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REAL ESTATE MANAGEMENT

Real estate Real Estate Law Overview- Transfer of ownership Classes no. 4.

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Legal framework

- The *real estate law* system of Poland helps to understand how the contemporary system of real estate management works in Europe, as civil law and real estate law regulations in Europe are quite unified.
- The fundamental principles of Polish law regarding real estate are codified in the Polish Civil Code and supported by a wide range of legislation regulating all special issues regarding in particular transfer of the legal title, development and *management of real estate*.
- *Case law* (rulings of the Supreme Court and courts of appeal) is used for the interpretation of ambiguous regulations.



Real Estate
Law



Titles to Real Estates

The Polish Civil Code distinguishes between several legal institutions that give a title to use and dispose of real estate. The most common are:

- 1) titles to the most extensive rights to the real estate, i.e. the *ownership* and the *perpetual usufruct* (term derived from Latin)
- 2) limited property rights to another person's real estate in the scope strictly defined by law including *usufruct*, *easement (servitude)* and *mortgage* (institutions of civil law, which limit possibilities of using a land or real estate by its owner. For example establishing servitude of water on his land will mean that he is obliged by law to make it possible for his neighbour to have access to his source of water which is situated on his land).
- 3) rights to use another person's real estate arising from a *contractual relationship*, e.g. lease and tenancy.

WHAT SHOULD I KNOW
ABOUT REAL ESTATE LAW?



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The ownership

Ownership gives the **most extensive legal** title to the real property and allows **the owner** to, in particular (subject to some limitations prescribed by law):

- 1) use the real estate,
- 2) collect profits and other revenues,
- 3) **encumber** the real estate (**an encumbrance** is a claim against a property made by a party who is not the property owner. An encumbrance can impact the transferability of the property and restrict its free use until the encumbrance is lifted.
- 4) The most common types of encumbrance apply to real estate; these include mortgages, easements, and property tax liens.
- 5) freely **transfer** the ownership to others.

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The ownership

Ownership is the title that grants the beneficiary the broadest scope of rights.

Within the limits set by statutory law and the principles of community life, the owner may possess the real estate, use it, collect profits and other benefits from it, and dispose it.

Apart from a few exceptions (for example agricultural land), the owner may freely *transfer* his ownership to another person.

Although the change of the real estate's ownership should be registered in the *Land and Mortgage Register*, the transfer of ownership becomes effective when an appropriate contract is signed between the owner and the acquirer in the form of a notarial deed. The notary fee for the notarial deed depends on the value of the transaction. The maximum notary fees are specified in the Ordinance on Maximum Notary Fees of June 28, 2004.

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Transfer of ownership

In order to *transfer the ownership* of real estate the contract must be concluded in the form of a notarial deed. The notary public (public officer representing the state in order to control the purchase and sell of real estates and lands) will collect stamp duty and a notarial fee.

The ownership is disclosed in the *Land and Mortgage Register* but the transfer of ownership is effective when an appropriate contract is concluded.



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Transfer of ownership

– acquisition of real property

The contract for the transfer of ownership or the contract granting or transferring perpetual usufruct is governed principally by the Civil Code.

In order to be effective, a contract for the transfer of a real estate must be concluded in the form of a notarial deed. Therefore, participation of a public notary is essential. The transfer of ownership becomes effective when the contract is executed.

Register should be pursued in Registration in the Land and Mortgage, but it has declaratory effect only. In the case of perpetual usufruct, a notarial deed is insufficient for the transfer, which becomes effective only upon registration in the Land and Mortgage Register.

WHAT SHOULD I KNOW
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Transfer of ownership
- *acquisition of real property*

Many contracts are concluded in two stages.

Firstly, the parties sign a preliminary agreement, which specifies all the essential elements of the final contract, especially the price and time when the final contract ought to be concluded.

When all the conditions stipulated in the preliminary agreement are met, the final contract is concluded. The preliminary agreement may give the right to demand the signing of the final contract to a single party or both parties (or more parties in case of multilateral agreements).



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Transfer of ownership - acquisition of real property

However, if one party evades signing the final contract, the party entitled to the said demand may file a case and obtain a court order substituting the statement of intent of the other party (in order for the final contract to be executed), provided that the preliminary agreement was concluded in the form of a notarial deed.

If the preliminary agreement was signed in a normal written form or a written form with only the signatures authenticated by the notary, the beneficiary could only demand compensation for damages he suffered by counting on conclusion of the final contract. In case of real estate owned by the State Treasury and units of local government, there are special regulations concerning the sale of said property. The general rule is that such property is sold by tender.

WHAT SHOULD I KNOW
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Transfer of ownership

- acquisition of real estate by foreign investors

The matter of acquisition of land by foreigners is regulated by the Acquisition of Real Estate by Foreigners Act of March 24, 1920.

The said act dating from 1920 has been heavily amended, especially due to Poland joining the European Union and the developing integration of European states.

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Transfer of ownership

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Transfer of ownership

- acquisition of real estate by foreign investors

The Act defines a foreigner as:

1. an individual who is not a Polish citizen;
2. a legal person with its principal place of business abroad;
3. a partnership of the above mentioned individuals or legal persons, which has no legal personality, has its principal place of business abroad and was established in compliance with applicable law of a relevant foreign state;
4. a legal person and a commercial partnership without legal personality with its principal place of business located in Poland, directly or indirectly controlled by the individuals and entities listed in points 1-3 above.

WHAT SHOULD I KNOW
ABOUT REAL ESTATE LAW?



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Transfer of ownership

- *acquisition of real estate by foreign investor-*
 - *foreigners from other states*

Foreigners from other countries require a permit in order to acquire real estate in Poland. The permit is an administrative decision granted by the Minister of Internal Affairs and Administration.

The permit must be obtained both to acquire ownership and the right of perpetual usufruct. The permit is also required when a foreigner intends to acquire shares in a company with its registered seat in Poland which is an owner or a perpetual usufructuary of a real estate, if as a result of such transaction the foreigner will take control of that company. Moreover, the permit is required when the said company is already controlled and the shares are to be bought by a foreigner who is not its shareholder or a stockholder.

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TASK TO DO:

What are the possibilities of transfer of land in Poland?

