



s m a r t m o n e y

# Reading and Understanding a Mortgage Contract





Since buying a house or an apartment is one of the most important financial decisions you will ever make, you need to understand the Mortgage Loan Agreement that you sign with the bank.

Careful! Loans denominated in any currency other than the hryvna expose you to foreign exchange risk.

If the hryvnia's value falls relative to the foreign currency, your loan is denominated in, you will have to pay more in hryvnia to pay back your loan.

LOAN AGREEMENT No. \_\_\_\_\_  
\_\_\_\_\_ two thousand \_\_\_\_\_

**PARTY 1.** A legal entity under the law of Ukraine \_\_\_\_\_, hereinafter referred to as **the Lender** represented by \_\_\_\_\_ acting under the Charter \_\_\_\_\_, and,

**PARTY 2.** A citizen of Ukraine - \_\_\_\_\_, hereinafter referred to as **the Borrower**, who was born in \_\_\_\_\_, passport series \_\_\_\_\_ issued by \_\_\_\_\_ in the year \_\_\_\_\_ and registered at the address \_\_\_\_\_, tax payer identification code \_\_\_\_\_,

hereinafter referred to jointly as **Parties** and each one separately as **the Party** have concluded this Agreement for the following:

#### ARTICLE 1.

##### THE SUBJECT OF AGREEMENT

**1.1.** The Lender shall make available to the Borrower monetary funds in the principal sum of \_\_\_\_\_ (US dollars/hryvnia) for temporary use upon the conditions of security, refundability, term, payment of interest and purposeful nature of use, with the fixed/floating interest rate at \_\_\_\_\_ which (equals/is calculated) \_\_\_\_\_, with the following procedure for payment of the principal amount by the 10th day of each month in line with the schedule set forth in Article 1.1.1 herein:

**1.1.1.** Schedule of payments

**1.1.2.** The debt payable under the loan debt, hereinafter

If you sign a loan mortgage agreement with a floating interest rate, it can change in both directions, that is, increase or decrease.

You should remember this and assess whether or not you will be able to pay the loan principal and interest, if the interest rate increases significantly. The bank should tell you the base index of your floating rate loan and the dates when it may change.

The bank should also explain the formula that is used to calculate interest.

Ukrainian loan agreements often peg a floating rate to LIBOR (The London Inter-bank Overnight Rate) which can be found in most financial newspapers.



referred to as **the Loan**, shall be repaid in full by **the year** \_\_\_\_\_ upon the terms and conditions of this Agreement.

**1.2.** The Loan shall be made available to the Borrower for the following purposes: to purchase real estate - /description of the apartment/, located at the following address:

**1.3.** To secure that the Borrower will meet his/her obligations to pay the Loan, interest, and any possible penalties and expenses for meeting the demand secured by the mortgage item, the Lender shall:

**1.3.1.** on the day of signing this Agreement with the Borrower, sign a mortgage contract under which the Borrower shall transfer to the Lender mortgaged real estate that shall be purchased for the Loan under Article 1.2 of this Agreement and is owned by the Borrower on the basis of ownership, at the mortgage value of \_\_\_\_\_ ( \_\_\_\_\_ ) **hryvnias 00 kopecks.**

The mortgage contract shall be notarized; the encumbrance of real estate by mortgage shall be registered with the State Mortgage Register in line with the established procedure; a notary shall impose a ban on disposal of real estate;

**1.4.** The Borrower shall guarantee that no events exist as of the moment of signing this Agreement that pose a threat to the proper fulfillment of this Agreement (**court proceedings, claims of third parties in relation to the property**) about which the Borrower failed to notify the Lender.

*As the buyer, you must perform due diligence on the property, checking anything that could affect the property you want to purchase (value, pending claims by third parties...)*

## ARTICLE 2. PROCEDURE FOR LOAN ISSUANCE AND INTEREST PAYMENT

2.1. The Loan shall be issued for the purposes listed in Article 1.2. of this Agreement by way of making funds in cash available to the Borrower.

2.2. The moment (day) of Loan issuance shall be considered the day of making funds in cash within the sum of the Loan available to the Borrower.

2.3. The moment (day) of Loan repayment shall be considered the day when the following funds are credited on the Lender's relevant accounts: the Loan principal, accrued interest and possible penalties determined by this Agreement, if the terms of the Agreement do not provide otherwise.

2.4. Accrued loan interest shall be calculated in the Loan denomination currency on the last working day of a month not including the last working day and the following non-work days of the month; the method for accrued interest calculation shall be Actual/ 360 (365, 366).

