

FINANCE | 9 May 2016

New Security for Real Estate Financings

Law Decree No. 59 dated 3 May 2016 introduced a new security instrument for real estate financings which entails secured creditors to satisfy their claims against the mortgaged assets without the need of going through a proper foreclosure proceeding

Scope of the New Security Arrangement

The new tool is available for any real estate financings provided to Italian companies by a bank or other entities authorised to perform lending activities in Italy.

The parties can enter into an agreement providing for the automatic transfer of real estate assets to the secured creditor or any of its affiliates conditional upon the occurrence of a payment default by the debtor. The security can be given by the principal debtor or any third party security provider. The secured creditor will be required to reimburse to the security provider any difference between the certified value of the real estate assets subject to transfer and the outstanding amount of the debt.

The transfer arrangement can be made in relation to new financings but also financings which are already in place as at the date on which the Law Decree was enacted. If the existing financing is already secured by a mortgage, the transfer arrangement will benefit of the same ranking of the existing mortgage and therefore shall prevail against any subsequent prejudicial filings in the land register (*trascrizioni/iscrizioni pregiudizievoli*).

The transfer of the real estate assets to the secured creditor will become effective upon a payment default by the debtor having the following features:

- for financings which contain a monthly amortisation plan, a failure to pay of at least three instalments (even not consecutive) remaining outstanding for more than 6 months;
- for financings which contain an amortisation plan providing for instalments longer than one month, a failure to pay of at least one instalment remaining outstanding for more than 6 months;
- for financings providing for a bullet repayment at maturity, a failure to repay the relevant amount in accordance with the terms set out under the facility agreement remaining outstanding for more than 6 months.

Main Steps to Enforce the Security

The main steps to effect the transfer of the real estate assets are:

- notification by the secured creditor to the debtor of its intention to trigger the transfer;
- appointment by the court of an expert to determine the value of the real estate assets through a certified appraisal within 60 days of such notice;
- notification by the appointed expert of the value of the real estate assets to the debtor;

- possible challenge of the appraisal by the debtor. However, such challenge will not prevent the transfer of the real estate assets to the secured creditor but only require the secured creditor to pay any higher amount resulting from any such challenge;
- effectiveness of the transfer of the real estate assets upon notification of the appraisal to the secured creditor or (if applicable) payment of any higher amount ascertained as a result of any challenge by the debtor. The satisfaction of the condition can be declared unilaterally by the secured creditor.

The above procedure can be activated also in cases where the underlying real estate assets are already subject to a foreclosure proceeding.

What's New?

- Improvement of existing security tools with the introduction of a new kind of security for real estate financings.
- Ability of the secured creditor to appropriate the real estate assets without the need of going through a lengthy foreclosure proceeding.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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