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# Diffusion value of the pledge

Collector activity



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In order to develop production and expand markets for all interested in handling financial resources. Own funds are limited because actual borrowed funds of credit institutions. Loan is secured by collateral, for which execution is levied for improper fulfillment of financial obligations. When activated, deposit procedures arises business process by which the performance of collateral, encumbered with outstanding financial obligation, it becomes a catalyst for dispersion of its value among the involved credit institutions affiliated to it the same structures, and the borrower, the owner of the collateral, forced to pay for their services. Registry of collateral individual credit institution is the value of having a monetary value, or more precisely register the debt, the return of the collateral is provided, during the implementation procedures of the collateral is an extremely topical issue of cost. Affiliated bank structure use a "ready" for implementation of the collateral as a financial instrument whose value is dynamic in time.

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# **Nikolay L Kamzin, Elizabeth L. Kamzina**

## **Diffusion value of the pledge. Collector activity**

### **Introduction**

Institute of lending performs security functions in the global economy. The expediency of actions of the participants revealed by periodic debriefing activities. Socially important sector of the economy through government protectionism is not experiencing discomfort from the practical implementation of this institution. Innovative projects of the same business and consumer sector of society to use the credit facility requires an external stimulus. Such acts Institute of collateral to enforce credit obligations, guaranteeing financial compensation to the lender, which on the one hand to the subject for the insolvent, and other psychological factors, stimulating to the proper performance of obligations under the loan agreement. The subject of pledge encumbered in favor of the creditor, in what appears in ram lien being manifested in a pure form, subject to availability and properties of publicity followed<sup>1</sup>. By foreclosure on the collateral the lender is authorized to satisfy the financial requirement.

The dynamics of the financial situation of the modern credit institutions and their clients determine the relevance to the consideration of the proposed research topic. The main objective of the bank – to make the maximum number of profitable operations in the shortest period. At this same time for each credit institution's priority is the recovery of debts from the debtors, that is, the use of legal mechanisms returns the previously provided finance.

The author intends to investigate the interaction of the legal lending institution and the borrower. A credit institution shall promote non-cash issue the national currency. Borrowers on a contractual basis are the currency at their disposal, as well as the money supply is the equivalent of the existing wealth and services, the equivalent emitted by cash collateral acts. Public relations is the essence of investigation is that the collateral for the borrower is a goal that is achieved by burdening credit obligations, and for the credit institution's legal basis for issuance of non-cash and property shall be credited to the account off-balance sheet accounting, that is the financial instrument through which the obligation is extinguished.

Based on the license the Russian Central Bank credit institution provides funds to the borrower to purchase a vehicle (car for non-commercial purposes.) Later on the basis of the credit agreement is calculated on a credit obligation. When improper performance by the borrower of any financial obligation on the basis of a collateral agreement under implementation vehicle for the full, or the circumstances of a particular situation, a partial repayment of the loan obligation.

The main objective of the work is to investigate the methodological foundations of the legal regulation of mortgage lending sector relations in the acquisition of vehicles by individuals. Also require analysis of the legal mechanisms relations developing in the sale of collateral by credit institutions. To justify the practical relevance of research to study the practical arrangements to meet the requirements of credit institutions through foreclosure on collateral, taking into account the financial interest of the debtor and the credit institution.

Goal is achieved the following tasks:

- The study of theoretical and methodological bases of collateral in the functioning of the legal lending institution;
- Analysis of socio-legal basis of collateral and the factors determining the need for implementation of the collateral, storage, evaluation, presentation to a potential buyer.

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<sup>1</sup> Концепция развития гражданского законодательства Российской Федерации // Вестник ВАС РФ. № 11. 2009.

– The study of theory and practice of sale of collateral with a credit institution.

The object of this study is the relationship of the bank and the borrower on the debt repayment on the loan obligation from the proceeds from the sale of the collateral.

The subject of research supports the legal mechanism to meet the requirements of the lender in the face of the credit institution through the implementation of the vehicle, which is the subject of a pledge of financial liabilities arising from the loan agreement.

