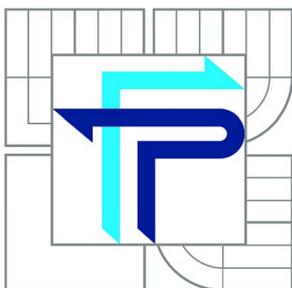


VYSOKÉ UČENÍ TECHNICKÉ V BRNĚ

BRNO UNIVERSITY OF TECHNOLOGY



FAKULTA PODNIKATELSKÁ
ÚSTAV EKONOMIKY

FACULTY OF BUSINESS AND MANAGEMENT
INSTITUTE OF ECONOMICS

BUSINESS AND INVESTMENTS INTO A DISTRAINED REAL ESTATE IN CZECH REPUBLIC

OBCHOD A INVESTICE DO NEMOVITOSTÍ POSTIŽENÝCH EXEKUCÍ V ČESKÉ REPUBLICE

DIPLOMOVÁ PRÁCE

MASTER'S THESIS

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V Brně, dne 27.08.2012

Abstract

This thesis analyses the legal bases and the use of the Civic Code, Property Laws, Civic Judicial Code and Execution Code in the real estate business. Through case studies, this thesis attempts to point out the critical points and the feasibility of individual investments in by execution or legally devaluated property. The final section seeks standardized procedure that finds an optimal balance between risk and profitability.

Abstrakt

Tato diplomová práce analyzuje právní základy a užití občanského zákoníku, majetkových zákonů, občanského soudního řádu a exekučního řádu v obchodu s nemovitostmi. Skrze případové studie se snaží poukázat na kritická místa a proveditelnost jednotlivých investic do exekucí zasažených či jinak právně znehodnocených nemovitostí. Závěrečná část hledá standardizované postupy, které nachází optimální mix rizika a profitability.

Key words

Civic Code, Property Law, Civic Judicial Code, Execution, Real estate, Debt, Solvency

Klíčová slova

Občanský zákoník, Majetkové zákony, Občanský soudní řád, Exekuční řád, Nemovitost, Dluh, Bonita

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Statutory declaration

I declare that submitted master's thesis is authentic and worked up independently. I also declare that citations are complete and copyrights are not violated (pursuant to Act. No. 121/2000 Coll, on copyright and on laws related to copyright Act.).

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Preface

The subject of this Diploma Thesis is to find considerably safe ways of doing business by investing in legally problematic property. Investing in such kinds of property is the cause of many disputes in society as on one hand, it might become a very profitable business, on the other, for some people it is morally and ethically problematic. It must be mentioned that the level of risk is very high and there is always plenty of room for error. But the fact is that it is the business of the present and future as it offers a high yield.

The main hypothesis is that there is no risk-free investment in real-estate in the Czech Republic, even if we do not consider value estimation. There are always plenty of factors that can sometimes be hard to identify and affect every single investment. This field is huge and all the possibilities cannot be included in one simple work. This thesis firstly defines the position of the investor and a few basic parameters of such a person or corporation. For the purpose of this work we will consider property owned by a regular person (further sometimes consumer) or a common entrepreneur¹. For the most part 3 varieties of investment will be considered, a loan secured by lien on chosen property, purchase of a property and the securing of performance by assignment of a right; each of these methods have various advantages and are convenient in different situations.

This thesis should provide the reader with valuable case studies from which they should gain an understanding of the issue and give them hints to find their own investment strategy. The case studies are borrowed from PomocPro.cz, a Czech firm that became focused on loans on “problematic” real-estate. In the end the most convenient ways to invest in real-estate are identified and temporary legal devaluation is taken as an advantage.

¹OT: Fyzická osoba (vystupující pod rodným číslem) a fyzická osoba podnikající (vystupující pod identifikačním číslem)

1 Aims and Methods

The aim of this work is the creation of an optimal investment in a real-estate during the global crisis concerning the Czech Republic. This includes the exact identification of potential risks linked with an investment in real-estate which are legally flawed. The identification is followed by a selection and confirmation of a suitable method to execute the investment in order to minimise the risk. On the basis of real life case studies it outlines standardised low-risk investment procedure. The core and most important target is the attainment of a positive return on investment.

The methods used in this thesis are for the most part known logical processes such as abstraction, synthesis, analysis, induction and deduction.

2 Theoretical Part

In this part, the theoretical basis and preconditions are discussed. These backgrounds are used further in this work and are important for the interpretation of the case studies included.

2.1 The Investor and his options

Every investor must decide the level of risk that they are willing to undertake, take their time to consider the outcomes and how financially independent they are. Financial independence is more important than the financial resources available. The investor must not be threatened to make profits on the investment and must understand that they cannot expect regular cash flow from the exercised investment. If the investor is clear on what they expect from the investment, they can then further follow the guide in this work.²

Investors are seen from a broader point of view as the 3rd person who usually steps into a relationship between the owner, commonly a debtor and a creditor. In most cases there are more creditors and executors who demand overdue payables.

2.1.1 Five steps to invest into real-estate

1. Decide the return

Every investor has to decide the return that he expects. There are many ways to invest in real-estate, some are more conservative with a low lengthy return and some are more risky with quicker returns.

As the most conservative way of investing might be considered a property rental. The net interest rate should move between 3 and 8 %. However, it is safe and there should not be a large loss, but a problem can arise when losing payment moral in tenants, because the law is strongly on the side of the tenant and it is hard to evict

² Experience of the exercised firm PomocPro.cz

and replace them with those who pay properly. Another problem is vandalism from the side of the tenants who can devastate a whole apartment. (Hospodářské Noviny, 2011) (SLAVÍČEK, 2011)

Another way is a buy and a sell strategy, which at times of fluctuation might generate profits of over 20% but carry a high risk. Even if the immovable is bought for a good price, to buy and sell can take more than half a year even if you were to get the right buyer in only one month. (Daniel KOTULA, 2011)

A very classic method is building houses and selling them ready made. Today this is possible in the suburbs of big cities or with alternative buildings from paper or wood. However, even the big investors have problems to sell such houses without loss. (ČTK, 2012) (POPELA, 2012)

The usage of the phrase “Mind your own business” should seriously be considered as a property investment rule and when offering loans secured by immovables. The loan itself generates a deliberated interest rate and the risks of the modern habit of not paying debts is minimised by settling a lien upon a property. There is another advantage in that the duty of maintaining the property still lies with the owner and therefore there are no additional costs. The best thing is that the value of the property securing debt is as high as the investor decides to make it.³ That means that the intended interest from the investment is more secure than in the conventional method. Moreover, it looks as though the main business is in the loan, whereas in reality it is the immovable behind it.

2. Find suitable real-estate

What is suitable property for investment? Theoretically it's an easy question. It is a property with a high price potential or one bought for a low price where upkeep costs are lower than the monetary reward, although complications may arise when it comes to finding equitable prospects. Where to find such fortune when there are no virgin investments? As R. T. Kiyosaki says “Find an opportunity that everyone else missed.” (KIYOSAKI, 2011 p. 113)

³ Experience of the exercised firm PomocPro.cz

This work attempts to talk about typical investors and the way they invest their resources. In reality it does not have to require an investor to possess the huge piles of money of the so called “Forbes top 100”. A few hundred thousand CZK is enough to set up an investment. In any case houses over 3 million CZK are not currently in demand. (TŮMOVÁ, 2012) As expected, the lowering prices of immovables empowered by deregulation of tenancy has rationalised the market and made more apartments available for tenancy. Therefore some apartment owners have begun selling their property as it does not generate the expected revenue. (TŮMOVÁ, 2012)

It can be said even more so about disproportions in the market, but it is up to the investor to find them. The basic and most classic strategy is to find a seller who is desperate to sell. Such a seller is at a big disadvantage and business can be settled quickly. Another way is to be better informed than the others, but this usually narrows your opportunities significantly or the costs are too large. Recently in the Czech Republic there have been more and more property owners in execution and the big jump in the number of executions is caused by the enforcement of fines by transportation enterprises. (ČTK, 2012)

Table 1: Execution statistics 2009 - 2011 (ČTK, 2012)

Execution statistics 2009 - 2011			
	2009	2010	2011
Total number of executions	760 900	701 900	936 200
Number of terminated executions	178 200	202 000	288 000
Number of abandoned executions	44 200	55 900	97 000
Number of succesfull executions	134 000	146 100	191 000

On the other hand people have become quite used to high standards of living and with the global crises cannot help themselves and try to live on debt and do not always succeed in its management. (SEDLÁČKOVÁ, et al., 2012)

From all this information it is clear that an investor should search for a property with legal flaws and that is the main focus of this work. Today it is not a problem to monitor Land Registry information, auction halls, The Central Evidence of Executions and so on. It is up to every individual investor which information channel he is going

to choose. The difference is made in the ability to distinguish good investments from malicious traps.

3. Find an amount of single executions and a total debt upon the real-estate

The key to success is the information about the legal state of a property into which the investor wants to invest. The first place to go is Land Registry. There are many firms that offer selected information about changes in the Land Registry and deliver them organised and ready to use by an active investor.

