

What you should know about real estate before conclusion of the contract

It is important to point out several significant facts that play important role during the purchase – defects that affect real estate. These can be divided in two basic groups, namely; factual defects and legal defects.

Real estate suffers from factual defects if it does not have the required or expected features and such defects would impede the daily use of the anticipated purchase. These defects are usually sorted out by repairs to the property etc.

Legal defects are represented by the existence of the rights of the third parties to the real estate that you intend to buy. Usually it is the existence of right of lien, real burden or lease agreement. It is a fact that such rights can considerably limit the purchaser and, under certain circumstances, even invalidate the whole conveyancing process.

This subject can be divided in two basic sections, namely; the purchase of a plot of land and the purchase of a house or flat on the aforementioned plot of land.

Acquisition of a plot

We now come to the subject of a plot for the purpose of house-building.

The potential factual defects of the plot of land for the planned purchase (including house-building) should be examined. Firstly, it is important to check that the land has approval for building, to what extent and under which conditions. Simultaneously, one should investigate the future house-building that is planned within the neighbourhood of the plot. Checks should ensure that it will be possible to connect the plot with the utility networks and that the plot is located in an ecologically sound area. These actions will ensure an easier construction process and ensure that the house ultimately is placed in a suitably pleasant location.

It is recommended that a preliminary statement from the administrative authorities (giving their opinions about decisions affecting the land, construction permits and opinions about the proposed construction permit. This will considerably simplify the subsequent process.

Next to stated factual defects it is necessary to pay attention to legal defects where it is almost necessary to be acquainted mainly with record in cadastre of real estates. But even from this register all legal defects might not be noticeable.

The Real Estate Cadastre will provide information about contractually established rights of lien, contractually established real burdens, limitation of ownership rights arising out of joint ownership or any other fact relating to legal issues surrounding the real estate.

The Real Estate Cadastre should record (usually as an official duty) the rights of lien established by law, real burdens established by law or those established by adverse possession and, at the same time, any legal interests established on the basis of a court decision or any other body. This clarification will prevent a number of difficulties.

Additionally, it is necessary to check that there is no evidence of lease agreements or agreements about establishment of rights of use that are not in the purchaser's legal interests, leading to potential problems. It is also important to ensure that there are no matters of unsolved restitution relations (relating to past owners- pre 1989) or the potential for the execution by court, administrative decision and distraint.

Acquisition of house or flat

Another issue is the possibility of the acquisition of house or flat with rights to the plot under the building as the purchaser will become, at the very least, the shared owner.

With respect to the factual defects it is appropriate to differentiate between new buildings and longer term established real estate.

In case of a new building most often the defects are caused by standard procedures connected with the construction itself. These defects might be easily removed with the assistance of a guarantee that should be provided by the supplier of the real estate.

The situation with existing older houses or flats is different. In such cases it is necessary to undertake a survey (e.g. wear and tear) and to take account of the costs for any anticipated changes/needed improvements when considering the purchase price that you are ready to accept. A suitably qualified surveyor or building engineer should undertake this survey.

As far as legal defects of real estate are concerned it is necessary to consider the issues relating to plots as well. Identical legal interests or rights of obligation of third parties may exist in relation to the house or flat.

During the purchase of a flat not only the co-ownership share on the plot under the building is transferred but also the co-ownership share on the common parts of the building that the flat is located within.

It is important to be aware of the statutes of partnership of owners, to which you would become bound to upon acquisition of a unit. There will be certain obligations, such as contributions to the fund for building repairs. Cooperative flats, where there is no de facto transfer of ownership rights, transfer member rights and duties.

The most significant right is the right of use of the dwelling unit to which you are a member. Shares in a cooperative are mostly acquired with the presumption of the future transfer of ownership rights, transferring the unit that was being used during the cooperative period. Therefore it is important to check the legal position relating to the ownership of flat, within the cooperative, during the transfer of membership rights.

Checking the factual and legal defects, although slowing down the process, is fundamental to the process. This will prevent the future owner suffering from unexpected problems later on, usually relating to unknown future costs, and assist the buyer in the negotiation of a reduced price in such cases. This work should really be undertaken by a suitably experienced lawyer, ensuring a smoother process, with minimal problems.