CZECH UNIVERSITY OF LIFE SCIENCES PRAGUE
Faculty of Economics and Management
Department of Law

DIPLOMA THESIS

Legal Regulation of Real Estate Purchase

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DIPLOMA THESIS ASSIGNMENT

Aneta Sychrová

specialization of the study: Economics and Management

In accordance with the Study and Examination Regulations of the Czech University of Life Sciences Prague, Article 17, the Head of the Department assigns the following diploma thesis to

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1. Introduction
2. Objectives of thesis and methodology
3. Literature overview
4. Practical part - Possible Risks of Real Estate Purchase
5. Conclusions
6. Bibliography
7. Supplements

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Bibliography:

ELIÁŠ, K. et al. Občanský zákoník : velký akademický komentář : úplný text zákona s komentářem, judikaturou a literaturou podle stavu k 1.4.2008. 1. Vol. 1. Praha: Linde, 2008.
BAREŠOVÁ, E., BAUDYŠ, P. Vzory listin o nemovitostech : komentované vzory s disketou. Vol. 2. Praha: C. H. Beck, 2003.
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The Diploma Thesis Supervisor: **Doc. JUDr. Ing. Bohumír Štědroň, Ph.D., LL.M., MBA**

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Head of the Department

ČESKÁ ZEMĚDĚLSKÁ UNIVERZITA V PRAZE
Provozně ekonomická fakulta

.....
Dean

In Prague: 16th November 2010

Registered by Dean's Office of the FEM under the number

Declaration

I declare that I have worked on my diploma thesis titled "Legal Regulation of Real Estate Purchase" by myself and I have only used sources mentioned in the bibliography.

Prague, November 30th, 2011

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Bc. Aneta Sychrová

Acknowledgment

I would like to express my sincere gratitude to my supervisor Doc. JUDr. Ing. Bohumír Štědroň Ph.D., LL.M., MBA and to JUDr. Radka MacGregor Pelikánová, Ph.D., LL.M., MBA. Thank you for appreciable and inspiring advices concerning my diploma thesis, critical suggestions, tolerance and great encouragement. Last, but not least, I would like to thank my mother who supported me during all of my studies.

Právní úpravy pořízení nemovitosti

Legal Regulation of Real Estate Purchase

Souhrn

Tato diplomová práce pojednává o právní úpravě pořízení nemovitosti na území České Republiky a o možných rizicích pro kupující a prodávající. Teoretická část nejprve obsahuje vymezení a charakteristiku základních pojmů a institutů souvisejících s pořízením nemovitosti, poté se detailně zabývá úpravou rezervační, předkupní a kupní smlouvy. Dále podrobně rozebírá obsah katastru nemovitostí a postupů nutných k provedení vkladu. Také je zde popsáno prohlášení vlastníka, členství ve společenství vlastníků bytů a v družstvu a v neposlední řadě podmínky pro pořízení nemovitosti na území České Republiky cizincem. V praktické části jsou zhodnoceny nejčastější rizika pro strany kupní smlouvy. Dále je zde uvedeno několik podrobných příkladů daňových povinností jak ze strany kupujícího, tak prodávajícího. Také je obsaženo podrobné srovnání a případné výhody či nevýhody koupě nemovitosti v osobním a družstevním vlastnictví. Shrnutí zpracované problematiky je obsaženo v závěru.

Klíčová slova

Nemovitost, katastr nemovitostí, pořízení, Česká Republika, kupní smlouva, družstvo, osobní vlastnictví, Občanský Zákoník, právní úprava

Summary

This diploma thesis deals with the legal regulations for real estate purchases in the territory of the Czech Republic and also with potential risks for sellers and buyers. The theoretical part starts by outlining the qualifications and characteristics of the basic terms and institutes related to the purchase of real estate. It further describes a reservation contract, future purchase and purchase contract. It then deals with the proceedings at the Land Register in order to successfully accomplish contribution. Moreover it studies statements of the owner and a membership in an association of owners and in a cooperative and last, but not least, it explores the conditions under which foreigners are able to buy real estate in the Czech Republic. A section follows which

deals with practicalities, such as evaluating the common risks for both parts of the purchase contract. Furthermore several specific examples demonstrate tax liabilities from both the buyers and sellers point of view. And finally there is included a detailed comparison of private and cooperative ownership pointing out its advantages and disadvantages. The conclusion contains a summary of elaborated problems.

Keywords

Real Estate, Land Register, Purchase, Czech Republic, Purchase Contract, Cooperative, Private Ownership, Civil Code, Legal Regulation

Content

1. Introduction

I have selected this topic of diploma thesis because it is very close to my profession. I have been working in the real estate agency Homesweethome s.r.o. in the department of long-term rentals for one year, and after my studies I would like to continue in a different real estate agency in the sales department, so the knowledge gained while processing this diploma thesis is very useful to me.

Moreover, real estate is one of the most important areas of business in the modern world. Any piece of land or house can be classified as a real estate. Everyone has to live somewhere, so the topic of a real estate purchase is presently enjoying a great interest among a wide range of people throughout all income categories. The possibility to obtain a mortgage had been enlarged in the past decade, which makes the purchase of real estate much more affordable for nearly anyone. People naturally have the desire to live in their own dwelling and for some it becomes the aim of their life and the biggest investment they have ever conducted. As such, real estate is one of the largest, if not the largest, purchases that people will ever make.

Not only is a house or a flat necessary as a place to live, but it can also be a sound investment. Real estate is a very big business. People purchase residential property all over the globe and can obtain profits from its rental or renovation. Not only does residential real estate bring in large profits, but, as well, commercial real estate such as shops, storage facilities and offices are even bigger business areas.

Relating to real estate purchases as a whole and conducting the reservation, future purchase or purchase contracts, there could be a few legal pitfalls. This thesis delineates these pitfalls and gives its readers practical advice and overall insight into the purchase of real estate in the Czech Republic conducted either by a citizen or a foreigner.

2. Objectives and Methodology

The primary objective of this diploma thesis is to study in detail the process of a real estate purchase in the legal environment of the Czech Republic and to point out possible risks connected to the purchase contract realisation in order to be able to conduct such a transaction in practice. Then follows a comparison of the private and cooperative form of ownership, evaluating which of these is more advantageous from a buyer's viewpoint where the hypothesis is formulated as follows: Private ownership is generally more advantageous than cooperative ownership. The whole diploma thesis is focused on giving its readers information and advice that can be utilized in practice.

The theoretical part of the thesis, the legal framework overview, is divided into several sections. It begins with qualifications and characteristics of the basic terms and institutes related to the purchase of real estate. It further describes a reservation contract, future purchase and purchase contract. It deals with proceedings at the Land Register in order to successfully accomplish contribution. Moreover, it studies statements of the owner and membership in an association of owners and in cooperative and last, but not least, it stipulates conditions under which are foreigners able to buy real estate in the Czech Republic. This theoretical part was dedicated to data collection using the secondary research of literature available. The literature was mainly concerned with legal regulations in the Czech Republic connected to the real estate purchase. The resources were books, academic and business related articles, generally available data and my own experience working in the real estate field.

I would like to point out that it was very difficult to separate the theoretical from the practical part and, at the same time, to keep an order of the thesis. As a result, there are some practical advices present in the theoretical part and on the other hand there is some theory present in the practical part.

The practical part first examines different aspects of real estate purchase conducted in the Czech Republic by foreigners using PEST analysis as its analytical tool. It further moves to the possible factual or legal problems that real estate might potentially suffer from, it

points out the risks such as the right of lien, easement, pre-emption right, duplicate record in the Land Register, problems with the payment of the purchase price or with the ownership of a plot of land under the building and gives advice how to avoid them when conducting a purchase contract. The practical part also includes tax liabilities of both parties of the purchase contract and gives detailed practical examples that might arise first from the sellers and then from the buyers viewpoint. The following, and final, part utilizes a comparative analysis in order to find out which part of ownership, whether private or cooperative, is more advantageous using also a SWOT analysis for both ownership types.

The whole practical part was supported by findings from an interview conducted with Mgr. Ondřej Staněk, who works as a corporate lawyer in a real estate agency called Výběr Reality s.r.o., and whose comments and advice from real-world practice was very valuable. The interview started with the legal basis of the real estate purchase, followed through different types of real estate, types of its ownership and the consequences each of them has, types of financing of its purchase, connected tax liabilities and followed to proceedings in Land Register. Mentioned was also LLC (*s.r.o.*) as a type of ownership, but I decided to exclude it from my diploma thesis as it is not a very important and not often used type of ownership, which is in nature similar to a cooperative.

3. Theoretical Part – Legal Framework Overview

3.1 Basic Principles Involved in a Real Estate Purchase in the Czech Republic[1]

Certain basic principles of the applicable laws must be respected during the acquisition of real estate in the Czech Republic. These principles are as follows:

- Real estate situated in the territory of the Czech Republic is registered in the publicly accessible Land Register. The Land Register contains relevant facts about any particular piece of real estate as well as information about legal relationships applicable to them, especially the identification of their owners and limitations of the ownership rights. Before any acquisition, it is thus advisable to check the Land Register for the legal status of the real estate being acquired, preferably with the help of an appointed consultant who is specializing in the relevant legal field.
- The principle "superficies solo cedit"[2] (the surface yields to the ground) does not apply in the Czech Republic. Thus, if someone is acquiring a building, he/she is not automatically acquiring the land on which the building is situated. Therefore, it is necessary in every acquisition to ensure that, besides the ownership title to the building being acquired, the purchaser also acquires the ownership right to the land on which it stands.
- Real estate in the Czech Republic becomes acquired upon the entry of the ownership right in the Land Register (referred to as a two-phase acquisition of ownership right). Thus, for the transfer of an ownership right to a purchaser it is not sufficient to sign the respective contract (e.g. on purchase or on a donation), but the ownership right must also be entered in favour of the acquirer in the Land Register. Only then is the property acquisition accomplished.
- From the formal point of view, a written form is obligatory for legal acts (especially contracts) concerning the transfer and acquisition of real estate, and the signatures of the parties (i.e. the transferor and acquirer) must be on the same

[1] ADAM, J., SYROVÁTKO, P. *Acquisition of Real Estate in the Czech Republic*, Czech Business and Trade, 2010.
[2] ELIÁŠ, K. et al. *Občanský zákoník : velký akademický komentář : úplný text zákona s komentářem, judikaturou a literaturou podle stavu k 1.4.2008.* 1. Vol. 1. Praha: Linde, 2008, p. 483.

document. In order to prove the identity of the parties vis-á-vis the respective cadastral office, it is regularly required that the signatures on this document be officially certified.

