

Real Property Law

Dr. Tamás Fekete

Notary Candidate

(Budapest)

Introduction

1.1. In Hungary the beginning of the development of modern civil law is closely related to the legal development of the Hapsburg Empire (later the Austro-Hungarian Monarchy). The short period of independence achieved in the revolution and war of freedom of 1848-49 gave a new impetus to bourgeois transformation as well, but after the suppression of the revolution the laws could not be implemented. Having been accepted in 1811 and considered a state-of-the-art code in its era, the Austrian General Civil Code (ABGB) was promulgated in Hungary in 1853. It is owing to this code that the feudal legal system was completely eliminated and a new, state-of-the-art legal regulation was introduced. It was a few years later that the General Land Register necessary for safe trading of real property was created, which followed the German-Austrian model in that it covered every property and that its entries had constitutive effect.

The codification of the Hungarian Civil Code (hereinafter: Ptk.) did not happen until 1959, but that date did not favour the consolidation of legal institutions under civil law, either. The Socialist legal system is based on the dominance of state ownership. Privately owned real estate was restricted by law; one natural person was not allowed to have more than one apartment and one holiday home. The major means of production were owned by the state or cooperatives. For lack of a free market, mortgage did not play a significant role, either.

Still in effect these days, Ptk. had to undergo many changes so that it could get rid of the Socialist legacy and comply with the requirements of a modern day market economy. The Constitution specifies the principle bases for the changes.

***Section 9 paragraph (1)** The economy of Hungary is a market economy, in which public and private property shall receive equal consideration and protection under the law.*

(2) The Republic of Hungary recognizes and supports the right to enterprise and the freedom of competition in the economy.

***Section 10 paragraph (1)** Property of the State of Hungary is considered national wealth.*

(2) Fields of ownership and economic activity deemed to be the sole domain of the State shall be defined by law.

***Section 11** Enterprises and economic organizations owned by the State shall conduct business in such manner and with such responsibilities as defined by law.*

***Section 12 paragraph (1)** The State shall support co-operatives based on voluntary association and shall recognize the autonomy of such co-operatives.*

(2) The State shall respect the property of local governments.

***Section paragraph (1)** The Republic of Hungary guarantees the right to property.*

(2) Expropriation shall only be permitted in exceptional cases, when such action is in the public interest, and only in such cases and in the manner stipulated by law, with provision of full, unconditional and immediate compensation.

In addition to the Constitution and Ptk., the other important sources of property law include (but are not limited to) the following:

Act LV of 1994 on Arable Land

Act CXLI of 1997 on Property Registry

Act LXXVIII of 1993 on Certain rules on the lease of apartments and rooms and the alienation thereof

Act CXXXIII of 2003, the Law on condominiums
1997/253 Government Decree on the national requirements of community planning and construction requirements

1.2.1 Several persons may only acquire title to one article through the legal institution of common property. Feudal rights shall not exist in Hungarian law.

1.2.2 Superficies solo cedit

The building is one of the most important components of land sections. Since the building shall be considered a component, it obviously will have the same fate as the land section. As a main rule (*aedificium solo cedit*), the title to the land is connected to the title to the building, it is uniform, i.e. the owner of the building and the owner of the land are the same [Ptk. Section 97 paragraph (1)]. The exceptions to the main rule are contained in paragraph (2).

From this it follows that in the case of started construction the only cases when the building may be given to the title of a person who is not the owner of the land are those based on agreement between the parties, provisions of the law and in certain cases, court ruling.

This contract shall be made out in writing under the law. Obviously, the written contract shall be concluded between the owner of the land section on the one hand and the encroachment builder on the other hand. Oral agreement between the parties shall be void [Ptk. Section 217. paragraph (1)].

The title to the building and the land section shall not be separated, unless by the contract mentioned above, and in the case of construction. Therefore no agreement shall be validly concluded under which the owner of a developed property sells the land and the building separately.

Having been valid since 1 January 2000, Act CXLI of 1997 (hereinafter: Inyvtv.) also formulates the main rule that any buildings and structures on the land shall be kept in registry together with the land section. In addition to the land section, buildings, cellars, underground garages and other structures shall be considered stand-alone properties if they are not owned, or are only partially owned by the owner of the land section.

In summary, the main rule that the owner of the building and the owner of the land section are the same persons also applies in the Hungarian legal system. Any exception to this main rule shall be prescribed by law. That way, the title to the building and the land section may be different, if authorized by law, the agreement of parties or a court ruling. However, it is very important that the building should be qualified as stand-alone property and should be suitable to be recorded in the real estate registry as such. Other provisions of the law also apply the main rule, for example, when they stipulate that the land owner has the title to the building, the title to the building may not be transferred or encumbered, unless together with the title to the land (Ptk. Section 113). Another provision that points towards the union of land and building is the pre-emption right, ensured by law, of the land owner for the building and that of the owner of the building for the land [Ptk. Section 97 paragraph (3)].

Encroachment means the case when an unauthorized party builds on the land of another party, or when someone expands a building owned by another party, attaches to it or remodels it – assuming in both cases that the parties did not agree otherwise.

Those authorized in an agreement concluded with the owner of the land shall be entitled to build on the land of another party [Ptk. Section 97 paragraph (2)]. In this case obviously, the rules of encroachment shall not be applicable. The legal consequences of encroachment are:

1. Application of the provisions contained in Section 97 paragraph (1) of Ptk (the land owner acquires the title to the building, in exchange for paying compensation for enrichment.

2. The land owner may request that the encroachment builder should buy the land (or part of the land if it can be split up).

The essence of the regulation is that the land owner has the right of choice regarding the legal consequences.

A. If the value of the building materially exceeds the value of the land and the encroachment builder acted in good faith:

1. a bona fide encroachment builder may acquire the title of the land (or part of the land).

2. The land owner may also request that the encroachment builder should only acquire the title to the building [Ptk. Section 137 paragraph (2), Ptk. Section 155].

That way, the title to the land and the title to the building may be separated, if:

- it is requested by the land owner (and not the encroachment builder) pursuant to Section 137 paragraph (2) of Ptk.,

- there was originally an agreement to that effect between the builder and the land owner at the beginning,

- the encroachment builder has requested so, and in the lawsuit the land owner has approved (Opinion no. PK 7.).

In the lawsuit, the approval of the land owner may replace the written agreement pursuant to Section 97 paragraph (2) of Ptk. If the encroachment builder acquires the title to the land, he shall refund the fair market value thereof.

1.3 Rights applying to the property

Inytv. Section 16. The following rights associated with the property and the beneficiaries of the same may be recorded in the real estate registry:

- a) owner's right or in the case of properties owned by the state, the organization exercising the owner's rights of the state and the property management right,

- b) permanent utilization right of members of housing cooperatives,

- c) land utilization right based on agreement and court ruling,

- d) right of enjoyment and right of utilization,

- e) appurtenant easement,

- f) right of utilization ensuring the placement of permanent land survey signs, land qualification sample spaces, electric equipment, furthermore, right of way for cables, water drainage and mineral easement, easement and utilization rights of public interest, based on statutes,

- g) pre-emption and repurchase rights and option to purchase,

- h) right of support and right of annuity,

- i) mortgage (independent lien),

- j) enforcement right.

The law on real estate registry lists which rights may be indicated in a registry of real estate. Regarding classification, it should be noted that in addition to classic ownership title, utilization, easement and security rights, there are special Hungarian legal institutions as well. (see 1.3.6)

The contract of the parties must be aimed at the establishment, termination or amendment of one of the above mentioned rights. They may not establish a new legal construction. However, the legal regulation is dispositive, thus the parties may conclude a separate agreement deviating from the legal regulation, unless the law indicates otherwise. Therefore, the parties are bound regarding the selection of the legal title and the related material requisites, but regarding the details the principle of freedom of contract shall apply.

1.3.3. Utilization rights

Right of enjoyment is an especially important item of utilization rights.

Ptk. Section 157. (1) On account of his right of enjoyment, the beneficiary may keep an article owned by another party in his possession, he may use it and collect its benefits.

The right of enjoyment is tied to person, the beneficiary may not transfer it between living persons or in the case of death. The right of enjoyment is non-transferable. The object of enjoyment is usually movable or real property. It may be established or is created by inheritance on rights generating benefits and on interest-bearing claims as well. The enjoyment may cover the entire article or only a part thereof.

Several persons may have right of enjoyment on the same article. These persons may exercise enjoyment parallel at the same time, or in sequence, one after the other. The entitlement of the beneficiary to possession also includes the right of property protection. This right is the same as the right of the owner.

The right of enjoyment is limited and shall not extend beyond the life of the beneficiary.

158. § (1) Based on a contract, enjoyment is established by the transfer of the article, enjoyment applying to real property is established upon recording in the real estate registry.

(2) If the enjoyment is created on the real property by virtue of statute, court or official measure, the right of enjoyment shall be recorded in the real estate registry, if that is not carried out, enjoyment shall only be enforceable against persons who have obtained the article in bad faith or have not given any consideration for the article.