The theoretical and methodological bases of the research were the works of experts. It should identify the works of researcher such as Ю. Барона, Р.С. Бевзенко, В.А. Белов, В.М. Будилов, А.Ю. Буркова, Д. Васильев, С.И. Вильнянский, Л.В. Гантовер, О.В. Грицай, Г. Дербург, Д.В. Добрачев, Е. Евтюхина, А. Егоров, С.К. Загайнова, А.С. Звоницкий, Н.В. Золотко, Л.А. Кассо, М.Ю. Катвицкая, Б. Кемпл, М. Киселев, А. Коневский, С.А. Кузнецов, Ю.М. Лермонтов, А. Максуров, Д.И. Мейер, Д.В. Минимулин, А.П. Миронова, С. Нестин, Д.А. Паленов, Д. Петров, О. Плешанова, Ж.А. Подкопалова, Д.В. Пристансков, К.В. Раев, Н.Ю. Рассказова, М.А. Рожков, И. Рябина, С.К. Соломин, И.Н. Сбитнева, В.В. Скворцов, А.А. Слуцкий, И.Е. Солова, М.Ю. Тихомиров, В.М. Хвостов, Л.Б. Шейнин, М. Шубенко, Ю. Шумилов, Jeffrey K. Liker.

Also was used legislation in the field of banking regulation and regulation of foreign trade, official statistical publications of international organization (IMF, WTO), the states, international banks and institutions.

The solutions of these problems in the research performed with a single methodological position, the basis of the research were scientific methods of research: logical, comparative, normative, comprehensive, systematic, specific theoretical approach: an ascent from the abstract to the concrete<sup>2</sup>.

The study author used the techniques of systems analysis of psychological, social, economic, but above all, legal phenomena, synthesis, problem approach to the study of issues of debt obligations, collateral, valuation of collateral.

The study examined regulations, the data of the Central Bank of Russia, credit institutions, research and development of textbooks, monographs and periodicals.

The scientific novelty of the results is proof of the following findings:

– Relationship to obtain available funds of the credit institution by the borrower to allow non-cash issue and the urgent needs of the borrower. Institute of Credit, which allows people due to the possibility of a subject to obtain satisfaction of their material needs, have a negative impact on socio-economic status of citizens thoughtlessly or deliberately overestimated their financial capabilities;

– A legal mechanism to enforce the obligations of the collateral value is widely used in lending, but security functions and is offset by the distribution. Credit institutions in view of the magnitude of its organizational and functional structure is not able to adequately monitor the collection process, which leads to reduced income from the proceeds after sale of collateral and their dispersal among the affiliated bank officials and their staff;

– Legal regulation of the sphere of money circulation makes its professional participants to ensure compliance with the requirements of the Bank of Russia. Credit institutions, carrying out performance targets, make loans with little support, and in the process of foreclosure is often collusion of participants in various combinations, leading to the realization of the collateral at a reduced cost, resulting in the denial of rights, such as the borrower and the bank.

The essential results of the study may also include the following:

– Define the concept of bail in civil law from the perspective of social value;

– Investigated the psychological aspects of the legal characteristics of the collateral relations;

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<sup>2</sup> Яскевич Я.С. Методология и этика в современной науке: поиск открытой рациональности. – Минск: БГЭУ. 2007. – С. 33.

- Analyzed the institutional ownership of collateral relationship, the specificity of civil regulation;
- The content of the credit agreement secured by a pledge;
- Investigated the types and reasons of financial claims of credit institutions to the participants of legal mortgage and third parties;
- Studied theoretical concepts and practical procedures for implementing the activities of the collateral.

The practical significance of the results of the study. Performed in the framework of the analysis allowed the construction of a unified picture of the implementation procedure of the collateral to repay the debt to the lending institution. The dynamic structure provides insight into the key points of the procedure, allowing a significant effect on its socio-economic results, which is important for the borrower in particular and society in general, significant financial result for the Bank, its affiliates and their employees.

Testing results. The main results of the author in the scientific and practical article, “Sputtering value of the collateral of the credit institution affiliated entities”, prepared for publication in the Journal of SSEU (№ 5 (67) 2010) and applied in practice in auditing procedures for the implementation of collateral credit the organization.

In the text of the study includes a list of references containing 86 items.

# **Chapter 1**

## **Collateral relationship: concept, features, peculiarities of legal regulation**

### **1.1. The concept of bail in civil law**

By mortgage lender on the secured obligation is entitled in the event of default by the debtor of the obligation to obtain satisfaction from the value of the mortgaged property prior to other creditors of the person who owns the property, with the exceptions established by law (par. 1, art. 334 Civil Code). Pledge performs security functions, determines how the principle of preferential position of the pledge in relation to other creditors and the principle of following the right mortgage for a foreclosure sale<sup>3</sup>.

The pledge is known since Roman law that called for three main types of collateral<sup>4</sup>:

- General mortgage (pledge of all assets in general);
- Hand-held mortgages (transfer possession of the things the lender the right to use without obligation to include in the backup);
- To send things to the creditor, with the proviso that, if debtor has defaulted, the thing goes into foreclosure, regardless of the size of the debt and value of the mortgaged property.

