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MORTGAGE AS ONE OF THE MOST EFFECTIVE TYPES OF OBLIGATIONS SECURITY: ACCOUNTING ASPECTS

The paper investigates the place of mortgage among other ways of security of contractual obligations fulfillment, determines its advantages and feasibility of use. The paper defines problems of mortgage operations accounting, which determine the direction of future researchers.

Key words: mortgage, obligations security, accounting

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ЗАСТАВА ЯК ОДИН ІЗ ЕФЕКТИВНІШИХ ВИДІВ ЗАБЕЗПЕЧЕННЯ ЗОБОВ'ЯЗАНЬ: ОБЛІКОВІ АСПЕКТИ

У статті досліджено місце застави серед інших способів забезпечення виконання договірних зобов'язань, встановлено її переваги та доцільність використання. Окреслено проблеми бухгалтерського обліку операцій із заставою, що формують напрями подальших досліджень.

Ключові слова: застава, забезпечення зобов'язань, бухгалтерський облік

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ЗАЛОГ КАК ОДИН ИЗ ЭФЕКТИВНЫХ ВИДОВ ОБЕСПЕЧЕНИЯ ОБЯЗАТЕЛЬСТВ: УЧЕТНЫЕ АСПЕКТЫ

В статье исследовано место залога среди других способов обеспечения исполнения договорных обязательств, установлена его преимущества и

целесообразность использования. Определены проблемы бухгалтерского учета операций с залогом, которые определяют направления дальнейших исследований.

Ключевые слова: залог, обеспечение обязательств, бухгалтерский учет

Problem statement. Activity of any company is accompanied by cooperation with other companies, which is based on contracts. Relationship between enterprises may be different, but they are based on contracts that provide a record of the agreement subject, rights and obligations of the parties, and ensure fulfillment of the contract. The choice of method of security of the contract obligations fulfillment is quite difficult because various types of security are used in practice of the economic activity, and mortgage is the most effective of them.

Analysis of recent researches and publications. Different types of security of obligations fulfillment were studied by the following scientists: Boyko A.A. (2010), Banasko T.M. (2013), Chudak M.V. (2011), Kizlova O. (2010), Serebryakova I.O. (2011), Zatoka T.V. (2012). However, most studies reveal a legal aspect of security types of obligations fulfillment and neglect an accounting aspect of such operations. Also, insufficient attention is paid to the choice of the most effective way of obligations security from the economic point of view and its reflection in the company accounting system.

The aim of the study is to find a place of mortgage among other forms of security of contract obligations fulfillment and delineate problems concerning accounting security of obligations and mortgage management.

Main results of the study. Fulfillment of contractual obligations is one of the most important institutional aspects of the national economy development. The relative stability of business environment is provided, among other factors, by fulfillment of contractual obligations of contractors. Different means of influence is used for it and one of them is security of obligations fulfillment that can be implemented in various forms.

The Civil Code of Ukraine defines the following types of security of obligations fulfillment (Code, № 435-IV, 16.01.2003): penalty, bail, guarantee, mortgage, holding, deposit. However, this is not an exhaustive list of types of obligations fulfillment. According to p.2, Art.546 of the Civil Code of Ukraine (Code, № 435-IV, 16.01.2003), agreement or law may establish other types of obligations fulfillment, which allow economic subjects to choose other possible forms of such security. Let us consider basic forms of obligations security, which are determined by laws of Ukraine and establish main differences between them to select the most effective.

Art. 549 of the Civil Code of Ukraine reveals the concept of penalty and determines that penalty (fine) is a sum of money or other property that the debtor must pass the creditor in case the debtor breaches obligations (Code, № 435-IV, 16.01.2003 p.). Also, this regulatory document specifies conditions of penalty application. Penalties application requires determining that the debtor actually violated his obligations and then, after a violation, he must pass the creditor an amount of money or other property. The object of penalty may be an amount of money, movable and immovable property. If the object of penalty is an amount of money, the amount is set by the contract or the act of civil law. Thus, penalty is the right of the creditor to get a refund if the contract is breached.

Another type of security of proper obligation fulfillment is bail. Bail can secure any obligations, but it has gained considerable popularity in ensuring obligations under loan agreements. Bail is concluded between the creditor and the guarantor to secure fulfillment of the debtor's obligations under the contract concluded between the debtor and the creditor. Bail may secure partial or full obligation fulfillment. Thus, bail requires a third party that is the guarantor of fulfillment of the debtor's obligations to the creditor. Detailed terms of such bail are specified in a separate contract between the guarantor and the creditor.