The law provides for one case when enjoyment is established by virtue of statutes, this is the widow's right regulated in Section 615 of Ptk.

The widow obtains the right of enjoyment at the time of the commencement of the inheritance (the death of the testator), both in the case of inheritance by law and testamentary inheritance, therefore in this case the establishment of enjoyment is not conditional upon the recording of the right in the real estate registry. In this case, the recording has declarative effect, if it is not carried out, enjoyment will be enforceable against persons who have obtained the article in bad faith or without consideration.

The right of utilization

Section 165 paragraph (1) of Ptk.: By virtue of the right of utilization, the beneficiary may use the article and collect its benefits to an extent not exceeding the necessities of himself and

his family members living in the same household. Exercise of the right of utilization is non-transferable.

Easement

Section 166 paragraph (1) Based on appurtenant easement, the current owner of a property may use the property of another party to a limited extent, or may require the owner of the property encumbered by the easement to refrain from an otherwise existing conduct.

(2) Appurtenant easement may be established for the purpose of crossing, water supply and drainage, the construction of cellars, placement of cable poles, support of a building or other purposes favourable for the beneficiary.

Easement may be established under the law:

Section 167 If a plot of land is not accessible by appropriate public road, the neighbours shall be required to tolerate that the beneficiary cross their land.

It may be established by agreement (contract). In these cases easement shall be recorded in the real estate registry.

But easement may also be obtained by adverse possession, i.e. if there is no agreement and entry in the registry, easement may be established by permanent exercise of right.

Establishment of right of utilization for public interest

Ptk. Section 171. paragraph (1) If justified by public interest, easement or other right of utilization may be established on real property by resolution of agencies of state administration, for organizations authorized in separate statute. Indemnification shall be payable for the establishment of right of utilization.

In this case rights of utilization are established by the resolution of an agency of state administration. The existence of public interest shall be verified ex officio. In order to accomplish the objective specified in the resolution, in the framework defined by the general rules of exercise of law, the beneficiary may use the property, possess a specified part, perform transformation, prescribe measures. The right shall be exercised leniently, to the justified extent, in cooperation with the owner.

Act I of 1992 (on cooperatives) regulates the right of apartment utilization of members of cooperatives.

Section 92 paragraph (1) *For the purposes of this law, housing cooperatives are: cooperatives constructing or maintaining apartments, pensioner's homes, holiday homes, passenger car storage facilities and store rooms (hereinafter together: housing cooperative).*

(2) *The housing cooperative is a communal organization performing activity of public interest.*

At present there are some 300,000 cooperative apartments in Hungary. This constitutes about 7.5% of all apartments. From 2006 apartment cooperatives will probably be subject to a separate law. A housing cooperative is different from a condominium inasmuch as it has separate assets and it is a legal entity. Parts of shared usage and sometimes the apartments themselves are the property of the cooperative. In such cases members have right of utilization, which shall be recorded in the real estate registry.

The fundamental function of the housing cooperative is to operate the houses under its control. It may also perform enterprising activities (for example, it may construct new apartments), but in these cases it has to re-invest the profit into its core activity.

In the Charter Document the owners may specify the measure of contribution to operations. In contrast with condominiums, here the members have more freedom, they are not bound by their ownership ratios. If a member has a debt overdue by six months or more, the cooperative may have mortgage recorded on the apartment of the member. Regarding the right of utilization, members of the cooperative have pre-emption right for apartments owned by the cooperative.

I have presented tenure in land above.

1.3.4 Security rights

For the time being, Ptk. regulates mortgage law not within the scope of property law, rather in the field of contract law, among so-called contingencies aimed to secure obligations.

There are several kinds of mortgage in Hungarian law. Property mortgage may be contingent or independent. Limited security lien shall also be recorded in the real estate registry. Chattel mortgage and mortgage on the property of legal entities shall be recorded in the registry of the Chamber of Notaries. The Hungarian law also contains mortgage on rights and claims.

In addition to agreement between parties, there is another kind of lien that is established by virtue of law: (for example, lessor, contractor, depository, to the extent of unpaid charges)

1.3.5. The provisions of Ptk. presented here describe pre-emption and repurchase rights and option to purchase.

Section 373 paragraph (1) If the owner grants pre-emption right regarding a specified article by written agreement and wants to sell that article, before agreement conclusion he shall communicate any proposals received to the beneficiary of the pre-emption right. The owner shall not be bound by this obligation if the fulfilment thereof would incur extraordinary difficulties or significant delay, owing to the whereabouts of the owner or other circumstances.

(2) If the beneficiary of the pre-emption right accepts the contents of the proposals in his statement made to the owner, the agreement shall be concluded between them. If the beneficiary makes no such statement within the deadline generally specified for the acceptance of the contract offer, the owner may sell the article as per the offer or with more favourable conditions.

(3) If the pre-emption right has been recorded in the real estate registry, it shall be valid to every party who acquires any right on the property after the recording.

(4) Unless otherwise provided by law, transfer of the right of pre-emption shall be void, however, a business enterprise may designate a person entitled to exercise that right.

(5) *Unless otherwise provided by law, the right of pre-emption shall not be transferred to heirs.*

(6) *The provisions applying to pre-emption right shall also be applied to pre-emption rights based on law. Pre-emption right based on law shall precede contractual pre-emption right.*

Section 374 paragraph (1) The right of repurchase of the sold article shall be put in writing, simultaneously with the conclusion of the sale and purchase contract. Repurchase shall occur by the statement of the seller to the buyer.

(2) *An agreement on the right of repurchase shall not contain a term longer than five years, any agreement to the contrary shall be void.*

(3) *The repurchase right shall be equal to the original purchase price, however, the original buyer may require, in addition to the repurchase price, the sum by which the value of the article had increased through his useful expenditures until the date of repurchase, while the buyer in the repurchase transaction may deduct the depreciation caused the wear and tear of the article in the meantime.*

(4) *The original buyer shall be responsible for the failure or impairment of the repurchase right, however, if the article is destroyed for reasons for which he cannot be held liable, the repurchase right shall cease.*

Section 375 paragraph (1) If the owner grants a purchase right (option) to another party, the beneficiary may purchase the article by a unilateral statement. Agreements on purchase right shall be incorporated in writing, indicating the article and the purchase price.

(2) *Purchase right specified for an indefinite term shall cease after six months; any agreement to the contrary shall be void.*

(3) *Unless otherwise provided by law, a court may relieve the owner from his obligation under purchase right if the owner is able to prove that after granting the purchase right, such changes have taken place in his circumstances that he can no longer be expected to fulfil that obligation.*

1.3.6 Other rights

The Ptk. provides for right of support and right of annuity:

586. § (1) *Under a support agreement, one party shall support the other party appropriately. As an obligor, a legal entity may also conclude a support agreement.*

(2) *Support agreements shall be concluded in writing.*

(3) *The obligation of support shall also cover care, arrangement of healing, care in sickness and arrangement of funeral.*

(4) *The agreement shall remain valid until the beneficiary has died; the obligation of support shall, according to the rules of liability for the debts of the testator – be transferred to the extent that the support provided until the time of the death of the obligor does not cover the consideration.*

587. § (1) *If the beneficiary transfers the real property in his possession as an exchange for the support, the right of support may be recorded in the real estate registry.*

(2) *If the right of support has been recorded in the real estate registry, in the case of failure to fulfil the obligation of support, the beneficiary may seek satisfaction from the property, subject to the rules of enforcement.*

(3) *If the obligor to the obligation of support alienates the property, the new owner shall tolerate the satisfaction.*

The source of the regulation of the right of enforcement is Act LIII of 1994 on Enforcement in court proceedings.

Section 21 paragraph (1) Enforcement right may be recorded within the restrictions of the laws on enforcement in court proceedings and the collection of public debts, on the entire property or entire ownership share. After the right of enforcement has been recorded, further rights or facts may be recorded on the conditions that such rights or facts may not violate the right of the party requesting enforcement and may not defeat the aim of the enforcement.

1.4 Condominium

The first law on condominiums was promulgated in 1994. In order to resolve the high number of problems that occurred in practice, it became necessary to prepare a more current and precise law. This is Act CXXXIII of 2003 on Condominiums.

***Section 1 paragraph (1)** A condominium property is established when, in a building at least two stand-alone apartments or rooms not used as apartments, or at least one stand-alone apartment and one room not used as apartment specified in the charter document and technically divided became the separate properties of the co-owners (hereinafter: condominium). The land section belonging to the building, furthermore, building sections and building fixtures not specified as separate property, rooms not used as apartment and apartments – especially apartments of the caretaker or janitor – become the shared property of the co-owners.*

(2) The support structures of the building, the components thereof, building components assuring the safety (stability) of the building, building components serving the shared aims of the co-owners, fixtures of the building and assets are common property, even if they are in a separately owned apartment or room not used as an apartment.

(3) If the land section is not common property, the co-owners shall have utilization right on it.

***Section 2 paragraph (1)** Property components constituting the subject of shared ownership constitute an element of separately owned apartment or room not used as apartment, it is considered a stand-alone property together with the same.*

(2) With the exception of the cases specified in this law, the ownership ratio of the individual co-owners regarding the common property and the title to apartments or rooms not used as apartment may not be transferred or encumbered independent from one another.