- Transfers of real estate are subject to a real estate transfer tax, which amounts to 3% of the price of the real estate being transferred. The tax is payable by the transferor, but the real estate acquirer becomes, by operation of the law, the guarantor of the tax liability. Consultation with specialists is advisable on other tax liabilities related to the acquisition of real estate.

3.1.1 Main Laws Governing Real Estate in the Czech Republic

- Civil Code – No. 40/1964 Coll. (*Občanský zákoník*)
- Commercial Code – No. 513/1991 Coll. (*Obchodní zákoník*)
- Czech Land Register Act – No.344/1992 Coll. (*Zákon o katastru nemovitostí ČR*)
- Ownership of Flats Act – No. 72/1994 Coll. (*Zákon o vlastnictví bytů*)
- Registration of Ownership and Other Property Rights to Immovables Act – No. 265/92 Coll. (*Zákon o zápisech vlastnických a jiných věcných práv k nemovitostem*)
- Building Act – No. 183/2006 Coll. (*Stavební zákon*)
- Real Estate Tax Act – No. 338/1992 Coll. (*Zákon o dani z nemovitostí*)
- Inheritance Tax, Gift Tax and Real Estate Transfer Tax Act – No. 357/1992 Coll. (*Zákon o dani dědické, dani darovací a dani z převodu nemovitostí)*
- Foreign Exchange Act – No. 219/1995 Coll. (*Devizový zákon*)
- Government Regulation 371/2004 Coll., laying down standard rules of unit owner association, as amended by Government Regulation 151/2006 Coll.

3.1.2 Types of Rights Over Land Recognised in the Czech Republic

- ownership (sole ownership, co-ownership or community property of spouses)
- possession
- mortgages and sub-mortgages
- easements
- leases and subleases

- preliminary contracts
- pre-emptive rights
- right of back purchase.

All rights *in rem* are registered, because they generally begin to exist after registration in the Land Register. These are ownership (co-ownership, joint property of spouses), mortgages, easements and pre-emption rights *in rem*. If the right must be registered in the Land Register, the right will not exist solely on the basis of the agreement of the contractual parties until the registration is accomplished.

There are several rights which are not required to be registered in order to become legally effective, namely possession, leases and subleases, pre-emption rights *in personam* and rights of back purchase. The other rights must be registered.[3]

3.2 Legal Definitions[4]

The subject of property rights in our legal system can only be a material thing, the law creates a fiction of ownership of such a material thing in a form of a unit that can be a flat or a commercial space defined as a limited part of a building, which is a subject of co-ownership by the Act on Ownership of Flats. There is a specific terminology that has been adopted in order to deal with these specific relations. These special terms are in the Act on Ownership regulated in § 2, but their use should be viewed in a broader context. For this reason this article is devoted to terms generally used in the Civil Code and their relationship to terms specifically used according to the Ownership of Flats Act.

Land

According to § 27 Act No. 344/1992 Coll. of Czech Land Register Act, land means a natural part of the earth's surface separated from adjacent parts by an administrative unit boundary, cadastral boundary, ownership boundary or any natural limit such as a land type or method of land use. It is an individually determined part of the Earth's surface which is impossible to break or move. Land which has a geometrical and positional determination is

[3]KUBÁNEK, M., ŠLAPÁKOVÁ, P. *The International Comparative Legal Guide to: Real Estate 2011, A Practical Cross-border Insight into Real Estate Law*. Global Legal Group, 2011.
[4]SCHŐDELBAUEROVÁ, P. Vlastnictví bytů-základní pojmy. *Stavební fórum*, 2007.

shown in the cadastral map and is marked with a plot number is called a ***plot***.[5] Compact land may consist of several plots. Land is determined by a plot number and possibly by the name of the municipality or cadastral area.[6]

Property Appraisal Act[7] divides land:

Construction, agricultural and forest land, land registered as a water reservoir and water flows and other land which is listed as economically unusable and barren soil such as gorge, stony land , protective barrier, marsh or swamp.

Czech Land Register Act[8] divides land:

Arable land, hop field, vineyards, gardens, orchards, permanent grass stand, forests, water area, built up area, forecourt and courtyards and other areas.

3.2.1 According to Legislation of the Civil Code

The subjects of civil law relations are, according to § 118 of the Civil Code things, rights, other property values and residential and commercial spaces. This provision indicates that the subject in terms of *civil relations* and thing as subject of *property rights* (which is one of the kinds of civil relations) is not the same. As defined in Civil Code § 118 paragraph 2 apartments and commercial spaces are objects of civil law relationships, but they are not inherently possible to acquire as a thing , because in fact they are not things, and the subject of property rights under applicable legislation according to the Civil Code can only be a thing.

Thing

The concept of a "thing" is not defined in our legal system.[9] A thing is generally considered to be a manageable physical object[10], or manageable natural force, which both

[5] DVOŘÁK, T. *Vlastnictví bytů a nebytových prostor*. Vol. 1. Prague: ASPI a.s., 2007. p. 66.
[6] BRADÁČ, A., FIALA J. *Nemovitosti : oceňování a právní vztahy.* Vol. 3. Prague: Linde, 2004.
[7] Property Appraisal Act No.151/1997 Coll.
[8] Czech Land Register Act § 2 clause 3
[9] Legal definition of thing included in. No. 101/1963 Coll., of legal relations in international trade (International Trade Act), § 13.
[10] ŠVESTKA, J., SPÁČIL, J. et al. *Občanský zákoník : komentář I.* 2. Prague: C. H. Beck, 2009, p.

serve the needs of people. Basic characteristic features of the thing are its manipulability and usefulness to humans.[11] To decide whether a physical object is in a legal sense considered to be a thing or not must be assessed with regard to the circumstances and nature of the concrete case. Thing in a certain sense also implies a particular independence. The Civil Code divides things as mobile and immobile - movable and immovable (real estate).

Construction

The definition is contained in § 2 paragraph 3) of Act No. 183/2006 Coll. (Building Act) in the sense that as a construction is deemed all construction work, regardless of it's technical construction execution, purpose and duration. *Real estate* in a meaning of the Civil Code is only the construction that is connected to ground with a solid foundation. That is why the construction that is not connected to the ground with a solid foundation is considered to be a *movable thing,* and if it becomes the subject in civil law relations, it requires different legal acts than those relating to a real estate (eg, a contract for the transfer of this kind of construction does not require a written form, and for the acquisition of such a construction it is not necessary to record it in the Land Register, etc.). For the concept of construction in the civil law relations, it is irrelevant whether its establishment preceded a building permit and whether the final building approval has been issued after its completion or other essentials that are normally required by the Building Act. [12]

Part of Thing

Part of a thing - is defined in § 120 clause 1 of the Civil Code and it is everything that belongs to the thing and cannot be separated without decreasing the value of main thing. A thing and its components are understood as a single thing with a single legal regime, so the part also shares the legal fate of the main thing. A part of a thing cannot be itself the subject of property rights.[13] Extensions (penthouses) of a building are not separate things

637 and following.
[11] ELIÁŠ, K. et al. *Občanský zákoník : velký akademický komentář : úplný text zákona s komentářem, judikaturou a literaturou podle stavu k 1.4.2008.* 1. vol. 1. Praha: Linde, 2008, P. 476 and following.
[12] BRADÁČ, A., FIALA J. *Nemovitosti : oceňování a právní vztahy.* Vol. 3. Praha: Linde, 2004. 2004, p. 14.
[13] VIMMER, Eduard. Aktuální problémy právní úpravy bytového vlastnictví. *Časopis pro právní vědu a praxi*, p. 85 – 87.

(real estate) as they are part of the existing building. The flat, although it is not within the meaning of the Civil Code directly connected to the ground with a solid foundation and is not the thing, is, under the Act on Ownership of Flats (*ZOVB-Zákon o vlastnictví bytů*), regarded as an immovable thing (real estate), but only as far as it is defined as the subject of ownership. It is important to note that the flat is the subject of ownership only as far as the Act on Ownership of Flats defines it as a unit (although in practice it is inaccurately called Flat ownership instead of Unit ownership). It is also defined that the building is not part of the plot of land so the hypothesis of superficies solo cedit is not valid for the Czech Republic. Pavement, tennis courts, parking lots, garden ponds etc are understood as part of the land.[14]

Accessories of Thing

Accessories of a thing - defined in § 121 paragraph 1 of the Civil Code is a separate independent matter. It is characterized as a thing which belongs to the owner of the main thing, and is intended to be consistently used with the main thing (eg, farm buildings, sheds, wells, etc.), but, at the same time, it must always be independent on the main thing. The owner of the main thing and its accessories is the same entity.[15] For the nature of things as an accessory it does not matter whether it is associated with the main thing technically or it is unrelated. Some buildings may have a dual nature (e.g. a detached garage can be an accessory item or independent thing). The main thing can be only one, with more things as its accessories. There have been many disputes and legal changes concerning the ownership of an accessory, its specification and transfer of ownership rights depending or not on the main thing.[16] For the above stated reason it is necessary to specify in the purchase contract exactly the range of accessories that belong to the thing. [17] It is necessary to emphasize that the accessory of a flat or even of a commercial space cannot be a commercial space nor the common parts of the house.

[14] See Supreme Court of the Czech Republic verdict from 26.10.1999, sp.zn. 2 Cdon 1414/1997, from 13.5.2003, sp.zn. 22 Cdo 737/2001 and findings of Constitutional Court from 24. 5. 1994, sp. zn. Pl. ÚS 16/93.

[15] ELIÁŠ, K. et al. *Občanský zákoník : velký akademický komentář : úplný text zákona s komentářem, judikaturou a literaturou podle stavu k 1.4.2008.* Vol.1. Prague: Linde, 2008, p. 498.