Providing a guarantee provided by borrowing a sum of money to provide opportunities to meet the priority requirements of the mortgagee of the property value of the mortgaged property and proprietary rights restrictions – on the order laid down by the mortgagor<sup>5</sup>.

As a general rule collateral arises under the contract (par. 3 art. 334 Civil Code). The contract shall be in writing (par. 1 art. 339 Civil Code). The security deposit can be transferred to any property, including property rights and things, with some exceptions (art 336 Civil Code)<sup>6</sup>.

Owing to the nature of collateral relations, funds cannot be pledged<sup>7</sup>. The pledge may be both the debtor and the third person. To pledge things necessary to the mortgagor was entitled to its ownership or the right of economic management. The pledge of property right may be the person to whom the pledged right belongs (art 335 Civil Code). The right of pledge arises from the conclusion of the pledge agreement. If the property must be transferred to the pledge, the pledge right there at the time of transfer of the thing. May otherwise be provided in the contract (art 341 Civil Code).

The main drawback is the inability of collateral circulation in the foreclosure of the collateral. In case of failure of the principal obligation the creditor is forced to sell the mortgaged property itself and meet its requirements only obtained from its value<sup>8</sup>. If there is a dispute between the pledge and the pledge the initial selling price of collateral established by the court on the basis of market price

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<sup>3</sup> Рассказова Н.Ю. Залог движимого имущества // Меры обеспечения и меры ответственности в гражданском праве: сборник статей / рук. авт. кол. и отв. ред. М.А. Рожкова. М.: Статут, 2010. С. 8.

<sup>4</sup> Кемпл Б. Практика применения права судами Кыргызской Республики. Сб. лекций: В 2 т.: Том I. – «Premier LTD», 2006. С. 156.

<sup>5</sup> Кузнецов С.А. Судебные обеспечительные средства в российском гражданском праве. – М.: Волтерс Клувер, 2008. С. 79.

<sup>6</sup> Лермонтов Ю.М. Договоры – бухгалтерские и налоговые последствия. Велби ТК. 2010. С. 198.

<sup>7</sup> Золотко Н.В. Некоторые проблемы залога имущественных прав // Вестник Федерального Арбитражного суда Северо-Кавказского округа. № 3. 2006.

<sup>8</sup> Паленов Д.А. Залоговые правоотношения с учетом нового нормативно-правового регулирования // Регламентация банковских операций. Документы и комментарии. № 4. 2009.



of the property<sup>9</sup>. In practice, the party concerned shall evaluate the property. Based on the results, as reflected in the report, agree with the other party selling price of the collateral.

The pledged property in its entirety provides the pledge's claim, including interest, penalty, damages caused by delay in performance<sup>10</sup>. In addition, the cost of the mortgaged property is reimbursement of the mortgagee for the maintenance of things as well as the costs of foreclosure. May otherwise be provided in the contract (art 337 Civil Code).

The essential conditions required for contracts of this kind, without a contract will be deemed not concluded (art. 432 Civil Code) are:

- Information on the property, pledge, and its evaluation (par 1. art. 339 Civil Code). The contract of pledge must contain information enabling identification of the pledge the property. The language defining the collateral, such as “cars and other vehicles owned by the borrower” is not possible to determine the estate passed to collateral that is taken into account by the court<sup>11</sup>;

- A condition on the size and duration of the obligation secured by the pledge (par. 1 art. 339 Civil Code). This condition is considered to be consistent if the agreement of the pledge is an allusion to the contract governing the principal obligation of the debtor<sup>12</sup>;

- A condition that, at any of the parties (the mortgagor or mortgagee) the pledged property (par. 1 art. 339 Civil Code). The mortgagee in the test situation is a credit institution, a legal entity.

Obtaining property in the pledge does not entail any tax consequences on the value added tax, as the ownership of the collateral remains with the mortgagor (par. 2 art. 335 Civil Code). Value of property received in pledge, revenue is not included (subpar. 2 par. 1 art. 251 Tax Code). Property received in bail, remains the property of the mortgagor, regardless of whether it is the mortgagor or mortgagee in.

If the object of pledge is a vehicle, the vehicle passport makes no marks, although the science continues to discuss the issue of maintaining a database of encumbrance of vehicles, but in practice do not enter such arrangements. The introduction of registration of mortgage transactions vehicles can only be set by issuing regulations, providing for state registration of rights for vehicles according to paragraph 2 art. 130 Civil Code<sup>13</sup>.

