

PROVISIONAL REGISTRATION SECURITY ACT

Act No. 3681, Dec. 30, 1983
Amended by Act No. 5454, Dec. 13, 1997
Act No. 6627, Jan. 26, 2002
Act No. 7428, Mar. 31, 2005
Act No. 8919, Mar. 21, 2008

Article 1 (Purpose)

The purpose of this Act is to provide, with respect to the return of any borrowed object, the effect of a security contract and provisional registration or ownership transfer registration made for the purpose of such security, when a borrower pre-engages to transfer other property rights in lieu of the borrowed object if the value of such property at the time of preengagement exceeds the sum of the loan and any interest accruing therefrom.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 2 (Definitions)

The definitions of terms used in this Act shall be as follows:

1. The term "security contract" means a contract for credit security included in, or existing together with preengagement (including all, such as repurchase, security by means of transfer, etc. whatever a name may be) of return of substitutes, the effect of which shall be lost under Article 608 of the Civil Act;
2. The term "obligor, etc." means persons under the following items:
 - (a) An obligor;
 - (b) A person who has pledged his/her property to secure another's obligation for a real estate which is an object of a provisional registration for security; and
 - (c) A third person who has acquired ownership after a provisional registration for security was made;
3. The term "provisional registration for security" means provisional registration made for the purpose of securing any obligation;
4. The term "compulsory auction, etc." means a compulsory auction and

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an auction for exercise of a security right, etc.; and

5. The term "junior creditor" means a mortgagee, a person with a right to lease on a deposit basis, and a person holding a right to the provisional registration for security registered after a provisional registration for security was made.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 3 (Notification of Exercise of Security Right and Period for Liquidation)

(1) In order for a creditor to acquire ownership of a real estate for such security by exercising a security right under a security contract, the creditor shall notify an obligor, etc. of the estimated amount of liquidation as prescribed in Article 4 after the period of payment of such credit has passed, and two months shall pass after such notification has reached an obligor, etc. (hereinafter referred to as "liquidation period"). In such cases, if it is deemed that there is no liquidation amount, the effect shall be notified.

(2) The estimated value of a real estate for security and the amount of credit prescribed in Article 360 of the Civil Act shall be specified in the notification as referred to in paragraph (1). In such cases, if there are two or more real estates, the credit intended to be extinguished by transfer of ownership of each real estate and the expenses thereof shall be specified.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 4 (Payment of Liquidation Amount and Acquisition of Ownership)

(1) A creditor shall pay an obligor, etc. an amount left by deducting the amount of credit from the value of a real estate for security at the time when notification is made under Article 3 (1) (hereinafter referred to as "liquidation amount"). In such cases, if there are rights, such as a senior security right, etc. to a real estate for security, an amount of credit secured by a senior security right, etc. shall be included when calculating the amount of credit.

(2) In cases where a creditor has already made registration for ownership transfer of a real estate for security, he/she shall acquire ownership of a real estate for security when he/she has paid an obligor, etc. the liquidation amount after the liquidation period passed, and in cases where a provisional registration for security has been made, he/she may request the principal registration on the basis of the provisional registration only after the liquidation period has passed.

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(3) Article 536 of the Civil Act on a right of defense of simultaneous performance shall apply *mutatis mutandis* to performance of an obligation to pay the liquidation amount, registration for ownership transfer of a real estate and performance of an obligation transferred.

(4) Any special contract which is contrary to the provisions of paragraphs (1) through (3), and unfavorable to an obligor, etc., shall lose its validity: *Provided*, That this shall not apply in cases where a special contract which has been concluded after the liquidation period expired, does not infringe rights of a third person.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 5 (Exercise of Right by Junior Creditor)

(1) A junior creditor may exercise his/her right to the liquidation amount payable to an obligor, etc. according to the order, within the limits of the estimated amount notified under Article 3 (1), until the liquidation amount is paid, and if the junior creditor demands the payment thereof, a creditor shall pay it.