2.4.1. Interest shall be paid in the Loan denomination currency on account No. \_\_\_\_\_ at the \_\_\_\_\_ branch \_\_\_\_\_ by **the 10th day** of the month following the month where interest is accrued. If **the 10th day** of the month is a non-work day the Borrower shall pay the accrued interest on the preceding workday under Article 2.4. of this Agreement.

2.5. If there are any late installments on the Loan or interest



*Generally, banks establish a very strict sequence of the repayment of liabilities;*

*the penalties, the interest, commissions, fees are repaid first and the loan principal is repaid last.*

the Borrower shall repay such late installments in the following priority as set forth by this Agreement:

overdue accrued interest debt;  
overdue Loan principal debt;  
accrued interest debt due;  
loan principal debt due;  
penalty for late payment of Loan principal and interest;  
other penalties.

**2.6.** If any changes of interest rates occur on the lending market of Ukraine, including changes arising from decisions of the competent state authorities of Ukraine, that directly or indirectly affect the state of the lending market in Ukraine, as well as those arising from decisions taken by the Board, Asset/Liability Management Committee, Lending and Investment Committee, or the Rate Committee of the Lender, the Lender shall have a right to initiate the change of interest rate specified in Article 1.1 of this Agreement.

**2.6.1.** The Lender shall notify the Borrower of his intention to change the interest rate at least within ten working days before the application date, as well as provide the Borrower with the relevant additional agreement.

**2.6.2.** If the Borrower agrees to the changed interest rate, he shall sign the additional agreement provided by the Lender within the term set forth in Article 2.6.1. of this Agreement and return it to the Lender.

**2.6.3.** If the Borrower does not agree to the interest rate proposed by the Lender, he shall, within the term specified in Article 2.6.1. of this Agreement, repay the Lender the whole outstanding amount of the Loan, pay accrued interest, commissions and possible penalties in full amount. After the Borrower has paid the above mentioned sums,

*The interest rate established by the agreement may not be increased by the bank unilaterally.*

*If you find such a provision in your contract, then try to have the bank take it out. If the bank refuses, find another bank.*

*This gives the bank the right to withdraw money from your account without transaction-by-transaction authorization from you. So be careful if your salary account is opened in the same bank.*

this Agreement shall be deemed terminated.

**2.7.** The Borrower shall entitle the Lender to perform direct debit transfers from the Borrower's accounts:

**2.7.1.** of the amounts due in relation to the Loan on the last day of each period specified in Article 1.1 of this Agreement, or on the day of cash inflow to the accounts if there are no funds on the Borrower's accounts on the last day of the period;

**2.7.2.** of accrued interest within the timeframe specified in Article 2.4.1. of this Agreement;

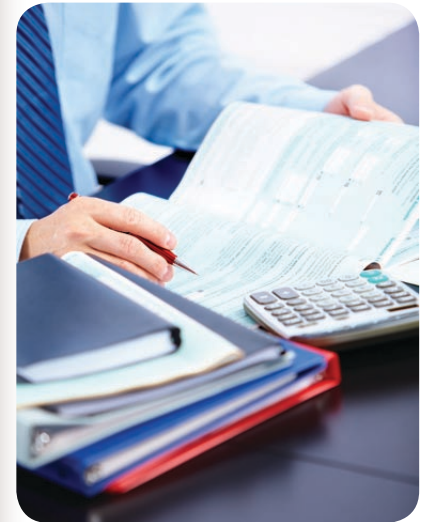
**2.8.** If the Borrower prepays the Loan in full or partial amount within the first and the second years of Loan, the funds shall be used to pay the commissions for early repayment of the Loan in full or partial amount in the amounts defined in Article 3.4.1. of this Agreement as the first priority.

### **ARTICLE 3. RIGHTS AND OBLIGATIONS OF PARTIES**

**3.1. The Lender shall:**

**3.1.1.** within one working day from the date of the agreements specified in Article 1.3. of this Agreement coming into force, provided that the Borrower has fulfilled his obligations listed in Article 3.3.1. of this Agreement, open loan account No. \_\_\_\_\_ at \_\_\_\_\_ for the Borrower and provide funds in cash to the Borrower in the amount of the Loan specified herein, following the below deadlines:

- on the day of funds provision if the Borrower files the application to receive cash within the operation hours of



the Lender;

- no later than the following working day if the Borrower files the application to receive cash after the operation hours.