The online information is free and therefore not fully reliable. There is no precise information, but it can offer a good baseline for further searches. More precise and reliable information can be attained from the Land registry if you were to pay for a Title or deed.

Vlastníci, jiní oprávnění	
Vlastnické právo	
Jméno/název	Adresa
Name of the owner	His address
Způsob ochrany nemovitosti	
Nejsou evidovány žádné způsoby ochrany.	
Omezení vlastnického práva	
Typ	
Exekuční příkaz k prodeji nemovitosti	The up to date state of the real property and restrictions upon it.
Nařízení exekuce - Zahradník Jan	
Zástavní právo exekutorské	
Jiné zápisy	
Nejsou evidovány žádné jiné zápisy.	
Objekt je dotčen změnou právního vztahu: Z-17963/2012 , Z-17962/2012 , Z-17965/2012 , Z-17961/2012 .	
These are notes about new changes in the state, it is possible to find out who and how he affects the recent state of the real property.	

Picture 1: Land Register information (ČÚZK, 2012)

<p>Exekuční příkaz k prodeji nemovitosti na základě usnesení soudu o nařízení exekuce ze dne 27.01.2012</p> <p>Jednotka: 373/3</p> <p>Listina Exekuční příkaz k prodeji nemovitých věcí - město ze dne 14.02.2012.</p>	<p>Number of resolution</p> <p>103 EXE-794/2012 -13</p> <p>030 EX-50/2012 -15</p> <p>030 EX-50/2012 -14</p>	<p>Městský soud v Brně, Number of the proceeding</p> <p>Z-4166/2012-702</p> <p>Exekutorský úřad Brno</p> <p>Execution Number</p> <p>Z-4166/2012-702</p> <p>Z-4737/2012-702</p>
<p>Zástavní právo exekutorské ve výši 31.232,- Kč + příslušenství a náklady soudního řízení</p> <p>Všeobecná zdravotní pojišťovna České republiky, Orlická 2020/4, Praha 3, Vinohrady, 130 00 Praha 3, RČ/IČO: 41197518</p> <p>Listina Exekuční příkaz o zřízení exekutorského zástavního práva na nemovitosti ze dne 14.02.2012. Právní moc ke dni 16.02.2012.</p>	<p>Kind of restriction</p> <p>Jednotka: 373/3</p>	<p>Z-4737/2012-702</p> <p>Z-4737/2012-702</p>
<p>Exekuční příkaz k prodeji nemovitosti na základě usnesení Městského soudu v Brně ze dne 3.12.2007, č.j. ze dne 17.10.2011.</p> <p>Jednotka: 373/3</p> <p>Listina Exekuční příkaz k prodeji nemovitých věcí Brno-město ze dne 17.10.2011.</p>	<p>Number of resolution</p> <p>105 Nc 32094/2007-3</p> <p>030 EX-39768/2007 -40</p>	<p>Z-35044/2011-702</p> <p>Exekutorský úřad</p>

Picture 2: Title deed and important entries

Such a title or deed has from one up to sometimes 10 pages and even more, it depends on the number of legal restrictions and amount of property written into it. It is not always easy to pair the executions in the deed. A prospective investor who is trying to find information has to understand the terminology and sometimes look into the physical papers that the Land Registry stores. If all the executors and courts standardised the information that they send to the Land Registry and all the Land Registry offices in the different districts would enter the information in the same way, it would turn this forensic adventure into just another bog standard duty. An investor or any person in fact, has to reference carefully the numbers of the judicial proceeding (code starting EXE, NC); the execution number (code EX) the number which comes before EX is the number of the executor. Prior to 1.9.2001 only an E was used “Execution of a decision”.⁴ The investor also has to look for the contractual rights of third party liens, easements etc. (KOS, 2011)

The problem is that on the title deed is not written everything. Another important source of information is the corresponding regional court of the owner of a property or if not the corresponding regional court of the property itself. There a person receives the information only if he already has power of attorney, otherwise he will not receive

⁴ OT: Výkon rozhodnutí

any information. However, even with power of attorney, information is not always available.

Other information can be found in the Central Register of Execution, it is good to search for social security, financial authority and health insurance as they also use judicial lien⁵ to secure a debt. Last but not least is an insolvency list⁶ where all persons and companies claiming or undergoing bankruptcy are recorded.

4. Settle the contract

The contract is settled based on the information received from the preparation mentioned above. The method of securement and expected outcome of the investment is up to the individual investor; however, if they skip steps 1, 2 or 3. They will struggle to set up good deals.

5. Pay off the debt

- First of all the investor needs power of attorney to look into an executor's file, pay instead of the debtor, surrender the right to appeal the execution and receive specific documents.
- Ensure that everything goes according to plan and to avoid problems with entry rights to the Land Registry.⁷
- While paying, an investor has to surrender the right to appeal the execution
 - Remember to obtain a notification of expiration of authorisation from the executor and resolution of execution termination.

6. Clean the title deed

- It is important to bring the documents to the Land Registry personally; otherwise this whole action will be put at severe risk of delaying the entry of the real right.

⁵ The problem is described further in the text.

⁶ Free to enter on www.justice.cz

⁷ Problems in timing of debt pay-out are described further in the text.

- As it is discussed further there may spring up problems with an executorial lien.

If the investor followed all of the steps before, then there of course may still be unpredictable occasions, every single investment is different and everyone must remember that it is simply impossible to buy a property without taking a risk that the property is not legally clean. In reality, the immovable become 100% legally safe after 3 years of uninterrupted ownership. In some cases it is even 10 years. (TOMAN, 2012)

2.2 Property laws

2.2.1 Movables and immovables

Civic code defines two kinds of property; movable and immovable; where immovable property is immovable by its nature such as an area of land or things firmly connected with it, the rest are movable things.⁸ (Zákon č. 40/1964 Sb.) Land is considered as part of the earth or ground regardless of what it is on (wetlands, rivers, buildings, forests and so on). Lands are divided by territorial administrative units, borders of a cadastral area or proprietorial boundary. These borders divide larger swathes of land into smaller parcels. (DUŠEK, 2008)

For our purpose we define the term building from a civic law point of view as an object (deployed or completed) firmly connected to the parcel (but not a part of it) and was created by human action. (DUŠEK, 2008)

Law on ownership of residential units⁹ defines residential and non-residential units. This law defines a building as a persistent construction connected to the ground and enclosed by walls into one three dimensional object (not a set of smaller buildings). The most important characteristic is the existence of at least 2 divided rooms to create autonomic units. (Zákon č. 72/1994 Sb.)

⁸ OT: Zákon č. 40/1964 Sb., Občanský Zákoník

⁹ OT: Zákon č. 72/1994 Sb., o vlastnictví bytů v platném znění

2.2.2 Land Registry

This is a good basic source of information for anyone concerned with immovable property, let alone an investor. The Land Registry is a public comprehensive register of the most important information about immovables in a particular locality. Land Registry offices collect information about land, buildings tied to the ground, residential and non-residential units, deployed buildings or residential and non-residential units and structures according to specific legislation. However, there exists a simplified register for the parcels where the borders are not clear (usually open fields and forests) and it would not be economical to search for them. Information available is as follows: kinds of parcel and their size, their position, specification of their protection and usage, ownership information, legal relations such as easement, lien, pre-emptive rights and other legal matters.

There are three kinds of entry collated at the Land Registry:

- Entry of real rights¹⁰
 - The rights are entered on the basis of contracts, deeds, agreements or declarations.
- Record of real rights¹¹
 - The rights are entered according to the law, decision of executory authority, administrative body or on the basis of auction.
- Note¹²
 - Notes have an informative and alerting character. It notifies the reader that in a short time the information can be changed, because the immovable is affected by proceedings leading to a change in the real rights which apply.

The law precisely identifies what is valid obligatory information. These are parcel numbers, geometric dimensions of a building, name and geometric dimensions of a cadastral area. (DUŠEK, 2008)

¹⁰ OT: vklad

¹¹ OT: záznam; Reader has to remember the difference between Record of real rights and Entry of real rights as it is very important for the investment.

¹² OT: poznámka

Informace o stavbě	
Stavba:	č.p. 84
Část obce:	Řeznovice 145424
Číslo LV:	527
Typ stavby:	budova s číslem popisným
Způsob využití:	objekt k bydlení
Katastrální území:	Řeznovice 745421
Na parcele:	66
Zobrazení v mapě	
Vlastníci, jiní oprávnění	
<i>Vlastnické právo</i>	
Jméno/název	Adresa
Veselý Jiří	Řeznovice 84, Ivančice, 664 91
Způsob ochrany nemovitosti	
Nejsou evidovány žádné způsoby ochrany.	
Omezení vlastnického práva	
Typ	
Exekuční příkaz k prodeji nemovitosti	
Nařízení exekuce - Veselý Jiří	
Zástavní právo smluvní	
Jiné zápisy	
Typ	
Nepravomocný exekuční příkaz o zřízení zástav. práva doručen	
Objekt je dotčen změnou právního vztahu: Z-18788/2012 .	

