement and/or mortgage agreement used to create a mortgage. The mortgage document may set forth in one or more documents.

“Mortgagee” is the person who holds a mortgage.

“Mortgagor” is the person whose immovable property is encumbered by a mortgage.

“Person” includes both natural and legal persons.

“Principal agreement” is the agreement which gives rise to financial obligations that are secured by the mortgage.

“Municipal Cadastral Office ” is the municipal level government body authorized to maintain records on land parcels, immovable structures, mortgages, other interests relating to property, and transactions related thereto.

“Registered Address” means the address registered by a business organization pursuant to the Regulation on Business Organizations.

“Business Property” includes immovable property or rights thereto which are used for business undertakings or operations, regardless of whether such property is also used for residential purposes.

“Selling Agent” is a person appointed by a financial institution to sell property subject to a mortgage under the authority of a business authorization.

Words of any gender used in this Law shall include any other gender and words in singular number shall be held to include the plural and the plural to include the singular.

## **Chapter 2**

### **Mortgages**

#### Section 3

##### Collateral of a Mortgage

- 3.1 The collateral of a mortgage may be immovable property or a right thereto that the owner may dispose of within the limits prescribed by law.
- 3.2 The mortgage of a land parcel shall apply to the entire land parcel.
- 3.3 A building, an apartment or other portion of a building or similar structure may be mortgaged without subjecting the rest of the structure or the land parcel to the mortgage.
- 3.4 All buildings or structures constructed on a land parcel shall be subject to any mortgage thereon, provided they have the same owner or user.

#### Section 4

##### Fundamental Aspects of a Mortgage

- 4.1 A mortgage may secure obligations under credit agreements, promissory notes, or other contractually based financial obligations, including obligations arising from a contract of guarantee.
- 4.2 Unless otherwise provided by the mortgage document, the mortgage shall secure repayment of the principal, interest, and fees due the mortgagee under the terms of the mortgage document as well as any expenses incurred by the mortgagee resulting from foreclosure procedures.
- 4.3 Where the right to dispose of the collateral of the mortgage is held by more than one person, no mortgage document shall be valid unless all persons who hold such rights sign the mortgage document.
- 4.4 A mortgage may secure future financial obligations based on advances made by the mortgagee up to the maximum amount stated in the mortgage document to the same extent as if the future obligations were made on the date of the execution of the mortgage document.
- 4.5 If immovable property is the subject of several mortgages, the rights of the mortgagees shall be determined pursuant to the moment of registration, unless otherwise provided by law.
- 4.6 If the mortgagor reduces the value of the collateral of the mortgage or otherwise depreciates its condition, the mortgagee shall be entitled to petition the court for an

injunction against such acts in respect of the mortgagor, and if he fails to conform, may demand enforced settlement of the claim secured by mortgage before the due date.

4.7 Contract provisions granting the mortgagee the right to settle his claim in event of default through direct acquisition of the collateral of the mortgage or otherwise obtaining the right to use the property shall be null and void.

### Section 5 Mortgage Document

In order to be valid, a mortgage document shall be in writing and certified in a manner required for other transactions involving immovable property in accordance with applicable legislation. A valid mortgage document shall include:

- (a) the name, address and contact information of the mortgagor and mortgagee;
- (b) a description of the obligations secured by the mortgage, or, if the obligation is set forth in a separate principal agreement, a precise reference to the principal agreement;
- (c) a description sufficient to reasonably identify the collateral of the mortgage, including cadastre number of the immovable property, and the name of the municipality in which the immovable property is located;
- (d) the relevant possession list, or equivalent;
- (e) the relevant construction permit(s), if any;
- (f) the relevant use permit(s), if any;
- (g) the maximum amount of the financial obligation or possible future financial obligation secured by the mortgage;
- (h) a statement in prominent bold letters indicating that foreclosure may result in the eviction of the mortgagor;
- (i) the means of delivering documents to the mortgagor in case of default or foreclosure proceedings;
- (j) the date on which the mortgage document is signed; authorized signatures by or on behalf of the mortgagee and the mortgagor;
- (k) other provisions as may be required by this Law and applicable legislation.