[16] Compare Supreme Court of the Czech Republic verdict from 4.7.1985, sp. zn. Rc 4 Cz 25/85, from 25.6.1956, sp. zn. Rc 3 Cdon 1053/96, from 14.8.2001, sp. zn. Rc 28 Cdo 133/2001, from 11.9. 2003, sp. zn.31 Cdo 2772/2000, from 30.8.2005, sp. zn. 22 Cdo 1844/2004

[17] BAREŠOVÁ, E., BAUDYŠ, P. *Zákon o zápisech vlastnických a jiných věcných práv k nemovitostem: komentář.* Vol. 3. Praha: C. H. Beck, 2002, p. 397-398.

3.2.2 According to the Act on Ownership of Flats

Building

Not all constructions connected to the ground with a solid foundation are entered in the Land Register. The Land Register records only buildings. Buildings are defined in Act No. 344/1992 Coll. Cadastre Czech Republic (Cadastral Act), as amended[18] as an above-ground construction, which is closed by external peripheral walls and a roof structure.

This definition has been expanded by § 2 Act No. 72/1994 Coll., Act on Ownership of Flats, where it is defined as a permanent building connected to the ground with a solid foundation, which is spatially concentrated and is closed by external peripheral walls and a roof structure, containing at least two spatially separated areas which can be autonomously utilized, excluding halls. This definition often did not suit the specific situation where a detached building was composed of two or more closed units, where each had a separate entrance and was impossible to walk through one to the other. The Supreme Court in its decision file no 30 Cdo 1068/2000, concluded that this unit, with only one entrance and with other units separated by walls, is possible to consider as a building for the Act on Ownership of Flats relations.

Property Appraisal Act[19] divided buildings:

- Ground building including the building and outdoor layout where a building is spatially concentrated and enclosed with external walls and roof structures and has one or more enclosed useful spaces
- Engineering buildings and special ground projects
- Water tanks and ponds

Flat

Flat, according to the Act on Ownership of Flats, means one or more rooms, which are by the Building Act authority designated for housing.

[18] listed in § 27 point. i) Czech Land Register Act
[19] Property Appraisal Act No.151/1997 Coll.

The scope of ownership rights to the unit is given by § 2 Act on Ownership of Flats, according to which the subject of ownership can only be the rooms of a flat (or rooms of its accessories). This corresponds to the floor area according to Act on Ownership of Flats, meaning the floor area of all rooms, including the accessory rooms of a flat. Other areas that can be used exclusively by the owner, but do not form a room, are not subjects of ownership. In the Czech legal system, a flat can only exist as a part of a building. Because of that, ownership of a flat is always legally connected with joint ownership of the shared areas (parts) of the building that the flat is located in. Besides that, ownership of a flat is always legally connected with the right to use the plot of land beneath the building containing the flat.

Commercial Space

Non-residential space, according to the Act on Ownership of Flats, means one or more rooms which are, by the Building Act authority, intended for a purpose other than housing.

House with Flats and Commercial Spaces

A house with flats and non-residential areas is jointly owned according to Act on Ownership of Flats and it is divided into units.

Unfinished Flat or Commercial Space

An unfinished flat and commercial space under construction is defined as a set of rooms designated (in accordance with the Building permit) for housing or other purposes, if the house is at least at such a stage of development that it has complete peripheral walls and roof structures. This definition is particularly necessary when conducting the contracts for the construction of units (§ 17 Act on Ownership of Flats).

Common Parts of the House[20]

This includes foundations, the roof, main vertical and horizontal structures, entrances, stairways, corridors, balconies, patios, laundries, drying rooms, pram storage, boilers, chimneys, heat exchangers, heat distribution, distribution of hot and cold water, sewer, gas,

[20] DVOŘÁK, T. Poznámky ke společným částem domu. *Právní fórum*. 2008, p. 493.

electricity , air conditioning, elevators, lightning, a common antenna, even when they are placed outside the house. Considered as other common parts of the house are also accessory buildings (eg petty construction)[21] and the common equipment of the house (eg equipment of shared laundry). It is not a comprehensive list, although the Act on Ownership of Flats is currently the only legislation that at least defines common parts of the house. [22]

Unit[23]

Unit is specified for the purposes of the Act on Ownership of Flats in § 2 point h). The term unit for a flat or commercial space is defined as the real part of the house which alone can be the subject of property rights. The essential idea according to the Act on Ownership of Flats is the co-ownership of the building and simultaneously the ownership of the unit as an indivisible part of the building. Co-ownership of the building and ownership of the unit cannot be separated, so that each owner of a flat or commercial space is therefore simultaneously the co-owner of the common parts of the house. Neither flat nor commercial space can figure as a thing, as specified in Civil Code § 119, but according to the Act on Ownership of Flats, may be a subject of the civil relations and it is possible to acquire them and dispose with them as if they were an autonomous thing. For the purposes of the Act on Ownership of Flats, the flats and commercial spaces-units are viewed as real estate. Legal proceedings in regards to units are governed by the provisions of the relevant legislation-primarily the Act on Ownership of Flats and issues that are not covered there follow the provisions of the Civil Code relating to real estate. [24]

Floor Area of Flat and Definition of the Room

Under the point i) the floor area of a flat or unfinished flat is the area of all rooms, including accessory areas. To calculate the floor area is a key concept of the term "room of flat." The law does not define the concept of the room; neither does the Civil Code nor the Building Act. Generally a room can be defined as every area located in a building which is

[21] DVOŘÁK, T. *Vlastnictví bytů a nebytových prostor*. Vol. 1. Prague: ASPI a.s., 2007. p. 50.
[22] MacGREGOR PELIKÁNOVÁ, R. Komparatistické poznámky k vymezení společných částí budovy . *Právní fórum*, 2009, p. 538.
[23] DITMAROVÁ, M. Vlastnictví bytu a společenství vlastníků jednotek ve světle rekodifikace. *Právní Fórum*, 2011, p. 311.
[24] DVOŘÁK, T. *Vlastnictví bytů a nebytových prostor*. Vol. 1. Prague: ASPI a.s., 2007. p. 45.

enclosed on all sides by perimeter walls, floor and ceiling and is lockable, so it is equipped with standard door frames and entrance doors.

Floor area is calculated as the sum of the floor areas of all rooms in the flat, i.e. both rooms for housing and accessory areas as described in the Civil Code. The floor area of a room is calculated as the content of its geometric shape.

It is obvious that the floor area of the room does not include pillars (supporting posts) in the middle of the room and no partitions, which do not fulfil the function of separating rooms and do not reach the ceiling (eg, bathrooms joined with toilet). However, built in equipment such as furnishings (eg bath, stairs, etc.) are included.

In the case of an apartment located on two floors connected with stairs located inside of the apartment - duplex – counts the entire floor area of the lower room including the projection of the staircase, the floor area of the upper room does not count the space for a staircase hole.

In the case of retention walls- if they are located on the floor level, the floor area of the room is reduced by the thickness of the retention wall.

When it comes to the common spaces such as air shaft, ascending pipes, elevator shafts, subways, atrium, staircase either inside or outside the house – the floor area of these elements does not count into the floor area of flat. It is a common part of the house, where the calculation of floor area is pointless, because it does not affect the determination of the amount of co-ownership share on the joint parts of the house. The ground plan size of the technical elements (and of other common parts of the house) is necessary to take account for each floor only when making a drawing – a plan of all floors, which are annexed to the Statement of the owner of the building according to § 4 of Act No. 72/19994 Coll. and the purchase contract for the transfer of a flat or commercial space according to § 6 paragraph 2 of the same Act. [25]

[25] SCHŐDELBAUEROVÁ, P. Vlastnictví bytů-základní pojmy. *Stavební fórum*, 2007.

3.3 Reservation Contract[26]

The reservation contract guarantees that the purchaser can reserve the property for an agreed period of time. During this period the seller or the real estate agency cannot sell it to anybody else. The objective of such a contract is to provide the eventual purchaser enough time to check the legal and factual position of the real estate and, if necessary, to ensure that the buyer can fulfil the financial means of the real estate purchase.

Usually the contract is formed by depositing the reservation fee. The amount is not specified by law, or any other legal regulation, but usually it varies from 20 000,-CZK to 100 000,- CZK for a real estate unit. It is paid in cash at the time of signing the reservation contract. It is recommended that the purchaser make sure whether the payment of the reservation fee is factored in as part of the purchase price at the final closing of the transaction.

A potential problem might occur when negotiating conditions under which the reservation fee is returned to the interested party. Such conditions usually cover legal defects (such as the existence of a right of lien, easements, issues with leases) and factual defects (e.g. the roof of the house needs repair), but it specifically depends upon the contractual parties. Ideally for a buyer the fee should be returned in the case that a purchase contract is not signed. Usually a buyer should check all the necessary and relevant facts before signing the reservation contract and paying the reservation fee. In most cases, the reservation fee becomes compensation to the seller in case the buyer changes his mind, meaning a compensation for another buyer who was lost to the seller due to the reservation or other lost opportunities. In the case where the seller fails to complete the contract, the reservation fee is (in ethical cases) given back to the potential buyer in the full amount.

3.3.1 Content of Reservation Contract

Firstly, the contract should stipulate the period for which the real estate is reserved so as to ensure that it cannot be sold to anybody else. The seller, or a third party agent, should enable the purchaser to check the legal and factual issues surrounding the real estate. The

[26] GRŮLICH, R. Purchasing Real Estate-Overview. *Expats*, 2008.

contract should provide a provision of financial means for the purchase (e.g. mortgage credit).

The seller, usually the third party agent, (e.g. real estate agency) should unconditionally confirm within the reservation contract that the specified real estate cannot be sold or offered for sale to anyone else during the period.

The contract should include the amount of the reservation fee, as agreed by all parties, conditions for the return of the fee and a clause that the fee is included in the purchase price of the real estate.

Furthermore, the basic condition is that the person who takes the fee is also the person who shall return the fee, in the event that no purchase contract or future purchase contract is concluded.

3.4 Future Purchase Contract[27]

A future purchase contract is mainly used when the buyer needs to secure funding (mortgage). It is accepted by the majority of banks as evidence of a purchase.
The main purpose is the written commitment of the participants to conclude the purchase contract within an agreed period, following conditions set in the original future purchase contract.