### **3.2. The Lender shall have a right:**

**3.2.1.** to examine whether the Loan is used purposefully in the following manners:

- analyse and review authenticity of supporting documents confirming purposeful use of the Loan;  
- check availability of the property for which purchase the Loan has been issued at the location of such property;

**3.2.2.** to demand that the Borrower provides additional security for obligations under this Agreement in cases of significant impairment of the Borrower's financial standing, termination of agreements specified in Articles 1.3., 3.3.5. of this Agreement or recognition of such agreements null and void;

**3.2.3.** to demand immediate payment of the Loan principal, accrued interest and possible penalties, if, within three working days from the date of receipt of the Lender's demand to provide additional security for obligations as specified in Article 3.2.2. of this Agreement, the Borrower fails to provide such additional security (by way of concluding the relevant agreement) or the Lender does not agree to the security provided;

**3.2.4.** if the Borrower fails to repay the Loan within the timeframe specified in Article 1.1. of this Agreement or fails to fulfill properly the terms of this Agreement, the Lender shall have a right to send the relevant information to the unified information record system of borrowers/debtors of the National Bank of Ukraine;



*Insuring your property is your obligation.*

*According to the law, you must provide insurance coverage of the mortgaged property.*

*However, the bank is not allowed to impose a specific company or a list of "acceptable" insurance companies.*

**3.2.5.** to perform automated notification of the Borrower via text messaging on the Borrower's mobile telephone number \_\_\_\_\_ or leaving a message on the answering machine of a landline telephone number \_\_\_\_\_ specified in the loan request or application; the automated notification shall mean notification of the Borrower of the outstanding debt he must pay and the deadline by which the outstanding debt shall be paid if any.

**3.3. The Borrower shall:**

**3.3.1.** have provided all documents required to open a Loan account by the National Bank of Ukraine and the Lender by the moment of signing this Agreement;

**3.3.2.** provide the Lender with all documents necessary for the Lender to undertake actions specified in Article 3.2.1. of this Agreement;

**3.3.3.** conclude agreements listed in Articles 1.3.1. and 3.3.5. of this Agreement at the same time as this Agreement is concluded, under the terms and conditions agreed with the Lender;

**3.3.4.** provide the Lender with the Borrower's salary statement and/or income statement at least 1 time (once) per calendar year throughout the Agreement term;

**3.3.5.** simultaneously with signing this Agreement, conclude an insurance contract for the full cost of the mortgage item for the term of the Agreement to insure the mortgage item against contingent destruction, damage or harm, to the benefit of the Lender as the beneficiary, and provide the Lender with the original or notarized copy thereof, as well as provide the Lender with the original or notarized copy of changes and/or amendments, if any,

within three working days following the incorporation of such changes and/or amendments into the above mentioned insurance contract.

**3.3.6.** follow strictly the terms of this Agreement and agreements specified in Article 1.3., subit. 3.3.5. of this Agreement;

**3.3.7.** use the Loan for the purposes only that are set forth in Article 1.2. of this Agreement;

**3.3.8.** pay interest under the Loan in accordance with the procedure specified in Articles 2.4., 2.5. of this Agreement;

**3.3.9.** repay the Loan principal and accrued interest for the actual time of use, along with possible penalties, on a timely basis and in full amount, following the procedure specified in Article 1.1. of this Agreement;

**3.3.10.** repay the Loan, accrued interest and possible penalties early in cases set forth in Articles 2.6.3., 3.2.3., 3.3.18., 4.4., 4.5., 5.4. of this Agreement;

**3.3.11.** within two working days after undertaking the actions that comprise the purpose of the Loan under it.

1.2. of this Agreement, notify the Lender thereof and provide the Lender with all supporting documents, as well as allow the Lender to review and make sure that the documents are accurate at the location of the relevant property;

**3.3.12.** not undertake any actions to dampen the value of items specified in Article 1.3. of this Agreement that are used to secure liabilities throughout the term of this Agreement, and allow the Lender to verify their availability and monetary valuation;

**3.3.13.** within two working days notify the Lender of the change of employment, address of residence, telephone numbers, first and last name, divorce, marriage, birth of child and other circumstances that may affect fulfillment



### **Early repayment is your irrevocable right,**

so any clauses that state that the debtor forfeits his right to early repayment is illegal and may be recognized as null and void by a court of law. However, the bank retains the right to

to levy certain commissions for early repayment and include a provision to this effect in the agreement.

of liabilities under this Agreement, and provide the documents confirming the abovementioned information, within two working days following the change;

**3.3.14.** appear before the Lender on the day specified in Article 2.6.3. of this Agreement to sign an agreement defining interest rate under the Loan for the next year;

**3.3.15.** The fee for starting a credit case and opening a loan account is 0.99 (zero point ninety nine) per cent of the Loan amount at the NBU rate;

**3.3.16.** pay the Lender a fee specified in Article 3.4.1. of this Agreement if the Borrower prepays the Loan or a part of it within the first and the second year of servicing the Loan, by way of paying the relevant amount in cash at the Lender's cash desk or transferring the funds to account No. \_\_\_\_\_ at \_\_\_\_\_, MFO \_\_\_\_\_.