Informace o řízení	
Číslo řízení:	Z-18788/2012
Pracoviště:	Katastrální úřad pro Jihomoravský kraj, Katastrální pracov
Datum přijetí:	25.06.2012
Stav řízení:	Záznam splňuje n.
Řízení se týká nemovitosti v k.ú. Řeznovice (745421)	
Účastníci řízení	
Jméno	Typ
Veselý Jiří	Povinný
Exekutorský úřad Klatovy, soudní exekutor - JUDr. Mika Dalimil LL.M.	Soudní exekutor
CP Inkaso s.r.o.	Zástavní věřitel
Provedené operace	
Operace	Datum
Založení řízení	26.06.2012
Zaplombování	26.06.2012
Předání záznamu k aktualizaci	04.07.2012
Předměty řízení	
Typ předmětu řízení	
Zástavní právo	
Zobrazené údaje mají informativní charakter.	
Platnost k 04.07.2012 12:55:19	

Picture 3: Print screen from Land Register web (ČÚZK, 2012)

2.2.3 Regional planning and taxes

Regional planning

One of more important aspects is regional planning; it affects the environment and value of immovables. Regional planning is addressed by Law No.183/2006 Code, regarding regional planning and building order.¹³ This law influences creation, usage and forfeiture. It is important to know the documentation of regional planning with regard to the surrounding area of the considered immovable as it may significantly affect its price. (Zákon č. 183/2006)

Taxes

Property taxes

Recently, there have been big differences in property taxing in Czech Republic and now every municipality can create its own level of property taxation. (HOVORKA, 2011) However, it is not the biggest issue concerning the kind of investment this work refers to, but it is still one of the parameters that model the final price and operating costs.

Income tax

This is the tax that affects the amount the investor has to pay when profiting from the sold or hired immovable.

Transfer tax

The objective of this tax is the transfer of rights for value or an exchange of rights. The rate of taxation is 3% and is paid from the exercised price or according to an expert evaluation on the basis of the law referring to the evaluation of property¹⁴. The tax is always paid from the higher amount (Zákon č. 357/1992 Sb.); and if the either side of the contract tries to avoid full payment, the contract can be terminated. (FETTER, 2010)

¹³ OT: Zákon č. 183/2006, o územním plánování a stavebním řádu

¹⁴ OT: Zákon č. 151/1997 Sb. o oceňování majetku

VAT

This tax is mainly important for investors who are obliged to pay “value added tax”. The problematic potential is rather broad and not so important to this thesis.

2.2.4 Ownership according to Civic Code

Ownership

The ownership is described in the Civic Code; however, this legal adjustment is stipulated in many other laws, directives and orders. The important facts from Civic Code are picked up on in the following passage.

§123 dictate that the owner is within the law and allowed to hold, use, enjoy the benefits of and do business with their property. Furthermore §126 it says, the owner has the right to defend their ownership against an intruder; they in particular may enact the eviction from a property of one who is in position of it illegally (a squatter or non-paying tenant).¹⁵

§127 dictate that owners of neighbouring properties have to tolerate inconveniences to the normal use of their property for an inevitable period of time, if maintenance of the property is due.

§132, §133 States that ownership can be acquired by contract, heritage, decision by state authority or on the basis of the outcome of legal proceedings. Movable can be repossessed by executing a repossession order for the item. If the transferred property is an immovable registered at the Land Registry, then the ownership commences from the time of entry on the register. In most cases it is a decisive moment in time measured in minutes on the proposal of the entry received by land registry. (Zákon č. 40/1964 Sb.)

¹⁵ However, the reality might prove the opposite.

Common ownership

Common ownership is very widespread and some investors just focus on buying shares that are cheaper than the ownership of the whole immovable. But there are some risks tied to pre-emptive rights and execution proceedings.

§137 States that the value of the share identifies the exact level of common ownership.

§140 Defines one important thing, that a co-owner has a pre-emptive right to the transferred share (if not transferred to a trusted person §116, 117(mainly relatives)). (Zákon č. 40/1964 Sb.)

Common marital ownership¹⁶

This kind of ownership usually ends up being a very problematic when spouses get into a financial trouble. Therefore every investor has to be aware of this special status and take advantage of it.

§143/1 defines common marital ownership as property or loans acquired by one or both spouses during the marriage. However, article b) specifies that loans above a reasonable level belonging only to one of them without the awareness of the other are excluded. Which means in practise, that credit companies need their loan contracts to be signed by both parties. However, spouses are obliged to prove their ignorance.

§143a Discusses narrowing common marital ownership with the agreement written by a public notary.¹⁷ Both spouses can adjust the extent of their common marital ownership. Such an agreement can become tricky so this is another reason to have raised awareness; on the other hand it can serve as a useful tool for the protection of an investment when one of the spouses is likely to get into debt. (Zákon č. 40/1964 Sb.)

¹⁶ OT: Společně jmění manželů

¹⁷ OT: Zúžené jmění manželů

Easement

An easement restricts the owner of immovable property in favour of someone else so that the owner must tolerate something or oblige another party in some aspects. Rights tied to easements are either associated with the ownership of a property or belong to a particular person. Easements associated with the ownership of a property are transferred with the property to the new owner.

There are many kinds of easement but usually the most problematic ones are the easement of dwelling and enjoyment, the easement of access and so forth. These easements usually cut the market value of the immovable in half.

Lien

The understanding of a lien is very important in this particular case, therefore it is discussed in more depth. For the debtor a lien does not change much, but for the creditor such security is financially lethal and usually makes the difference in the final distribution. Let alone the position in negotiation is stronger and the creditor can choose a more optimal solution.

The Subject of a lien

The basis a lien consists of a lien creditor in whose favor the lien is imposed and a lien debtor as an obligor. A lien debtor does not necessarily have to be the owner of the property under the lien that is securing his obligation, but the owner has to sign the lien contract and offer his property. (Zákon č. 40/1964 Sb.)

Change of subjects of lien

The change of the subjects of a lien can cause devolution of the secured obligation by the creditor. On the basis of Civic Code §524 par. 2 the lien goes with the obligation and all the other rights tied to it. The assignee becomes not only a new creditor, but a lien creditor as well. The agreement of the lien debtor is not needed. The assignor is obliged to notify the lien debtor about the devolution and forward all the documents and information to the assignee as it states in Civic Code §528. However, there are

no specific sanctions and both sides can specify the duty to inform in the devolution assignment.

The obligation (debt) can be devoted to a different debtor as well, but only with the agreement of the lien debtor (the owner of property), if they are not the same person.

A change can be affected even on the side of lien debtor by changing the owner of the property; however, it has no influence on the lien or rights enjoyed by the creditor. (Zákon č. 40/1964 Sb.)

Functions of a lien

A lien has more functions that work for a creditor in unison. One such function is to compensate overdue payment by acting on the lien, usually through the non-voluntary or executory auction. The lien creditor cannot become the owner of the property in question. (GIESE, et al., 2003)

The second function is the assurance of the obligatory payment that gives the creditor a better position against other creditors. This gives him space to communicate with a debtor in case problems occur it does not force him to claim his payments back immediately, which can sometimes become costly for both sides.

Last but not least is the motivation function. The lien (in most cases) generates pressure on the debtor and pushes him toward a better payment discipline. However, this is mostly the case with conservative thinking people, which is usually not the case for the targeted group investors are looking for. This is how we come to the fourth function, which is prevention. In cases where the investor does not only search for immovables, but for instance offers loans. He can divide groups of responsible and irresponsible potential debtors, as in most cases those who do not consider the repayment an obligation of the debt, they only realise it when they are asked to put their home directly at stake. This sometimes does not work in cases of pledge given by the third party as losing someone else's house does not look as scary. (GIESE, et al., 2003)

Object subject of a lien

Basically the subject of a lien can be anything that is transferable and executable by law (KNAPPOVÁ, et al., 2005) - movables, immovables, rights, debts, residential units according to special law. (§153 Zákona č. 40/1964 Sb.) It is possible to put a lien on the ideal share of a property, because it is possible to dispose of it without making harming the co-owners. However, it is impossible to pledge real share of a property, for instance one floor or one room in a house.

In connection with a lien, it should be mentioned that there is the possibility of a lien claim. It serves as compensation under the insurance contract that pays insurance in case of damage or destruction of property. A lien creditor receives this in case of damage or destruction of the pledge as eligible collateral to balance the loss of security. In practice, this situation is also addressed by blockage of indemnity in favour of the lien creditor. (JAROŠOVÁ, 2008)

Secured obligation

Secured obligation may not only be pecuniary, in this case the obligation is only secured up to its value at the time of the liens creation. (§155 Zákona č. 40/1964 Sb.) This paragraf implicitly states that the obligation has to be evaluated at the time of settling a contract, this is an important part of the lien contract and Security must be valid.

One of the most important attributes is, that a lien can ensure an obligation which might arise in the future. The lien can be imposed regardless of the obligation and still non-existent lien creditor acquiring lien rights from the time the entry draft was delivered to the Land Registry.