It is interesting is that the transfer of ownership of real estate is governed by the Civil Code, but Future Purchase Contracts are governed by the Commercial Code, even if the contract refers to the real estate and even though generally the system of a Future Purchase Contract then concerns the transfer of ownership.

[27] GRŮLICH, R. Purchasing Real Estate-Overview. *Expats*, 2008.

3.4.1 Content of the Future Purchase Contract[28]

According to law, a substantial part of the ultimate *purchase contract* should be in the future purchase contract. This will ensure the success of negotiations about future contract conditions.

The written contract should stipulate the parties of the contract, express obligations for the conclusion of the contract and the period during which the contract must be concluded. It is standard to stipulate the obligation of the seller to transfer the ownership rights and the obligation of the buyer to pay the seller the agreed price. It is imperative that the purchase price is clear and also the method by which the price will be remitted.

3.4.2 Recommended Contractual Clauses in Future Purchase Contract

Firstly, the Future Purchase Contract usually stipulates the method of payment of the purchase price. The buyer is obliged to pay a certain amount of money. This is then deposited in an escrow account with assistance of a notary or lawyer. This is set off against the full purchase price. However, this money may also serve to pay the vendor a contractual penalty, as per the contract conditions, for failure to meet obligations or withdrawal from the contract.

A very important part of the contract is undoubtedly the specific reference to contractual penalties for breaching obligations within the Future Purchase Contract. Further sanctions would arise in the event that the buyer fails to obtain the financing for completion or if statements made by the participants to the contract are proved to be invalid.

Clauses frequently state that the subject of the real estate in question (during the period stipulated in the contract) cannot be sold, assigned or encumbered in any way by the vendor.

[28] ČECH, P. Kdy použít obchodní zákoník a kdy jen občanský zákoník II. *Právní rádce*, 2008, p. 60.

It is possible to agree upon conditions for withdrawal that are in favour of both parties. The contractual freedom of the participants to a Future Purchase Contract allows the parties to adapt the contract to suit both sides of the deal. Therefore, it is not possible to list all possible variations and possibilities of such contracts. Due to the wide range of possible contract wordings, it is important to obtain the advice of an experienced lawyer.

3.5 Purchase Contract[29]

The Purchase Contract was first mentioned in the Civil Code from 1950 (§ 366 and following) In the Civil Code from 1964, the different ideology tried to decrease the meaning and interest in Purchase Contracts and its legal regulation consisted of only six paragraphs and was missing all of side negotiations.

The Purchase Contract is defined by both the Civil Code and the Commercial Code. However, the Purchase Contract with regard to real estate as the subject is always governed by the Civil Code. The only exception is the sale of a firm where the real estate belongs to it as its trade property (an enterprise), in which case § 476 of Commercial Code is used.

3.5.1 Parties of the Purchase Contract

A natural person must include the name and surname and personal identification number (date of birth in the case of foreigners). The Civil Code does not require the personal identification number in the contract (date of birth is sufficient), but according to § 4 paragraph 3 Act No. 265/1992 Coll. it is required further for the initiation of registration in the Land Register, therefore it is very convenient to have the personal identification number already in the contract. Within the contract the seller must be obliged to sell the real estate and the buyer must be obliged to purchase the real estate at the purchase price.

[29] BLATNÝ, M. Odkup stavby a pozemku pro podnikání. *Daně a právo v praxi*, 2010, p. 43.

A legal entity must include the name of the firm, its seat and identification number. In the case that the Czech Republic as a state is present as one party of the Purchase Contract, then it is taken as a Legal Entity.

3.5.2 Subject of the Purchase Contract

Each and every parcel of real estate should be marked in an unmistakeable way. The real estate included in the Land Registry evidence must be recorded according to provision § 5 clause 1 of Land Register Act. A purchase contract for the property that is registered in the Land Register requires registration of such an ownership transfer. In the case that the property is not correctly stated in the contract, the input would be denied by the Land Register Authority. If the real estate includes an accessory property, it should be spelled out in the purchase contract.

3.5.3 Purchase Price

A purchase contract must state the purchase price and the way of its settlement and, in some cases, also the method of its calculation.

3.5.4 Demonstration of the Free Will

The buyer and seller must both clearly express their free will to buy or sell the particular real estate, it is not sufficient to specify the contract as a purchase contract, it is critical to express the free will of both parties. An exact definition of such a "will" that should be included in contract is not stipulated by the Civil Code. Moreover, even the individual courts have different opinions. Generally it is recommended to use formulas such "I buy" and" I sell".[30] This free will is further confirmed by the signature of both parties. As the Land Register office verifies the signatures of the seller and buyer, it is recommended that the signatures are verified on the contract itself.

[30] BAREŠOVÁ, E., BAUDYŠ, P. *Vzory listin o nemovitostech : komentované vzory s disketou*. Vol. 2. Prague: C. H. Beck, 2003.

The will of both parties should be present on one document that is solidly joined together, most suitably by string or sticker or at least by a splicer, which should prevent the possibility to include or exclude any page of the document.

3.5.5 Written Form of the Purchase Contract

According to provision § 40 of Civil Code, a contract must have a prescribed specified form under a sanction of invalidity. Moreover, provision § 46 of Civil Code stipulates that a purchase contract concerning a transfer of ownership of real estate[31] must be in a written form.

3.5.6 Guarantees and Penalties[32]

It is necessary to ensure that there are substantial guarantees built into the contract for the buyer. Similarly, the seller will need guarantees to ensure the payment of the purchase price by the buyer. Guarantees have the form of a statement or a commitment. A guarantee in the form of a commitment means that the buyer or the seller is obliged to do something or, on the contrary, not do anything.

In order to ensure that both the buyer and seller are motivated to uphold the guarantees, it is useful to link the breach of guarantees to the payment of a contractual penalty. The situation might be easier by including the obligation of the seller to return any part of the purchase price, already paid, within a certain period and an obligation of the buyer to vacate the real estate within the same period.

Generally it is best to stipulate the right of withdrawal from the contract in the instance that the buyer will not be registered as the owner by the Land Register. It is necessary to determine exactly when the real estate will be handed over to the buyer, and who will submit the application for recording it into the Land Register.

[31] See provision 46 clause 1 of the Civil Code, provision § 151 Civil Code, provision § 156 clause 1 Civil Code, provision § 603 clause 2 of the Civil Code
[32] GRÚLICH, R. Purchasing Real Estate-Overview. *Expats,* 2008.

3.5.7 Obligations of Seller

The seller is obliged to inform the buyer of any defects in the object of purchase he is aware of. The correctness of any information disclosed in the purchase contract is usually guaranteed by the seller and a statutory declaration that he did not withhold any relevant information is included.

The seller assures the buyer that the object of purchase is of a certain quality and it has attributes stipulated by the buyer and it is without defects (including factual and legal defects). In case this disclosure proves to be false, the buyer has the right to withdraw from the purchase contract and moreover, the seller will be liable for his loss.

With respect to contractual guarantees, it is common for the seller to warrant the seller's ownership of the property and also that there are no other encumbrances other than those registered in the Land Register or otherwise disclosed, including legal encumbrances (the contractual guarantee may only be stricter but not milder than the statutory one).

With respect to the statutory guarantee, the buyer must notify the seller of defects that existed at the time of performance without undue delay at the latest within six months. If the buyer fails to do so the claim shall lapse. If the seller does not accept liability for the defect, the buyer can sue him within three years from the notification of the seller; otherwise the claim will become statutorily barred. The buyer may also claim damages in case of breach of contract.

3.5.8 Obligations of Buyer

In addition to paying the sale price (including VAT, if applicable), the buyer as a guarantor is liable for the real estate transfer tax payment in case the seller defaults in paying it.

3.6 Record into Land Register

The official name of this institution is the Czech Office for Surveying, Mapping and Cadastre – COSMC (*Český úřad zeměměřičský a katastrální- ČÚZK*), referred to as a Land Register.

To fully understand the management of real estate, their records and related procedures must be at least briefly discussed. The evidence of real estate[33] in our country follows the public books that served as official lists, where registered properties and rights connected to them were listed. It operated under the jurisdiction of the courts and was available to the public. These public books were mainly land books, railway books and mining books.

The second line of real estate records were land cadastres, which arose due to tax purposes. Land cadastres were one of the instruments of the fiscal policy of the state, and had undergone a complex historical development, which culminated, during the 1950's by eliminating their management and replenishment. The Cadastral Act from 1927 was formally cancelled in 1971. The renewal of the registers and its earlier content was realized on 1.1.1993.

There is only one Land Register in the Czech Republic that covers the entire surface of the Czech Republic. Therefore, unregistered land does not exist in the Czech Republic. This Land Register has 14 branches situated all around the country. The authority of each branch depends on the location of the real estate that is in question.[34] Some of the rights pertaining to land are not registered in the the Land Register, as was mentioned previously.

3.6.1 Information in Land Register[35]

According to the Czech Land Register Act[36] the Land Register is defined as a collection of data about real estate in the Czech Republic that includes geometrical specifications of real

[33] JANKŮ, M. *Nemovitosti : koupě, prodej a další právní vztahy.* Vol. 2. Brno: Computer Press, 2007, p181-182.
[34] Act No. 344/1992 Coll., of Czech Land Register Act, as amended.
[35] BAUDYŠ, P. *Katastr a nemovitosti.* Beckovy příručky pro právní praxi.. Vol. 2, Prague: C.H. Beck, 2010.

estate, location of real estate, and determinations of cadastral territory, plot number, kinds of plot, plot acreage and the use of land. The Land Register includes also data about legal relationships, including data about the owners and their rights or other legal interests to real estate.

Subjects which are evidenced in the Land Register are mainly land in the form of plots, buildings connected to the ground by fixed solid foundation, flats and commercial spaces, unfinished buildings or flats and commercial spaces, etc.[37] According to § 2 clause 2 of Czech Land Register Act the minute (small, minor) structures are not registered. The subject to registration in Land Register is more specified by Public Notice 26/2007 Coll., in the provisions § 3 to 5.

