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Buying and Selling Real Estate in Hungary

ILN REAL ESTATE GROUP



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KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER HUNGARIAN LAW

1 Types of real estate transactions

In the Hungarian market, the typical types of real estate transactions can be differentiated as follows.

1.1 Transfer of an undeveloped plot of land

Plots of land are often bought for the purposes of construction. In this regard, first and foremost the relevant Hungarian zoning and construction regulations should be previously checked, to ensure that the desired facility can indeed be developed on the given land.

1.2 Transfer of a developed plot of land

As a general rule, buildings located on a real estate are considered to be the part of the land and are treated as one and the same property. It means that generally, by buying the land, the purchaser automatically acquires its buildings as well.

1.3 Transfer of the building and the land separately

The ownership of the land and the buildings thereon however may also be separated and registered as independent real estates, and in that case, they may also be sold separately.

1.4 Transfer of a condominium property (typically flats)

A condominium property consists of separately owned (typically the flats itself), and jointly owned (e.g. garden, staircase) parts, but the separately owned part automatically includes the connected ownership ratio in the jointly owned parts. In case of a condominium, the co-owners might have a right of first refusal, and therefore the deed of foundation of the condominium must always be

checked in advance, to see whether such right applies or not.

1.5 Transfer of an agricultural land

A real estate is deemed to be an agricultural land if it is recorded in the Land Registry as such. The typical forms are arable land, meadow, lake or forest. The acquisition and use of agricultural lands are subject to wide and strict limitations as to who can acquire or use them and under what conditions, and a transfer procedure may take up to 6-8 months to complete.

1.6 Share deal of a corporation that owns real property

During the planning of a property acquisition, if the owner of the real estate is a company, it often seems to be a reasonable solution to acquire the legal entity that owns the respective property.

2 Restrictions for acquiring real estate in Hungary

2.1 General rules

In general, EU/EEA citizens and entities are freely allowed to purchase and sale real estates in Hungary, while non-EU/EEA citizens and entities may only purchase a Hungarian real estate with the permission of the competent Government Office.

2.2 Agricultural real estates

Unlike in case of regular real estates, for agricultural lands there are numerous serious limitations for the purchase of those.

Non-EU/EEA citizens and entities are completely excluded from acquiring agricultural lands in Hungary. As per EU/EEA citizens and entities, private persons must fulfil certain criteria to



become entitled to own agricultural lands, while in case of entities only certain types may own agricultural lands (the state, municipalities, churches). Other EU/EEA legal persons, if they fulfil certain special conditions, may only use agricultural lands, but are not entitled to own them.

Apart from the above, there are also limitations for the maximum size of agricultural lands that can be owned (or used) by one and the same person or entity, plus agricultural real estates are also encumbered by law with a complicated system of rights of first refusal of certain persons like local farmers or even the Hungarian State.

3 Land registry

The Hungarian Land registry is a unified system keeping records of all kinds of real estates, and the records are public and authentic. Publicity means that anyone may obtain the title deed of a respective real estate from the Land Registry.

3.1 Title deed

The title deed of a real estate consists of three parts, with the following main content:

- (i) Section 1: main data and characteristics of the real estate

This part contains the size and qualification of the property, its topographical lot number and address (if the property has a separate address), and a note if there are any pending procedures in progress relating to the property at the Land Registry.

- (ii) Section 2: ownership rights

Here one can find the data of the owners, and the date and legal title of their acquisition.

- (iii) Section 3: encumbrances (e.g. pledge, buy option, prohibition of alienation and encumbrance)

The third part contains the existing encumbrances and third-party rights related to the property. It is always essential to check the registered encumbrances / third party rights before any transaction.

3.2 Ranking

The most important principle of the Land Registry is the principle of ranking, meaning that the Land Registry (with only a very few exceptions) will proceed with the pending requests according to the order of their submission, and will not deal with any submission until all previous pending requests have been completed.

3.3 Procedural deadline

The general procedural deadline for the Land Registry to proceed with any request is 60 days. An urgent procedure may also be request, subject to the payment of a separate fee, in practice this can shorten the procedure to approximately 12-15 days.