***3.§ (1)** The community of the co-owners of the condominium (hereinafter: community) may acquire rights and assume obligations under the common name that they bear, in the maintenance of the building and management of affairs related to common property, it may start lawsuits and is actionable, it will exercise the rights of the owner regarding common property and bear the burden of common property. The common representative (the chairperson of the management committee) shall have legal capacity in litigation. Any action of the condominium or the co-owners to the contrary shall be void.*

Ptk. also contains provisions applying to the owner of condominiums

Section 149 paragraph (1) If specified parts of the building – primarily the apartments – are owned separately by the co-owners, it is still possible to establish common ownership on a building (condominium property).

(2) The establishment of condominium property requires the agreement of the co-owners incorporated into the charter document and the recording of condominium ownership into the real estate registry.

(3) At the request of any co-owner, a court may also mandate the transformation of the common property into condominium property. In this case the charter document shall be replaced by the court ruling.

(4) The rules applying to common property shall be applicable to condominium property, with the deviations specified in separate law.

The resolutions of the member's meeting shall be binding on the future owners as well. Only the rights and facts listed in the law may be recorded in the real estate registry, therefore the rules on the use of shared rooms may not. Still, the charter document must be submitted to the Land Office and to the common representative of the condominium, thus the buyer may get information about the rules on the use of the apartment.

When the shared costs are determined, in respect of permanent costs the ownership ratios shall be the basis of allocation. In the case of extraordinary expenses (renewal) the member's meeting may also decide on a different method of cost sharing.

The member's meeting may prohibit the utilization of separately owned apartments for purposes other than apartment. The member's meeting shall pass its resolutions according to the total ownership ratio – including the affirmative vote of at least two-third of directly impacted neighbouring co-owners – by at least a simple majority of votes.

The member's meeting may exclude pets on the grounds that they disturb the peace of the tenants or the regular exercise of rights by the tenants. The local governments may also pass resolutions to that effect. It often happens that keeping two dogs requires permission. There is usually no problem with cats or with small animals and plants.

If the resolution of the member's meeting violates the provisions of the charter document or the rules of organization and operation, or results in the material violation of the rightful interests of the minority, any co-owner may file a complaint to court and ask that the resolution should be invalidated within sixty days from the date when it was adopted. Failure to meet the deadline shall result in loss of right.

The complaint shall not impede the implementation of the resolution, however, in justified cases the court may suspend implementation.

Forms of legal relationship applying to apartments include cooperative and common property that have been explained above. Ptk. defines common property:

Section 139 paragraph (1) Several persons may have a title to the same article, in specified ratios.

(2) In case of doubt, the ownership ratios of the co-owners shall be equal.

Section 140 paragraph (1) Each of the co-owners shall be entitled to having and using the article; however, none of the co-owners may exercise this right to the injury of the rights and legitimate interests of the others regarding the article.

(2) Regarding the issue of possession, utilization, exploitation and expenses not exceeding the scope of ordinary management, unless the law provides otherwise, the co-owners shall pass resolutions by simple majority; each co-owner shall have votes in the proportion of his ownership ratio.

Section 141: The co-owners shall be entitled to the benefits of the property in the proportion of their ownership ratios, the expenses incurred by the maintenance of the article and other expenses associated with the article and the obligations arising from the common property relationship shall burden them in equal proportion, the same applies to damages sustained by the article.

1.5

There is no legal regulation on apartment lease-purchase in Hungarian law.

1.6

Duty shall be paid upon the transfer of the property, the income of the buyer shall be qualified as personal income and shall be subject to personal income tax, unless the buyer buys a new property within one year.

The duty applying to apartments is lower compared to other rooms not used as apartments (for example, holiday homes). The lowest duty applies to the transfer of arable land.

Over the recent years the governments in power have introduced various forms of support to facilitate the housing of citizens. The citizens may have better loan amortization conditions through supported mortgage loans. A special duty discount applies when the first apartment is purchased. Under the latest measures, in the case of married couples under thirty years of age the state will guarantee the down payment, thus these young persons can buy an apartment practically with minimum cash. Other benefits relate to existing children and the commitment to have children in the future. In this latter case the support will only have to be repaid if the committed children are not born within the given deadline.

1.7

Owing to the consolidation of the economy and the above-mentioned housing support system, the construction industry started to develop spectacularly at the beginning of the decade. By now the market has become saturated, thus the sale of new or even old apartments is increasingly more difficult. There are more than 4 million registered apartments in Hungary. Most of them are owned privately. The number of social rental apartments owned by the state or local governments falls short of the needs by far.

Families with a modest income find it very difficult to get housing. There are almost no blocks of rental apartments in Hungary, the investors do not consider such a venture profitable. That way, most of the rooms are owned by private individuals, who mostly lease the rooms out to single young persons.

Those who pass the means test may apply to the local government for rental apartments, but the opportunities are not very promising.

The institution of mortgage is very common, almost every investor and future tenant takes this opportunity. Mortgage banks have appeared in Hungary in recent years. Today there are three banks of this type, they mostly refinance their transactions through merchant banks.

The role of real estate agencies is becoming increasingly important, however, in private classified ads we can still often see provisions that emphatically exclude the participation of real estate agencies in the transaction. Most of the sellers are not prepared to pay a commission of 2-3% of the purchase price (which is the generally accepted level) as brokerage fee to the office.

In Hungary the involvement of notaries public is not necessary with the sale and purchase of real property. Typically, attorneys handle the transaction for a fee that equals 1% of the purchase price. If the parties still would like to have a notary public handle the transaction, his fee will be the sum specified in law. The parties are usually willing to accept the costs of the notarial deed if other, directly enforceable obligations are associated with the sale and purchase (outstanding part of the purchase price, evacuation of the apartment, etc.).

Lawsuits take quite a long time in Hungary. The courts have to struggle with a high workload, especially in Budapest, but outside Budapest as well, one case takes 2 years on average. The procedural duty is 6%. It is the HUF equivalent of a minimum of 28 euros and not more than 3600 euros.

The procedural duty of real estate registry: 8- 40 euros when rights are established or deleted.

2.

Real Estate Registry

2.1.

The uniform real estate registry system has existed in Hungary since 1972. Earlier, two registers were kept for real property, in line with the West European practice, the two registers were different both in terms of contents and purpose. The courts kept the so-called land book, which was meant to contain records about the legal position of marketable properties (primarily apartments, houses, holiday homes). Its purpose was to ensure the security of ownership right and to protect the interests of creditors. Having been maintained by various agencies of state administration and then by land offices, the land tax cadastre - later called the land register – was originally the basis for levying land tax, as its name would imply, then since the 1960s it was mostly used for lands outside residential areas, for statistical and administrative purposes and regarding agricultural production.

As a result of the ownership reform that unfolded since the 1990s, the number of properties and land sections increased very significantly. In places where there had been large plots of homogenous land before, hundreds of small land sections were created, and through the sale of state-owned apartments the number of condominium flats increased considerably. Since the subjects of the register have multiplied, owing to the high number of changes and the manual handling of the records, the contents of the real estate registry had become more and more different than the actual status. For that reason, the upgrade of the technical conditions and material facilities of real estate registry had become inevitable. Since 1993, in the framework of the PHARE program the entire real estate registry – including textual entries – had been put on a computer basis. The legal basis for that effort was established by Act V of 1994, the implementation of which means the migration of real estate registry to electronic, machine-aided data processing, while the valid entries are left unchanged in terms of contents and

form. The migration of the real estate registry to machine aided data processing was completed nationally by 1997.

The real estate registry is a uniform system and applies to the entire country.

Since 1973 a new and uniform real estate registry has been kept through the merger of the land books that had been kept by courts, and the state land register that had been kept by the land offices. The maintenance of the real estate registry was delegated to the land offices that operate as agencies of state administration.

The procedure of the Land Office requires the involvement of an attorney, legal counsel or notary public. The various documents constituting the basis for the recording must comply with various formal requirements. The recording is performed by public employees under the control of lawyers.

In theory, all properties are on record, in practice over 95 % of all properties are registered.

2.2.

I already mentioned under article 1 which are the rights that may be recorded in the registry. In the following passage I cite the law regarding the facts that may be recorded.