(2) When exercising the right as referred to in paragraph (1), a junior creditor shall deliver the statement and the deed of the obligation to a creditor within the limits of the secured claim.

(3) When a creditor has received the statement and the deed as referred to in paragraph (2), and has paid the liquidation amount to a junior creditor, the obligation on the liquidation amount shall be terminated to that extent.

(4) A person who intends to prevent a junior creditor from exercising the right as referred to in paragraph (1), shall seize or provisionally seize the liquidation amount.

(5) Article 536 of the Civil Act on a right of defense of simultaneous performance shall apply *mutatis mutandis* to any person who has acquired an opposable lease right after the provisional registration for security was made, within the limits of the liquidation amount.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 6 (Notification to Right Holders other than Obligor)

(1) When the notification under Article 3 (1) reaches an obligor, etc., a creditor shall notify, without delay, a junior creditor of the fact, details and arrival date of the notification.

(2) When the notification under Article 3 (1) has reached an obligor, etc., if there is any third person who has made registration after a provisional

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registration for security was made (excluding any person who is to receive the notification under paragraph (1), but including any opposable lessee), a creditor shall notify, without delay, a third person of the fact that the notification as prescribed in Article 3 (1) has been made, and of the credit amount.

(3) The notification as referred to in paragraphs (1) and (2) shall take effect only when it is sent to the address on the register of any person who is to receive the notification. For a lessee having any opposable right, however, it shall be sent to the site of a real estate for security.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 7 (Restriction on Disposal of Liquidation Amount)

(1) No transfer of the right to, or other disposal of the liquidation amount, which is made by an obligor prior to the expiration of the liquidation period, shall be opposable to a junior creditor.

(2) Even in cases where a creditor has paid the liquidation amount before the period of liquidation expires, or without notification under Article 6(1), the provisions of paragraph (1) shall be applicable.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 8 (Deposit of Liquidation Amount)

(1) In cases where credit for the liquidation amount was seized or provisionally seized, a creditor may be released from an obligation by deposition of the liquidation amount equivalent to such credit within such extent after the liquidation period has expired, with a district court or a branch court having the jurisdiction over the place where the obligation is to be performed.

(2) In cases where deposition is made pursuant to paragraph (1), a claim for payment of the deposit of an obligor, etc. shall be considered to be under seizure or provisional seizure.

(3) Except as prescribed in Article 14, a creditor shall not claim for recovery of the deposit.

(4) A creditor shall, in cases where he/she has deposited pursuant to paragraph (1), notify, without delay, an obligor, etc., any creditor who has made a seizure or any creditor who has made a provisional seizure.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 9 (Binding Force of Notification)

A creditor shall not dispute against the amount of liquidation which he/she

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has notified pursuant to Article 3 (1).

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 10 (Legal Superficies)

In cases where land and any building on the land belong to the same owner, if ownership under Article 4 (2) has been acquired, or the regular registration on the basis of a provisional registration for security has been made for such land or building, the superficies shall be considered to be established on the land for the purpose of possession of the building. In such cases, the duration and rent shall be determined by a court at the request of the party concerned.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 11 (Claim of Obligor for Cancellation)

An obligor or such may pay the amount of obligation (including the interest accruing and loss incurred until repayment is made) to a creditor, until he/she has repaid the obligation for the liquidation amount, and may then request that the creditor cancel the ownership transfer registration made for the purpose of securing the obligation: *Provided*, That this shall not apply in cases where ten years have passed after the period for payment of such obligation expired or a *bona fide* third party has acquired the ownership.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 12 (Request for Auction)

(1) Any person having the right to a provisional registration for security may, at his/her option, execute the security right under Article 3, or request an auction of a real estate for security. In such cases, the right to the provisional registration for security shall be deemed to be a mortgage with regard to the auction.