Guarantee is a way to secure fulfillment of obligations according to which the guarantor bank (or other financial institution) assumes liabilities to the beneficiary (in writing or in the form of a message) to make payment on behalf of the principal in

case of his failure to fulfil obligations in full or partly in case the beneficiary claims payment and compliance with all requirements stipulated by the terms of guarantee. Obligations of the guarantor bank (or other financial institution) to the beneficiary are independent of the main obligation of the principal (its expiration or invalidity) including when the reference to such obligation is found directly in the text. Thus, the guarantee feature is that it is used in financial transactions.

Mortgage is one more way to secure obligations. According to Art.572 of the Civil Code of Ukraine (Code, №435-IV, 16.01.2003) by virtue of mortgage the creditor (mortgagee) has the right to satisfaction by the mortgaged property primarily to other creditors of the debtor in case the debtor (mortgagor) fails to fulfil the obligation secured by mortgage, unless otherwise provided by law. Mortgage may result from the concluded agreement or by the court decision. The peculiarity of mortgage is its material nature, while other types of security are a definite right to compensation or reimbursement.

The right of holding appears in case the debtor fails to fulfill an obligation on time concerning payment for a thing or compensation of related to it costs and other damages to the creditor. The creditor is entitled to hold the thing until the obligation is fulfilled by the debtor. Holding stipulates postponing of fulfillment of contract terms by the creditor until the debtor fulfills his obligations.

Deposit is an amount of money or movable property given by the debtor to the creditor on account of contract payments, to confirm obligation and secure its fulfillment. In fact, deposit stipulates a kind of advance payment on the part of the debtor, and as a result the creditor receives certain guarantees concerning fulfillment of the debtor's obligations.

As we can see, only mortgage and deposit are of material nature among the methods of obligation fulfillment security fixed at the legislative level, while all the rest are the right to claim obligations repayment, which repayment guarantee, in fact, has no material support. However, deposit can be used only on the basis of the signed contract, while mortgage can be used by the court decision, which extends the possibilities of its use in judicial settlement of commercial disputes. Taking into

account all the above mentioned we believe that mortgage is the most appropriate and effective way of fulfillment of contract obligations.

Mortgage as a method of obligations security is secondary in the contract process and cannot be used without attachment to main obligations. The object of mortgage, depending on its type, can be any property (including a thing, securities, property rights), which may be alienated by the mortgagor and collected (Table 1). The objects of mortgage include property which the mortgagor gains after mortgage occurrence (future harvest, livestock litter, etc.). Thus, even if the mortgagor has no valuables to be mortgaged at the moment, he can mortgage values, he will acquire ownership rights to after a certain period of time.

Table1. The object of mortgage as accounting objects (depending on the type of mortgage)

| No. | Type of mortgage | Subject of mortgage |
|--|--|--|
| 1 | Mortgage on real estate | Land plots and real estate |
| 2 | Pawn | money, tangibles |
| 3 | Securities | Stocks, bonds, promissory notes and other securities of guaranteed income |
| 4 | Property rights | Documents confirming the right to certain tangibles or the right to receive income |
| 5 | Mortgage of goods in circulation or processing | Goods that are in circulation or processing |
| 6 | Tax mortgage | Enterprise property |
| The object of mortgage cannot be | | |
| 1) cultural values that are objects of state or municipal property and must be recorded or are recorded in the State Register of Cultural Heritage, 2) cultural heritage monuments, recorded in the list of cultural heritage that cannot be privatized, 3) demands of personal nature; 4) state property that cannot be privatized | | |

Source: author's work

Despite the prevalence of operations with mortgage, accounting issues of such operations remain unsolved, which manifests itself in a number of points (Figure 1).

In the current Plan of accounts of assets, capital, liabilities and economic operations of enterprises and organizations, and Instructions for its use (Manual, №291, 11/30/1999) we use off-balance accounts 05 "Guarantees provided" and 06 "Guarantees obtained", respectively, to account gained and provided guarantees and secure fulfillment of obligations and payments.