Inytv. Section 17 paragraph (1) Only the following legally significant facts associated with the property may be recorded in the real estate registry:

- a) the beneficiary is under eighteen years of age or has been placed under guardianship,*
 - b) liquidation or winding up has been initiated against the beneficiary,*
 - c) the branch office or commercial representative office of enterprises based abroad has been deleted from the company registry,*
 - d) expropriation and tract formation procedure has been started,*
 - e) appeal and submission of petition for legal remedy to court against the resolution of the Land Office,*
 - f) submission of petition for review to court against court resolutions used as a basis for recording or associated with recording,*
 - g) the legal nature of the property,*
 - h) rejection of petition for registration,*
 - i) the fact that the building has been erected or demolished,*
 - j) the fact that the procedure has been suspended,*
 - k) measure and type of permanent environmental damage specified by a conclusive resolution of authority or court,*
 - l) ownership restriction based on court ruling,*
 - m) imposition of prohibition on tract formation and construction based on the resolution of court or authority, furthermore, other restrictions on construction,*
 - n) restraint on alienation and encumbrance based on contract or last will and testament,*
 - o) initiation of lawsuits and criminal procedure specified in this law,*
 - p) announcement of auction and public invitation for bids,*
 - q) impoundment or collateral relief preceding impoundment,*
 - r) sale while preserving title,*
 - s) maintenance of the ranking of deleted mortgage and waiver of the right to dispose of rank,*
 - t) preliminary reservation of the rank of mortgage,*
 - u) change of rank,*
 - v) the fact that the property is classified as a special health care asset,*
- (2) If the facts mentioned in articles a)-k) of paragraph (1) are not on record, this shall not impact the legal effects otherwise associated with the same. If the facts specified in articles l)-*

v) are not on record, the beneficiary may not apply the same against parties who have obtained such rights in good faith.

The property sheet consists of three sections and the header. The header shows the name of the Land Office maintaining the records, with reference to territorial competency and the address. This part contains the lot number and the address of the property. The header may also contain so-called marginal notes. These contain the petitions already received, indicating the day of arrival, but before the actual recording.

The first part contains the data of the property, name, purpose, area, possibly the number of rooms and the belonging shared ownership ratio.

The second part contains the data of the owner(s) and asset manager(s), the ownership ratio, the file number of the record used as a basis for obtaining the property, its date and the legal title. The following data are on record about the owner: name, year of birth, mother's name and address.

The Land Offices continue to use the so-called personal ID or personal number to this day. The Constitutional Court has restricted the use of that ID significantly for privacy protection considerations, thus the personal number is included in the records, but it does not appear on the property sheets, however, it must be indicated in the documents (every Hungarian citizen has / had a personal ID also called personal number. Men have their personal numbers beginning by 1, women by 2, followed by the date of birth and then by a four-digit code).

The third section of the property sheet may contain the encumbrance, rights (enjoyment, easement, mortgage, etc.) and other facts applying to the property.

2.3

The establishment, modification or deletion of any rights or facts associated with the property shall be recorded in the real estate registry at request or petition. Legal representation is mandatory in procedures initiated by petition. Legal representatives may mean attorneys (attorney offices), legal counsels and notaries public acting on behalf of the party. Petitions shall be submitted to the district Land Office within 30 days from the date of the contract (legal statement) used as the basis for recording.

The document used as a basis for recording and two duplicate copies shall be attached to the petition, which shall contain the clause recorded on the document (approval, certificate, etc.), furthermore, all other documents necessary for recording and the definition of duty.

The acting authority (court, notary public, court bailiff, etc.) issues its resolution on requires to be registered or facts to be recorded on the sheet and, after the resolution has become conclusive, will contact the Land Office regarding registration.

Upon recording it must be verified whether the document complies with the requirements in form and contents applying to the given contract.

Inytv. Section 32 paragraph (1) In order to be used as the basis for recording in the real estate registry, instruments made out in Hungary must contain:

- a) the first name and family name, year of birth, mother's name, residential address, furthermore, personal ID of the interested private individual;*
- b) name, seat and registry number, furthermore, the number of registration by court or company court of organizations with numerical statistical ID;*
- c) the exact specification of the impacted property (name of locality, lot number),*
- d) the exact specification of the right or fact,*
- e) the legal title to the change of right,*

f) the agreement between the affected parties, the statement of the recorded beneficiary authorizing the recording,

g) the declaration of the contracting parties on nationality, furthermore, if a resident person is qualified as a foreign for the purposes of Act LV of 1994 on Arable land, this capacity must be indicated.

(2) A private document made out in Hungary may not be used as a basis for the recording, unless it indicates the date and time when it was done, furthermore, if

a) the declarant has written and signed the document in his own hand, or

b) there are two witnesses identified by name and residential address on the document, who certify that the declarant has signed the document not prepared by him before them, or has acknowledged the signature before them as his signature made in his own hand, or

c) the document has been prepared by a notary public, or

d) the document has been counter-signed by an attorney, furthermore, if

e) the document has been signed appropriately, by indicating the name of the legal entity,

f) in the case of documents consisting of several pages, the initials of the contracting parties, of the person who made it and of the person who counter-signed it should be on every page, regarding notarial deeds it should comply with all the formal requirements specified in separate law,

g) contains the signatures of the authorized parties and the contracting parties, which should be obviously identifiable based on the document.

(3) Entries regarding the establishment, amendment or termination of ownership title, right of enjoyment, right of usage, right of easement, option to purchase, mortgage (independent mortgage) may be made on the basis of public documents or private documents countersigned by attorney. The counter-signature of legal counsel shall also be accepted if any of the contracting parties is an organization represented by a legal counsel.

Inyvtv. Section 35 paragraph (1) Unless otherwise provided for by an international agreement, if a document is not made out in the Hungarian language, a certified Hungarian translation shall be attached thereto.

The Land Office may return the documents if there are missing elements in them that can be supplied. This is the so-called instruction for correction. For example, this may mean that the personal ID is missing, or if the resolution does not have a *res judicata*.

The law on real estate registry regulates the cases when no correction is allowed for the missing elements. These serious irregularities include, for example, the lack or invalidity of legal title, lack of date or signature.

The Land Office will send the resolution on registration to the impacted parties, usually, the resolution can be challenged, an appeal may be submitted to the county Land Office and after that to court.

2.4

Inyvtv. Section 4 paragraph (1) As specified in this law, the real estate registry is public.

(2) The contents of real estate registry property sheets may be disclosed to any party without restrictions: anybody may inspect it, make notes of it or request a certified copy thereof.

The publicity is somewhat less wide regarding the contents of private and public deeds, official resolution kept in instrument archives and used as a basis for registering the obligee and the obligor, as well as regarding the list of owners (name registry). These data can be

disclosed with the permission of the affected obligee and obligor, also, it is sufficient if the petitioner demonstrates his legal interest in the disclosure. This legal interest may therefore be an intention to buy / lease in the future, or the credit scoring of a bank. Accordingly, if the press wants to explore the assets of a politician, the difficulties are not insurmountable.

The registry is electronic, the property sheets may be downloaded from the Internet. The notary public will certify the downloaded data, thus the certificate will be equivalent with a property sheet copy issued by the Land Office.

2.5 The law on real estate registry specified which are the rights that will have right originating (constitutive) effect when registered.

It is a registry of public authenticity, therefore the data contained in it shall be considered true until proven otherwise.

Contracts of parties acting in good faith and trusting the data of the registry will be valid even if the record proves untrue later.

2.6 Registration is made in the order of receipt by the Land Office.

Mortgage is established by the registration. In a procedure aimed at selling the pledged property, the creditors will be paid off in the order of registration.

There are two solutions available to ensure the rank of the mortgage. The rank of the mortgage may be maintained for 1 year, furthermore, the mortgagor may dispose of the rank of the terminated mortgage.

The owner may also have it noted in the real estate registry that within one year he does not intend to pledge the property by an amount higher than the sum defined in the note. If the mortgage is requested to be recorded within the deadline specified in the note, the registered mortgage will receive a rank that corresponds to the place (rank) of the note in the ranking order.

The owner may, in the rank of the deleted mortgage and to the extent of the deletion and simultaneously with the deletion of the recorded mortgage, establish a new mortgage of an amount that is not higher than the old one, or he may sustain the rank of the deleted entry for the period of one year. The owner may waive this right to a third party or a mortgagee registered in a rank that follows the rank impacted by the waiver. In this case, the owner may not exercise his rights regarding the rank, unless with the approval of the party regarding whom he has waived that right.

There is no direct institution of the Hungarian law that would ensure rank, but indirect contracts containing so-called right sustaining declarations are very common. These are registered by the Land Office on the day of conclusion. By that, the beneficiary will quasi-maintain the rank until the date of the final transfer. This solution is generally applied with sale and purchase contracts (see below).

3.

Sale and Purchase of Real Property between Private Individuals

3.1 The buyer contacts the seller or the real estate office in response to the advertisement. If an oral agreement was reached regarding the important issues, the parties go to an attorney, less frequently to a notary public (hereinafter: lawyer). Under the established practice the buyer will pay the fee of the lawyer. After the parties presented their agreement, the lawyer will put it into written form. On the day of agreement conclusion the lawyer will also check the copy of the property sheet. In addition, the lawyer will control the personal data, inform the clients, verify their intention and represent that the agreement will be suitable to induce the intended legal effect. The lawyer will send the agreement to the Land Office.

That way, the sale and purchase may be completed in one day, but it may also take years to complete. In the most typical scenario, this process takes 2-3 months on average, owing to the payment schedule and the time needed to handle the bank loan.