4 The sale and purchase agreement

The sale and purchase agreement of a real estate has certain, strict formal and content requirements that must be met in order to be suitable for registering the transfer of ownership in the Land Registry

4.1 Formal requirements

The most important formal requirements for the transfer documentation of any real estate are the following:

- (a) the agreement must be concluded in writing;
- (b) it must be prepared and countersigned by a Hungarian attorney-at-law or public notary;



- (c) in case of a multiple-page document, all pages must be signed by the contracting parties and the countersigner.

4.2 Compulsory elements

The Hungarian law prescribes several elements that must be included in the property sale and purchase agreement. Some notable elements are:

- (a) detailed definition of the property;
- (b) certain scope of data of the contracting parties (among others, birth name, place and date of birth, address, mother's maiden name, tax identification number, or registered seat, registration number, statistical number, tax identification number in case of legal persons);
- (c) the exact legal title of the transfer (e.g. sale and purchase);
- (d) unconditional and irrevocable statement of the registered owner on consenting to the transfer of the title ("*registration consent*") (which statement may also be made later on separately, especially if the payment of the purchase price is made in instalments);
- (e) regulations on the handing over of an energetic certificate (energy certificate is a document made by an authorized expert that gives information about the energy features of the property, generally the seller is obliged to prepare such energy certificate and to hand it over to the buyer at contract signing).

4.3 Typical further elements of an agreement

Although the inclusion of the below elements is not legally required,

according to market practice the parties apply them frequently.

- (a) Payment of the purchase price in more instalments

In case the purchase price is paid in more instalments, there are two typical scenarios regarding the transfer of title.

- The first option is when the parties submit the request to registration, but with a request for suspension, meaning that the Land Registry will not deal with the request until the seller issues the registration consent after the payment of the full purchase price. This method ensures that, due to the ranking principle, the buyer's request cannot be preceded with any other request, so the legal status of the property existing as at contract signing is secured. Typically, the registration consent is put into lawyer's escrow by the seller at contract signing and is released by the escrow agent upon the payment of the full price. It should be noted that such suspension procedure can only last for 6 months, so this can be a solution only if the transaction is closed the latest within 6 months after signing.
- The other option (especially used if the period between signing and closing is more than 6 months) is the sale of the property with the retention of title clause. This means that the Land Registry makes an entry into the Land Registry on the fact of the sale with retention of title, by also indicating who is the buyer, but will only



actually register the buyer's ownership once the full price is paid. This entry works similarly to a prohibition for alienation and encumbrance, meaning that until the entry exists, the property cannot be sold or encumbered without the consent of the buyer.

(b) Earnest money

A typical real estate transaction is sealed with the payment of earnest money, a special form of advance payment, with a typical sum of 10% of the purchase price. If the transaction is completed, the earnest money will be deemed as an advance payment. If the transaction is not completed, the party being responsible for that loses the amount of the earnest money.

(c) Transfer of possession

Designating the date of transferring the possession is important, as normally the buyer takes over the burdens, the risk of damages, and all other relating liability for the property from the date of the possession transfer. The transfer of possession typically follows the payment of the full purchase price.

5 Transfer of ownership

As a general rule, the ownership is transferred with the registration into the Land Registry, but with retroactive effect to the date when the request for registration has been submitted.

6 Usual fees and costs

6.1 Transfer duty

In case of the acquisition of a real estate, a transfer duty must be paid by the buyer. The rate of the duty is 4% of the value of the real estate up to the value of 1 billion HUF, and 2% of the exceeding part of the value (but maximum 200 million HUF per property).

In certain cases, the buyer can be entitled to a duty exemption or discounted duty. The most typical cases of duty exemption and discounts are the followings:

- transfer between affiliated companies (no duty is payable);
- buying a building site if the buyer develops a residential building thereon within 4 years after the purchase (no duty is payable);
- buying/selling between close relatives or spouses (no duty is payable);
- acquisition by real estate funds (the duty is 2% of the value instead of 4%).

6.2 Procedural costs

For making any entry or registration in the Land Registry, a procedural fee is to be paid, which is normally borne by the buyer.

6.3 Legal fees

If both parties are represented by their own legal advisors, usually both parties bear their own advisor's fees. Since in case of the sale of a real estate, legal representation before the Land Registry is mandatory (meaning that it should be a lawyer who submits the documents to the Land Registry), in most of the cases it is the buyer's lawyer who proceeds in that respect.



7 Our firm

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