All of this is public evidence, open to the public, where anyone has the right to view the recorded information in the presence of the cadastre officer. It is possible to make and take copies, extracts or drawings. Some basic data about real estate is available on the internet pages of the cadastre. The CzechPoint spots have access to all information from the Land Register.

Not all constructions are present in the Land Register, for example, underground constructions or constructions that are not connected with the ground by a solid base or "minute constructions" are not included. According to the provision § 27 point m) of the Czech Land Regoster Act a *small building* has a single overhead floor, the floor area not exceeding 16 m² and a height 4.5 m, which performs an additional function to the main building. It concerns also buildings designated to ensure the operation of forest nurseries or hunting, if their built-up area does not exceed 30 m^2 and height of 5 m.[38]

[36]Provision § 10 clause 1 point d) Act No. 344/1992 Coll.
[37] Detailed definition is in the provision § 2 clause 1, Czech Land Register Act.
[38] KUBA, B. Vklad do katastru nemovitostí má svá pravidla [on-line]. *Právní rádce*, 2007.

3.6.2 Documents Collected by Land Register

- **Set of geospatial information**, which includes the cadastral map in represented areas and its numerical mark. There are three forms of cadastral maps: digital cadastral map digitized cadastral map and analogue cadastral map (graphic).
- **Set of descriptive information**, which includes data about the cadastral territory, plots, buildings, the flats and commercial spaces, the owners and other beneficiaries, the legal relationships, rights and disclosures.
- **Summary of the Land Fund**, which contains information on the status and development of Land Fund of the Czech Republic, the total value of land types and the division of arable and agricultural into production subareas. An overview of the land fund is presented annually by 31.12. in the Statistical Yearbook of Land Fund.
- **Documentation of results and measurements of surveys realized for the purpose of the keeping and the recovery of geodetic information files.**
- **Collection of documents** which carry out the land registration, including the decision of state authorities, contracts and other documents. The collection, due to its great importance, disposes of a well-defined management regime, ensuring an ongoing easy orientation.

3.6.3 Land Register on-line[39]

The basic information from the Land Register containing the name of the owner of the real property (without further personal data) and the reference to existing encumbrances of the real property (without any further specification) is published on the Internet and is publicly available from www.cuzk.cz, more precisely from http://nahlizenidokn.cuzk.cz/ . There is also a paid Land Register electronic database which is available to everybody who signs up for it and obtains an account.

[39] KUBÁNEK, M., ŠLAPÁKOVÁ, P. *The International Comparative Legal Guide to: Real Estate 2011, A Practical Cross-border Insight into Real Estate Law*. Global Legal Group, 2011.

The procedure for the registration of rights to the particular real estate can be partially completed electronically, because all necessary forms are published on the Internet and can be downloaded very easily. Nevertheless, some of them cannot be sent directly to the data boxes of the Land Register, because the law requires certain attributes which cannot be contained in the electronic version. Therefore, the application for permission to enter the following in the Land Register cannot be used electronically and must still be delivered/taken to/from the Land Register physically: record in the Land Register; record or note with attached geometrical plans; contracts with a clause certifying the entered record; the return of documents delivered physically to the Land Register; or certain documents which are officially certified. As a result of the reform of justice and administration, everything else can be completed electronically using data boxes.

Anyone is allowed to inspect the documents or make copies of them if they prove their identity and the purpose for which they need the information. The only restriction for access is therefore the declared purpose, though it is not obligatory to declare this purpose to obtain information which is freely available on the Internet.

3.6.4 Kinds of Registration in Land Register[40]

Entries in the Land Register shall be made in three ways, containing *a contribution*, *record* and *note*; moreover it can also be a *cancellation* of any rights registered in the Land Registry. Only a contribution has a constitutive effect (right arises from contribution), a record and note have a declaratory character. Types of entry in the Land Registry are defined in the provision § 14 of the Act of Records.[41]

a) Registration of Contribution (*vklad*)

Ownership of real estate is transferred after a decision by the Land Register Authority allowing the registration of the title in the Land Register with an effect from the day when the proposal has been accepted and filled in the Land Register. In the period from application till acceptance, when the title is not registered in the Land Register there are

[40] KUBA, B. Vklad do katastru nemovitostí má svá pravidla. *Právní rádce*, 2007.
[41] BAUDYŠ, P. *Katastr a nemovitosti*. Beckovy příručky pro právní praxi.. Vol. 2, Prague: C.H. Beck, 2010.

only contractual obligations between the contractual parties, but they are not binding or in any way effective against third parties.

The subjects for registration of contribution into the Real Estate Cadastre are the *transfer of ownership*, *right of lien*, *right of easement*, *pre-emptive right* and other rights[42]. The specific documents that are needed for a registration into the Land Register are, for example, Purchase Contracts (transfer of ownership), Lien Contract, Pre-emptive Contract, declarations and agreements[43].

The procedure for the admission of a registration into the cadastre office includes several steps. It includes the initiation of procedure, correction of draft of contribution, reconsideration of draft and related documents and, finally, adjudication.

Initiation of procedure – delivery of draft of contribution into the cadastre

After drafting a proposal for a contribution and delivering it to the competent Land Register Office, the procedure for authorization of the contribution begins. Authorizing a contribution or a cancellation to the Land Register is conducted according to Act No. 500/2004 Coll. of Administrative Code in case that the Act of Record does not state otherwise. The delivered proposal for a contribution is on that day entered by the Land Register Office in the Protocol V. (Protocol of Contribution), it is given a number and marked by a day, month, year, hour and minute according to the stamp on it.

By a maximum of one day after the delivery of the proposal for contribution, record or note, the cadastre office will mark the relevant real estate with a “seal” registering the letter "P". It means that the real estate is affected by a legal process. This register shows third parties that proceedings are in progress. Information about the kind of proceeding is provided by the cadastre. The fact of a marked “seal” does not mean that the owner of the affected property is limited in the handling with his real estate.

[42] Ander provision § 2 clause 4 point b) to i) Czech Land Register Act
[43] Listed in the provisions § 36 of the implementing Decree No. 26/2007 Coll.

Before making a decision to permit the contribution or not, the Land Registry has to examine the essentials of the proposal. What such a proposal should contain is stated in the provisions § 4 clause 3 of Act of Record. The draft must include:

- an indication of the cadastre to which the draft is addressed
- an exact identification of the individuals who are party to the procedure
- designations of the rights which are supposed to be entered into the cadastre
- the application must include legally stated documents[44]

The Land Register Office, before taking a decision, examines the requirements of the sent documents under provision § 5 Act of Records. The power of attorney must be annexed if the attendant is represented by a third party. Then Abstract of Trade Register if one of parties is a Legal Entity. Additionally, it is necessary to provide a deed proving the rights of the owner, or some other legally qualified person, to treat the subject in a legal operation (and provide a certified translation of the deed stating the right to be entered into the cadastre if this deed is not written in Czech). This must be handed into the relevant numbered office as per the Czech Land Register Act.

Correction of draft of contribution

If the draft of contribution does not have the above stated terms, the cadastre office will ask the applicant to correct these errors or to present the requested deeds within a stated period. The applicant is reminded of the possibility of refusal of the draft if the stipulated duties are not fulfilled. Such an interruption occurs according to § 64 of Act of Record.

Reconsideration of Draft of Contribution and Presented Documents

The Land Register Office examines the facts before releasing a decision. The office will then ensure that the parties have the legal right to be registered and that there is no outstanding legal issue to affect it.

[44] Determined by provision § 4 clause 4 of Act of Records (usually the Purchase Contract and the Title Deed with the information about acquisition of real estate by the current owner).

Interruption of the Process

Situations that might occur to stop the procedure of authorization of proposal by Land Registrer:

- administrative fee (500 CZK per draft of contribution) was not paid by applicant, not even within a fifteen days period from the appeal of Land Register[45]
- defects of proposal have not been eliminated after appeal of Land Register Office
- proposal was withdrawn by the applicant and other parties agree
- there is an obstacle, that the subject is under proceeding by another administrative authority for the same reason
- extinction of things or rights to which the proceedings concerned

The decision of the Land Register to stop proceedings is sent to all parties.
The decision may be appealed within fifteen days of receipt, but such an appeal does not have a deferring effect.

Refusal of the Draft of Contribution

If a draft suffers from errors, or the conditions for accomplishing the record are not fulfilled, then the Land Register Office dismisses the draft of contribution and will not approve it. The decision of refusal shall be delivered to all participants of the contract in a form of personal delivery. The decision must have all the requirements stipulated by law in the provisions § 68 and 69 of the Administrative Code. The decision may be appealed according to § 244 et seq. Act No. 99/1963 Coll., Civil Procedure Act (*občanský soudní řád*) to the respective regional court within two months of the receipt of the order.

It should be pointed out that some Land Register offices reject applications due to heavily formal reasons or a lack of legal knowledge on their part, therefore many appeals are successful.

[45] The fees for land registration are likely to double from CZK 500 to CZK 1,000. It is included in a governmental amendment approved only with some modifications by the Chamber of Deputies by coalition votes. The increase will bring the state over CZK 300 million annually, according to the government.

Approval of the draft of contribution

If the conditions are fulfilled, then the Land Register office approves the contribution of the right into the Land Register by entry in the file in the Collection of documents and the decision becomes final. This decision is not delivered to the parties. There is no possibility of an appeal against such a decision.

The Land Register Office marks an *endorsement* of the allowed contributed right on all delivered documents (it is denoted with the appropriate Land Register office, the reference number of the decision, the date of entry of the contribution, the date of the legal effects). The legal effects of the deposit occur, as has been mentioned several times, on the date of delivery of the draft of contribution. The Land Registry then delivers a contract with endorsement to all the participants.

Final action of the Land Registry

After the Land Register decides to interrupt, allow or refuse the draft of contribution, the so called "seal" is cancelled, and then the Land Register Office files the draft of contribution or copy of Contract with the Endorsement into the Collection of documents.

b) Registration of Record (*záznam*)

The registration by record originates on the basis of the legal matter of fact. Thus, recorded rights may be modified or become extinct by the law, a decision of a Government body, and for a few other potential reasons. The Land Register Office, during a registration by record, proceeds on the basis of deeds established by Government bodies or other deeds that confirm or verify such legal relations.