The legal nature of a dual pledge, I think, it must not be simplified by reducing the complex formed by the characteristics of the civil law institutions. In the social sense of security is the value of the mortgagor is the property of value, which the lender in an advantageous manner is able to obtain satisfaction of claims of financial misconduct in the performance of duties by the borrower to repay the loan. The main function of collateral flow from its definition, this is an interim, minimizing the risks associated with the lender and the deterrent associated with the psychological impact on the behavior of the debtor. Public activity is catalyzed by a combination of factors, one of which is wealth, which by their nature can act as pledged. Subjects having them in his possession, in the normal course of business subject to the motivation and stimulation, which is often the psychological basis of entry into collateral relations.

The scope of property and of personal relations in a society based on equality, autonomy of the will and property independence of the participants referred to the sphere of civil society. One of its key categories is the property the absolute right, stipulating the right of possession, use and disposal facility. And as the category the money, means of payment, must be accepted at face value. On the

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<sup>9</sup> Постановление ФАС Поволжского округа от 03.03.2010 по делу № А55-16293/2008 // СПС Гарант.

<sup>10</sup> Раев К.В. Обращение взыскания на предмет залога // Имущественные отношения в Российской Федерации. № 5. 2009.

<sup>11</sup> Определение ВАС РФ от 12.04.2010 по делу № ВАС-3332/10; Определение ВАС РФ от 12.04.2010 по делу № ВАС-3336/10; Определение ВАС РФ от 13.05.2010 по делу № ВАС-5585/10; Определение ВАС РФ от 13.05.2010 по делу № ВАС-5718/10; Определение ВАС РФ от 28.06.2010 по делу № ВАС-8174/10 // СПС Гарант.

<sup>12</sup> Постановление Пленума Верховного Суда РФ № 6, Пленума ВАС РФ № 8 от 01.07.1996 «О некоторых вопросах, связанных с применением части первой Гражданского кодекса Российской Федерации» // Российская газета. № 151. 10.08.1996.

<sup>13</sup> Егоров А. Проблемы регистрации залога автомобильного транспорта // ЭЖ-ЮРИСТ. № 8. 2004.

activity of the will, property and cash based civil circulation by means of which human needs are met, there is coordination of its internal and external peace, manifest mental activity. The movement of property takes place through its alienation and acquisition, one of the mechanisms of acquisition is the realization of the Institute of sale. Buying and selling is a counter-exchange of the owner of things, one of her orders, and the holder of cash, which results in a change of ownership thing and transfer of funds in payment for it. In this case the property is assessed by the ratio of demand for it and supply of these things, but also in terms of its values, its ability to meet the needs of end users.

Cash at their failure to compensate the owner for the disposal of the property for the benefit of another person may be obtained from a person, through the implementation of the mechanism of borrowing free cash. The mechanism of borrowing is the use of funds as an object property, taking into account the meaning of the following rules of financial management: “the value of a certain amount today, much higher than it tomorrow”. Due to this condition, the acquisition of a sum of money, its buyer agrees to “tomorrow” to return the equivalent value of an amount of time the return and compensation for its provision.

Under the obligation refers to the implementation actions of one person to do otherwise. Moreover, in view of free will, and those which obliged the risk of misconduct liable to stimulate his good conduct there is a mechanism to enforce the obligations. One of the key is to provide preventive and a punitive fine.

The penalty has an effect on the human psyche through the creation of the inner world of human representation of the adverse effects of increasing monetary obligations to the outside world, which should be fulfilled in misconduct.

Economically active entity becomes a party to pledge relations with the need for free cash and the desire to retain ownership of the collateral.

## **1.2. Psychological aspects of legal characteristics of the collateral relations**

The society is managed by appearing in its relationships. Man as a psycho-physiological system is the subject of relationships and people together make up the society with their individual legal culture, largely independent of the psychological motives of human action. Before it is adopted and enacted regulation, civil society focuses on the needs of regulatory settlement of existing relationships or qualitative changes in individual integrated relationships in order to correct a coherent social system.

The subject of law is as collective entities, as individual persons. Collective entities can be a structure with a common purpose and the distribution of functional roles and can also be complicated by a set of equal members in the form of public association. I think it is indisputable that it is human psychology, but rather the mental processes influence human activity and its relationship reasoned choice, in which he must come to their own or public necessity.

Time abstractly represented as a direct strike a point on it, which define the present, on either side of it, respectively, will be past and future. A person staying in the present, aware of the inevitability of the passage of time, having an idea about the past, looking to the future, free to plan, implement their plans, commensurate capabilities and desires. Desires are the consequence of the representation of something, to some extent known. Depends on the degree of knowledge of the validity of space needs for the future of man.