Lien creditor and the holder of the obligation must be the same person. But the obligor and lien debtor do not have to be the same as mentioned earlier in the text. (Zákon č. 40/1964 Sb.)

Principles

Subsidiarity (§ 152 Zákon č. 40/1964 Sb.) means that a lien just support the obligation. A lien can be used powerfully only in cases where there are problems with the completion of a commitment of the obligor (lien debtor). The difference is with a judicial and executory lien that can be imposed only after the obligation is overdue. The specifics of these liens are dicussed further in the text.

Accessory is another principle that influences lien law. It states that a lien right covers the debt and its accessory such as interest, default interest and the cost of enforcement. (§155 Zákon č. 40/1964 Sb.) Contract penalties must be mentioned separately as an anex in the text of a contract. It is not expresly mentioned in the law; however, it is important to specify the maximum ammount of penatlties secured by a lien and the time when they can be created. In practice some land registry staff demand this obligation and some do not.¹⁸

The lien is an absolute right and to guarantee a safe business for 3rd parties the lien is publicly visible for everyone and most of the information can be found in the Land Registry. In § 159 Civic Code it is written that a lien is created by settling a contract, but concerning immovables is only valid when recorded by the Land Registry. This principle is supressed in the case of ***Judicial lien*** or law lien that according to § 338d Civic Judicial Code, are valid from the time of motion to entry of real right is received by the Land Registry. This specific paragraf can often cause severe harm to a 3rd party that has little opportunity to predict such behaviour; however, if used properly the judicial lien might give the investor a decisive advantage by beating others to the punch. The majority users of judicial lien are health insurance companies and the social security system.¹⁹

Indivisibility states that the lien is still valid even if some part of a receivable was already payed. If a part of a pledged property expires the lien still secures the receivable against the rest of the property. (GIESE, et al., 2003)

¹⁸ Own experience of the author

¹⁹ Own experience of the author

The most important principle of a lien is a priority. The lien creditor on the basis of lien is a preferred creditor. In case of more liens upon one property it is again important to consider the time when the motion to entry of a lien reached and was recorded by the Land Registry. Apart from varying legislation in different countries it is not possible to change the priority of the liens on the basis of the settlement of lien creditors. (ŠVESTKA, et al., 2009)

Volume of ensurance

The lien secures everything that is part of an immovable. If the immovable's value depreciates then the lien creditor can claim another property to pledge. On the other hand in case the value of the pledged property rises, a lien creditor has no right to withdraw any part of the property from the lien. (§ 163 Zákon č. 40/1964 Sb.)

Sub-lien²⁰

Sub-lien is a special kind of a lien. It secures obligation by obligation that is itself already secured by a lien. This means that the obligation that is secured by sub-lien is secured by the collateral that is given by the first owner of the property even without their approval and there is no contractual obligation between the lien debtor (owner of the property) and the sub-lien creditor. The sub-lien is only valid if the creation was announced to the owner of a double-pledged property.

- It is only possible to use a sub-lien if both obligations are overdue.
 - Sub-lien creditors claim their rights as regular lien creditors.
- (SLAVÍČEK, 2011)

Lien by Law

Lien by Law is an additional contractual lien that the financial authorities in accordance with Act No. 337/1992 Code,²¹ act on. Tax Administration is imposed to ensure that tax assets and their accessories establish a lien. Under § 72, paragraph 6 of this regulation it is prohibited to set up a lien on another party without the approval

²⁰ OT: podzástavní právo

²¹ Zákon č. 337/1992 Sb., o správě daní a poplatků

of the tax authority. This has been interpreted as “lien by law” has a different legal structure than a contractual one. Land Registry authorities consider the establishment of a statutory lien for legal status, under which the pledgor cannot dispose of an immovable. However, according to the Constitutional Court 1997 the state should pay only during the proceeding of the motion to entry delivered to the Land Registry to the permanent record in the registry itself. The reason was that “lien by law” was given a different institute and was superordinated to a contractual lien that is unacceptable.

Executorial lien

Executorial lien is very similar to a judicial one and is used in very much the same way. However, there are problems with its removal.

According to the interpretation of JUDr. Daniela Šustrová²², 2009, an executorial lien expires by usual means of lien extinction. According to this interpretation by Land Registry offices; the responsibility in these cases remains with the creditors (not the executors), who should send the relevant certificate of expiration of the lien, in addition equipped with a signed verification. In the case of corporate institutions like banks, such certificates with verification of signatures are a significant administrative problem. That means that although the executor initiated the executorial lien, he cannot himself remove it, he can only do it in cooperation with the creditor (obligee).

Thus, if the debtor brings the Land Registry a certificate from the executor of indebtedness, he will not succeed in erasing the executorial lien from the register even though the actual lien has expired along with the secured obligation.²³ In this particular situation the former debtor has no effective tool to remove the lien from his debtless immovable and in fact makes it worthless. In practice a debtor has but one hope, they must put pressure on the executor and land registry to cooperate with each other to remove it; however it usually depends on the particular bureaucrat dealing with the request. (KLOBUŠICKÝ, 2010)

²² Head Officer of the Land Registry Office of Capital Prague

²³ § 170 paragraph 1 point. a) Civil Code

However; there is an agreement between the Land Registry Office and the Executorial Chamber, that the executorial lien should be removed on the basis of resolving the termination of the execution. In practice, most executors send the Land Registry an explicit statement and certificate of expiration of the executorial lien and move forward with the strict interpretation of the law by the Land Registry officers. (KOS, 2011)

2.2.5 Records and notes, its function and effect

Resolution to execution directive

On the basis of a non-final judicial resolution to execution directive (§44 Zákon č. 120/2001 Sb.) enter the Land Registry record “Execution directive”²⁴ tied to the particular person who is marked in the resolution as the obligee.

Effect of the Record

It the Land Registry, during the proceedings of the entry of real rights, finds the record of execution directive is irrelevant. It is considered relevant only when it is made relatively invalid by the *execution order to sell the immovable* issued by the executor who issued the original note. This execution order must be issued before or during the proceeding of entry and it pays off only if the execution directive was delivered before the motion to entry. This is the reason for the rise in use of executorial liens, because the immovability blocks the particular executor even when the execution proceeding is in a non-finalised mode. (ČÚZK, 2009)

Deletion

The record is deleted on the basis of a valid resolution of execution abandonment²⁵ issued by the court or executor. It might even be done via a resolution to execution termination²⁶.

²⁴ OT: Nařízení exekuce

²⁵ OT: Zastavení exekuce

²⁶ OT: Skončení (provedení) exekuce

Execution order to sell immovables

The Land Registry records non-final execution orders in their register.

Effect of a Record

- a) At the Land registry, during the proceeding of the entry of real rights, finds the execution order record proceeds in this way:
 - a. If the execution order is on the day of motion to final entry asks the executor, whether:
 - i. The execution was already paid or not, in a sense §46 par. 2 or §46 par. 5 of the Executorial Code.
 - ii. Whether or not the ban to dispose of the immovable has ceased according to §44 par. 2 of the Execution Code.
 - iii. There has been a final resolution or not, according to §44a par. 3 regarding the exclusion of an immovable from the execution order.
 - b. If the execution order is not finalised on the day of the motion to entry of real right, the Land Registry asks the executor, whether the execution order was delivered to the obligor. If it was delivered, then, when it was delivered and if the facts according point iii did not take place.
- b) In case the execution order was not delivered by the day of the motion to entry of real right, then the obligor is not affected by this order in reference to §47 par. 4 of the Execution Code
- c) If the execution order was delivered on the day of the motion to the obligor and nothing from point a) has taken place then it is not possible to approve the Entry.
- d) If the execution order was delivered on the day of the motion to the obligor and on the same day, one of the examples written in point a) took place then the obligor is not restricted by the execution order.

Deletion

The record is deleted on the basis of the valid resolution of execution abandonment²⁷ issued by a court or executor. It might even be done by the way of resolving the execution termination where the exact execution orders are mentioned. (ČÚZK, 2009)

*Auction and public notice*²⁸

Auction and public notice is recorded in the Land Registry on the basis of a non-final resolution of an auction directive (further only auction public notice).

Deletion

The note is deleted on the basis of a valid resolution of execution abandonment²⁹ issued by a court or executor. It might even be done by resolving the execution termination where the exact auction and public notices are mentioned or by way of a valid resolution regarding knock-down at auction.

Liens and easements terminated by successful auction are deleted on the basis of notifying the executor, who carried out the auction and that the liens and easements, entries and notions have been deleted by means of successful sale.

2.3 Civic Judicial and Executional legislative Law

This part is very important concerning the fast possibility of getting an executable title and becoming the first to receive payment from the debtor. Regretfully, sometimes it is not enough just to own a lien on a property if the executor which is first to sell the immovable is not yours. Smooth and fast way to get to the pledged property leads through a better position against the debtor who usually starts to think rationally only when pressed by a nearing auction date.