It is necessary to point out that the Land Register Office does not issue any decision and thus it is not possible to file a legal remedy. The change then occurs automatically without a decision of the cadastre office.

c) Registration of Note (poznámka)

In the case of a note, the Land Register Office proceeds in the same way as a registration by record. The note does not influence the origin, modification or extinction of rights to the real estate. It may refer to a registration of the facts that limit the rights of disposal, and it can be considered as information for any third parties about any legal defects of the real estate in question. A note provides the possibility to find information about the commencement of certain administrative or court proceedings etc.

3.6.5 Compensation from Land Register in Case it Makes Mistake[46]

Compensation for damages can be claimed based on the State Liability Act – No. 82/1998 (*Zákon o odpovědnosti za škodu způsobenou při výkonu veřejné moci rozhodnutím nebo nesprávným úředním postupem*). State institutions, natural or legal persons who exercise the public service vested in them by the statute or based on the statute, or institutions of municipalities are responsible for the compensation of damages. The state is responsible if the damage was created by the decision or by an incorrect administrative procedure.

3.7 Statement of the Owner

The execution of the statement of the owner, and its input into the Land Register, normally occurs when a house consists of more units (flats) and where it is the intention of the owner to transfer such units to the ownership of other persons.

The statement of the owner defines the rights and duties resulting from the ownership of the units inside the house, together with the co-ownership of the common parts of the house and plot.

[46] KUBÁNEK, M., ŠLAPÁKOVÁ, P. *The International Comparative Legal Guide to: Real Estate 2011, A Practical Cross-border Insight into Real Estate Law*. Global Legal Group, 2011.

3.7.1 Content of the Statement of the Owner[47]

According to the law, the statement about the ownership of flats must include the address and the location within the building, description of the unit and equipment, floor area, common areas and any plot subject to a change of ownership right.

Such a statement should include the rights and obligations to the building, its common parts and rights to the plot and the transfer of rights from the building owner to the owners of the units. It should include the rules of contributions of the co-owners of the house for costs connected with the administration, maintenance and repairs of the common parts of the house. Additionally, it should clearly state which person is responsible for the administration of the whole complex.

As an annex to the statement must be included the ground plans of all floors, including the plans determining the location of the units and the common parts of the house, together with data about the floor areas of the units.

3.7.2 Record of the Statement of the Owner into Land Register

The determination of the units inside the house is not completed by the statement of the owner itself. It is necessary to record the statement of the owner into the Land Register at the respective cadastre office, and it is submitted personally by the owner of the house. The Land Register Office examines this proposal and then approves or refuses it.

3.7.3 Transfer of the Unit

After the statement of the owner is approved by the Land Register Office, the ownership of the units inside of the house and the co-ownership of the common parts of house (and, in some instances, of plots on which the house is built) is transferred.

[47] DVOŘÁK, T. *Vlastnictví bytů a nebytových prostor*. Vol. 1. Prague: ASPI a.s., 2007. p. 89

To complete the whole procedure, it is necessary to sign the contract for the transfer of the ownership of the unit. The contract has to include data about the building according to the Land Register, the number of the unit including its designation and location within the building, the description of the flat or commercial area, determination of the floor area and equipment of the flat or commercial area. Further, the description of the common parts of the house including the determination of the parts of the house that are common only to the owners of a few units. Then follows a stipulation of the share of each owner of the unit on the co-ownership of the common parts of the house that is being transferred from the present owner of the house to the owners of the units.[48]

3.8 Association of the Owners of Units[49]

The Act on the Ownership of Flats explicitly stipulates that the association is a legal entity with a legal identity. The legal identity is limited to activities connected with the administration, operation and repairs of the common parts of the house[50]. The association is obliged to maintain the accounts.

The law also stipulates that the composition of the association – general meetings of the owners of the units, the committee of the association or such owners of units entitled to perform functions of the committee in the event that no committee is elected.

3.8.1 Competence of the Association of Owners of Units

The association is entitled to act in order to secure deliveries of services connected with the use of units, insurance for the house and lease (in the case of the lease of common parts of the house or of units in co-ownership of all the owners of units).[51]

Services connected with use of the units include delivery of energy, water, etc. The association is entitled to decide about the distribution of the costs for the services to the

[48] DVOŘÁK, T. *Vlastnictví bytů a nebytových prostor*. Vol. 1. Prague: ASPI a.s., 2007. p 89.
[49] DITMAROVÁ, M. Vlastnictví bytu a společenství vlastníků jednotek ve světle rekodifikace. *Právní Fórum,* 2011, p. 311.
[50] .Not to be mistaken it does not refer to administration, operation and repairs of the individual units in the house because that is the matter of each respective owner of a unit.
[51] DVOŘÁK, T. Poznámky ke společným částem domu. *Právní fórum*, 2008, p. 493.

individual owners of units. The owners of units guarantee the obligations in a proportion that corresponds to the size of the co-ownership shares within the common parts of the house. All owners of units are guarantors and, on the basis of a written demand by a creditor, are obliged to fulfil the debt of the association.

To become a member in an association it is necessary to own a right in the unit and therefore it becomes extinct together with a transfer or assignment of the ownership to the unit. If the unit has co-owners, then such co-owners are joint members of the association.

3.8.2 Origin of the Association of Owners of Units

The association is specifically defined by law. It should refer to a house where at least 5 units are defined and, at the same time, three of the units have to be owned by different owners.

The association commences upon the delivery of a deed with a clause about the designation of entry into the Land Register, or another document by which the Land Register verifies the ownership of a unit and the relationship to the previous owner. In practice it refers to the contract between the owner of a unit who has defined units in a house and a new owner – the buyer.

3.8.3 General Meeting[52]

The general meeting is the highest authority of the association. According to law, the first meeting has to be completed within 60 days after the commencement of the association[53]. The first general meeting is set up by the original owners of the building, they *approve the statutes* of the association and its *bodies are elected*, i.e. mainly the committee and the ultimate owners. The first general meeting should take place with the presence of a notary, who will prepare the records consisting of the running of meetings, the election and composition of the association bodies as well as approval of the statutes.

[52] DVOŘÁK, T. *Vlastnictví bytů a nebytových prostor*. Vol. 1. Prague: ASPI a.s., 2007. p. 306.
[53] However there are no sanctions when this term is not fulfilled.

The approved *statutes* of the association have to include:

- the office of the association and its designation (i.e. details about the house and the reasons for the association)
- the subject matter of the activities (relating to the administration of the house)
- the bodies of the association (their rights and duties and method of agreement)
- the rights and duties of the members of the association
- how the costs connected with the house administration will be covered
- the handling of the property of the association

In case that the statutes are not approved by the general meeting, the law reverts to model rules. A general meeting can pass a resolution based upon a majority decision of the members.

The size of the co-ownership shares corresponds to the amount of votes each member has. The law states that a qualified majority is necessary to adopt a resolution about significant matters of the association. A unanimous vote is required to change the purpose of use of the building or any of its changes.

Committee

The committee is the executive body, i.e. the statutory body. The minimum is 3 members, the duration of the committee is determined by the statutes, but it should not exceed 5 years. The committee decides upon matters connected with the house administration, provided such decisions are not delegated to the general meeting.

3.8.4 Entry of the Association into the Register of Associations of Owners of Units[54]

The association is recorded in the Register of Associations of the Owners within the Regional Court. The only significance of this is as a declaration.

[54] DVOŘÁK, T. *Vlastnictví bytů a nebytových prostor*. Vol. 1. Prague: ASPI a.s., 2007. p. 277.

It is necessary to submit with the proposal:

- an extract from Land Register confirming a house with flats and commercial areas
- a notary record about the running of the first general meeting where the statutes of the association have been approved and the association bodies have been elected, including a document verifying the presence of the owners of the units
- an application for registration to a regionally competent tax administrator within 30 days of the day when the incomes levied by tax have started to be received or when the obligation for the deduction of tax or a tax advance payment has originated

3.9 Cooperatives and its Membership[55]

Co-operatives are regulated by Act. 513/1991 Coll., Commercial Code, particularly part two "trading companies and co-operatives" Article 221 to 260. A cooperative is a partnership of an unlimited number of persons established for the purpose of entrepreneurial activity or securing economic, social or other needs of its members. Membership in a cooperative is based on a principle of spontaneity, relating to an origin of membership on the basis of free will.

A cooperative must have at least five members, which is not valid if its members are at least two legal entities, but if the number of members declines below the minimum then the court may cancel the cooperative and order its liquidation.

Each cooperative is a legal entity and guarantees with its whole property. Generally the members of a cooperative do not guarantee its obligation, but the exception may be adjusted in the statutes of the cooperative and a meeting of the members may then decide a certain amount of compensation fee for certain members for the coverage of the losses of a cooperative.

Statutes determine the amount of the basic capital of the cooperative that is recorded in Trade Register, it has to be a minimum of 50 000 CZK and is formed by the deposit of all members.

[55] GRŮLICH, R. Purchasing Real Estate-Overview. *Expats*, 2008.

A cooperative is managed by its statutory body- the *Board* and the highest authority is the *Meeting* of the members of the cooperative. They may elect and recall the members of the Board, decide about the distribution and utilization of profits or loss, decide about the transformation, distribution or cancellation of the cooperative, etc. By the law, members of the supervisory board and the director of the cooperative are not allowed to be entrepreneurs or members of statutory and supervisory bodies of legal entities with a similar subject matter of the activity. But this may be adjusted in the statutes.

Rights and duties of members of cooperative are, according to law, stipulated by the statutes of the cooperative. It basically means the right of a member to participate in meetings of the cooperative bodies, to vote, to make suggestions, to be voted for, etc.

3.9.1 Housing Cooperative

These are cooperatives for building construction which has had a financial assistance according to special regulations designated as *building housing cooperatives*. Or they are established on the basis of cooperatives that have originated for the purpose of purchasing the building from the municipality, so called *privatised housing cooperatives*. It includes the so called *investor housing cooperative* established for the purpose of the construction of houses with flats and the eventual transfer of the units into the ownership of the members. Another possibility is a *cooperative established for construction and administration of garages*.