3.2

Pursuant to Ptk., sale and purchase contracts shall be made in writing. Inytv adds to this the provision that registration requires counter-signing by lawyer / legal counsel, or the agreement shall be made as a notarial deed. Agreements made in a non-compliant form shall be void or unsuitable for registration. In this latter case parties shall be bound by the obligation of cooperation, one of the fundamental principles of the Civil Code, to remedy the irregularities.

The parties may agree that they will conclude a contract at a later date (precontract). The precontract shall be made out in the form prescribed for the contract. Under the precontract, the parties are obliged to conclude the contract.

If the contract is not concluded, the court may establish the contract at the request of either party and specify the contents thereof.

3.3

The law makes obtaining the title conditional upon joint compliance with conditions, among others the legal title of obtaining. Of these legal titles the most frequent is a contract (sale and purchase, exchange, donation) for or without valuable consideration. Also with a view to the general rules, the sale and purchase contract is established through the identical expression of the contracting parties (seller and buyer) regarding the transfer of the title to a specified article (the subject of the sale and purchase), for a purchase price agreed upon by them, as material issues, furthermore, regarding any issue qualified as material by either of them. However, the conclusion of the agreement does not result in the transfer of the title, because the law makes this legal effect conditional upon compliance with further preconditions. These include the validity of the legal title, the transfer of the possession of the article and the recording of the change of owners in the real estate registry. Transfer may be performed by actually giving the property to the ownership of the buyer, or in any other way that makes it clear beyond doubt that the property is given from the control of the transferring party to the control of the party that acquires the ownership right.

Payment schedule is the most delicate provision of contracts. The simplest case is when the buyer is able to pay the entire purchase price upon the conclusion of the contract. At the same time, this is quite rare. Even if the entire amount is available, typically, the parties postpone the payment of the entire purchase price to a later date.

In the turnover of real estate it often happens that the buyer sells his old property when buying a new one. The schedules of the two transactions should be harmonized. In about two-

third of the transactions, the parties also borrow bank loans and arrangements must be made with the bank in order to delete the existing mortgage. In this case the seller spends the first instalment of the purchase price to finance the cancellation of this mortgage.

If payment is not made in one lump sum, the seller will preserve his title until the payment of the entire purchase price. Typically, transfer of possession also takes place at this point. Payment through attorney's or notary's escrow is quite rare, without any good reason, since it is a reliable form of payment.

If the contract was made out as a public document by a notary public, then enforcement proceedings may be started directly for both the payment of the purchase price and the transfer of possession. In the case of all other contracts lawsuit must be initiated.

3.4

The lawyer preparing the contract verifies that the seller is the actual owner, there is no encumbrance on the property that was not mentioned in the conclusion of contract, and that the property exists and has been registered. In order to avoid abuse, it is recommended that the lawyer should verify the status immediately preceding contract conclusion (via Internet), and that immediately after conclusion the contract should be sent to the Land Office (although the law allows a deadline of 30 days for that).

Since the title and most liens on the property are established by registration, a bona fide buyer may feel totally secure if he verifies the property sheet. Insurance policies are usually not taken out regarding that.

Lease right is an exception to the above, since lease right does not have to be registered by the Land Office, thus it may happen that the seller deceives the buyer regarding whether there is a lease right applying to the property constituting the subject of the sale and purchase. This only presents a problem if the lease contract has been concluded for a long and definite term. In the case of such and similar breaches, the provisions contained in Ptk. shall be applicable. Naturally, in addition to indemnification, the buyer also has the right of rescission regarding such contracts. If the tenant intends to exercise his right of pre-emption, the transfer will be ultimately invalid to the buyer.

3.5

The seller is bound by implied warranty and warranty of title to the buyer.

Pursuant to an agreement under which parties are mutually required to render services to the other party, the obligor does not perform appropriately if the rendered article does not comply with the characteristics specified in statute or the agreement upon the date of fulfillment. The obligor shall be liable for improper performance (implied warranty).

Section 306 paragraph (1) In the case of defective performance, the obligee may

a) primarily – as he chooses – require repair or replacement, except if the fulfilment of the chosen requirement under warranty is impossible, or if the obligor would have to incur disproportionate additional costs compared to the fulfilment of the other claim under warranty, in consideration of the value of the rendered article in error-free state, the weight

of the breach of contract and the inconvenience caused to the obligee through the fulfilment of the warranty right;

b) if he does not have a right for either repair or replacement, or if the obligor did not agree to a repair or replacement, or he cannot fulfil this obligation with the conditions specified in paragraph (2), he may choose to require an appropriate price discount or may rescind the agreement. Rescission is not allowed if the defect is negligible.

Warranty of title means that the seller declares that the property is free of any encumbrance or claims, i.e. no third party has any right on it that would restrict the future title of the buyer.

The liability of the participating lawyer applies to the completion of the tasks mentioned above. If the contract becomes invalid owing to a legal error, the lawyer shall indemnify the parties. All attorneys and notaries public have obligatory liability insurance, this is one of the conditions for exercising their profession.

Whoever was misled upon the conclusion of the agreement regarding any material circumstance may contest his contractual declaration if the other party caused or could recognize his error.

Contractual declarations may be contested on the ground of error in a legal matter, if the error was material and the legal expert acting in his work capacity gave to all parties such information regarding the contents of statutes that was obviously erroneous.

If all parties had the same false assumption upon agreement conclusion, any of them may challenge the agreement.

This applies to the case when the parties disregarded some administrative provision or local rule regarding the property.

3.5.2 Caveat emptor

Generally, there is no separate provision on implied warranty rights between private individuals, thus in these cases the rules contained in Ptk. shall be applicable: if the buyer knew or should have known the error upon the date of agreement conclusion, the obligor shall be relieved from his liability under warranty.

However, it is always indicated in the agreements that the buyer inspected the property and knows its state. Accordingly, liability is limited to the so-called hidden faults. The burden of proof that this could not be recognized upon inspection is on the buyer, if the agreement refers to purchase in an inspected state.

After the fault has been detected, the buyer must communicate his objection to the seller within the shortest time allowed by the circumstances. The buyer should be held liable for damages arising from late communication of the error.

All costs associated with the fulfilment of the obligation under warranty and the establishment of the contractual status – including especially the material, work and forwarding costs – are the liability of the seller.

Private individuals may, in theory, also agree that the seller excludes his liability regarding every deficiency known at present or detected later. This is quite rare.

Regarding implied warranty in contracts of consumption, we find more stringent rules in Ptk. on the liability of the seller, but in the definitions the law takes out contracts on real property from the scope of consumption contracts. There is no separate law on this matter, thus in a peculiar manner, in the case of properties sold by companies as a business activity, only the general provisions of Ptk. are applicable to the rights under implied warranty.

However, there is a regulation in Ptk. regarding general contract conditions. Based on that:

(1) If the general contract condition is unfair, the injured party may challenge the provision.

(2) If the business enterprise uses an unfair general contract condition in contract conclusion, the organization specified in separate statute may also challenge the injurious clause.

(3) If the challenge specified in paragraph (2) is found warranted, the court will determine the invalidity of the unfair provision, applying to all parties contracting with the party who applies the clause. The declaration of invalidity does not affect those contracts that had been fulfilled until the time of the challenge.

3.5.3

In general, the seller bears the public utility charges and the shared costs of the condominium until the date of the transfer of possession. In the contract he declares that he has no outstanding public debt. Upon the transfer of possession the seller presents the certificate of no debt, in which the public utility company and the representative of the condominium declare that he does not have any outstanding debt. The seller sends a copy of the sale and purchase contract to the public utility provider and parallel with that, he asks the company to conclude the consumption agreement with him.

If the buyer does not act with such caution and is not able to prove that the outstanding debt that may exist has been accumulated by the previous owner, he will be exposed to the risk of having the given apartment or house excluded from service until the debt has been paid off. If there are accumulated outstanding shared costs, the condominium may request refund of such costs from the owner, it may even have mortgage registered on the apartment with certain conditions.

In respect of local taxes, the given statute defines who is required to pay the tax, there is no general tax on real property in Hungary.

3.6

When an apartment is sold no official license is required, In the case of condominium, common property or cooperative, the provisions on pre-emption shall be verified and observed. This is also the responsibility of the lawyer who prepares the agreement.

The state may exercise its pre-emption right pursuant to the law on arable land through the National Land Fund, but the state also has pre-emption right regarding art monuments, areas of natural protection and highlighted areas of tourism (around Lake Balaton).

Local directives (for example, prohibition on construction) may cause injury to the buyer recognizable after agreement conclusion. Unless provided otherwise, neither the seller nor the lawyer may be held liable for these. Naturally, if the buyer was misled in agreement conclusion, he may challenge the agreement according to the general rules mentioned above.

3.7

If a lawyer acts in the transactions, the fee of legal services is subject to agreement. In general, it is 1% of the value of the property.