Features of the planning are closely linked with the responsibility for implementing the goals and the potential for further planning. If you violate the natural flow of things, an alien who violates the determining factor, the pressures on a person and all the planning to be with him in terms than narrower range of cognitive human nature that is unnatural.

Man exists in the environment of their own kind, in society, the society also dynamically in time, like a single person has the abstract mind, modeling his fortune and position in the future. To implement the will of society restricts the individual through the regulatory mechanisms of behavior in certain circumstances. By implementing these mechanisms in consciousness of generations of people, the culture of the peoples, the people “separated” from natural plants and host of the template defined in the future aspirations and opportunities in the present. In the process of improving the social mechanisms and social structures, one is totally abstracted from nature and is not without prejudice to his mind barely separable part of the social system in which there is until now. His mind knows and is subject to social environment, his aspirations for the future are determined mainly social factors, and the will is passive, undervalued opportunities. In this situation, there is a potential conflict of man and society for which a permit is either in complete subjection of human society and has further shaping its future through public awareness, or individualization of rights and the impact it will on the public consciousness.

Time is the catalyst for a man, human life, and that is a public catalyst that serves as a stimulating element in society, the state – the set of products, obtained possession of the material and spiritual values, “Gross Domestic Product”.

The person carrying out its activities, creates, consumes, uses, benefits of the material world, existing at the moment. Through his mind, he models the need for it in the future of some goods, possession of which is not possible with the currently existing opportunities. By appealing to the public mechanisms person meets all their needs, but now the company is competent to vindicate rights commensurate with the currently good for the balance of opportunities for all members of society.

The social system is based on a set of rules of conduct which in its development and adoption of the society are the rule of law, and they in turn the mechanisms of legal regulation of society in general and man in particular. Nature sends man already leveled priority needs of the society and the

public decide and determine the circumstances of the future. Consider the behavior of an individual member of society, modeled their future opportunities commensurate with the actual present.

When considering the category of time, we cannot touch the category space. The person carrying out its activities over a large territory, to seek to maximize the approximate time of being in different points in space. Simulating consciousness in the future, seek to merge into a single point on this "time line". In the material world, man partly solves this problem by using a vehicle which is a product of social production. In the absence of human capabilities of its establishment, the person may use public, value-at its disposal a vehicle (for example, a car), but subject to the conditions of return value of the good society is determined by supply and demand for it from the other members of society at the moment. If a person does not have the ability to compensate for the value to society now, the society is quite capable, with the definition of the degree of risk compensation model in the future.

The human psyche is a process of harmonizing its inner and outer world, this process is the basis for the establishment and development of personality, achievement of having a place to be a result of this psychological process have both positive and negative effects on humans. The stimulation needs updating and qualitative development of the individual or person is in dismay and disappointment.

Depending on the individual human psyche, the occurrence of certain requirements is the result of motivation in the inner world of man, or through external stimulation, awareness of the outside world. Needs prompt people to seek ways to meet them by using their own capabilities and in their absence by the possibilities of a subject or society in general. Thus, there are relationships, communication in society.

Two important concepts of time and space, everything happens somewhere and sometime. Changing the location of the subject in space occurs over time. Savings – decrease in costs and achieve the same result, why is identical, because the reduced costs of using a single factor, but is used by some other factor, which in comparative terms from the perspective of the researcher less costly to achieve the desired result.

To reduce the amount of time moving from one point to another, finding some comfort, relative advantages of having a person uses a vehicle.

If you identify yourself in the community, comparing themselves with other members of society, people, above all, accessible survey compares the external world around him and being in contact with him members of society. Depending on the outcome of this identification, conducted gradation, consider themselves to one category or another, a strategy is satisfied with its achievements, or to set a goal at competitive nature of the individual.

If we consider the period of human life as the period of existence of an active subject of the economic sphere of society, its potential in the short and long run are directly related. With a possibility in the short term, the person has potential, definitely needed him in the future, formed as a result of effective activity in the past as an excess or a wrongful retention, therefore, its use in the present may lead to certain consequences. First, prevent the potential benefits of a safety net buffer, secondly, lead to a balance, third, will be the basis of loss-making influence.

With the materialization of a man of his own abilities, achievement of results, harmonizing the inner and outer world, the progressive development of the individual, society is also evolving and it material, spiritual, and social spheres of existence are saturated with goods, fruits direct and indirect effects of human creativity. For a single person it is the external environment (exposure) is recognized in mind that influences his inner world and challenging it active.

The inner world of man has no boundaries, a person in the development process set things in order there, the outer world is a reflection of the world controlled by society, in which a person carries out its vital functions, there exist in society and dynamically evolving social controls, which formed the right and legal controls, state-controlled and society from the political superstructure.