3.9.2 Origin of Membership

Membership arises:

- after the admission of pretender into the membership on the basis of a written application
- by a transfer of membership
- by other ways stipulated by the law
- by a transformation of the cooperative (meaning a merger or eventual division)

Membership is not valid until the payment of the initial investment is accomplished. Further conditions of membership may be regulated by the statutes of the cooperative.

3.9.3 Transfer of Membership

The rights and duties of members may be transferred to another cooperative member or to a third person. The statutes determine the detailed conditions under which the transfer may be realized. The acquirer attains rights and duties in the same extent as the transferring member in the cooperative.

3.9.4 Extinction of Membership

The law stipulates that the extinction of the membership of a cooperative may be realized by:

- agreement
- resignation
- exclusion
- death of member
- extinction of cooperative
- date of the extinction of the legal relationship between the member and the cooperative-transfer of membership or some other way

It also refers to a situation connected with proceedings against the property of members of a cooperative for the satisfaction of the debts of its own creditors. This way of extinction is needed for the creditors of a cooperative member to enable the creditors to reach the capital participation of such cooperative member. Only by the extinction of the membership may the member claim the settlement of his capital participation in the cooperative.

3.9.5 Settlement Amount

After a cooperative extinction, its members may claim the settlement amount. It is basically a fragment representing a part of the capital indicating the participation of a former member in the cooperative property. When stating the amount, not only the investment deposited by the former member into the cooperative is taken into account, but also the increase in capital as a consequence of its membership. The amount is derived from the property of the cooperative shown in its closing accounts.

A claim for settlement originates on the day of the extinction of membership. A claim for its payoff is three months from the approval of closing the accounts for the year when the membership became extinct.

3.10 Acquisition of Real Estate in the Czech Republic by Foreigners

The citizens of the Czech Republic are, in the area of real estate purchasing, not restricted at all. In the case of foreigners, however, the situation is a bit different. Before the accession of the Czech Republic into the European Union it was necessary to differentiate between the *citizens of the member states of the European Union, citizens of the other countries who on the basis of the international agreements are granted by some advantages* and *citizens of other states outside the European Union*, the so called the third countries.

In the case that the foreigner of a third country could not fulfil the conditions stated for a real estate purchase, the solution was usually that such a citizen established or purchased a Czech legal entity, most often a limited liability company, and such a company purchased the required real estate.

Legal questions and problems on an international basis are processed by the Private and Procedural International Law Act – No. 97/1963 Coll. (*Zákon o mezinárodním právu soukromém a procesním*). Both parties select the law to govern their contractand also the court, which will have the authority to decide their case. The situation is different with regards to rights *in rem*. These rights are governed by the law of the place where they are located, which means in this case the Law of the Czech Republic. Therefore, international treaties and conventions are the only directly applicable international instruments for real estate in the Czech Republic.[56]

[56] KUBÁNEK, M., ŠLAPÁKOVÁ, P. *The International Comparative Legal Guide to: Real Estate 2011, A Practical Cross-border Insight into Real Estate Law*. Global Legal Group, 2011.

3.10.1 Situation after Accession to the European Union

The internal market of the European Union is based on the application of *four basic freedoms*, which are the free movement of goods, persons, services, and capital.

Free movement of capital includes the unrestricted acquisition of real estate, in particular for European Union member states. In accordance with such principle, Article 56 of the Treaty establishing the European Community prohibits any restrictions of the free movement of capital, both between European Union member states and in relation to third countries. On the basis of these freedoms, citizens of the European Union and of third countries are free to acquire real estate in other states of the European Union without any restrictions.

Upon its accession to the European Union, the Czech Republic was granted two exemptions related to the above mentioned Article 56, which were implemented by the introduction of the so-called ***transition periods*** for the acquisition of real estate in the territory of the Czech Republic. During these transition periods, certain restrictions were maintained in the area of the acquisition of domestic real estate by foreign persons, and that in the duration of *7 years for the acquisition of farmland and woodland*, and in the duration of *5 years for the acquisition of other real estate*. Both transition periods became effective as of the Czech Republic's accession to the European Union 1 May 2004, and were incorporated into documents signed by the Czech Republic upon its entry into the European Union. These transition periods are implemented in the Czech law by the Foreign Exchange Act (Act No. 219/1995 Coll.).

With respect to the above mentioned, in the case of land which is part of the agricultural land resources, and land designated for the fulfilment of forest functions, the transition period expired in May 2011 and the Chamber of Deputies have approved an amendment which would end this exemption. As regards other types of real estate – especially residential and commercial – the exemption restricting their acquisition by the foreign persons expired in May 2009. The acquisition of this type of real estate is thus no longer

restricted; The Chamber of Deputies approved an amendment to the Exchange Act, which repeals the restrictions on foreigners buying agricultural land, forests and other real estate in the Czech Republic. The amendment, which will now be discussed in the Senate, is to come into effect upon publication of the Civil Code. The Ministry of Agriculture also prepared amendments to allow preferential purchase of state land by farmers who have already been active on the land. New rules are meant to prevent persons who do not carry out agriculture production from buying the land first.[57]

To summarize, as regards the acquisition of real estate in the Czech Republic by the foreign entities, the Foreign Exchange Act still distinguishes two categories of real estate, namely the agricultural and forest land, and other real estate. Both types of real estate may be acquired without restrictions by individuals with permanent residence in the territory of the Czech Republic or legal entities with the registered offices in the country (resident status). Foreign individuals and legal persons (non-residents) are at present not restricted from the acquisition of the agricultural and forest land since May 2011 and they are also entitled to acquire other real estate under the same conditions as the resident individuals and legal entities.

[57]ČTK. *Restriction on Foreigners Buying Land Ends.* Stavební fórum. 2011.

4. Practical Part

4.1 PEST Analysis: Foreigners Buying Real Estate in the Czech Republic

Political Aspects

Any kind of international transaction, including the purchase of real estate in the Czech Republic by a foreigner, helps to strengthen relations between countries on a political level. If citizens of certain countries cooperate and trade together, then it is in the best interest of everyone to keep the political situation between these countries balanced.

From the other point of view, if the political relations of particular countries are sincere and warm, the citizens of such countries are willing to cooperate and invest, because they can sense the stability and security of this investment.

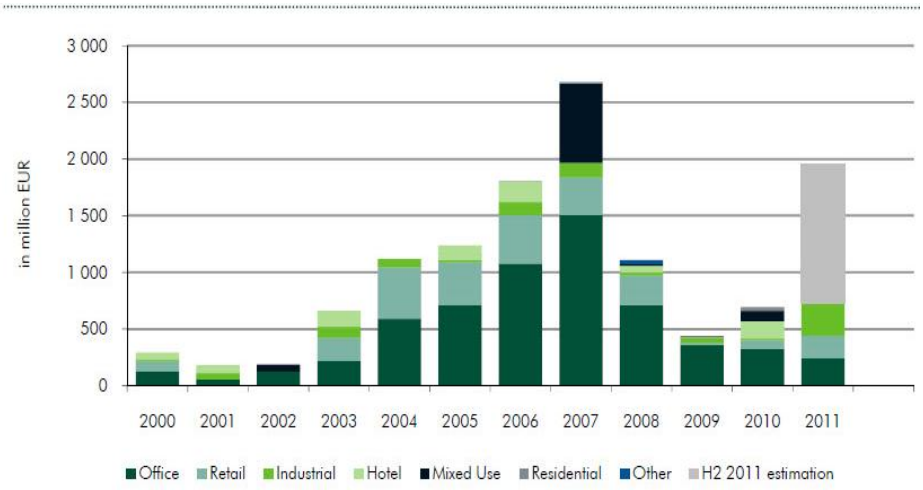
Economic Aspects

The attention of foreign investors in the Czech real estate market returned at the beginning of year 2011 and they accounted for 83% of the total transaction turnover. UK investors dominated with a total volume of EUR 280 million (share of 39%), followed by Austria 34% and Germany 10%. Their attention is concentrated on industrial, office and retail real estate.

Undoubtedly the foreign investment in Czech real estate brings desired cash into the Czech economy and increases the Czech GDP. The purchase of industrial and retail property might create new working positions and help to decrease unemployment.

On the other hand, foreigners investing in residential property not for the purpose of investment, but rather for their own housing may seek to obtain the working opportunities in prestigious positions that would normally be expected to be taken by a Czech citizen.

Graph 1: Annual Real Estate Investment Volume in Czech Republic 2000-2011



Source:http://www.propertysecrets.net/blogs/czech_point/czech_real_estate_investment_volume_2011_set_to_be_second_highest_on_record/post-649.html

Social Aspects

One of the obvious reasons behind the increasing amount of real estate sold to foreigners is their growing presence in the country. According to Czech Statistical Office there are more than three hundred and thirty thousand foreigners with a permanent or long-term residence permit.

The procedure might also be the reverse; a foreigner might buy real estate in the Czech Republic precisely for an investment reason and then begin to assimilate with Czech culture to such an extent so as to settle down.

From all the foreigners, the ones most interested in buying Czech real estate especially for residential reasons are our very close neighbours the Slovaks, a significant minority of at least sixty thousand long-term or permanent residents. They prefer to buy property in Prague, Ostrava, Brno, Olomouc and Zlín. US citizens, Germans, Britons, Israelis and French are also interested largely in purchasing real estate in Prague, but some of them have bought flats in other major cities such as Brno or Ostrava. For Russians, the most popular place aside from Prague is Karlovy Vary.

Of course, a multiplicity of various nationalities might cause a cultural clash and intolerance, but on the other hand it might also enrich Czech cultural life concerning

various restaurants, theatres, art or dance and music. Czech citizens generally do not get on well with Russians or Germans because of the historical background.

Technological Aspects

Buying a price advantageous piece of real estate in the Czech Republic might bring to the country investors that would normally not even think of the Czech Republic as an attractive place. Of course, different cultures with a different education, knowledge and experience might bring various technological developments to the country or some new fresh ideas.

4.2 Possible Factual Risks of Parties Involved in Purchase Contract

It is important to point out several significant facts that play an important role during the purchase of real estate; these are defects that affect the real estate.

Real estate suffers from factual defects if it does not have the required or expected features, and such defects would impede the daily use of the anticipated purchase. These defects are usually sorted out by repairs to the property etc.

