

Czech Republic:

Changes in Land Register to facilitate transfers of real estate

By **Luboš Fojtík**

The Czech law on registration of ownership and other rights to the Land Register has recently been amended. The changes concern different aspects of the registration procedure and are primarily aimed at tackling some of the deficiencies of the regulation that had been shown to be burdensome, especially for the real estate and banking sectors.

The amendment of the Act no. 265/1992 Coll. on registration of ownership and other rights in rem to real property entered in force on 1 January 2012.

1. The “note of disputableness” to tackle lawsuit abuse

The change is intended to tackle a relatively common practice of abusive lawsuits with the sole purpose of delaying the registration of the new owner in the Land Register. Previously, when a new owner filed a motion for registra-



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tion and there was any court dispute concerning the ownership with any other party, the registration procedure had to be suspended until the court issued

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the final decision in the case. This rule was sometimes abused by competitors, who were tempted to enter groundless lawsuits in order to delay legal completion of the transfer.

The amendment therefore introduced a so called “note of disputableness”. A court dispute concerning the real estate will no longer automatically block the registration in the Land Register. The cadastral office will enter a note of disputableness in the Land Register so the information about the existence of a dispute will be publicly available. If the motion for registration of a right to the real property is filed after the note of disputableness is entered, the registration proceeding shall not be suspended. If the note of disputableness is entered when the registration proceeding is already on going, the proceeding shall be suspended unless the parties to the registration proceeding agree that the proceeding shall continue.

As a result, entering abusive lawsuits will not be as worthwhile for competitors as such lawsuits will not have automatic postponing effect on the registration proceedings.

2. Documents to follow previous registrations

This change should resolve situations in which some old official documents appear to show that the existence of the ownership right of a person that has never been registered in the

Land Register. Previously the cadastral office was obliged to register such alleged owners by a so-called “record” (záznam), usually resulting in duplicated registrations, which could only be resolved by a court decision or by settlement. The possibility of such cases has been criticized by the Public defender of rights (the Ombudsman), as it resulted in unacceptable uncertainty of the registered owners. Similar problems occurred in cases of disputes over ownership when the property was transferred to a third party in the meantime. The judgment was the basis for a record of the ownership right of one party to the dispute, although the newly-registered owner had not been a party to the dispute and had had no way to defend his or her rights.

From now on, the cadastral office will register ownership by record only if the presented documents follow previous registrations in the Land Register. If the documents do not follow previous registrations, the alleged owner will have to claim his ownership in a lawsuit by filing a declaratory action against the person currently registered in the Land Register as the owner (or by settlement).

3. Deletion of old mortgages

The amendment allows the deletion of certain very old mortgages taken from former land registers that were kept before 1964. Most of these mortgages are no longer effective, but their

formal deletion from the Land Register was problematic and the mortgages had devaluing effect on the real properties concerned.

3. Formal changes of registration procedure

The motions for registration shall be newly filed on a prescribed form that will be available online. This should simplify the proceedings and reduce the error rate of the motions.

The applicant will not be required to submit extracts from public registers with the motion, such as extracts from the Commercial register. The amendment also abolished the requirement to submit old acquisition titles effective prior to 1 January 1993.

The administrative fee for the motion for registration in the Land Register has increased from CZK 500 to CZK 1000.

5. Conclusion

The changes to the Land Register law were adopted in response to certain specific problems that had occurred repeatedly under the previous regulation. They are expected to facilitate real property transfers and to offer more protection to registered owners.

Changes to the formal aspects of the registration should be seen as a step towards simplification and standardization of the procedure and are expected to create conditions for electronic com-

munication between the cadastral office and the applicant.

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