

Dear Sirs,

On December 9, 2011 the Federal law No. 405-Ф3 “**On introduction of amendments into certain legislative acts of the Russian Federation with regard to improvement of the procedure for foreclosing pledged property**” (the “Law”) was signed by the President of the Russian Federation. The Federal law enters into force on **March 7, 2012**, except its Article 7, amending the Tax Code of the Russian Federation. which enters into force on January 1, 2012.

The main changes introduced by the adopted Federal law concern the mechanism of extrajudicial procedure for foreclosing pledged movable and immovable property, particularly the procedure for placing notarial executive endorsement on pledge agreement.

**1. Foreclosure of pledged movable property according to the new edition of the Federal law No. 2872-1 dd. May 29, 1992 “On pledge”**

- Foreclosure of pledged movable property is permitted **without recourse to the court** provided that the following conditions are met: (i) pledge agreement contains a clause on extrajudicial foreclosure of the pledged property; (ii) pledge agreement is notarized; (iii) there is a notarial executive endorsement on the pledge agreement.
- Foreclosure of pledged movable property is permitted **without placing notarial executive endorsement** if and when (i) a pledge agreement contains a clause on extrajudicial foreclosure of the pledged property and (ii) the subject of pledge remains with the pledgee.
- The **moment of transfer to ownership on pledged property** left with the pledgee is defined.
- **It is not required to engage an appraiser** in case the pledged securities placed on organized market of securities are left with the pledgee at the price specified in the pledge agreement, or the procedure for determination of such price is specified therein. In all other cases, when the subject of pledge is left with the pledgee or sold to a third party, an engagement of an appraiser is required.

**2. Foreclosure of mortgaged immovable property according to the new edition of the Federal law No. 102-Ф3 dd. July 16, 1998 “On mortgage” and the Federal law No. 122-Ф3 dd. July 21, 1997r “On state registration of rights on immovable property and transactions with it”**

- Foreclosure of mortgaged immovable property **within extrajudicial procedures by virtue of notarial executive endorsement** can be executed basing on (i) the notarized mortgage agreement which contains a clause on extrajudicial foreclosure of the mortgaged property or (ii) mortgage deed, if the agreement it is based on meets the requirements specified in point (i) above and the mortgage deed itself contains the same provision on extrajudicial foreclosure of pledged property.
- A pledgee is permitted to reserve itself mortgaged immovable property if the parties to the mortgage agreement which contains a clause on extrajudicial foreclosure of the pledged property are a legal entity and (or) an individual entrepreneur, and such agreement secures obligations related to their entrepreneurial activity.
- The value of the property remaining with the pledgee is determined on the basis of an **appraiser’s report**. However, an interested party who does not agree with such appraisal is entitled to seek compensation for losses inflicted by realization of property at the price indicated in the report.

- The Law expands the list of circumstances when satisfaction of pledgee's demand to foreclose the mortgaged property extrajudicial court is not permitted.
  - State registration of mortgage established by an agreement may be executed upon **the application of the notary** that certified such agreement. The notary may also request cancellation of a register entry on mortgage that was established by a notarized agreement.
  - The Law provides for **reduced terms** for state registration of mortgage of land plots, buildings, structures, non-residential premises established by notarized mortgage agreement.
  - A notary that certified a mortgage agreement bears **full responsibility for the legal expertise** of documents and **validity** of the transaction.
3. **The procedure for placing notarial executive endorsement on pledge agreement in accordance with the new edition of Fundamentals of legislation on notaries dd. February 11, 1993 No. 4462-1**
- When placing executive endorsement, the notary **must propose the debtor to perform the obligation that is secured by pledge** by issuing him respective notification and providing a 7-day period from the moment of receipt of such notification for performance of his obligations.
  - A notary is entitled to make an **executive endorsement with respect to a part of obligation secured by pledge**, with regard to which the documents confirming performance by the debtor of his obligations were not provided.
  - The notarial actions of placing an executive endorsement on a pledge agreement may be appealed, but such appeal **may not serve as ground for suspending the foreclosure** of pledged property and its recovery.
  - The **grounds for notary's refusal to execute foreclosure** on pledged property are specified.

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We hope the information above is helpful for you.

For more information on ALRUD Real estate practice or ALRUD Dispute resolution practice please visit our [Web-site](#)

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Kind regards,

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