The notarial fees are regulated in a decree:

14/1991. (XI. 26.) IM (Ministry of Justice) Decree on the fees of notaries public

Section 9 The amount of fees dependent on the value of the case:

if the value of the case is below 20,000

HUF

1,000 HUF

if the value of the case is above 20,000

HUF, but does not exceed 50,000 HUF,

*1,000 HUF and 4% of the part
over 20,000 HUF*

if the value of the case is above 50,000

HUF, but does not exceed 100,000 HUF,

*2,200 HUF and 3% of the part
over 50,000 HUF*

if the value of the case is above 100,000

HUF, but does not exceed 500,000 HUF,

*3,700 HUF and 2% of the part
over 100,000 HUF*

if the value of the case is above 500,000

HUF, but does not exceed 5,000,000

HUF,

*11,700 HUF and 1% of the part
over 500,000 HUF*

if the value of the case is above

5,000,000 HUF, but does not exceed

10,000,000 HUF,

*56,700 HUF and 0.5% of the part
over 5,000,000 HUF*

if the value of the case is above

10,000,000 HUF,

*81,700 HUF and 0.25% of the part
over 10,000,000 HUF*

but the highest case value used as a basis for fee calculation is 200,000,000 HUF.

Section 10 paragraph (1) *The full amount of the fee defined in Section 9 shall be payable for the notarization of transactions with two or more parties.*

(2) *Half of the fee defined in Section 9 shall be payable for the notarization of transactions with one party.*

(3) *Unless otherwise provided, one-quarter of the fee specified in Section 9, but at least 2000 HUF shall be payable for notarial activities not mentioned in paragraphs (1) and (2).*

(4) *One-quarter of the fee specified in Section 9 shall be payable for the notarization of mortgage loan agreements concluded by mortgage credit institutes – with the exception of transactions specified in Section 30/A, but the provisions contained in Section 7 shall not be applicable to the definition of the fee.*

18. Section 18 *The notary public may charge as expenses those actually incurred costs (travel, accommodation, mail costs, transcription fees, etc.), regarding the performance of notarial activities in the given case.*

Section 22 *In addition to the costs specified in Sections 18-21, the notary public shall be entitled to receive 40% of his fees as flat rate cost refund.*

The seller is liable to pay personal income tax on the revenue of the sold property (20%), unless he or she buys or builds a new residential property within one year. The buyer pays property acquisition duty on the fair market value of the property. The measure of the duty is 10%. In the case of residential properties it is 2% plus 6% of the part above 4 million HUF. No duty is payable on arable land purchased for family farming.

Duty is also payable on the procedure of the Land Office, in the case of title registration it is 2000 HUF (8 euros).

The following documents are required for the transfer of property:

Recent copy of the property certificate from the land registry (6000 HUF, i.e. 24 Euros) or from the Internet-based registry. If notarization is not required, this costs about 1500 HUF (6 euros). Since 2004 each notarial office has had the technical opportunity of downloading property certificates through the Internet.

Real estate agencies are involved in about half of all apartment sales, less frequently with other types of real estate. Their commission is 2-3% of the purchase price.

3.8

Owing to interest support provided by the state and the favourable housing loan interests on the recently introduced loans based on Swiss franc or euro, most of the apartment purchases are financed from mortgage loans of banks. The bank insists that in such cases the sale and purchase contract should provide for the preservation of the title and that the bank should transfer the last instalment of the purchase price to the seller. The loan will not be disbursed until the mortgage contract has been concluded with the new owner and proven to have been received by the Land Office, also, the seller should waive his title. This mostly takes place simultaneously with the transfer, or the bank makes out a debt note on his obligation to pay, to "persuade" the seller to waive the title to the property before the bank transfer has been made. The mortgage contracts of banks are usually made out by notaries public, since a contract of the bank cannot be forwarded for enforcement directly. However, it is also quite common that the contract is prepared as a private document, then it is only confirmed by the unilateral notarized assumption of obligation of the debtor / mortgagor on the repayment of the loan amount and the vacation of the apartment in the case of enforcement.

4.

Problems Associated with the Sale and Purchase

In terms of content requirements, an agreement aimed at the transfer of the title to the property is validly concluded if and when the contents of the instrument made of the agreement indicates the persons of the parties, the expression of their will to transfer the title to the property, furthermore, if the instrument contains the specification of the property and the consideration, or if the transfer is free, this can be determined from the contents of the instrument. If agreement on other matters has not been put in writing, this shall not impact the validity of the contract, even if any of the parties has considered an agreement on that matter as material.

In order for a written contract to be valid, it is not necessary that the parties should incorporate their agreement into a notarial deed or a private document of full probative value, unless required by a separate rule of law.

The transfer of title to a property requires, in addition to a relevant contract or other legal title, that the change of owners should be recorded in the real estate registry. However, this requires that the contract should be counter-signed by an attorney who impressed his dry stamp on it (or the contract should be notarized). A written contract concluded as defined above is validly made, but it is not suitable for registration.

Pursuant to Ptk.:

Section 4 paragraph (1) In the exercise of civil rights and the fulfilment of obligations, the parties shall act according to the requirements of good faith and fairness, in mutual cooperation.

Therefore, based on this principle of cooperation, the parties should be obliged to approach a lawyer, put the instrument in a form suitable for recording in the real estate registry and send it to the Land Office.

If that does not happen, the party may turn to court and require that the contract should be fulfilled. The court ruling is sufficient basis for the recording of the transfer of the title at the Land Office.

Here one should mention the legal institution of prescription, meaning that if the buyer has possessed the property in good faith for 15 years, he may request to be indicated in the real estate registry as the owner.

4.2

If a bona fide buyer trusts the real estate registry and acquires the property from the owner indicated in the registry, the acquisition shall be valid regardless of the former reasons of invalidity. Therefore, if the subsequent buyer knows that the seller is not the owner, the purchase shall be invalid.

Under the above mentioned rule, a belatedly disclosed testament is no basis to challenge the title of a bona fide buyer to the property. Naturally, the false heir shall have to fulfil the rightful claims of the real heir by all his assets, up to the value of the inheritance.

The seller shall represent that the property is free of litigation, encumbrance and claims, therefore no third party may initiate enforcement against it. If that still happens, the buyer may rescind the contract, the advance on the purchase price already paid shall be refunded, that way no enforcement may be initiated to collect it.

4.3

Delay of the obligor

Ptk. Section 298 The obligor falls in delay,

a) when the fulfilment time that was specified in the contract or can be determined from the purpose of the service without doubt has elapsed unsuccessfully;

b) in other cases, if he does not fulfil his obligation at the reminder of the obligee.

Section 299 (1) The obligor shall refund the damage of the obligee arising from the delay, unless he proves that he has acted in order to eliminate the delay as can be generally expected in the given situation.

(2) If the obligor cannot excuse his delay, he shall be liable for all damages sustained during the term of the delay by the object of the service, unless he can prove that such damages would have been sustained without the delay as well.

Section 300 paragraph (1) Regardless of whether the obligor has excused his delay, the obligee may require fulfilment, or if he is no longer interested, may rescind the contract.

(2) The lapse of interest in fulfilment need not be demonstrated if the contract should have been fulfilled - owing to the agreement of the parties or the recognizable purpose of the service - at a specified date and not at another time, or if the obligee imposed an appropriate deadline for the subsequent fulfillment and that deadline has elapsed unsuccessfully, too.

Section 301 paragraph (1) In the case of cash debt – unless otherwise provided by law - the obligor shall pay, from the date of falling into delay, an interest that equals the base interest of the National Bank of Hungary on the last day preceding the six calendar months impacted by the delay, even if the debt is otherwise interest-free. The obligation to pay interest shall be applicable even if the obligor excuses his delay.

Contracts often provide that the buyer shall bear the risk of damage from the date of seizing. Of course, transfer of possession may be symbolic transfer, for example, depositing the keys at the acting attorney / notary public. However, if that does not take place, the buyer in delay shall only be liable for those damages that are associated with his delay. That way, the damages arising from the fact that the keys were transferred but actual seizing did not take place shall be the liability of the new owner. If the seller rescinds the contract, he may require indemnification for these damages.

4.4

If damage is sustained because a water pipe becomes worn out, this shall be the liability of the new owner, since this cannot be considered a defect in the provided article existing at the date of agreement conclusion (i.e. a hidden defect). The fitness period of water pipes (i.e. the term of the implied warranty obligation) cannot be measured in decades.

Here we should mention Act X of 1993 on product liability. Under that law, if the defect already existed when the product was brought into circulation, the new owner may require directly the manufacturer to refund the damages caused by the defective product. Therefore the damage was not sustained because of the water pipe, rather because it broke. Product liability only applies to movable properties (even if they have become components of the real property).

If the cellar gets regularly flooded in the spring, this is a case of defective performance. Under the law, contracts shall be fulfilled in line with their contents, in the specified place and at the specified time, according to specified quantity, quality and assortment. At the time of fulfilment, the service

a) shall be suitable for the purposes for which other services of the same type are regularly used, and

b) shall have the quality or shall provide the performance that services of the same type regularly have or provide, and that the obligee can expect.

If there has been a leakage on the roof before, it is clear that the defect existed at the time of agreement conclusion.

The only question is, whether the buyer was aware of this defect when he purchased the property, and whether the liability of the seller for this kind of defects was excluded in the contract or not.

