The Mortgage as an institution in Finland according to prevailing law relative to mortgages on real estate

- - o O o - -

The general legislative provisions regarding mortgages ("inteckning") are found in the Law ("Förordning") of 9 November 1868 re mortgages in real estate, which law has in several particulars been amended thru later laws ("författningar"). In addition (to said law), certain kinds of mortgages are governed by special laws (chattel mortgages, railway mortgages, ship mortgages, etc.; called in Swedish:"lösöreinteckning, järnvägsinteckning, skeppsinteckning, m.m.",respectively).

According to §1 in said law , mortgages in real estate may be granted as surety for whomsoever has a definite amount in money or goods coming from the owner of the real estate, or is entitled to receive from him definite payment/s or to use for a definite time the real estate or anything thereto belonging.

In §2 of said law, as amended 19 February 1883, is more closely stipulated the kind of property in which mortgage may be granted. The subject of the mortgage is the real estate as a definite integral unit ("kameral enhet"). The unit for city real estate is expressed through divisions into lots according to a fixed city plan (official). Country real estate is formed per effected (official) division of ground areas ("jordskifte") and appears in the official Land Register ("jordregistret"). Division may be effected in accordance with previously determined partnership relationships("andelsförhållande") or thru definite marking off ("placering") on the ground itself. Such division is (legally) effected/completed thru the entry of the act (i.e.division) in the Land Register. Subsequently such tracts or plots of ground have the status of individual properties. City real estate can only exceptionally be divided into parts. This presupposes an alteration in the city plan and requires the consent of the government. Mortgages can be arranged also in definite although formally undivided part of city real estate. This applies to such parts as may exceptionally in cities but generally and regularly in the country (agricultural land) be split up into independent properties by division (as above).

As real estate are treated, from the mortgage/hypothecation angle, also such structures,on other individual's ground,consisting of buildings and establishments ("inrättningar", as have come into existence with the consent of the owner of the ground and as may, in addition to the right of possession to the ground, be conveyed to a third party without the specific consent of the owner of the ground. Although such structures ("anläggningar") theoretically must be considered chattel property, the transferability of the right of possession ("besittningsrätten") gives, as basis for the buildings, such possibilities of selling ("omsättningsmöjlighet") the structures ("anläggningen") that the regulations for mortgages hereby can be applied. Essential for such structures' mortgaging possibilities it is that the lease contract ("arrendekontraktet") contains stipulations permitting free transfers of lease rights. In cities such permission with respect to its leased properties are granted by the City Treasury ("drätselkammaren").

The mortgage embraces only the real estate itself together with permanent structures but not thereon found chattels. Whatever thru fire, legal process ("klander"), expropriation,or similar agency, takes the place of hypothecated real estate, inures to the benefit of the creditor.

The authority which handles mortgage matters is the lower court ("underdomstol") in that locality where the real estate exists, i.e., the municipal court in cities and the district court in the country (agricultural sections).

For the institution of mortgaging proceedings written application is required filed with the court, together with the document, such as loan instrument, contract, etc. on which the right to mortgage is based. This application, together with the loan instrument (literally "skuldsedeln" means:debt paper), contract, etc., are copied exactly in the court's protocol. The applicant should also present proof of the fact that the real estate on which mortgage is sought in due legal manner ("fång" really means:scope) belongs to the person who has given the obligation in question. If the real estate owner in the loan instrument or other document in writing has given his approval to the hypothecation, the mortgage is approved without giving him a hearing, this provided the abstract of title ("utredningen över äganderättsförhållandet") is complete. Lacking such approval, a mortgage can not be granted without the