Politics is concentrated economics, control of the economy, but rather it is a catalyst for the category of money, money, a matter of law, currency, and money institution.

Features real people, potential, assimilated in the society to a certain number of them, man-made public goods, are also equivalent in the society some of their number.

Because the dynamics are the benefits to society as a catalyst corresponded money from one entity to another, thus, are in constant motion, and the process is currently in human history, developing commodity-money relations in society.

Man that is the subject of cooperation in society through voluntary actions affects its environment and simultaneously exposed to its influence. The human psyche, the inner world, reflecting the outer forms the totality of needs enabling them satisfaction through action. Acts committed by a person in society, must meet the standards to be within agreed with the company rules of conduct. The Company is regulated by interactions occurring therein entities. Governed by strict regulation of interaction by permission or prohibition of activity in a particular field.

If an entity becomes a party of any relationship, it is endowed with a set of rights and burdened with a set of responsibilities, which corresponded, and other participants in relationships. The right set of features determines the acquisition, which sought to broaden the subject and which seeks to anyone in the development of his personality. The human psyche is set up so that the dynamics of the inner and outer world of man is in constant correspondence, and a favorable combination of circumstances is setting goals, creating results in the inner world and the achievement of its external, with different development status quo mentality experiencing stress and a person suffers an adverse effect of negative the result.

Formed relationships in the community, involve human activity in their implementation. The set of actors to join them on a regular basis in order to achieve a predetermined result. Established practice of the most active subjects suggests some rules of data relationships that are made in the tacit rules accepted by all participants of relations. "We cannot live in society and be free from society". The resulting institution of civil society drew the attention of the State that the formation of opinion need to support the tacit rules of state coercion, these relations will settle the legal norm.

The most unfortunate sanction to the "evil" entity, its exclusion from the team, "ostracism". Apply it can civil society by deciding not to join with "undesirable" in the subject of relationships, the decision will be known to all possible counterparts of collective solidarity and it will be done, but in a market economy, the pressures of this decision is the essence of the concept of "cause". In the economic benefits of a separate entity because of "exiled" entity, assessing risks, it is able to change the collective interest. Under state regulation as public relations, there is an expansion team to the level of the whole society, and the sanction for violation of "rules of the game" lies in the law is inevitable, and very unfavorable for the "cause" of the economically active single entity, increasing its risk. Legal regulation provides for action in a particular area and number of persons universally rules of law that governs the actions of subjects, defined relationships, setting some boundaries within which the balance formed public relations.

### **1.3. Institutional affiliation of collateral relationship. Specificity of civil regulation**

The question of the institute of law is a pledge (lien, the relationship) – of property or a debt, has a long history, and, of course, many have tried to resolve it<sup>14</sup>.

Г. Дернбург, Г.Ф. Шершеневич, Ю. Барон, В.М. Будилов and other authors have assumed that the bail is extremely proprietary institution, an essential feature of which is the alienation and transfer of things with the emergence of a mortgagee the right to the mortgaged property. Proponents of a material nature of collateral generally acknowledge the existence of the Law of Obligations hell collateral, but indicate that only features in ram collateral account of its nature. The main arguments in favor of a material nature of collateral commonly referred to as: following the law of collateral pledged for, the absolute protection of the lien creditor against any person and the resolution of conflict on the basis of seniority of creditors. The jurisprudence confirms this position<sup>15</sup>. Other authors, such as Д.И. Мейер, Л.В. Гантовер, Л.А. Кассо, А.С. Звоницкий, С.И. Вильнянский and В.М. Хвостов, viewed as a pledge of obligations law institute. Proponents of obligations of the legal nature of collateral relied mainly on the following considerations: a pledge does not give her the subject of the possibility of prolonged direct exposure of the thing. The domination of the creditor over a thing does not even influence character: while the existence of the debt security leads to burdening things, payment of the debt burden is destroyed<sup>16</sup>.

We cannot agree either with the advocates of a material nature of collateral, or the adherents of his Obligations of nature, since both of these positions greatly simplify the nature of the collateral by reducing it to the characteristics of complex formed in the civil law institutions.

At the present stage of development of knowledge about the relationship of collateral issue, the legal nature of the collateral remains open, what stresses existing interest in this institution and the relevance of research in this area. Besides the practical relevance of research collateral relationships exist scientific interest, as confirmed by carrying out research in this area, preparation of papers on related topics. Nature of mortgage is twofold, and it is characterized as proprietary, and as the Law of Obligations, the focus on this issue distracts the researcher from the spirit, which consists in the method of enforcement of obligations.