²⁷ OT: Zastavení exekuce

²⁸ OT: Dražební vyhláška

²⁹ OT: Zastavení exekuce

Execution Code, Law No. 120/2001, about court executors and execution proceedings³⁰ is in its present state dates back from 2001. From this year there are two parallel laws according to which executable judgements, verdicts and rights are enforced. The second is Civic Judicial Code, Law No. 99/1963.³¹ Both Codes represent judicial directives that adjust the execution proceedings, governmental and municipal supervision, institution and personal capacity of executory authority. According to §52 of the Execution Code is the 6th part of the Civic Judicial Code used to maintain the adequacy of the execution proceedings. The meaning of the word execution itself as taken from a historical point of view is a very classic one; however, the Czech legislative body knows from the 1963 execution of a decision³². The two sides remain the same, obligee and obligor³³. (SEDLÁČEK, 2011)

2.3.1 Executor

- The Executor is an individual qualifying under law, whom the state has assigned Executorial Authority.
- The Executor carries out enforcement and other activities for a fee.
- Fees, reimbursement of cash expenses, compensation for loss of time during the execution process belong to the executor under this law. (Zákon č. 120/2001 Sb.)

Each executor is basically an entrepreneur, therefore they work for profit. The main source of profit is the reward of an executor which goes hand in hand with the successful enforcement of obligations. We can therefore assume that in financial terms the executor defends the interests of the creditors.

Executorial fees are only paid in cases of successful execution, for more complex information see directive 330/2008 The Ministry of Justice. Up to 3.000.000,-CZK it is 15%. The Investor must be aware of this especially if the security is not much

³⁰ OT: Exekuční řád, Zákon č. 120/2001 Sb., o soudních exekutorech a exekuční činnosti

³¹ OT: Zákon č. 99/1963 Sb., občanský soudní řád

³² OT: Výkon rozhodnutí

³³ OT: Oprávněný a povinný

higher than the debt itself. (330/2008 Sb.Vyhláška o odměně a náhradách soudního exekutora)

An Executor cannot deny any execution; however he is not obliged to execute. If he realizes that the debtor has no means by which to pay he might not work towards a successful execution at all. However, we have to understand that there are plenty of executions that expire without any success and there are people who have more than 20 of such executions brought upon them. Some executors actually refuse to work unless a deposit is paid or some additional fee. On the other hand there are executors who do not require payment of minimal fees in cases of unsuccessful execution even though they are entitled to receive them.³⁴

2.3.2 Execution proceedings in steps

1. *Order of execution of judgement*

a. *Motion to execution directive*

b. *Appeal to completion*, in case the motion is insufficient

c. Release of resolution to *execution directive*³⁵

i. The path to this execution directive usually takes between 15 and 60 days. The problem is that the courts usually do not adhere to this 30 day time-limit for each step, so the time period varies from court to court.

2. Executor reacts by *Execution order*

a. An Obligor can react against an execution by

i. *appealing against the resolution* of the execution directive

ii. *proposal of execution abortion or postponement*

iii. logical reaction would be *compliance with the obligation*

iv. *Accusation of prejudice on the part of the executor*

1. Each of these steps except for the 3rd can postpone the whole execution proceeding for more than

³⁴ Experience of the exercised company

³⁵ OT: Nařízení exekuce

a year and so this can be considered a very great risk.

3. If the steps of the obligor are overruled by the court or not used, the situation proceeds to execution itself and after a successful execution come the distribution proceedings. (SEDLÁČEK, 2011 p. 10) (Zákon č. 99/1963 Sb.):

2.3.3 Execution Title

The execution title is the key to success as the court does not take into account substantive law, because it is covered by the execution title. It defines the subjects. It deals with unambiguous obligation that has to be enforced.

Kinds of execution titles

- resolutions
- verdicts
- compulsory payment orders
- bills or compulsory payment orders
- court approved reconciliation
- notary public deed, execution deed
- arbitral award
- and decisions made by public administration

From the execution titles the exact date is not always clear when the obligation is due. Therefore, every such paper has to be approved by a clause of enforcement.

Another way to receive an enforceable execution title is via an Electronic payment order, which was introduced on 1.7.2008 and was supposed to shorten the time to get an enforceable execution title. But as the majority of companies and institutions started to use this tool, it became even slower than the older, more conservative method.

Execution in practice

Confiscated property has to be sold via auction. Each executor has their auction company partner with which they cooperate. Auctions must be published in prescribed manner by law. Mainly bigger executorial authorities advertise on the internet, use big portals where there is higher demand so that they can get better price. The use of central address is new internet server, where all the executors are obliged to post their auctions, but in practice they don't always do it.³⁶ Sometimes it is a planned purpose when for example the ex-president of the Executorial Chamber of Czech Republic had bought an undervalued residence in very suspicious circumstances. (AOV ČR, 2010)

The same problem can be found with the central evidence of execution (CEE) based on Execution Code (§ 125 Zákon č. 120/2001 Sb.), where all the executors are obliged to send their executable execution for a fee of 60,-CZK and be given a list of such executions; however some executors again do not adhere to it. It has happened many times that in the property record in the Land registry, there were 4 or 5 forceful executions, the CEE³⁷ cleared the exercised persons and 60,-CZK was wasted on useless information.³⁸

Sometimes it even looks as though some executors don't even want the money from the obligor. They are reluctant to inform the obligor how much they actually have to pay and on what date. They make a huge fuss when the obligor wants to pay in cash and they don't want to give away papers clarifying that execution has been stopped. In practise there isn't an algorithm or rule according to which executors behave. However, recently this situation is improving as trends are becoming more apparent.³⁹

Success of executors

There is not much information about the success of executorial proceedings. For an overview of the results of the activity, an executor can provide the following information:

³⁶ <http://www.centralniadresa.cz/cadr/>

³⁷ Central evidence of executions (CEE) - <https://live.ceecr.cz/main.php>

³⁸ Experience of the exercised company

³⁹ Experience of the exercised company

- In More than 80% of cases executors have to deal with problems amounting to 50,000, - CZK. These are mostly fines imposed by the city police, mobile operators or health insurance organisations.
- Larger events are more time-consuming. For example, the seizure of a house can take up to four years as the obligor has wide ranging possibilities to postpone it.
- The Success of large executions is less than 15%
- Generally, the fresher the obligation is the better chance of recovering the debt; the biggest problems come with companies where the obligations are nearly impossible to recover.
- The problem is that it is not difficult to avoid paying and hide property before the execution and so the obligees are often unwilling to pay additional charges.
- Smaller amounts are easier to demand and the percentage of success goes up to 60% but problems arise with greater amounts, where the success rate drops significantly and it is more economically effective to avoid paying an obligation.
- The worst situation is with companies, where the success rate drops to under 7% concerning debt up to 1.000.000,- CZK

2.3.4 The Execution of a decision according to Civic Judicial Code

Currently, the execution of a decision according to the Civic Judicial Code rights is not so common and as it has already been described in the explanation of judicial lien it is mostly used by governmental institutions, insurance companies and the social security authority. For an investor it is a useful tool only in cases where speed is important, when a debtor tries to dispose of their immovable or tries to process an eviction.

Comparison of execution according to Executorial Code vs. Civic Judicial Code

The execution of a decision is carried out by a bailiff⁴⁰, who is an employee of the court and follows the instructions the judge. In this case the obligee determines

⁴⁰ OT: Soudní vykonavatel

the method of execution. The execution of a decision may be ordered only to the extent of the justified volume. More satisfying methods can only be chosen if one of them would not be sufficient to satisfy the claims of obligee. And if the obligee would propose more methods of satisfaction than needed, then the judge would overrule them and choose the most optimal one. (Člověk v tísní, 2012)

An Executor (according to law Court Executor) is a person elected by the state. An Executor determines the method of execution himself and can carry out the execution by way of their own decision without the need for permission from the court. They have many powers of investigation, such as, finding out if the debtor has a bank account, its number, if they have access to the central population register and so on. (Člověk v tísní, 2012)

To put this in short if the obligee knows of the account or knows about a house or other method of recovering the overdue debt, then they might be better off choosing a judicial execution of a decision, if not then an executor is the right choice. However it is strongly recommended to choose the executor properly as there are big differences and this step cannot usually be taken back without severe financial consequences. (Člověk v tísní, 2012)

Judicial fees

For the proposal of civic judicial proceedings, when the subject has pecuniary obligation: It is above 20.000,-CZK 5% of the obligations. In case of electronic payment order it is 4%. Fees of arbitrage vary, but usually are between 1% and 5% depending on the court and amount sued for. These are the basic fees which an investor must take into account.

The cost of the motion of judicial execution of a decision is 2% from the enforced debt. That might be a much smaller amount than the sum that some executors demand to start the execution. (Zákon č. 549/1991 Sb.)

Auctions

The rules of auctions of immovables are described in the Judicial Civic Code, Executorial Code and Law regarding public auctions. There are three kinds of auctions; voluntary, non-voluntary and executorial. The first one is irrelevant for our purposes. The differences between non-voluntary and executorial auctions are not big but they are relevant in cases where a lien is used, but the investor needs the final executable title.