affording
xxxxingxof the owner of the real estate an opportunity of being heard relative to the application for such mortgage. If the real estate owner has not in advance been xxxx summoned and, if he is noth otherwise present, the Court will, if the application is not such that it immediately ought to be refused, xppxint set a day when the owner may reply. If the case is such that the real estate owner is to be given a hearing relative to the application, and he has been summoned but does not present himself in Court, it is to be considered xhxx as if he had agreed to the mortgage. if, on the other hand, the real estate owner is present and opposes the application (for mortgage), then two cases must be differentiated between at the very outset. If the owner supports his opposition on a basis (reason) which relates to the right of mortgage itself, e.g., that a mortgage for such a xixix suit or claim as has been filed is not permissable in general or in casu, the question must be decided by the Court which has jurisdiction over the mortgage matter and (must be decided) in the same proceeding. But if the application for a mortgage is contested on any materially legal basis, e.g. that the right to a mortgage does not at all exist or that the real estate owner is not obligated to be responsible for it, then the further procedure depends on whether the question is clear, that is to say, ripe for decision, or questionable(complicated), so that further investigation is necessary. In the former case the question will be immediately decided in the mortgage action/process itself. If respondent has proven that the applicant's demand is unjustified, the application shall without further ado be refused. If, on the other hand, the correctness of the claim/demand is unquestionable and its compass sufficiently (as required) determined, the mortgage shall be effected independently of the real estate owner's opposition. If, further, the case has become debatable(complicated) the Court shall refer the applicant to, thru special legal process/suit,to enforce/strengthen his claim/demand. In such event the mortgage matter's decision shall be postponed until the argument has been decided thru the special Court process/suit. The presupposition for such a special lawsuit shall be that the applicant shall furnish a bond to cover eventual costs and damages. As stated, mortgage can be granted even against the real estate owner's will if only the applicant's claims are found incontestible, but, if such compulsory mortgage is sought to furnish security for a claim on the inception of which such surety was not xxxxxxxxxxx khe promised/fixed by the debtor, the debtor shall be entitled to pay his debt even if it his not fallen due.. (§15)kxgxkxxkxxxx Mortgage may not be effected against the real estate owner's will (§14) on the basis of legal claims founded on personal guarantees and on other casual happenings.

Relative to application for mortgage the Court shall render its decision, involving either approval or refusal. In p testing this question, the situation/circumstances such as they were at the time of submitting the application to the Court shall be decisive. Changes, which have come since this time, can therefore not as a rule effect the applicant detrimentally, but possibly favorably,-if namely a then existing hindrance for the effectuation of the mortgage disappears. Herefrom follows amongst other things that, if the real estate in the meanwhile thru death or sale has come into other hands, that this does not prevent the granting of the mortgage; the only effect of the change is that also the new owner shall be heard relative to the application (§16) The mentioned rule is, however, not without exceptions. If a real estate owner's estate, subsequent to the submission of the application for a mortgage, has been placed in bankruptcy, mortgage may not be granted, if unless the demand for a mortgage is not based on an earlier given approval to(effecting) the mortgage or on the ruling of a Court or on the law relative to the (preferred) rights of unpaid purchase monies.

When mortgage is granted, evidence (proof) thereof- stating also the day from which the mortgage is in force - shall be inscribed on that document on the basis of which the mortgage is founded. The mortgage shall be in force for ten years from the day on which it was effected. A mortgage for debt which is paybale after a longer time than ten years shall, in order to be kept in legal force, be renewed within ten years. The thus renewed mortgage is effective with the same right of priority as the original for another ten years during which time it shall be renewed if the debt has not yet been paid. The right to renewal of mortgage is unconditional and shall for such renewal be required only the original mortgage document shown to the Court for the purpose of noting thereon the effected renewal.

The general effect of the effectuation of a mortgage is that thexxxxxxxxxxxx xxxx mortgage equity ("intecknade rättigheten") thereby is secured against each and every one. This effect reveals itself not only,when the real estate passes to a new owner, against such new owner, but also in relation to other mortgage owners, thus namely, that a right which has once been registered against a real estate

property is not permitted to suffer ingress by other rights which are later registered (per mortgage) against the same property. Mortgage rights ("Inskrivna rättigheters") relative ("inbördes" really means: a between themselves, i.e. inter se) priority is determined according to the time of registration, so that an earlier registered right has precedence over a one later registered. The effect of the registration is, however, figured from the day when application for same was submitted to the Court. The time unit is, however one day and mortgage registrations effected the same day thus enjoy the same rights(§22).

It may happen that registered rights of different kinds, which according to these rules ought to be effective with equal right(weight), can not exist together. Here the rule applies that rights to (or of) utilization ("bruksrättigheter"), e.g. the right to make use of ("nyttjanderättighet"), have precedence over collateral (mortgage) rights ("panträtt"), and that the right to separate from real estate a certain part takes precedence before all these aforementioned rights (§§22).