If we consider the legal structure of collateral relations in society, the legal registration of the collateral encumbered by rules of law of obligations. When activated, the creditor in respect of the collateral when it comes to the right of bail as a right, and burdensome thing that follows it, there is a real right<sup>17</sup>.

Thus, on the mortgage, with its existing item of publicity, namely the registration of the commission, confirming the charge, I believe, by the proprietary rule of law. A key player in credit relations in the broadest sense is a credit institution whose primary function is to provide loans and attracting deposits and making settlements.

A credit institution – a legal person with special permission of the central bank to conduct banking operations, it has its own capital, also has the right to engage in monetary funds of natural persons and legal entities, which constitute the basis of a lot of money, which is calculated from the distribution of loans among borrowers.

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<sup>14</sup> Белов В.А. Залоговые правоотношения: содержание и юридическая природа // Законодательство. № 11. 2001.

<sup>15</sup> Постановление ФАС Поволжского округа от 24.05.2010 по делу № А72-1359/2009; Постановление ФАС Поволжского округа от 29.03.2010 по делу № А72-14615/2009; Постановление ФАС Поволжского округа от 29.11.2010 по делу № А65-7782/2009 // СПС Гарант.

<sup>16</sup> Скворцов В.В. Эволюция природы залога в российском праве // Гражданин и право. № 8. 2001.

<sup>17</sup> Концепция развития гражданского законодательства Российской Федерации // Вестник ВАС РФ. № 11. 2009.

Some people have the available funds, which provide the bank, providing it with liquidity, and some lack the free cash and turning to the first or directly, or to a credit institution, forming a credit portfolio. Unlike credit, mortgage portfolio combines the assets transferred to a bank for temporary use and possession, but dispose of the bank has no right, and then there may not use the mortgaged property for a profit<sup>18</sup>.

Reasons for lack of funds may be different, if the “connect vessels”, the level is equalized, but the debtor will be the obligation to return, and the lender the right to demand repayment in time, and together with the remuneration the amount of money lent.

There is a risk of infringement of the debtor's obligation to avoid an institution thereof, to enforce the obligations presented as collateral relationship. The subject of mortgage lender compensates for the costs incurred in connection with the failure or improper performance of obligations by the debtor<sup>19</sup>. Subject of a pledge – a kind of a thing of value which the creditor may be entitled to the payment from the debtor through the sale of the collateral and to obtain from the sale of a certain sum of money.

In case of excess proceeds over the amount of debt, the difference shall be returned to the debtor, if failure is part of the debt is subject of a claim from the debtor.

In the field of civil relations all have financial evaluation. All transactions are in cash and cashless form by transferring cash from one person to another, or transfer of bank deposits in accounts in financial agents.

The interaction of agents because their relationship, each of them has a picture of the inner world to strive to create an image due to the further conduct of any other actor, then, is a contract, an agreement between two or more persons representing the set of agreements about anything.

The owner of the material goods needed to store their possessions, in the absence of his physical capabilities to implement their own security of property he refers to the ability to do this subject.

A credit institution for withdrawal of collateral from the borrower's unfair, because some of specialization, financial operations, refers to the entities with the land, storage facilities, the right of ownership or leasehold basis with a view to making them, of course, on a reimbursable basis, seized the car from the borrower for the purpose of its implementation in arrears.

When lending to buying a car for 008 off-balances by taking into account the car to ensure obligations are carried at acquisition cost, the so-called “collateral costs”. However, the vehicle is operated by the borrower for a certain period of time, was in his possession, and has been exposed to the external environment that does not rule out changes in its fair value. During the term of the loan agreement the fair value of mortgage-thing may undergo a qualitative change<sup>20</sup>. At the moment, the credit institution and the borrower collateral interest as a commodity that has value as possible to receive at his disposition, while the cost goes to paying off debt.

To determine the value of the collateral the credit institution or by the borrower draws an independent appraiser, which is an agreement by which he undertakes, using their professional knowledge and experience, with the support of appraisers offer an informed opinion on the value of the car.

If you are not achieving the result in finding a buyer for the vehicle privately, the car passed specializing in buying and selling automobiles organization, accompanied by the transfer condition, the contract of the host organization and the owner of the car. Under the agreement, trade organizations committed to responsibly keep and maintain a marketable car periodically publish in the media about the desire and the conditions of his exclusion, the owner shall pay the fee for the service.

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<sup>18</sup> Минимулин Д.В. Управление залоговым риском на основе методов риск-менеджмента // Имущественные отношения в Российской Федерации. № 5. 2009. С. 72.

<sup>19</sup> Скворцов В.В. Функции залога и их характеристики // Гражданин и право. № 11. 2001.

