



## **How to Send a Proper Acceleration Notice to Initiate Execution Proceedings for Collateralized Banking Receivable?**

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According to Article 45 of the Enforcement and Bankruptcy Law (“**EBL**”), if a creditor has a security interest in a borrower or third party’s assets (*e.g.*, mortgage, pledge), that creditor shall first initiate special execution proceedings against the borrower, known as “Enforcement by Foreclosure of Collateral”.

### **Commencement of Enforcement by Foreclosure of Collateral and Bankruptcy Proceedings by Sending an Acceleration Notice**

In order to begin the “Enforcement by Foreclosure of Collateral” under Article 150/1 of EBL for collateralized banking receivables, a bank should only submit a notarized copy to the Execution Office demonstrating that an acceleration notice for the outstanding amount of the credit has been served (or deemed to be served under Article 68/b of EBL) to the address of the borrower set forth in the loan agreement.

The opportunity to take advantage of 150/1 of EBL provisions is a privilege granted solely to banks and other financial institutions.

### **The Significant Role of the Acceleration Notice**

The most important feature of this procedure stated under article 150/1 of EBL is that the borrower’s objection does not stop the proceedings. The acceleration notice sent in accordance with Article 150/1 of the EBL shall be deemed as a court order. Designation as a court order requires that all procedures set forth in the law are strictly followed.

If it is determined at any stage of the enforcement proceedings that the notice has been prepared or served unlawfully, the enforcement proceedings may be deemed invalid. Therefore, the acceleration notice plays a critical role in Turkish execution proceedings.

### **Putting in Default by Sending an Acceleration Notice**

The “*default date*” is the date upon which the time granted for payment in the duly served acceleration notice has elapsed. Until this date, the interest set forth in the loan agreement shall apply. Following expiration of the time granted for payment in the acceleration notice, the default interest rate shall apply to repayment of the loan until the actual payment date. (*12. Civil Chamber, Docket no. 2016/3732, Order no. 2016/8734, Date of Order. 24.03.2016*)



## **Sending the Acceleration Notice to the Relevant Address**

If the borrower and the mortgagor are not the same person (if the mortgagor is a third party who is not personally liable for the debt), the creditor's notice shall be sent to both, i.e. borrower and the mortgagor for it to be effective in the enforcement proceedings. In other words, the creditor should send both the borrower and the mortgagor an acceleration notice including the statement of account in order to initiate a foreclosure of collateral proceedings against the mortgagor.

One of the common issues faced in practice is determining the address to which the notice should be sent. It is essential to send the notice to the recipient address stated in the loan agreement, pursuant to Article 150/1 of the EBL. Additionally, the bank (or the financial institution as the case may be) should send the notice to the borrower and the mortgagor via notary public. The notary public's certification of the parties' receipt of the notification is crucial to execution proceedings.

In practice, borrowers and/or mortgagors may change their address without informing the bank to avoid the service of these notices. If the borrower and/or the mortgagor change their addresses written in the loan agreement, and do not notify the creditor through a notary public, the date on which the notice sent by the bank via notary public reaches the former address of the borrower and/or the mortgagor shall be considered as the date of service.

## **Objecting to the Acceleration Notice**

The borrower and/or the mortgagor who receives the notice sent by the creditor via notary public may object to the notice within eight days from the date of service. In order to object, according to 150/1 of EBL, the borrower must send the plea through the notary public as well.

The objection of the borrower may only be related to the following reasons:

- (i) the existence of the debt,
- (ii) the debt not being due or,
- (iii) a difference in the amount mentioned in the statement of account

If the borrower's and/or the mortgagor's objection to the notice is made via notary public within eight days from the date of service, the borrower and the mortgagor may have the right to claim the cancellation of the proceedings to be initiated by the creditor against them in accordance with the Article 150/1 of EBL. It is important to note that, if the borrower does not object to the notification within eight days from the date of service, the borrower's and/or mortgagor's claims to get the proceedings canceled may not have the same effect. An objection by the borrower and/or the mortgagor to the notice does not prohibit the



creditor from initiating enforcement proceedings, which is an advantage granted to the banks and financial institutions for their collateralized receivables.

To clarify, the borrower's and/or the mortgagor's objection to the acceleration notice (i) entitles the borrower and/or the mortgagor with the right to object to the execution order (ii) and does not suspend the execution proceedings.

In case the borrower and/or the mortgagor do(es) not object to the acceleration notice within the eight-day period with the *numerus clausus* reasons, the right to object to the proceedings to be initiated shall be withdrawn.

The relevant legislation does not explicitly stipulate that a creditor shall wait eight days before initiating proceedings, to give the borrower and/or the mortgagor time to object; it is, however, accepted both by the Supreme Court and in doctrine that a creditor shall wait for the eight-day objection period to pass before starting the proceedings.

After receiving the execution order sent by the bailiff officer, the borrower and the mortgagor must pay the outstanding credit amount (with the default interest, attorney fees and etc.) within 30 days following receipt of the execution order, or should object to the contents of the order within seven days following the service.

According to Turkish enforcement legislation, sending an acceleration notice to the borrower and the mortgagor regarding payment of credit puts the creditor in a strong position in the enforcement proceedings. In order to collect the debt by selling mortgaged real estate with a judicial sale process, it is crucial to follow strictly the procedure for sending an acceleration notice as set forth in the law.

## References

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