(2) Any junior creditor may request an auction of a real estate for security even before the period for payment of such secured obligation comes, within the period for liquidation.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 13 (Claim for Preferential Payment)

In cases where a compulsory auction or such is commenced for any real estate of which the provisional registration for security has been made, any person having the right to the provisional registration for security shall be entitled to get his/her own obligation repaid in preference to other creditors. In such cases, with respect to the precedence, such right to the provisional registration for security shall be deemed to be a mortgage, and establishment

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of such mortgage shall be considered to be made when such provisional registration for security has been completed.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 14 (Provisional Registration for Security in Case of Compulsory Auction)

In cases where it is decided to commence a compulsory auction or such for any real estate for which a provisional registration for security has been made, if a request for such auction has been made before the liquidation amount is paid (if there is no liquidation amount, before the period for liquidation expires), any person having the right to the provisional registration for security shall not request the principal registration on the basis of the provisional registration.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 15 (Lapse of Right to Provisional Registration for Security)

In cases where a compulsory auction or such has been held for any real estate for which a provisional registration for security has been made, the right to the provisional registration for security shall lapse by sale of the real estate.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 16 (Special Provisions concerning Compulsory Auction)

(1) In cases where it is decided to commence a compulsory auction or such for any real estate for which a provisional registration for transfer of ownership has been made, a court shall call on any person having the right to a provisional registration to report matters under the following subparagraphs to the court within an appropriate period:

1. In cases where the relevant provisional registration is a provisional registration for security: Its details and the existence, cause and amount of credit (including interest and other incidental credit); and
2. In cases where the relevant provisional registration is not a provisional registration for security: The relevant details.

(2) If the right to a provisional registration for security made prior to the registration for seizure lapses by sale, the creditor may receive the proceeds from sale, or receive the repayment, only when he/she has made a report of credit under paragraph (1). In such cases, Article 144 (1) 2 of the Civil Execution Act concerning a commission for registration cancelling an entry on obligation for a real estate which has not been taken over by a purchaser shall apply *mutatis mutandis* to the cancellation of such

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provisional registration for security.

(3) Any person having the right to a provisional registration for transfer of ownership shall be deemed to be the interested party in the procedure for a compulsory auction or such.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 17 (Provisional Registration for Security in Case of Bankruptcy)

(1) The provisions concerning a mortgage of the Debtor Rehabilitation and Bankruptcy Act shall apply to the right to a provisional registration for security established on any real estate belonging to a bankrupt foundation.

(2) The provisions of Article 414 of the Debtor Rehabilitation and Bankruptcy Act concerning a person with a quasi-right to foreclose outside bankruptcy shall apply *mutatis mutandis* to any person having the right to a provisional registration for security established on any real estate of a bankrupt not belonging to a bankrupt foundation.

(3) When the Framework Act on National Taxes, the National Tax Collection Act, the Local Tax Act and the Debtor Rehabilitation and Bankruptcy Act are applied, the right to a provisional registration for security shall be deemed to be a mortgage.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

Article 18 (Application *Mutatis Mutandis* to Contract for Other Right)

The provisions of Articles 3 through 17 shall be applicable *mutatis mutandis* to any security contract that intends to acquire any right (excluding the pledge right, mortgage and right to lease on a deposit basis) other than the ownership of a real estate which may be registered or enrolled.

[This Article Wholly Amended by Act No. 8919, Mar. 21, 2008]

ADDENDA

(1) (Enforcement Date) This Act shall enter into force on January 1, 1984.

(2) (Transitional Measures) This Act shall not be applicable to any security contract concluded before this Act enters into force.

ADDENDUM <Act No. 5454, Dec. 13, 1997>

This Act shall enter into force on January 1, 1998. (Proviso Omitted.)

ADDENDA <Act No. 6627, Jan. 26, 2002>

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Article 1 (Enforcement Date)

This Act shall enter into force on July 1, 2002.

Articles 2 through 7 Omitted.

ADDENDA <Act No. 7428, Mar. 31, 2005>

Article 1 (Enforcement Date)

This Act shall enter into force one year after the date of its promulgation.

Articles 2 through 6 Omitted.

ADDENDUM <Act No. 8919, Mar. 21, 2008>

This Act shall enter into force on the date of its promulgation.