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Legal Aspects in the Sale of Mortgaged Properties in Mexico

The sale of mortgaged properties in Mexico is a process that involves compliance with various legal provisions regulated mainly by the Federal Civil Code ("CCF"). This scenario poses challenges for both the seller and the buyer, who must observe the legal requirements to guarantee a valid and secure transaction.

The constitution of a mortgage, generally, derives from a credit contract (executed with a banking institution), in which the debtor acquires the credit to pay the value of the real estate, in case the debtor does not comply with its payment obligations to the creditor, the creditor grants the real estate as collateral so that the creditor may collect either through the sale or foreclosure of the real estate. According to Article 2893 of the CCF, the mortgage is a real right that can only be constituted on real estate.

Once the loan has been paid, the debtor acquires ownership of the property and the mortgage constituted in favor of the creditor is released. In the event that a third party wishes to purchase a mortgaged property, there are two options for the third party to acquire the property, either through an assignment of rights so that the original debtor assigns the debt rights in favor of the third party so that the third party obtains ownership of the mortgaged property, or if the third party liquidates the debt and acquires the property.

Additionally, Article 2919 of the CCF establishes that in order for a mortgage to produce effects against third parties, it needs to be registered in the Public Registry of Property and Commerce of the state in which the property is located ("RPPC"), so in case a third party decides to purchase the mortgaged property, the change of debtor in case the credit continues, or the cancellation of the mortgage in case the third party liquidates the payment of the credit, must be registered.

In order for the sale of a mortgaged property to be valid, the original mortgagor (the seller of the property) must notify the mortgagee of its intention to sell the property and obtain its authorization prior to the assignment of the debt. Article 2051 of the CCF establishes that the assignment of debt may not be made without the prior express or tacit authorization of the creditor.

In practice, the contract must include a clause or background section where the parties acknowledge the existence of the mortgage and agree on the mechanism for its cancellation or transfer.

Failure to comply with the provisions and/or requirements established in the law related to the sale of mortgaged property may have various legal consequences, depending on the fault established by the legislation, among them:

- If the sale is made without the creditor's authorization, it could be declared absolutely null and void, leaving without effect the debt assignment made.
- In case of breach of contractual clauses or failure to properly inform about the existence of the mortgage, the parties may face claims for damages.
- In the event that the purchaser does not liquidate the mortgage as required, the creditor has the power to initiate legal proceedings to foreclose the mortgage, either by sale or foreclosure.
- In the event that the mortgage has not been registered in the Public Registry, the mortgage may not enforce the mortgage against third parties.

Once the loan has been paid, it is important for the buyer to request the cancellation of the mortgage in order for it to be registered in the RPPC and to obtain the public deed in which the payment settlement and the adjudication of the property is recorded.

At ECIJA Mexico, we have a team specialized in real estate law, providing comprehensive guidance for the structuring and execution of sales transactions of mortgaged property, ensuring that each transaction complies with applicable Mexican law.

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