If a building was constructed without permission and the seller conceals this fact (i.e. misleads the buyer), then the buyer may challenge the contract, the court may terminate it and restore the original state, while the damages of the buyer shall be refunded. In addition, the buyer may also implement his implied warranty claim.

Impossibility of performance

If performance has become impossible for reasons for which none of the parties may be held liable, the contract is terminated. If performance is impossible for a reason for which the seller may be held liable, the obligee may require compensation for the lack of performance.

Therefore, if a building is destroyed by a force majeure event, performance may not be required and the sums already paid shall be settled. In such cases the parties shall bear the damages sustained by the injury or destruction of the article constituting the subject of the contract, pursuant to the provisions contained in Section 99 of Ptk. Based on that, the owner shall bear the damages. It is a frequent stipulation in contracts that risk shall pass simultaneously with the transfer of possession. Failing that, the owner shall bear the risk until the title of the buyer has been registered.

5.

Sale of House or Apartment by a Construction Company

The Hungarian law contains no separate regulation on the operation of construction companies. Naturally, the general provisions on consumer protection may be applied.

If a company builds or renews houses or apartments and sells them later, it will conclude sale and purchase contracts with the future owners, subject to the general rules. The buyer pays the purchase price in instalments, in line with the completion level, under the established practice the last 5-10% is withheld until the conclusive occupation license has been delivered. This license is made out by the local government, it authorizes the use of the property, in view of the fact that the property has the physical and legal characteristics necessary for proper use. It is an additional condition of the payment of the entire purchase price that the buyer should take possession of the property. Upon the transfer of possession minutes are prepared, in which the parties record the state of the property and any deficiencies that may exist.

The purchase price is paid to the company directly, or to the bank financing the construction. The obligations contained in sale and purchase contracts may not be enforced directly, unless the contract has been notarized.

The applicable rules of law do not provide much security to the buyer. If the construction company goes bankrupt and is terminated without a legal successor, the refund of the advance purchase price and the implementation of the rights of implied warranty will also become more difficult.

When a certain part of the purchase price has been paid, the bank financing the construction will issue a permission for the deletion of the mortgage on the property that the buyer will acquire. This will only be recorded in the registry when, based on the occupation license or in most cases the charter document of the condominium, the part of the property received a permanent number, a so-called sub-title. Here the buyer is indicated as the owner and the property becomes unencumbered in line with the permission to delete the mortgage.

The description of the property constituting subject of the sale and purchase and its schematic drawing will constitute an annex to the sale and purchase contract. If upon the completion of the construction the outcome does not comply with the description or the drawing, naturally, the buyer may require that it should be in the state specified in the agreement. The withheld purchase price may provide adequate security to the buyer for the resolution of this kind of situations.

Almost every contract includes a delivery deadline and penalty in the case of delay. Naturally, the buyer may require indemnification for its damages exceeding the penalty as well.

6.

International Private Law

Section 21 paragraph (1) *The governing law of the location of the article shall be applicable, unless otherwise provided for by this law-decree, to ownership and other real rights, furthermore, to mortgage and estates.*

(2) The governing law of the location of the article shall be the law of the state having jurisdiction in the territory where the article is situated at the time when the fact inducing the legal effect occurred.

Section 24 *The governing law of contracts shall be the law chosen by the parties upon the conclusion of the contracts or later. If no governing law was chosen, the law applicable to the individual contracts shall be determined pursuant to Sections 25-29 of this Chapter.*

Section 25 *The governing law of contracts shall be the law of that state in which the following parties have their seat or site at the time of contract conclusion:*

- a) the seller in the case of sale and purchase contracts,*
- b) the lessor in the case of lease and usufructuary lease contracts,*
- m) the permanent or usual residence of the donor in the case of donation contracts.*

Section 26 paragraph (1) *In the case of contracts on real property, the law of the location of the property, while in the case of contracts applying to registered ship or aircraft, the law of that state shall be applicable whose banner or other ensign the vehicle bears.*

6.3.

In Hungary foreigners need permission to acquire real property. In the case of apartments the local Administrative Office issues the permission, on the condition that it must not violate public interest or the interests of the local government. Under the decree, the permission shall be granted if the petitioner has an immigration license or has been living in Hungary for longer than five years. EU citizens also need permission to acquire real property, but their cases are subject to administrative facilitations. With few exceptions, the Administrative Office grants them permission.

Act LV of 1994 on Arable land was created for this purpose “to ensure that, based on the changing ownership and usage relations, the market conditions based on private ownership should become dominant in agriculture, the turnover of arable land and arable land as security in mortgage-based lending should efficiently support the operation of the developing new operating organizations, to create land holdings suitable for competitive agricultural production, to ensure that the adverse consequences of the subdivision of land holdings should not burden the ownership structure of agriculture, to ensure that farmers can perform agricultural production without disturbances, to keep the decrease of arable land within reasonable constraints and to provide an appropriate legal background to the protection of the quality of arable land.”

The law limits the size of land allowed to be possessed by one person and excludes both Hungarian and foreign legal entities from the acquisition of land. Local residents and the National Land Fund have pre-emption right for arable land. After the EU accession Hungary received a derogation of 7 years for the authorization of acquisition of arable land by foreigners. Under the current regulations foreigners may only buy a smaller unit of agriculture production, a so-called homestead.

7.

Encumbrance / Mortgage on Real Property

There may be several kinds of mortgage in the Hungarian law.

Real property shall not be hypothecated unless by mortgage. In order to establish mortgage on real property, in addition to a relevant contract, the mortgage must also be recorded in the real estate registry.

The establishment of mortgage on movable properties and assets requires – unless provided otherwise by law - that the mortgage contract should be notarized and the mortgage should be recorded in the inventory of the Hungarian National Chamber of Notaries Public, maintained subject to a separate law (mortgage registry).

If the parties use the mortgage to secure claims that arise or may arise from the legal relationship or legal title specified in the mortgage contract, the record must also contain the legal relationship or legal title and the highest amount within which the mortgagee may seek satisfaction from the pledged property (limited security lien).

The establishment of a pawn requires a relevant lien contract and the transfer of the pledged property. The pledged property may also be delivered to a third party (pledge holder).

Asset mortgage may be established on the property of an incorporated or unincorporated business enterprise as a whole, or on those assets that may be operated as an individual economic unit, without specification of things, rights, and receivables (properties) constituting it, by incorporation of the mortgage in a notarial deed and registration of the lien in the notarial records. This mortgage shall also extend to those assets that the obligor acquires after the conclusion of the mortgage contract, from the date when the obligor obtained the right of disposal on these assets, however, this mortgage is terminated when the obligor no longer owns these assets.

Mortgage may be established on rights or obligations by a relevant contract. This mortgage shall also extend to rights and obligations to be established in the future with the mortgagor as the beneficiary. The rights or obligations constituting subject of the mortgage may also be defined by description. If the existence of the right or obligation is proven by registry of public authenticity and the relevant law makes hypothecation of the right or obligation conditional upon recording in this registry, the mortgage is established by recording in this registry. Mortgage may also be established in specified parts of divisible claims.

The Hungarian law contains the institution of independent mortgage. This can be established in such a manner that the mortgage on the pledged property is not connected to a personal claim. In this case the mortgagee may only seek satisfaction from the pledged property, up to the amount specified in the mortgage contract and its dues.

7.2

The mortgage is established by registration, registration is based on a contract.

Naturally, the contract shall be made out in writing, when it is registered, the parties, the subject of the mortgage, the amount of the claim (the highest amount intended to be secured in the case of future claims) and its dues shall be indicated, the dues may also be indicated by reference to the contents of the mortgage contract. The decrease or termination of the claim will affect the mortgage, regardless of the contents of the entry in the registry. Legal representation is mandatory in procedures of the Land Office.

There are no other restrictions in the case of mortgage.

Under the law, registration shall take place within 30 days.

The parties may also prepare the mortgage contract themselves, thus only a registration fee of 10,000 HUF (40 euros) must be paid to the Land Office. In practice, attorneys and notaries public handle these procedures. The fee is approximately 1-2% of the value of the case. The fees of notaries public are prescribed, the fee of the attorneys is subject to mutual agreement.

7.3

If the mortgage is associated with the loan contract (personal obligation), then by virtue of its contingent nature, in the case of invalidity the mortgage may not be exercised, either.

In the case of independent mortgage no personal or no valid personal obligation is required, since this kind of mortgage is on the real property regardless of the personal obligation. If the independent mortgage is sold, the owner – mortgagor may only implement his objections against parties who have acquired the mortgage aware of the underlying legal relationship or for free.

If the debtor has repaid the loan and asks for a new loan, a new mortgage must be established. In such cases it is possible to maintain the rank unchanged. The exception to that is the limited security lien, where in the case of permanent legal relationship only the maximum amount of the claim has to be specified, the individual transactions may follow one another.

If the debtor intends to terminate the contract, he has to repay the loan, in this case the bank issues permission to cancel the mortgage. If the debtor rescinds the contract before the loan amount is disbursed, the debt may request the same from the bank, naturally, he will have to pay certain costs of the bank anyhow (commitment fee).