Section 6  
Transfer of Rights Pertaining to a Mortgage

6.1 The transfer of a mortgage is bound to the transfer of the claim secured by the mortgage. The transfer of the rights under the mortgage document is subject to a written notice to the mortgagor by the mortgagee. The mortgagor shall be bound by the terms of the mortgage to the assignee of the mortgage after the registration of the assignment in the Immovable Property Rights Register (hereinafter “the Register”).

6.2 The mortgagee shall not have the authority to restrict transfers of the collateral of the mortgage by inheritance.

6.3 Where the collateral of the mortgage is transferred to several persons pursuant to an inheritance, each of the legal successors shall bear the consequences of default jointly and severally.

**Chapter 3**  
**Registration**

Section 7  
Effect of Registration

7.1 The registration of a mortgage according to applicable law shall render effective the rights and obligations of the parties thereto. Persons obtaining rights to the collateral of a registered mortgage shall be bound by the prior-established rights pertaining to the immovable property.

7.2 An amendment of the mortgage document shall be effective upon registration of the amended mortgage.

Section 8  
Termination of Mortgage by Registration

8.1 A mortgage is terminated upon registration of its release by the mortgagee in accordance with this Law.

8.2 Within fifteen (15) days of settlement of the obligations secured by the mortgage, the mortgagee shall file a request to release the mortgage.

8.3 The request shall contain a statement that the mortgagee no longer claims the rights of a mortgagee against the collateral of the mortgage and shall specifically identify by number and date the documents pertaining to the registration of the mortgage.

8.4 If the mortgagee fails to request the release of mortgage as required by section 8.2, a court, upon petition filed by the mortgagor, shall order the Municipal Cadastral Office to enter a release of the mortgage in the Register. Such mortgagee shall be liable to the mortgagor for any damages caused as a result of the mortgagee's failure to request the release of mortgage in accordance with this section.

## **Chapter 4** **Judicial Foreclosure**

### Section 9 Procedure for Judicial Foreclosure

The process and requirements for foreclosing the collateral of a mortgage shall be governed by the applicable law on execution procedures, unless a valid business authorization is granted by a business organization to a financial institution to sell the collateral of a mortgage in accordance with Chapter 5 of this Law.

## **Chapter 5** Business Authorization to Sell the Collateral of a Mortgage

### Section 10 Fundamental Aspects of a Business Authorization to Sell the Collateral of a Mortgage

10.1 A business authorization to sell the collateral of a mortgage shall be a grant of a power of agency by a mortgagor to a mortgagee to sell the collateral of mortgage in the event of a default as defined in the mortgage document.

10.2A business authorization to sell the collateral of a mortgage may be irrevocable and/or unrestrictable if agreed to by the mortgagor and mortgagee in accordance with the provisions in this Law.

10.3In order to be valid and enforceable, a business authorization to sell the collateral of a mortgage shall meet each of the following requirements:

- (a) a business authorization must be granted by a business organization;
- (b) a business authorization must be granted to a financial institution;
- (c) a business authorization shall specifically provide for the appointment of a selling agent to conduct the sale of the property subject to the mortgage;
- (d) a business authorization must be granted with respect to business property. Subsequent reclassification of the collateral of a mortgage as residential shall not affect the validity of a valid existing business authorization created under this Law;



(e) the business authorization shall be included within the mortgage document;  
and

(f) a business authorization shall be in the form required by this chapter.

10.4 The business authorization shall be registered in the Register.

10.5 The business authorization to sell the collateral of a mortgage may provide that it shall remain valid despite the death, disability, dissolution, bankruptcy or merger of either the mortgagee or the mortgagor, and may be binding upon the heirs, assigns, transferees and successors of the mortgagor.

10.6 The invalidity of a business authorization shall not prohibit the mortgagee from foreclosing the collateral of a mortgage in accordance with chapter 4 of this Law.

10.7 Principles of agency shall apply to the business authorization except as modified either explicitly or implicitly by this Law.

#### Section 11 Selling Agent

11.1 For services rendered in connection with the sale of property, the selling agent is entitled to reimbursement of costs and expenses incurred in connection with the sale of the property and a reasonable fee agreed upon between the mortgagee and the selling agent, in an amount not to exceed 1.5% of the sales price.

