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DEVIATION FROM THE PRINCIPLE OF ACCESSIBILITY TO THE TERMINATION OF THE MORTGAGE

Summary

In this paper, author analyzes legal institutes (disposal of unwritten mortgages, priority order notation, new mortgage prenotation) that deviate from the principle of accessibility to the termination of the mortgage. In accordance with the regulations of the Mortgage Law, the owner of a real estate has the right to transfer the mortgage that was not erased from the real estate registry to the registered amount to a new or the same mortgage creditor for the purpose of securing other claims, with the evidence that the claim has ceased. The paper is specifically focused on the limitation of the autonomy of will of the owner of real estate in case of exercising the rights to the disposal of the unwritten mortgage, as well as the right on the reservation of the priority order for the new mortgage. Autonomy of will in case of institute of the disposal of mortgage that was not erased is not only limited by the principle of officiality which is defined by the Law on the Registration Procedure with the Cadaster of Real Estate, but also the practical application of this institute.

Key words: *deviation from the principle of accessibility to the termination of the mortgage, disposal of unwritten mortgages, priority order notation, new mortgage prenotation.*

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