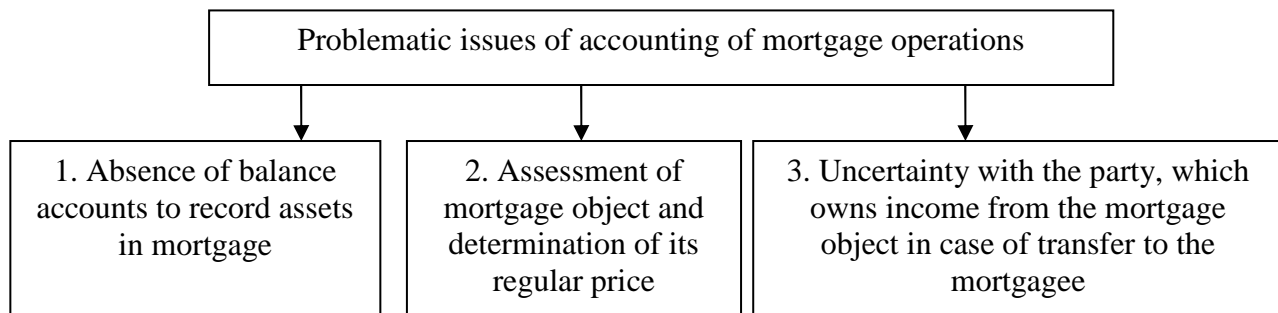


Figure1. Problematic issues of accounting of mortgage operations

Source: author's work

Within the framework of these accounts the enterprise can form analytical sections of mortgage accounting, however mortgage does not appear on balance accounts that narrows information capabilities of accounting system in provision of information about enterprise operations with mortgage for obligations management and their security.

Another problematic issue of accounting of mortgage operations is the assessment of the mortgage object. Assessment of the mortgage object is carried out by the mortgagor with the mortgagee according to regular prices prevailing at the time of mortgage occurrence, unless a different procedure of mortgage object assessment is provided by contract or law. Regular price is the price of goods (works, services) determined by the parties (Code, № 2755-VI, 02.12.2010). Regular price of the mortgage object can be defined for objects presented on the active market. When the mortgage object is a unique object, then determination of its regular price is quite problematic. The same situation occurs when the mortgagee gains property rights to objects in future. In this case, the formation of the object regular price is influenced by conjuncture price changes of these objects, inflation rate and market situation, as

well as general conditions of business uncertainty. In this case, the price of mortgage must be considered as compensation for possible risks.

If the mortgage object must be in possession of the mortgagee under the contract or law, the right of mortgage occurs at the time the mortgage object is transferred to him. If such transfer is made before the mortgage contract is signed, the mortgage right occurs after the contract conclusion. However, the issue of accounting of this property transfer to mortgage remains unsolved. Current plan of accounts does not include separate balance accounts to account assets received or transferred to mortgage. In fact, one company writes off a particular object, and another gets it on balance, but no assets inflows and outflows recorded in accounting meet economic and legal nature of this operation, which leads to violation of the principles of credibility and objectivity.

Current legislation stipulates that the mortgagee is entitled to use the mortgage object only in cases specified by the contract. Also the mortgagee may be obliged to acquire harvest¹ and revenues from the mortgage object if specified by the agreement. However, the issue of the party to own harvest or revenues obtained remains unsolved, which in turn affects the accounting display of these operations and formation of appropriate management information.

Thus, we can conclude that problematic issues of mortgage operations accounting are of organizational and methodical nature that requires further research to find solutions to problem areas outlined.

Conclusions and prospects for further research. The study of types of contractual obligations security established by law in Ukraine showed that the most appropriate and effective in use is mortgage. The use of mortgage may be fixed at the level of agreement between economic parties, as well as by the court decision, which provides the legal basis for realization of mortgage economic benefits compared to other types of obligations fulfillment security.

¹ If the mortgage object is workstock, productive livestock or perennials

Designated problems of mortgage accounting are of methodical nature and manifest themselves as: 1) lack of balance sheets to account incoming mortgage in current plan of accounts; 2) the problem of determination of regular price of the mortgage object, due to institutional features of economic development of the national economy; 3) unsolved issue of ownership rights distribution to harvest or revenues obtained from the mortgage object in case of its transfer and storage by the mortgagee. So detected issues are areas of improvement of accounting system as a whole and its separate components (including methodological principles of contractual obligations accounting and their security). Solution of these problems will strengthen informative credentials and increase effectiveness of management of the economic entity.

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