Executorial auction according to Judicial Civic Code

Executorial auction is easier for the investor. Because the executor takes care of everything, even if the price of the immovability exercised in the auction is not enough to recover the debt, the executor can simply carry out the execution without stopping. However, it is more expensive than an executor, who receives, excluding the auction cost 15% of the money earned at auction. (EKČR, 2010)

Execution through auction of immovable

- a) Executorial order to sell the immovable
- b) Resolution on the price of the immovable based on expert opinion
 - a. Starting price is $\frac{2}{3}$ of the price in the first round
 - b. In the second round it falls to $\frac{1}{2}$
 - c. Beware of the experts
 - i. Low reliability
 - ii. Often made without entering the actual immovable
 - iii. Pre-arranged or crooked pricing
 - iv. It is to be witnessed by the executor
 - v. Once valid it cannot be changed, which might be problem in cases where prices have subsequently fallen
- c) Collateral is a maximum of $\frac{3}{4}$ of the minimum price
- d) Final price decided by knock of the auctioneer's hammer
- e) Ends with the resolution, knock of the auctioneer's hammer
- f) Time limit of surcharge is set at a maximum of 2 months

- g) Distribution of price between creditors⁴¹
 - a. Comes after the winning price is paid
- h) Summons are sent to the obligees, obligor, successful bidder and persons that sent in applications (KOS, 2011)

This whole procedure can be affected mainly by the executor and obligor. The Executor defines the time limits and the obligor affects the proceeding by not cooperating or not picking up his mail.

Non-voluntary public auction

The first advantage of the non-voluntary auction according to law on public auctions, is that they are usually organised by private companies and that investors do not lose influence over the auction. The reason why lien creditors use non-voluntary auctions is mainly their speed. Lien creditors can usually recover their funds within 3 months (compared to the executorial average of 12 months it is vastly advantageous). The starting price can fall even in the first round to ½ of the expert's valuation (the expert's valuation is again more in the hands of the creditor). However, the problem is that there must not be an execution over the immovable, the owner has to physically receive the auction notice (if he does not receive it then the creditor must choose a different form of lien recovery). Another problem arises if during the 2 month span, for which the auction has to be advertised, any executor sends an executorial order to sell the immovable and then the executor and auctioneer have to agree on further proceedings. (ČAD, 2012) (Zákon č. 26/2000 Sb.)

It is best used if the lien creditor is reasonably sure that the auction will pay all of the overdue debt and no further execution proceedings will be needed.

Distribution proceedings

Distribution proceedings have its specified categories that are recovered gradually and successively (one by one).

⁴¹ In detail further in the work

1. Costs of state proceedings, costs of execution
2. Debt from hypothec loans
3. Debt secured by lien, debt secured by lien further down the line
4. Alimony debts
5. Debts in the form of taxes, duties, fees and social security
6. Other debts

Lower placed groups can be satisfied only if the prior has been recovered fully. Debts inside groups are recovered according their chronology.

2.4 Civic Code and Consumer loans

The Civic Code adjusts rights, duties, relationships and contracts between citizens of the Czech Republic. The Civic Code defines individuals and legal entities. For this work it is an especially important part concerning liability and material rights. Most of the directives and acts were described in the previous part of the thesis. Therefore mainly consumer rights, duties and relationship to the business' legal entities and entrepreneurs are discussed. The reason why this chapter is important is that consumers are according to §52 of the Civic Code practically all the individuals selling their property that was not a part of their business.

2.4.1 Consumer

It is important to understand that a consumer is „an individual who buys products or services for personal use and not for manufacture or re-sale. A consumer is someone who can make the decision whether or not to purchase an item at the store, and someone who can be influenced by marketing and advertisements. Any time someone goes to a store and purchases a toy, shirt, beverage, or anything else, they are making that decision as an individual consumer“. (CONSUMER, 2012)

This is Especially true when taking out a loan secured by lien over a property, it is usually a consumer loan and must be treated according to special

Law No. 145/2010 Code, referring to consumer loans and changes of some laws⁴²⁴³
(Zákon č. 145/2010 Sb.)

However, as always in the Czech legal system there are plenty of exceptions which enhance the space for a shadow economy. These exceptions are stated in §2 of the Law on consumer loans. The most abused exceptions by banks and credit companies are:

- a) A loan is supplied for the purpose of acquiring a dwelling, when the loan is secured by lien and the exact purpose is
 - (1) acquisition of ownership rights, settlements of rights or building a new household
 - (2) payment for dwelling syndicate rights
 - (3) changes to the building (connecting to electricity and so on)
 - (4) payment of costs connected with the acquisition of a loan in points 1 – 3
 - (5) Finalising payment of the loans in points 1 – 4
- c) supplied without interest or any additional payment

The problem is that in practice, many companies avoid the law regarding consumer loans in the loans that they offer. They put into the contract a sentence stating that the loan is offered for a reconstruction of a property upon which the lien is set up and the credit company then does not have to follow the consumer loan law. The same situation occurs when a credit company for example, lends 10.000,- CZK, but they write into the contract 300.000,- CZK and the same amount to be paid in 12 months. Since the loan is interest free again they do not have to follow the strict regulations. Consumers realise the difference if they want to pay the money back in advance or even when they just want to pay off the loan. It is hard for them to complain because they are already signed-off on contract, so it is obvious that they, as well as the credit company, had lied, so they usually surrender to this. The question is why are there such ridiculous exceptions in the law? Fair companies who always follow the rules will follow them even under the new legislation and cause no harm to the consumer,

⁴² Zákon č. 145/2010 Sb., o spotřebitelském úvěru a o změně některých zákonů

⁴³ Further only law about consumer loans

but those operating on the edge can keep doing it. There is in preparation another amendment of the rules concerning consumer loans (KUČERA, 2012) making it a stricter environment for the credit companies, but again does not target companies operating in the shadows. The question is, why?⁴⁴

For the purpose of this thesis loans are only considered, if offered to individuals (except for entrepreneurs), according to the law on consumer loans. There are always some duties and limits in every deal between an entrepreneur and a consumer and those are described later in the theoretical part and even further in the practical one.

2.4.2 Adequacy and proprieties

Adequacy and proprieties are terms that are rather vague. Tricky arrangements are beyond this work. But what are adequate arrangements and what is beyond the line is not easy to understand and even harder to describe.

The Investor faces the problem of estimating adequacy and proprieties, usually in terms of exercised price of a purchase, where the price should not be below half of the estimated price in expertise. The judgement of the Supreme Court says that there is no support in the law, so this has to be resolved according to the court itself. The inadequacy of the price itself is not against proprieties and does not cause invalidity of the purchase contract, but only on occasions under which the contract was signed had to be considered. (Nevyšší soud České republiky rozsudkem ze dne 31. srpna 2010)⁴⁵ As such problematic occasions might be considered pressure from the buyer if the seller has any kind of psychological handicap (elderly or under drug influence) or in complicated life situations (mostly having financial problems).⁴⁶

Another problem comes with the adequacy of contractual penalisation. The problem is not supported by law and has to be solved by the courts one case after the next. Approximately ten years ago the interpretation of contractual penalty by Supreme Court was unified, but since then it the contractual penalty can be used

⁴⁴ All the cases are experience of the clients of exercised firm PomocPro.cz

⁴⁵ Supreme Court judgement from 13th September 2011

⁴⁶ Regretfully the last condition pays for most of the client on non-bank credit companies.

considerably more safely in the form of a percentage for a specified time limit or for any other variable penalty. According to the Supreme Court it is propriety that it is the consensus of the majority of society, thus it is something that does not change much over time. (HRABEC, 2010) The only almost exact definition of what is beyond the line describes a Judgement of Supreme Court from 30.5.2007 that states that an adequate penalty is about 0,5% per day , but a penalty of around 1% per day is beyond propriety. (Rozhodnutí Nejvyššího soudu ze dne 30.5.2007)

2.4.3 Consumer loan rules

On 1.1.2011 an EU directive was implemented regarding consumer loan law. Every loan provider now needs to obtain a special licence.

That not all loans are considered as consumer loans. Loan providers have according to the Law on consumer loans, a lot of informative duties. The informative duty is significant before settling a contract and extends into the loan period. The informative duty also pays for the advertising that in practice led to the generalisation of such advertisements. Every applicant must be offered a form in which the following pieces of information have to be included:

- Annual percentage rate of charge⁴⁷
- Number of repayments and time period
- Total sum of all repayments connected with the loan
- Security if needed
- The Right to back out of the contract within 14 days without penalty
- No penalty for premature repayment
- The right to receive a draft of the contract

In case the loan provider does not offer such information at the pre-contract stage, then the right to back out of the contract without penalty lasts until the omission is rectified. The same situation is also true with the actual contract. The problem is that in this case the provider can claim only the discounted rate of the National Bank, this is usually far lower than the interest rate included in the contract.

⁴⁷ Further only APRC

The law about consumer loans does not concern an arbitration clause. The problems concerning arbitration are solved by arbitration law. (Zákon č. 216/1994 Sb.) According to this law the arbitration clause had to be changed to an arbitration contract.