11.2 For each sale of immovable property and rights thereto under this chapter, the selling agent shall open an account with a bank licensed by the Banking and Payment Authority of Kosovo. Such account shall be used for the sole purpose of disbursing funds received upon sale of the property in accordance with section 22 of this Law. The account shall be specifically identified by reference to the property being sold.

11.3 The actions of the selling agent shall be in compliance with the provisions of this Law.

11.4 The agent shall not be liable for actions undertaken if done clearly in good faith and in accordance with the provisions of this Law.

#### Section 12 Registration of a Request for Notice of Foreclosure or Sale

12.1 A person other than the mortgagor with registered rights in the collateral of the mortgage shall be entitled to notification if the mortgagee initiates foreclosure

proceedings or a sale pursuant to a business authorization and such request has been registered.

12.2 Persons filing a request for notice of foreclosure shall be entitled to notice of such at substantially the same time as the mortgagor.

Section 13  
Conditions Under Which a Business Authorization May be Exercised

A business authorization to sell the collateral of a mortgage may be exercised upon default described in the grant of business authorization, upon fulfillment of the applicable notification and auction procedures.

Section 14  
Required Form of a Business Authorization

A valid business authorization shall contain the following:

- (a) the name, address and contact information of the mortgagor and the mortgagee;
- (b) a statement that the parties have agreed that the collateral of a mortgage shall be sold with out court action in the event of the mortgagor's default under the mortgage documents;
- (c) a statement that the collateral of the mortgage is business property;
- (d) authorization for the mortgagee to appoint a selling agent to sell the collateral of a mortgage pursuant to this Law;
- (e) a description of the particular defaults under the mortgage documents that will give rise to the right of the mortgagee to exercise the business authorization;
- (f) the agreed-upon address for delivering the notices required under this chapter if different from the registered address of the mortgagor; and
- (g) any other elements agreed to by the mortgagor and mortgagee not prohibited by this or any other applicable law.

Section 15  
Notice of Default

15.1 Prior to initiating a non-judicial sale under this Law, the mortgagee shall file a request to register a notice of default in the Register. The notice of shall contain the following:

- (a) a description of the mortgage document under which the default has occurred, including the registration information of the mortgage document;
- (b) the name, address and contact information for the mortgagee and the mortgagor;
- (c) the name and address and contact information of the selling agent appointed by the mortgagee;
- (d) the address, cadastre number and the name of the municipality where the property subject to the mortgage is located;
- (e) a statement that a default has occurred and a description of the default;
- (f) a statement of the actions necessary to cure the default and the time period during which the default must be cured, which shall be not less than 45 days after the date of registration of the notice of default; and
- (g) a statement of the mortgagee's election to enforce a non-judicial sale of the property if the default is not cured within the designated cure period.

15.2 The notice of default shall be registered in the language required by the law and shall begin with the following language in 14-point boldface capital letters:

**THIS IS A NOTICE THAT YOU ARE IN DEFAULT UNDER YOUR LOAN. UNDER THE LAWS OF KOSOVO YOUR PROPERTY MAY BE SOLD WITHOUT ANY COURT ACTION IF YOU FAIL TO CURE THE DEFAULT. YOU HAVE THE RIGHT TO BRING YOUR ACCOUNT IN GOOD STANDING BY PAYING ALL YOUR PAST DUE PAYMENTS PLUS PERMITTED COSTS AND EXPENSES WITHIN THE TIME PERMITTED BY LAW. NO SALE DATE MAY BE SET UNTIL 30 DAYS FOLLOWING THE DATE THIS NOTICE OF DEFAULT WAS REGISTERED (WHICH DATE APPEARS ON THIS NOTICE).**

15.3 The MCO shall register the notice of default according to the request of the mortgagee. The MCO shall not be liable for any damages due to any wrongful action on behalf of the mortgagee.

Section 16  
Copies of Notice of Default

16.1 Not later than 10 days after registration of the notice of default, the mortgagee shall provide copies of the registered notice to:

- (a) the mortgagor;
- (b) the selling agent;
- (c) any person holding a registered interest in the property subject to the mortgage that would be affected by the sale (including successor owners of the property subject to the mortgage, junior lien holders, and their successors-in-interest);
- (d) any person designated to receive copies of notices in the mortgage document; and
- (e) any person requesting a copy of the notice pursuant to section 12 if this Law.