**3.3.17.** agree with the Lender the terms of insurance agreement specified in Article 3.3.5. throughout the term of this Agreement, as well as all changes and/or amendments thereto.

**3.3.18.** provide the Lender with a statement about the amount of salary and/or income received, within two working days after the principal installment and accrued interest become over 8 (eight) days past due.

### **3.4. The Borrower shall have the following rights:**

**3.4.1.** The Borrower shall have a right to prepay the Loan (part of the Loan):

- throughout the first and the second years of the Loan life, provided that 1 (one) per cent of the amount of prepaid Loan (part of the Loan) is charged as a fee;
- after the end of the first and the second years of Loan

*This provision says that the borrower must sign an additional agreement every year in which the credit conditions can be modified.*

*This is illegal: the bank is not allowed to impose an additional agreement modifying the loan conditions unilaterally. By law, the rate and mechanism of its calculation is determined on the date of the entering into agreement.*

life – commission free, but the Borrower shall notify the Lender of his/her intention at least within five working days before the date of such prepayment in writing;

**3.4.2.** to pay early or in part the interest accrued over the time of actual use of the Loan;

**3.4.3.** to repay the Loan and accrued interest on his/her own taking into account the requirements specified in Article 2.6. of this Agreement.

#### **ARTICLE 4. RESPONSIBILITIES OF THE PARTIES**

**4.1.** If the Borrower violates the terms of purposeful use of the Loan specified in Article 1.2. of this Agreement, the Borrower shall pay the Lender a fine of 10 (ten) per cent of the amount of misused funds.

**4.2.** If the Borrower fails to pay the charge for prepayment of the Loan (part of the Loan) by the deadline specified in it. 3.3.16. of this Agreement, or if the Borrower fails to meet the deadline for paying interest as specified in this Agreement and the deadline for Loan repayment specified in Articles 1.1., 2.6.3., 3.2.3., 4.4., 5.4. of this Agreement, the Borrower shall pay the Lender a penalty that equals double NBU discount rate for the late installment for each past due day effective over this period.

**4.3.** If the Borrower violated the requirements of Articles 3.3.2.-3.3.17. of this Agreement, the Borrower shall pay the Lender a penalty of 3 (three) per cent of the Loan amount specified in Article 1.1. of this Agreement for each violation.

#### **Penalties for Late Payments add up quickly**

If you fall behind in your payments the bank begins accrual of fines and charges. However, the amount of the charge (fine, penalty) may be decreased by a court ruling, if the judge finds that the charges imposed by the bank substantially exceed the damages suffered by the bank, or on other grounds that the court considers to be substantial.

If you are unable to meet the loan repayment schedule, it is very important to try to keep the initiative and approach the bank to try to find a solution acceptable to both parties.

The bank may give you a possibility to restructure the loan or, in other words, to repay the loan under new terms and conditions being acceptable to both you and the bank.


4.4. If the Borrower fails to fulfill (fails to fulfill properly) his/her obligations specified in Articles 3.3.2.-3.3.7., 3.3.11.-3.3.13., 3.3.16. and 3.3.17. of this Agreement and violates the terms of agreements specified in Articles 1.3., 3.3.5 of this Agreement, for over 10 working days, the Loan life shall be deemed exhausted and the Borrower shall, within one working day, repay the Loan in full amount, pay interest for the actual time of using the Loan, and accrued penalties if any.

4.5. If the Borrower fails to fulfill (fails to fulfill properly) his/her obligations specified in Articles 3.3.8., 3.3.9. of this Agreement for over 90 (ninety) calendar days, the Loan life shall be deemed exhausted and the Borrower shall, within one working day, repay the Loan in full amount, pay interest accrued over the actual time of using the Loan, and pay accrued penalties.

4.6. If the Lender violates the deadline of the Loan issuance set forth by Article 3.1.1 of this Agreement, the Lender shall pay the Borrower a penalty of 0.005 per cent of the amount of the Loan issued late for each day of delay but no more than the NBU discount rate effective over the period of default of liabilities under this Agreement, or by way of transferring funds to the relevant current account of the Borrower at \_\_\_\_\_, or by paying the Borrower the funds in cash.