("bruk" can also mean practice or custom, which I believe is the meaning here-Nelson)

The according to law existing rank between registered rights (per mortgage) can thru private legal act or declaration of wish/will be altered so that one right receives higher or lower rank than it should otherwise have. This can take place in two different ways. A real estate owner can, when he seeks or agrees to mortgage in real estate, therewith make the reservation that a claim to a certain amount shall be registered (per mortgage) with precedence over and above the at that time sought mortgage. If subsequently the mortgage, for which which such reservation has been made comes into existence, it carries with it (the stipulated) precedence over the previous granted mortgage. Further, two mortgage holders can agree that their mortgages are to exchange rank so that the one which has higher rank is placed under the other and that the latter in turn is placed before the former. For the validity of such action, regarding which the law contains no provisions, the stipulation must be made that the "postposition" be inscribed on the mortgage document. It is usual that such "postposition" (i.e.placing after) takes place before a Court and is inscribed in the Mortgage Register. The presupposition for "post"- and "anteposition" (i.e.ranking up or down) is that no loan/debt instruments intermediary(between the two to be altered in rank) are deprived of any rights.

In §22 of the Mortgage Law are given certain kinds of rights which enjoy precedence before registered loan/debt instrument (mortgage). These are: the last year's and current year's wages (compensation) to those permanently employed by the owner for the taking care of the real estate property, national/State- municipal or to individuals(ecclesiastical,etc.) due taxes and similar onera, e.g. rural land tax ("frälseränta"), etc. The creditor (in these instances) has the same rights/claims also for interest not in arrears more than three years as he has for the principal.

Now we come to the question as to in what order the mortgaged real estate shall be seized upon to liquidate unpaid claims on behalf of lienholders. The exercise of mortgage rights ("panträtt") embodies that the real estate shall be realized for the debt and that so large a part of the proceeds be withheld the real estate owner as correspond to the total lien claims and taxes,etc. This realization devolves upon executive authority, the chief executor ("överexekutor"), who is, in a city, the Magistrate, and,in the country, the provincial governor ("landshövdingen"). Application/petition to effect realization is submitted in writing to the chief executor, together with the original debt/loan instrument and the mortgage documents,etc. The presupposition for the taking up the application for executive action is that the lien claim has matured for payment and that the lien right is formally in order. Closer instructions re the executive procedure are found in the levy/seizure/execution law ("Utsökningslagen" really means:Recovery/seeking out) of 3 December 1895. According to these statutory provisions, the real estate owner shall have an opportunity to give an explanation relative to the creditor's application for execution, after which,- in the event that the explanation does not call for claimant's hearing relative to the matter, the case immediately, but otherwise after responsa have been turned in, is decided by pronouncement wherein the proper instructions are given re the sale of the real estate at public auction to liquidate the lien/mortgage claim.

The executive sale for lienholders account can only be effected in such a way better that lien rights bearing/priority rights do not suffer thru the sale. This is done thru an institution kalled "the lowest bid" ("Lägsta budet"). This embodies that the auctioneer calculates a minimum price under which no sale can take place. This minimum price is made up of the total of all the lien rights resting upon

(incumbrancing) the real estate, which have precedence ahead of the claim of the creditor seeking realization, plus the costs of auction. The lienholder's right it is, to be sure, to have the real estate sold, but lienholders with posterior priorities may not encroach on the lien rights of preferred lien- or right-holders. If the price of sale at the auction can not be driven up to the mentioned lowest bid, which protects lienholders with earlier priorities, sale will not be effected. In such event a new auction can be announced, but with retention of the "lowest bid." A lienholder has, however, the right to, when the sale of the real estate takes place on the application of mortgage holders with inferior rights, to join in the demand for realization. In such event the lowest sales price is reduced to such amount as if the realization took place on his petition/demand.

If the mortgagee's estate comes under bankruptcy proceedings before or during the mortgage realization auction, the lienholders stand outside of the bankruptcy proceedings and do not need, where they do not otherwise claim a part of the proceeds of the sale of the remainder of the debtor's property, to guard their lien claim in the bankruptcy. If the sale executive sale of the real estate has not commenced before the bankruptcy proceedings have started, it is the duty of the bankruptcy administrator to sell the real estate, but also this can only be done with the retention of all registered lien/mortgage rights.