The concept of acknowledgement of debts is known in Hungarian law. This is a unilateral declaration in which the obligor acknowledges his debts and assumes the obligation of repayment. That way, the parties may modify the legal title and the burden of proof passes to the obligor, too, thus the legal relationship underlying the obligation is pushed to the background. This is especially true if the commitment is notarized, this way immediate enforcement is possible. The obligee under such an acknowledgement of debt may pledge his claim by concluding a lien contract to that effect. For the mortgage to be enforceable, the obligor of the right or obligation must be notified on the establishment of the mortgage. The mortgagee may require that the mortgagor should deliver the instruments necessary for the enforcement amount mortgage (the declaration on debt acknowledgement).

The so-called own mortgage may occur in that case of the termination of mortgage when the mortgagee acquires the title to the pledged property, or when the owner of the pledged property acquires the claim secured by the mortgage, however - if the owner who has acquired the claim is not a personal obligor - the mortgage will remain valid to those mortgagees who have lower places in the ranking order.

For example, after the right of satisfaction commenced, the mortgagee and the mortgagor agree that the mortgagee acquires the title to the pledged property or the mortgagee will inherit it. The exceptional rule protects the interest of the mortgagee who acquires the title to the article, because without that a mortgagee entitled to priority satisfaction would be in a worse position than the party behind him in the ranking. If the mortgagee who is lower in the ranking satisfied his claim from the pledged property, at the same time owing to the *confusio* the mortgage of the mortgagee would be terminated, he would lose the pledged property and the basis for the satisfaction of his claim as well.

If, due to the *confusio*, the person of the owner who has acquired the claim and the personal obligor become the same person, in this case the mortgage will no longer apply to mortgagees lower in the ranking, either.

The owner may secure the rank of the mortgage, furthermore, he may dispose of the rank of the terminated mortgage for up to one year. In this case the rank will match the day when the application was received, i.e. it may actually predate the mortgage contract.

7.4 As a main rule, the mortgagee may enforce the mortgage by judicial enforcement. First, the contract shall be terminated and this shall be communicated to the debtor, specifying the cause of termination. If the contract was prepared by a notary public, the termination shall be notarized as well. The contracts of the bank contain a clause that the debtor accepts the genuineness of the accounting records of the bank, therefore the outstanding amount of the debt on the day of termination shall be calculated according to that. If the debtor is unable to pay that amount, the bank shall be entitled to enforce its mortgage.

If a directly enforceable instrument is prepared on the obligation (notarial deed), the court will only endorse it and the court bailiff is now authorized to act based on the endorsement. This usually means that he has enforcement right recorded in the registry, thereby preventing the disposal or the further encumbrance of the property. If the debt is not repaid, he will organize an auction and sell the property. This procedure is a bit cumbersome and not cheap, either, thus in the mortgage contract the parties may agree on selling the property outside judicial enforcement.

By defining the lowest sales price or the method of its calculation and the deadline from the date when the satisfaction right of the mortgagee commences, the parties may agree on the joint sale of the pledged property before the satisfaction right commences. If the sale of the pledged property is unsuccessful within the deadline, and subject to the conditions specified in the agreement, the agreement on the joint sale shall become void.

If the pledged property has an officially published market price or if the mortgagee deals lends mortgage loans as a business activity – including every credit institute regarding their claims secured by mortgage – the parties may also agree that the mortgagee will sell the pledged property itself outside judicial enforcement.

In the case of residential properties the procedure may be slower, inasmuch as the relevant decree allows a deadline of 3 months for the mortgagor to vacate the property.

Having an option to purchase ensured in the contract is perhaps, even better security for the creditor than just having mortgage. In this case, at the price specified in the contract the bank may unilaterally acquire the title to a property for which it has a right to purchase, also, it may appoint a party who will be entitled to exercise the right to purchase through the bank. The purchase price must be defined in advance and it must be taken into account that this price should be commensurate with the value of the property. Outstandingly disproportionate value clauses may be challenged in court. The right to purchase shall remain valid for a maximum term of 5 years.

7.5

164. The sums collected in enforcement will first be applied to the enforcement costs – costs incurred associated with the initiation, authorization and implementation of the procedure. After that the following order applies:

- a) child support,
- b) other support or alimony,
- c) wages of employees and other benefits of the same type (Sections 65 and 66),
- d) in penal and correctional procedures and misdemeanour proceedings the sum payable by the debtor to the state, claims from confiscation (with the exception of claims under civil law).
- e) debts from tax, social security and other public debts,
- f) other claims,
- g) fines imposed in enforcement proceedings.

Claims secured by mortgage takes priority among other claims, according to the rank.

The fee of the court bailiff:

The fee matches the value of the enforcement case, its amount is

if the value of the case is below 100,000 HUF	4000 HUF
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if the value of the case is above 100,000 HUF, but does not exceed 1,000,000 HUF,	4000 HUF and 3% of the part over 100,000 HUF
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if the value of the case is above 1,000,000 HUF, but does not exceed 5,000,000 HUF,	31,000 HUF and 2% of the part over 1,000,000 HUF
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if the value of the case is above 5,000,000 HUF, but does not exceed 10,000,000 HUF,	111,000 HUF and 1% of the part over 5,000,000 HUF
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if the value of the case is above 10,000,000	
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HUF,

161,000 HUF and 0.5% of the part
over 10,000,000 HUF

In addition to the costs, the court bailiff is entitled to receive 50% of his fees as flat rate cost refund (1 euro equals about 250 HUF).

7.6

The mortgage covers all objects permanently attached to land. Accordingly, it covers all structures. The only exception to that is the case when the owner of the land and the building is not the same person.

The mortgage does not apply to movable properties and accessories not attached to land, unless the mortgage contract provides otherwise for these.

Any insurance amount, indemnification or other value used to replace the destruction or impairment of the pledged property shall replace the pledged property or be used to supplement the mortgage. In the case of mortgage both the owner and the mortgagee may require that this value should be spent on the restoration of the pledged property.

7.7

As a general provision, Ptk. permits the premature repayment of cash debts. Upon the termination of the underlying obligation, the mortgagor may require that permission should be issued for the registration of mortgage.

Under a separate rule of law, mortgage banks may prohibit premature loan amortization by the debtor. This much disputed provision has been examined by the Constitutional Court, which however, did not consider it unconstitutional, owing to the special position of mortgage banks. The banks rarely take advantage of this right, but they often create conditions under which the debtors find that paying off their debts prematurely would put them at a disadvantage.

It is not too late to repay a debt even in the enforcement proceedings.

7.8

Subject to an agreement with the personal obligor, third parties may offer their properties as mortgage without any complications. This happens in mass numbers for housing loans within the family (namely, children borrow by offering the property of their parents as collateral).

In this case the mortgagors are only liable for the repayment of the loan by the pledged property (instead of mortgage), and will have right of subrogation to the debtor after an eventual enforcement.

7.9

If the loan contract of the bank is secured by mortgage and the contract defines it as independent mortgage, the merchant bank may transfer the mortgage to a mortgage credit institute.

In the case of independent mortgage it is possible that the obligee of the claim from the loan still remains a merchant bank. Transfer of a contingent mortgage – together with the claim – shall not put the debtor in a worse position. The permission of the debtor is not required for the transfer, but the debtor shall be informed about the transfer, so that fulfilment should be made for the benefit of the appropriate obligee.

The contracts of banks often include the clause that the debtor acknowledges that the bank transfers the mortgage and the debtor has no objection to that.

Registration is necessary for the mortgage to be established, thus the new mortgagee must be registered at the Land Office, otherwise no valid reference can be made to him regarding third parties.

Unless the merchant bank and the mortgage bank agree otherwise in the contract on the transfer, by the purchase of the mortgage loan all rights of the transferring credit institute deriving from the contractual relationship and underlying or securing the mortgage shall be transferred to the mortgage credit institute.

The costs of the transfer of the mortgage are the same as costs of the establishment of mortgage, the same applies to the time necessary for establishment.

If someone acquires independent mortgage in good faith trusting the real estate registry, it cannot be taken away from him in a lawsuit later. In the case of ordinary mortgage the situation is different, since owing to its contingent nature, if the underlying transaction is invalid, the collateral obligation securing it will become invalid.

The invalidity of contracts establishing independent mortgage and the objections to the underlying transaction may only be enforced against parties who directly acquired the mortgage or parties who acquired the mortgage in bad faith or for free.

Based on the contract, any party may request the Land Office to register the transfer of the mortgage.

7.10

Regarding mortgage contracts, the location of the property determines the governing law. The parties may choose the governing law of the loan contract by mutual agreement. An enforceable instrument is required in the enforcement proceedings, but this does not have to be made in Hungary. The law in force does not include any discrimination against lenders registered in EU member states. Act CXII of 1996 on Credit institutes and financial enterprises regulates the operation of banks in line with the EU directives.

8.

Bibliography

I have marked the cited laws in the text, they are in italics. The list of statutes is in article 1.1. I have also used the arguments attached to the laws as sources. At present the laws are not available on the Internet in English.