16.2 The mortgagee shall be deemed to have provided all necessary copies of notices of default if within 7 days following registration of the notice of default, the mortgagee deposits or causes to be deposited in the mail an envelope, sent by registered mail with postage prepaid, containing a copy of the notice with the registration date shown thereon.

Section 17  
Notice of Sale

17.1 If a default has not been cured within the cure period specified in the notice of default given pursuant to Section 15, the mortgagee may instruct the selling agent to proceed with the non-judicial sale of the mortgaged property or rights thereto.

17.2 The selling agent shall calculate the amount of the minimum bid which will be accepted at the auction for the property subject to the mortgage. The minimum bid shall not be less than the sum equal to all outstanding monetary claims as evidenced by instruments registered against the collateral of the mortgage, plus the estimated fee of the agent, the cost of sale and any unpaid property taxes and costs.

17.3 The selling agent shall file a request for the registration of the notice of sale. The notice of sale shall contain the following:

- (a) the date and time of the sale;
- (b) the address where the sale will be conducted, which shall be in the municipality in which the mortgaged property is located;
- (c) the address, cadastre number and the name of the cadastre municipality of the mortgaged property, and a description of the use of the property;
- (d) the amount of the minimum bid;
- (e) if any methods of payment other than full cash payment will be accepted at the sale, then a description of such methods, including the amounts of any required deposits; and
- (f) the name, address and phone number of the selling agent who will conduct the sale.

17.4 Not later than 10 days after registration of the notice of sale, the mortgagee shall provide copies of the registered notice to anyone entitled to receive a copy of the notice of default under section 12. The mortgagee shall be deemed to have provided all necessary copies of the notice of sale if within 7 days following registration of the notice of sale, the mortgagee deposits or causes to be deposited in the mail an envelope, sent by registered mail with postage prepaid, containing a copy of the notice with the registration date shown thereon, addressed to each person entitled to such a copy.

17.5 The selling agent shall publish notice of sale at least once a week for three consecutive calendar weeks, the first publication to be at least 21 days prior to the date of sale, in a newspaper with daily circulation of over 5,000 copies, published in Kosovo and generally available in the municipality in which the property is to be sold.

17.6 At least 14 days before the date of sale, the selling agent shall post the notice of sale:

- (a) on the public information board in the municipality building in the municipality in which the property is to be sold; and
- (b) in a conspicuous place on the property to be sold, where possible and where not restricted for any reason.

17.7 If the property is a detached structure the posting shall be on a door of the structure, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a gate or similar impediment, the notice may be posted at that gate or similar impediment.

Section 18  
Right to Cure Default

18.1 The mortgagor shall have the right to cure the default and reinstate the loan up to five business days before the date of the sale by paying all amounts stated in the notice of default (with interest), all subsequent arrearages, and the costs and expenses of the selling agent and mortgagee incurred in connection with the enforcement of the mortgage.

18.2 If the mortgagor or another person authorized to cure the default pursuant to this section does cure the default, the mortgagee shall, within 21 days following the cure, deliver to the mortgagor a notice of rescission, which rescinds the notice of default effective as of the date of the cure. The mortgagor shall file a request to register the notice of rescission in the Register in which the notice of default was registered. No charge, except for the registration fee shall be made against the mortgagor for the preparation and registration of the notice of rescission.

18.3 In the event the sale does not take place on the date set forth in the initial registered notice of sale, the right of reinstatement shall continue until five business days prior to the date of sale as postponed.

18.4 Nothing contained in the aforementioned paragraphs shall give rise to a right of reinstatement during the period of five business days prior to the date of sale, whether the date of sale is noticed in a notice of sale, or declared at a postponement of sale under section 19.

Section 19  
Postponement of Sale

19.1 There may be a postponement of the sale at any time prior to the completion of the sale upon instruction by the mortgagee to the selling agent.

19.2 There may be a maximum of two postponements of the sale under section 19.1 without the need to give a new notice of sale. If the sale is postponed more than two times, the rescheduling of the sale shall be preceded by a new notice of sale given in the manner prescribed by section 18.