<sup>20</sup> Слуцкий А.А. Банковские залого: неочевидные операционные риски // Банковское кредитование. № 6. 2007.

Banks engage in various ways to protect their rights, the degree of non-uniform validity and feasibility. One common measure is the withdrawal of passports of vehicles, vehicles transferred as collateral for the credit obligations of the borrowers<sup>21</sup>. The owner of the collateral, the car is a borrower under the terms of the loan agreement the vehicle passport is stored in the client's management of the bank in the region to provide free cash. In the case of separation of ownership from the process of implementation of the car they used the mechanism of the power of attorney granting authority to another person to enter into relationships on the use, ownership and disposition of the vehicle.

Of course we all know about the physics of “communicating vessels” – except if it is initially filling level is different, then it is aligned with their connection, and after separation of the return to the previous conditions gradually become different again. People tend to consume the material and spiritual goods, which, in turn, produces humanity and, with the help of nature. Turnover before the emergence of consumer demand, production, distribution, consumption, etc. For the rational allocation requires equal sharing, in view of existing expertise, someone bakes bread, and someone makes boots. Without going into details of economic theory, simply denote that the exchange takes place through cash flow, which are produced equivalent benefits. That is, money is a synthetic element promotes circulation of material and spiritual wealth, like a catalyst in chemical reactions. Operators are money lending institutions that conduct banking transactions, particularly credit. That is, provide a sum of money to the borrower for a fee in advance on condition of repayment and maturity. Operations conducted by credit institutions subject to internal accounting and external control by the Central Bank, as the banks are the operators of financial flows, whose total volume is equivalent to the aggregate public goods, the transparency of their activities is very significant for the society and state. Instead of providing cash, a credit institution takes account of property of similar or greater extent.

If you have any mortgage agreed by the parties of the contract value of the mortgaged property transferred by the mortgagee or the mortgagor left, is reflected in off-balance account 008, “Guarantees received”<sup>22</sup>.

If the collateral is transferred by the pledge to the pledgee, he is advisable to have an inventory card for the property received, indicating that the property is pledged, by analogy with the procedure established by section 14 of the Guidelines on accounting of fixed assets<sup>23</sup>.

Debit	Credit	Contents of transactions
008		Addressed agreed by the parties the value of property, received as collateral

The subject of pledge transferred to the pledgee, the pledger remains in the property (par. 2 art. 335 Civil Code), so returning it does not happen and the implementation of the obligation to pay value added tax does not arise (subpar. 1 par. 1 art. 146, par. 1 art. 39 Tax Code).

The cost of the collateral is returned to the pledger, in the expenses is not included, since it does not get recognized as income (subpar. 2, par. 1 art. 251 Tax Code).

Property received in bail, remains the property of the mortgagor, regardless of whether it is the mortgagor or mortgagee in. Upon termination of the contract agreed by the parties pledge of the pledged assets is deducted from the off-balance account 008, “Guarantees received”. On the off-balance account 008 reflects the emergence and cessation of collateral, not a physical receipt

<sup>21</sup> Нестин С. Российское автокредитование: проблемы залоговых правоотношений // Корпоративный юрист. № 7. 2009.

<sup>22</sup> Шубенко М. Реализация предметов залога // Финансовая газета. Региональный выпуск. № 22. 2006.

<sup>23</sup> Приказ Минфина РФ от 30.03.2001 № 26н «Об утверждении Положения по бухгалтерскому учету «Учет основных средств» ПБУ 6/01» (в ред. от 24.12.2010) // Российская газета, № 91-92, 16.05.2001.



and return of the collateral. Consequently, the write-off amount of collateral may be made by the pledgee before the return of the collateral mortgagor. If the collateral, the pledgee who was, they were wound up inventory card, then return information about the depositor of the collateral should also be reflected in the card.

Debit	Credit	Contents of transactions
	008	Deducted from off-balance sheet accounting agreed by the parties value of mortgaged property in connection with the termination of mortgage

If mortgaged property were purchased by the mortgagee, in this case, secured by the pledge to the pledger shall be counted (in whole or in part) in repayment of obligations to pay for purchased assets (par. 6 art. 350 Civil Code).

Implementation of the auction of the collateral owned by the depositor, not recorded mortgagee. At the date of receipt of funds from the auction organizer mortgagee makes an entry in the debit account 51 "Settlement Account" in correspondence with a score of 76 "Calculations with various debtors and creditors". Crediting amounts received in arrears the mortgagor (collateralized) reflects account charged to 76 in correspondence with the credit account, where the number of specified debt (sub 58-3 "Loans receivable").

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