## **ARTICLE 5. EXEMPTION OF LIABILITY**

5.1. The Parties shall be exempted of the liability for partial or full default of their liabilities under this Agreement in



cases where circumstances emerge and occur that are beyond the Parties' control and which the Parties have not been able to foresee or prevent. Such circumstances as specified by this Agreement include military activities irrespective of the fact of declaring a war, uprisings and natural disasters.

**5.1.1.** Parties shall not be exempted of liability for the failure to fulfill their liabilities on a timely basis if the circumstances listed in Article 5.1. of this Agreement occur in the period of delay in fulfilling the liability.

**5.2.** One Party shall notify the other Party about emergence and termination of the effect of force majeure circumstances and provide a confirmation from a competent authority within three days after the date of emergence or termination. The failure to meet notification deadline for emergence of force majeure circumstances shall deprive the Party from the right to refer to such circumstances as a ground for exemption of liability.

**5.3.** If any circumstances occur that are listed in Article 5.1. of this Agreement, the deadline for meeting liabilities shall be delayed by the duration of such circumstances but no longer than one month.

**5.4.** If circumstances specified in Article 5.1. of this Agreement last longer than one month, the Borrower shall repay the Loan and accrued interest within five working days after the term specified in Article 5.3. is exhausted.



**ARTICLE 6.  
DISPUTE RESOLUTION**

6.1. All disputes and conflicts that may arise out of the conclusion and fulfillment of provisions of this Agreement shall be resolved through negotiations between the Parties at the level of their authorized representatives.

6.2. If a dispute cannot be resolved through negotiations, the Parties guided by Article 5 of the Law On Arbitration Courts have agreed that such dispute shall be considered individually by arbitrator \_\_\_\_\_ of the \_\_\_\_\_ Arbitration Court acting on a permanent basis at the following address: \_\_\_\_\_. If a dispute cannot be resolved by the mentioned arbitrator, the dispute shall be considered by arbitrator \_\_\_\_\_ or \_\_\_\_\_ in the priority specified in the given item. If the dispute cannot be considered by arbitrators listed in the given item, an arbitrator shall be appointed by the Chairman of the Permanent Arbitration Court under \_\_\_\_\_ in accordance with the effective Procedures of the Permanent Arbitration Court under \_\_\_\_\_.

**ARTICLE 7.  
CLOSING PROVISIONS AND SIGNATURES OF  
PARTIES**

7.1. All addendae, changes and/or amendments to this Agreement shall be performed in writing and signed properly by

**Arbitration Clause in Dispute Settlement**

All disputes "arising of the agreement" shall be settled through an arbitration court. This provision is standard and legal.

However, the arbitration court settlement clause does NOT extend to real estate disputes. By law real estate disputes cannot be settled by arbitration, and therefore must be settled by a regular court. A property foreclosure lawsuit, for example, can be legally settled through a regular court only.



authorized representatives of Parties with a mandatory reference to this Agreement.

**7.2.** All notifications under this Agreement shall be considered properly made if they are made in writing and sent by a registered letter, courier, telegraph, or handed personally to the Parties at their listed addresses. Receipt date for such notifications shall be the day they are handed personally or the date of the addressee post office stamp.

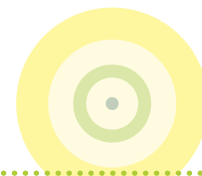
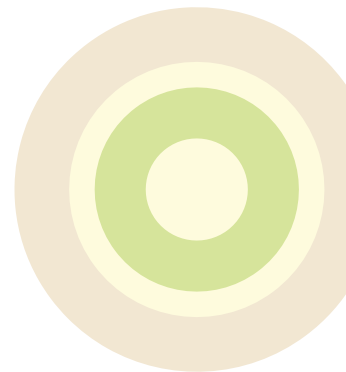
**7.3.** This Agreement shall come into effect on the date of signing and shall be effective through complete fulfillment of liabilities undertaken by the Parties.

**7.4.** If the Borrower has not applied to the Lender to obtain the loan in accordance with the procedure set forth by Article 2.1. of this Agreement by the deadline for repayment of the first installment under the Loan specified in Article 1.1.1. of this Agreement, the Lender's obligations in relation to the Loan issuance and this Agreement shall expire.

**7.5.** Invalidity of some provisions of this Agreement shall not cause invalidity of the Agreement on the whole assuming that this Agreement has been concluded without incorporation of such provisions.

**7.6.** The titles of articles of this Agreement shall be used only for comfort and shall in no way affect their contents or interpretation.

**7.7.** This Agreement was drawn up in two original copies in Ukrainian language, each copy for each Party. All copies shall be of equal legal force.





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