3 Practical part

3.1 PomocPro.cz

The firm was founded in 2008. The firm is led by an entrepreneur Pavel Procházka and has no other employees. All supportive services are outsourced. The original aim was to set-up a small credit company focused on unsecured consumer loans of up to 200.000,- CZK offered to clients that do not receive credit from banks. During 2010 the firm started to re-evaluate its strategy and position in the market, this re-evaluation showed severe losses due to the low payment moral of its debtors. In 2011 when the new law regarding consumer loans was introduced, the firm started to focus on loans secured by immovables. The contracts and proceedings had been changed from the ground up and the strategy remains, although with minor changes the same up until today.

“PomocPro.cz” offers its client a wider range of services such as individual bankruptcy management, financial crises management for individuals, real-estate services and insurance services. The first two services are mostly offered for free as edification of citizens as a part of the campaign.

Brand name: PomocPro.cz
Name: Pavel Procházka
Business ID: 87185202
Address: Boženy Němcové 613
Moravský Krumlov, 672 01
Czech Republic
WWW: www.pomocpro.cz

The client's potential, his solvency and legal knowledge have to be taken into account. This informs the investor on risk estimation and of potential future problems. The greater the risk of future insolvency or legal problems the higher the security value required. There is a golden rule, that it is better to have 20 investments of 100.000,- CZK in 20 different houses, than investing 2 million in one splendid chateau.

4.1.3 Be prepared and stick to a plan

The investor always has to prepare a feasible plan and stick to it. He cannot change it especially not at the client's request. There might be side interests of the client that severely contrast with those of the investor.

Sign the contracts

According to the plan, do not forget to sign contracts and letters of attorney, because of the unpredictability of executors it is advised to have one certified letter of attorney for each execution. Be careful with certifications of signature on the lien contract, that according to law cannot be signed earlier than the execution is terminated. On the other hand it is important to have the lien signed as it is the only security to the investment, according to the Land Registry authorities and in their explanation, it is important to take these steps on the same day, but there is still a risk that someone can sue during the proceedings in order to revoke the entry.

The optimum way is to sign the contract together with the debtor, the day after the executions are paid and then send a motion to entry of real rights to the Land Registry. However, this can bring on more problems than just simply doing it all on one day. The way to avoid this is to let the debtor sign the contract and sign it yourself a day later or get a letter from an attorney specifically for signing the lien contract. Both ways have their problems; however, the risks are minor and usually the court proceeding

to remove a lien from the immovable would not help anyone. It is up to every individual investor which way is best.⁶⁸

It is important not to forget any lawful formula, especially in the case of consumer loans, which could even result in nullified interest.

Executions first

The greatest priority must be given to the “execution of orders” and “directives to sell immovables from administrative authorities” and put them into Land Registry. These two can make the entry of real rights invalid.

Secondary priority is given to the execution of directives which according to law do not cause significant problems with an entry.⁶⁹

A lien can be recovered even after the motion of entry of real right; actually it does not have to be paid at all. If the investor doesn't consider it wise they do not affect any of the entries.

An Investor has to be aware that removing a judicial lien or directive to sell immovables from administrative authority can last up to 3 months and he cannot effectively dispose of the immovable. The worst risk comes when there are more instances of executorial execution scattered around the country, they are sure to put stress on the feasibility of the plan and consider the differences between single executors, the most suitable days are Monday and Tuesday, because the Land Register offices are open till 5 p. m, for example.

Do not forget to surrender the right to appeal the execution proceeding. It saves more than 3 weeks which could otherwise be added to the process.

Always expect the worst

An Investor has to be aware that he cannot rely on the courts and should avoid the risk of judicial disputes by all means, because they are time consuming, inhibit cash

⁶⁸ It is important not to explain such things to clients not to give them opportunity to make irresponsibility.

⁶⁹ Read more in 2.2.5 Records and notes, its functions and effects

flow and the results often seen to be in the hands of the gods. It is advisable to use an arbitration contract with debtors and lien debtors; however, even a good arbitration brings the investor to the executable execution title in 3 or 4 months so it is important in cases of loan settle the executorial deeds or the notary public deeds with executability clauses. Some Public notaries and even executors include penalties in the deed, but this is dangerous as it can make the whole deed invalid. It is safer and usually sufficient to include only the sum total of the payment expected and a schedule for repayments. Such a deed has to be signed when all the duties of the creditor have been fulfilled.

There is a question if it is not better to enter in the Land Registry a general easement, because there is always a possibility that an owner in financial stress would use their easement of dwelling and enjoyment and devalue the immovable. However, the exercised firm does not do it and up to now they have never had a problem.

Clean the title deed soon

An Investor needs an absolutely clean title deed, in case he needs to make the debtor sell the property, to put another real right into Land Registry, to sell through auction or if they bought it for themselves to dispose of it.

Problems with a client

The most important thing is to tell the debtor that when they have a problem with anything, that they have to call in good time. This helps the creditor in case the debtor starts to make excuses. If there is a problem with payment or with any of the debtor's duties and the debtor did not alert the creditor⁷⁰ in advance according to an agreement, it is important to send him a brief with his duties and penalties for not fulfilling them in it. The exercised firm receives all the penalties automatically in cases of breach of contract and do not have to contact the debtor, but even though it is better to try to negotiate a settlement and again, avoid auction, arbitration, executors, courts or anything damaging whatsoever. This costs time and money for both sides and if the debtor is reasonable they will understand.

⁷⁰ This always means that they do not give a damn about the loan, so the creditor doesn't have to feel too sorry for them.

In case the settlement does not succeed, there are two procedures:

- Give the executorial deed to an executor and start arbitration to receive the penalties, and then give the Execution title to executor two.
 - The advantage is that no one will step in
 - The disadvantages are that an executor is expensive and the earliest possible auction would be in 6 months
- Organise a non-voluntary auction and try to apply the penalties at an auction without arbitration, or go through arbitration and give it to executor afterwards.
 - The advantage is that you can have your money in 3 months, you have more control over the auction process and it's cheaper
 - The disadvantage is that an unknown executor can step in and excessive debt has to be given to the executor in any case

4.2 Contracts

In this part vital establishments from contracts that investor cannot skip are described. The contracts are included in the original version of this thesis in the appendix. For the purpose of this thesis it is considered that the investor will try to exercise maximum interest, which in most cases means to give a loan and secure it by lien upon the property, which was mostly the case for the exercised firm.

4.2.1 Consumer loan

Information about consumer loan⁷¹

The first thing that the investor must give to the future debtor is a form with information about consumer loans. It has to include all the important information from the consumer loan contract.⁷² This information is obligatory to be made available for 14 days.

⁷¹ See Appendix 1

⁷² See 2.4.3 Consumer loan rules

Consumer loan contract⁷³

1. Object of the contract

- 1.1. The object of the contract must be thoroughly specified. It is important to get a receipt for the money that had been given to the debtor in cash and take a photo of the person with the money.⁷⁴
- 1.2. It is advised to take out some insurance against changes in inflation; the world is full of surprises.
- 1.3. There has to be an Average percentage rate of charge and interest per annum and a total sum repaid by the debtor.
- 1.4. To defend against payback in 14 days it is important to make a debtor pay all of the costs connected with the loan. Because it looks better and a lot of customers ask for it, it is advisable not to accept any payments before the loan is given. Thus, the exercised firm may enlarge the loan for these costs.
- 1.5. It is important to have a signed form from the debtor displaying their debts on some additional document in case they try to pretend that the creditor did not judge their solvency.

2. Payments and sanctions

- 2.1. In this part of the contract the method of repaying the debt and a debtor's rights to receive full information about his payment is described.⁷⁵ It is best to give a full table payments to the client with consumer loan information to make them better informed on what they would be signing.
- 2.2. One of the most important things is a penalty, the highest might be 0,3% per day; however in this case is quite enough to use 0,2% per day and the creditor is sure that the penalty cannot be overruled by court as being excessive. It is good to specify when exactly penalties are due.
- 2.3. The most important penalty is the loss of the right to a payment schedule, which makes, for example, a whole 10 years of cash flow due on one pre-defined day.
- 2.4. The Penalty for misleading information is hard to use, but it works more as a psychological threat.

⁷³ See Appendix 2

⁷⁴ Some debtors try to pretend that they did not get anything and were forced to sign the receipt.

⁷⁵ See Appendix 3

2.5. A Debtor must declare that he is not in insolvency or execution except for those that form the subject of the contract.

3. Security

3.1. In this part it is written that if there is a co-debtor, if the debtor is obliged to sign an executorial deed or if there is a lien contract securing the debt.

4. Withdrawal from a contract

4.1. This part has to be done according to the law and in case early debt recovery can be made if the creditor wants only 1% of the principal as compensation for their additional costs.

5. Last establishments

5.1. Here an agreement should be included that the creditor can use the personal information of the client and information about the client's right to appeal any problem to the financial arbitration of Czech Republic.

