

CHAPTER 36 MORTGAGES

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Article 1 Mortgages in General

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§36101. What is a Mortgage. *Mortgage* is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

SOURCE: CC §2920. **§36102. Property Adversely Held.**
A mortgage may be created upon property held adversely

to the mortgagor.

SOURCE: CC §2921. **§36103. Mortgage to be in Writing.**
A mortgage can be created, renewed or extended, only by writing, executed with the formalities required in the case of a grant of real property.

SOURCE: CC §2922. **§36104. Lien of Mortgage - when special.** The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

SOURCE: CC §2923. **§36105. Transfer generally: mortgage or pledge.** (a) Every transfer of an interest in property, made only as a security for the performance of another act, is to be deemed a mortgage, [except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge.]

(b) Every transfer of conveyance of any interest in real property by deed of trust or otherwise, with right reserved to repurchase, executed and delivered to secure the performance of another act, is to be deemed a mortgage.

SOURCE: CC §2924.

NOTE: The concept of a mortgage on personal property has been abolished. The same purpose is found in the Uniform Commercial Code as a *security interest*, and the applicable law governing both security interests and pledges is found in the UCC (13 GCA). **§36106.**

Transfer defeasance may be proved. The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proven (except as against a subsequent purchaser or encumbrancer for value and without notice) though the fact does not appear by the terms of the instrument.

SOURCE: CC §2925. **§36107. Mortgage, on what a lien.**
A mortgage is a lien upon everything that would pass by a

grant of the property.

SOURCE: CC §2926. **§36108. Mortgagee not entitled to possession.** A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage, but after the execution of the mortgage the mortgagor may agree to such change of possession without a new consideration.

SOURCE: CC §2927. **§36109. Mortgage not a personal obligation.** A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

SOURCE: CC §2928. **§36110. Waste.** No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

SOURCE: CC §2929. **§36111. Subsequently acquired title.** Title acquired by the mortgagor, subsequent to the execution of the mortgage, inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

SOURCE: CC §2930. **§36112. Foreclosure.** A mortgagee may foreclose the right of redemption of the mortgagor in the manner prescribed by Title 7 of this Code (Civil Procedure).

SOURCE: CC §2931. **§36113. Power of Sale.** A power of sale may be conferred by a mortgagor upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

SOURCE: CC §2932. **§36114. Power of Attorney to execute.** A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of

attorney for grants of real property.

SOURCE: CC §2933. **§36115. Recording Assignment.** An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

SOURCE: CC §2934. **§36116. Not Notice to Mortgagor.** When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument, designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or any of them, to the person holding such note, bond, or other instrument.

SOURCE: CC §2935. **§36117. Passes by assignment of debt.** The assignment of a debt secured by mortgage carries with it the security.

SOURCE: CC §2936.

NOTE: No 1970 Civil Code §2937 existed.

NOTE: CC §2938, **Mortgage marginal release**, was repealed by P.L. 5-54 (1/27/60). Legislative history indicates that the amendments and repeals made to this Chapter by P.L. 5-54 were to repeal provisions of law having applicability only to the former Naval Government of Guam, and to harmonize this law with the establishment of the position of Recorder. **§36118. Discharge of Mortgage.** A recorded mortgage must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as prescribed by Title 21 Guam Code Annotated, Chapter 33, stating that the mortgage has been paid, satisfied or discharged.

SOURCE: CC §2939; amended by P.L. 5-54. **§36119. Satisfying by foreign executors.** Foreign executors, administrators, and guardians may satisfy mortgages upon

the records of Guam, upon producing and recording in the Department of Land Management a duly certified and authenticated copy of their letters testamentary, or of administration, or of guardianship, and which certificate or authentication shall also recite that said letters have not been revoked.

SOURCE: CC §2939a amended by P.L. 5-54.

NOTE: CC §2940, **Mortgage to satisfy**, was repealed by P.L. 5-54.

§36120. Duty of Mortgagee on Satisfaction. When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on the demand of the mortgagor, execute, acknowledge, and deliver to him a certificate of the discharge thereof, so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgage to be entered of record; and any mortgagee or assignee of such mortgage who refuses to execute, acknowledge, and deliver to the mortgagor the certificate of discharge or to enter satisfaction, or cause satisfaction of the mortgage to be entered, as provided in this Chapter, is liable to the mortgagor, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of one hundred dollars (\$100.00).

SOURCE: CC §2941. **§36121. Bottomry or Respondentia not affected.** Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this Chapter.

SOURCE: CC §2942. **§36122. Description of mortgaged property.** The description of the mortgaged property shall be such as to enable the parties to the mortgage or any other person, after reasonable inquiry and investigation, to identify the same.

SOURCE: CC §2943 amended by P.L. 5-54.

NOTE: No 1970 Civil Code §§ 2944-2946 existed.

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Article 2 **Mortgage of Real Property**

- §36201. What may be mortgaged.
- §36202. Form of Mortgage.
- §36203. Defeasance generally.
- §36204. Acknowledging and recording mortgage.

§36201. What may be mortgaged. Any interest in real property which is capable of being transferred may be mortgaged.

SOURCE: CC §2947.

NOTE: No 1970 Civil Code §2949 existed. **§36203. Defeasance generally.** When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the Department of Land Management.

SOURCE: CC §2950.

NOTE: No 1970 Civil Code §2951 existed. **§36204. Acknowledging and recording mortgage.** Mortgages of real property shall be acknowledged or proved, certified and recorded, in like manner and with like effect, as grants thereof.

SOURCE: CC §2952 amended by P.L. 5-54.

NOTE: Article III (Mortgages of Personal Property) of this Chapter of the Civil Code was repealed by P.L. 13-150 and replaced in concept and in

law by provisions of 13 GCA (UCC) relating to security interests.

NOTE: Chapter II-A (Conditional Sales), being §§ 2980-2981 of the Civil Code, was repealed by P.L. 13-150 and replaced in concept and in law by 13 GCA (UCC) provisions relating to security interests.

NOTE: Chapter III (Pledge), being §§ 2986-3011 of the Civil Code, was repealed by P.L. 13-150 and replaced by provisions of 13 GCA (UCC).