19.3 The selling agent shall postpone the sale upon the order of any court of competent jurisdiction, or where stayed by operation of law, or by the mutual agreement of the mortgagor and mortgagee. Any postponement under this section shall not be a postponement for purposes of determining the maximum number of postponements permitted pursuant to section 19.2. In addition, one postponement by the selling agent based upon a reasonable belief that a petition for bankruptcy has been filed shall not be a postponement for purposes of determining the maximum number of postponements permitted pursuant to paragraph 19.2.

19.4 The selling agent shall announce publicly any postponement and the reason for it at the time and place last appointed for sale. The public declaration shall set forth the new date and time of sale.

Section 20  
Sale

20.1 The property collateral to the mortgage shall be sold only in accordance with the provisions of this section. Any provisions to the contrary in the mortgage documents shall be null and void.

20.2 The sale shall be held any day Monday through Saturday between the hours of 9:00 and 15:00 (excluding holidays), but no sooner than 45 days; and

20.3 no later than 90 days, following the date of registration of the notice of sale.

20.4 Prior to starting the auction, the selling agent shall have the right to require each bidder to show evidence of the bidder's ability to deposit with the selling agent 10 percent of the amount of the minimum bid in cash or cash equivalent that has been designated in the notice of sale as acceptable to the selling agent.

20.5 The sale shall be conducted by public auction at which the property subject to the mortgage shall be sold to the highest bidder. The selling agent shall serve as the auctioneer at the sale and shall conduct the sale in a commercially reasonable manner intended to maximize the sale proceeds.

20.6 Each bid shall be deemed to be an irrevocable offer by that bidder to purchase the collateral of the mortgage for the amount of the bid. Any subsequent bid by the same bidder or any other bidder for a higher amount shall be a cancellation of the prior bid.

20.7 Within five (5) business days of completion of the auction, the winning bidder shall pay to the selling agent the amount of the winning bid, less the deposit.

20.8 In the event that payment is not made as provided in section 20.6, the bid deposit of the winning bidder shall be forfeited to the mortgagee, and a subsequent sale shall be held.

Section 21  
Transfer of the Mortgaged Property

The transfer of the immovable property right becomes effective only upon its registration in the Register accordance to the applicable law.

Section 22  
Distribution of Sales Proceeds and Deficiency Judgment

22.1 The selling agent shall direct the distribution of proceeds of the sale of the property as follows:

- (a) to pay any taxes or fees that are liens upon the property subject to a mortgage, and any liens or encumbrances placed upon the property subject to a mortgage that has priority over the foreclosed mortgage;
- (b) to reimburse the costs and expenses of the sale (including the payment of selling agent's fees under section 11);
- (c) to satisfy the amount of the debt and any other amounts owed to the mortgagee;
- (d) to satisfy the outstanding balances of all junior liens in the order of their priority; and
- (e) any remainder to the mortgagor.

22.2 The preceding paragraph shall not prejudice the rights of the mortgagee from bringing an action against the mortgagor in the event the mortgagee does not recover the total amount due under the mortgage document through non-judicial foreclosure.

22.3 If no court proceeding is instituted within 90 days of the date of sale, the proceeds of the sale shall be deemed to be in full satisfaction of the mortgage debt, and no right to recover any deficiency shall exist.

Section 23  
Judicial and Other Relief

23.1 The mortgagor shall have the right to petition the appropriate court in the municipality where the collateral of the mortgage is located to halt the proceedings, rescind the sale of the property, or provide other appropriate relief. The court shall grant such relief if it determines that:

- (a) the acts of default which give rise to the exercise of the business authorization to sell the mortgage property were not committed by the mortgagor; or
- (b) the selling agent failed to conduct the auction and sale in the manner indicated in this Law and other applicable legislation.



23.2 The court shall render a decision on such petition pursuant to summary procedures. The mortgagor's right to petition the court shall expire thirty (30) days after the date of the sales agreement provided for in section 21 of this Law.

23.3 A financial institution that fails to comply with the provisions in this chapter in order to obtain an unfair advantage for itself shall be subject to disciplinary action by the Banking and Payments Authority of Kosovo, as well as any other action that may be decided on by the court.

Chapter 6  
**Final Provisions**

Section 24  
Applicable Law

This Law shall supersede any provision in the applicable law that is inconsistent with it.

Section 25  
Entry Into Force

This Law shall enter into force on 20 December 2002.

No. 2002/4  
17 October 2002

President of the Assembly of Kosovo  
Nexhat Daci, Academician