5.2. Last but not least, is if the debtor has a spouse then it is important to have their signature in the contract also, or make them a co-debtor.⁷⁶

Arbitrage Contract⁷⁷

An Arbitration contract should be written by the arbitration court to which the creditor wants to appeal their claims. According to new rules, it must be on a different paper, there it must be specified who the arbiter is, the identification of the court, costs and the basic rules of arbitration. There must be an identification of the contract to which this arbitration contract was settled.

4.2.2 Lien contract

Together with a lien contract, a motion must be filed for the entry of a lien⁷⁸ this works as a consignment note of the lien contract. The lien entry costs 1000,- CZK⁷⁹ and there are will even be standardised forms which have to be used when introduced in 2013, But still the most used are contractual motions. Together with the motion,

⁷⁶ This is the method where by the creditor can claim the debt from the spouse as well.

⁷⁷ See Appendix 4

⁷⁸ See Appendix 5

⁷⁹ According to the latest news even removing of the lien will be paid by the same amount that means quadrupling prices in one year.

duplicates of the lien contract⁸⁰ and one duplicate per side of the contract must be sent to the Land Registry. This means that if there are two lien debtors and one creditor, five duplicates must be sent. When the Land Registry certifies them it returns them to each party in the contract.

Lien contract⁸¹

1. Object

1.1. It is important to clearly identify the immovables that are pledged⁸². Clear identification usually needs some experience; therefore it is better to leave this part to a lawyer.⁸³

2. Secured obligation

2.1. The specification of the obligation that is secured. It must be stated when and how much was lent, what the interest is, period of time in which the secured penalties may arise and up to what amount they can rise to.

2.2. It is important to specify that future conditional obligation is secured by this lien. This is important in cases of an early termination of a consumer contract (in the first 14 days).⁸⁴ (Zákon č. 145/2010 Sb.)

2.3. The purpose of the lien has to be explained.

3. Rights and duties

3.1. The lien debtor declares that they will not transfer ownership to a third person without the agreement of the lien creditor. They declare that they will not put another lien on their property without the agreement of the lien creditor. This is good to put into the contract alongside some kind of penalty, to make you more aware of what is happening with the immovable, but it is a problematic establishment, that has no support in law.

3.2. It is important to forbid entry of easements, because these will cut the price of the immovable more than half. For this breach there can be a severe penalty, because this causes great harm to the creditor.

⁸⁰ One of them has to have the signatures of lien debtors certified.

⁸¹ See Appendix 6

⁸² The same pays if it is a purchase contract.

⁸³ Most common problem in lien entry proceeding.

⁸⁴ The law says that a contract is terminated even if the consumer does not pay back the loan.

- 3.3. The immovable has to be insured and the insurance performance has to be directed to the creditor. There must be a penalty drawn up for breaching this establishment. The best way to make such an instalment is, when a creditor has an insurance licence, they set up the insurance themselves and thus have the best possible control over it.
- 3.4. An exemplar penalty must be set up for breaching a contract in subject of the contract itself, in case they try to commit fraud.⁸⁵
- 3.5. A condition should be mentioned regarding when the lien creditor can use the rights from the lien contract.

4. Cooperation and termination

- 4.1. Just to stress the obligation of both sides to cooperate in proceedings with the Land Registry.
- 4.2. There should be a specification of the conditions under which the lien creditor is obliged to remove the lien from the immovable.
- 4.3. Furthermore there is the right to sell the original debt and in this case the new owner of the obligation has the same right as the initial creditor.

5. What the sides want

- 5.1. In this part includes a simplified request regarding what the different sides actually want from the Land Registry.

6. Last establishments

- 6.1. This includes only the number of duplicates and why they are made.
- 6.2. Signatures (those of the lien debtors must be certified by a licenced authority.)

⁸⁵ See 3.2.9 Case study No. 9 – Moravany u Brna - Defrauders

5 Summary

It is up to every investor which method they decide to invest in real-estate, but they have to be aware that there are “No” risk free investments and they will not be an undoubtfull owner or lien creditor before the clock strikes three, in some cases even ten years after a legal act is initiated. Every style of investment has its advantages and disadvantages; today it seems that the greatest boom is in loans. It is apparent that this market has already emerged, but still there are a lot of opportunities to acquire an advantage.

The theoretical part of this thesis has given an overview of property laws in Czech Republic; it explained the ownership and other relationships to property according to Civic Code and described essence of the immovable. The work system of Land Register was studied into the debt and put together with specific notes and records that are important for investing. The differentiations between Land Register and executors and their interpretations of the law were stressed out.

The problematic of execution legislative, which was core of this work, was studied step by step from execution title to execution itself. The problem of impossibility of 100% recognition of all of the execution imposed upon one person was stressed. That is why there were introduced systems of limiting this uncertainty factor almost to zero. The arguments were backed up by examples from practise with numbers of successful executions. These numbers stand a fall with the amount of property of the debtor; all the systems of auctions and enforcing tools were described as well.

Further the reader was led to consumer part and his support in Civic Code. This is particularly important in case of any purchase or loan investment into a real estate owned by physical person, a consumer. There are many obstacles and consumer is in better position from the legal point of view, but the investor usually overrules him thanks to better knowledge. On the other hand the position of the consumer is easily abusive.

In the practical part the firm PomocPro.cz was introduced. Nine of their investments were used as case studies for the purpose of this work. The case studies were studied from the initial opportunity to invest over the presumed risks to final consequences. There were chosen mostly those problematic issues where it was easy to point out the common mistakes. The work shows how dangerous is overvaluation of the collateral and underestimation of the rights of 3rd parties hand in hand with unreliability of courts. The case studies point out the importance of formal accuracy and humility on investor's side whose lack of self-control can make problems in routine and perpetual crediting. It showed how important is keeping credibility and keeping some social status for future business even when there are significant problems with 3rd parties and investor can in a short term lose part of his profit. In the end the case studies show the dark side of the business, the bureaucratic authority of some executors and at last the deceit of one client.

The conclusion had one simple but challenging purpose, to provide the reader with complex information about optimal investment procedure and point out vital establishments of the necessary contracts. It outlines the establishments of consumer loan contracts and lien contracts on the exercised property

This work has given one simplified view on the problems of investing, it cannot transfer the tacit knowledge and experience to the reader, but it serves as a guide to success in the real-estate market of today.

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Zákon č. 72/1994 Sb., o vlastnictví bytů v platném znění.

Zákon č. 99/1963 Sb., občanský soudní řád.

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10 Key words translation and abbreviations

- **Act No. 337/1992 Code, Act on Tax Administration** - Zákon č. 337/1992 Sb., o správě daní a poplatků
- **Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic** – Rozhodčí soud při Agrární komoře České republiky a Hospodářské komoře České republiky – ACEA
- **Auction public notice** – Dražební vyhláška
- **APRC** – Average percentage rate of charge
- **Bailiff** - Soudní vykonavatel
- **Bill** – Směnka vlastní
- **Building Societies Association** – Stavební spořitelna
- **BSA** – Building Societies Association
- **Central evidence of executions (CEE)** – Centrální evidence exekucí (CEE)
- **Civic Code** – Zákon č. 40/1964 Sb., Občanský Zákoník – *Civic Code, Law No. 40/1964 Code*
- **Civic Judicial Code** - Zákon č. 99/1963 Sb., občanský soudní řád - *Civic Judicial Code, Law No. 99/1963 Code*
- **Common marital ownership** - Společně jmění manželů
- **Entry of real rights** - Vklad
- **Execution abandonment** – Zastavení exekuce
- **Execution Code** - Exekuční řád, Zákon č. 120/2001 Sb., o soudních exekutorech a exekuční činnosti - *Law No. 120/2001 Code, about court executors and execution proceedings*
- **Execution directive** – Nařízení exekuce
- **Execution of a decision** – Výkon rozhodnutí
- **Execution order** – Exekuční příkaz
- **Execution termination** – Skončení (provedení) exekuce
- **Law about evaluation of property** - Zákon č. 151/1997 Sb., o oceňování majetku - *Law No. 151/1997 Code, about evaluation of property*

- **Law about ownership of residential units** - Zákon č. 72/1994 Sb., o vlastnictví bytů v platném znění – *Law No. 72/1994 Code, about ownership of residential units*
- **Law No. 145/2010 Code, about consumer loan and change of some laws** - Zákon č. 145/2010 Sb., o spotřebitelském úvěru a o změně některých zákonů
- **Law No. 357/1992 Code, about heritage tax, gift tax and transfer tax of movable** - Zákon č. 357/1992 Sb., o dani dědické, dani darovací a dani z převodu nemovitostí
- **Law No.183/2006 Code, about regional planning and building order** - Zákon č. 183/2006, o územním plánování a stavebním řádu
- **Narrowing common marital ownership** – Zúžení společného jmění manželů
- **Natural person (consumer)** - Fyzická osoba (spotřebitel) – *using in contracts his personal ID*
- **Natural person entrepreneur** - Fyzická osoba podnikající – *using contracts his business identification number*
- **Note** – Poznámka
- **Obligee** – Oprávněný
- **Obligor** – Povinný
- **Record of real rights** – Záznam
- **Sub-lien** – Podzástavní práv