This point can be divided into two basic sections, namely; the purchase of a plot of land and the purchase of a house or flat.

4.2.1 Acquisition of Plot for the Purpose of House Building

The potential factual defects of a plot of land for the planned purchase (house- building) should be examined. Firstly, it is important to check that the land has an approval for building, to what extent and under which conditions. Simultaneously, one should investigate the future house-building that is planned within the neighbourhood of the plot. It should be ensured that it will be possible to connect the plot with the utility networks such as sewer, gas and electricity and that the plot is located in an ecologically sound area. These actions will provide an easier construction process and ensure that the house ultimately is placed in a suitably pleasant location.

It is recommended to gain a preliminary statement from the administrative authorities giving their opinions about decisions affecting the land, construction permits and opinions about the proposed construction permit. This will considerably simplify the subsequent process.

4.2.2 Acquisition of House or Flat

With respect to the factual defects, it is appropriate to differentiate between new buildings and longer term established real estate.

In the case of a *new building,* most often the defects are caused by standard procedures connected with the construction itself. These defects might be easily removed because these buildings are still in the guarantee period that should be provided by the supplier of the real estate.

The situation with existing *older houses* or flats is different. In such cases it is necessary to undertake a survey to take account of the costs for any anticipated changes/needed improvements which might have an influence on the accepted price of the property. A qualified surveyor or building engineer should undertake this survey.

4.3 Possible Legal Risks of Parties Involved in Purchase Contract

This chapter includes the possible risks the buyer or a seller may experience when conducting a purchase contract transferring the ownership of real estate. Legal defects are represented by the existence of the rights of the third parties to the real estate. Usually it is the existence of the right of lien, real burden or lease agreement. It is a fact that such rights can considerably limit the purchaser and, under certain circumstances, even invalidate the whole process of conveyance.

Checking the factual and legal defects is fundamental, although it does slow down the process. It is recommended to use the assistance of an experienced lawyer, ensuring a smoother process, with minimal problems. It prevents the purchaser from unexpected

problems relating to unknown future costs and can assist in the negotiation of a reduced price in some cases.

4.3.1 Easements[58]

Easements restrict the utilization of the real estate by the owner in favor of someone else, so the owner must sustain something, refrain from something or perform something. Rights connected with easements are either *associated with the ownership of a property* (and a change of the owner of property has no effect on the easement itself, these easements are permanent in nature, are established as unlimited in time, satisfy the interests of all other owners of other things), or *belong to a particular person* (the beneficiary of the easement is particularly stated and all competences are in his favour, the easement is cancelled only by the death of a natural person or the dissolution of legal entities). The creation and extinction of a new easement is conducted by a record of contribution into the Real Estate Cadastre. The most common easements are: a flat, housing, use and shared use, roads, walking, driving, entrance, carrying out various repairs, maintenance of pipelines, aboveground and underground water, etc.

Possible risks

Buyers should always know whether the transferred property includes some easements. This information is withdrawn from the record in the Land Register; easements limiting the property owner are recorded in Part C. As a problem might be seen an easement created by law (not always written in the Part C of the record) on the basis of a series public regulations, such as the Energy Act, Water Act, the Telecommunications Act, it is usually a different purpose-built buildings, equipment or access to them. When buying real estate, it is highly recommended to know the real situation on the property, and of the surrounding land and land-use planning documentation for the place where the property is located.

On the other hand, it can be advantageous to purchase a property which burdens another

[58] KUBA, B. Vklad do katastru nemovitostí má svá pravidla. *Právní rádce*, 2007.

property with a specific easement; these easements are registered in the Part B of record from the Land Register.

Sometimes a piece of real estate would not be possible to be properly used without an easement, for example when such an easement enables access to the property over someone else's land.

4.3.2 Right of Lien[59]

A lien is a very common hedging instrument relating to tenure in nature, serves to ensure claims against the debt in the case that the claim will not be met on time where satisfaction can be obtained from the monetization of the pledge. The right of lien can only arise to the specified thing (with exception of the collective thing) and the specified debt, and is valid to all owners of the pledge (real estate), which includes also the subsequent owners of the real estate. The right of lien extinct with the extinction of the main commitment, it is not transferable itself, it follows the legal fate of the thing or secured debt.

Real estate is very commonly used as a pledge due to its features. It is located in the same place, thus it cannot be moved out of reach the lender. Unlike a movable property, real estate normally does not suffer from a rapid decline of its value, vice versa; the value usually increases over time. A number of proposals for the record of the right of lien to real estate grew up to 2007; this trend declined due to the economic crisis, when fewer mortgage loans to finance housing residents were concluded.[60]

It should be noted that the contractual lien on real estate is created by record in the Land Register, as has already been mentioned above in the text several times; the right of lien to real estate is created reverse to the date of application for contribution to the Land Registry. For other property (not registered in Real Estate Cadastre), company or other collective thing, set of goods or movable things to which the lien shall arise, without being submitted as a pledge to a lien creditor or third person must be in accordance with § 156

[59] KUBA, B. Vklad do katastru nemovitostí má svá pravidla .*Právní rádce*, 2007.
[60] On the basis of information from the Czech Real Estate Cadastre. Available from : http://cuzk.cz/Dokument.aspx?PRARESKOD=10&MENUID=10424&AKCE=DOC:10-PER_PUB

clause 3 must be a pledge contract written in the form of a public notary registration and the lien arises by the entry in the Register of Pledges maintained by the Chamber of Notaries of the Czech Republic.

Possible risks

Buyers should generally wish to avoid the purchase of real estate burdened with a right of lien, because if the borrower does not meet its debt the creditor can satisfy its debt from the monetization of the pledge, even though it belongs to a new owner. Buyers should therefore always check the current record from the Land Register to determine whether the property is not pledged.

The problem is that the current record is not always a sufficient tool to realize if there is right of lien on the property. In a situation of executive orders, then can be established *judicial lien*, *execution lien*, the lien *on the decision of the Tax Office* or the *Social Security Office* on property. These liens are registered in the Land Registry after the virtue of a decision of the particular authority. There are therefore cases where a property is encumbered by a lien, but this is not possible to realize from the Real Estate Cadastre at the date of a purchase contract signature. In contrast to the contractually established liens, the legal power of the decision arises as a decision virtue.

If the real estate is part of the firm, which is pledged, the lien is recorded in the Register of Pledges maintained by the Chamber of Notaries of Czech Republic, where can be found the information whether the property is pledged as part of a company. Due to the fact that there is a series of theoretical disputes and insufficient jurisdiction regarding a firm as an object of the pledge it is recommended to avoid buying property that is pledged as a part of the firm.

Buyers should know the seller’s personal situation, his financial situation and commitment to potential borrowers. It is recommended that the buyer makes a request to the competent court for confirmation that the seller is not under the enforcement of execution.

4.3.3 Pre-emption Right

The participants of a purchase contract transferring the ownership of real estate should always know whether there is a real estate pre-emption right and the legitimate subject of this right. Not observing this right causes considerable risk to both contract participants.

Possible risks

Bypassing the right will be a breach of a contractual pre-emption right with bond consequences (*obligační účinky*). It does not impact the buyer, a pre-emptive right becomes extinct by the transfer of the property to a third party (buyer), but the person originally entitled to a right of first refusal may claim compensation from the seller according to provision § 420 of Civil Code.

It will also be a breach of the contractual pre-emption rights registered in the Land Register with tenure consequences (*věcněprávní účinky*). It will not affect the validity of the purchase contract, but it causes the buyer a significant risk. The beneficiary of a pre-emptive right may claim to buy the property from the buyer, thusly the buyer has the obligation to offer this property under the conditions originally stipulated between seller and beneficiary of the pre-emptive rights. If the buyer refuses to do so, the beneficiary has a legitimate possibility to go to court to replace the buyer's will by a judicial decision.

Also, there will be a breach of the statutory pre-emptive rights of the co-owners in accordance with provision § 140 of Civil Code. The beneficiary of a pre-emptive right may seek a cancellation of a legal act of such a purchase or he may have a claim on the buyer to offer to sell to him this share in co-ownership. In the case that the beneficiary does not use his right, the pre-emptive right remains preserved.

A pre-emptive right can be applied only in the case where the particular property is being sold, not in the case that it is given as a gift according to §602 clause 1 of Civil Code.[61]

[61] MANDÁK, V. Předkupní právo náleží spoluvlastníkovi jen v případě prodeje podílu, nikoliv též při darování. *Bulletin advokacie*, 2009, p. 56.

4.3.4 Duplicate Record of Ownership

As there is not sufficient information about the potential for the duplication of ownership out amongst the general public, the greater is then the surprise of the owner when he finds out that the property is registered as a duplicate ownership in the Land Register. The nature of Property Rights implies that it is not possible that one thing is in the exclusive ownership of more than one owner or owners. In practice the situation is often different - there is Institute of Duplicate Ownership Registration, it is a special case of registration of rights in the Land Register, expressing a mismatch of the actual state and state registered in the Land Register evidence. Most problems arose in the period from 1951 to 1964, when there was no evidence of real estate transfers since bookkeeping was compulsory. In the next period from 1964 to 1992 the evidence was inconsistent and often incomplete. Much duplication was created due to restitution.

Possible risks

Duplicate registration of ownership prevents persons registered on the relevant proprietary title to dispose with the property until the question "who is the real owner" is settled. Duplication is therefore an obstacle to transfer the ownership of the property. Duplicate registration of ownership is kept in the Land Registry until the document about who of the registered owners is the real one is delivered. The Land Registry does not have the power to decide who the real owner is. The buyer may reduce the risk of duplicate registration only by examining the original title deeds.

The way to solve this issue always depends on the willingness and possibilities of both parties. Legal options to remove duplicate listing include:

- an agreement of the owners, e.g. in the form of an agreement for the recognition of ownership rights or consent decree
- a unilateral recognition of the property rights of another person, when the duplicate owners agree who the real owner of the property is, in a form of written agreement for the recognition of the ownership rights or the settlement agreement

- when the agreement is not met, then after bringing a case before the court which determines the legal relationships and who is authorized as the owner

It should be noted that this pursuit is in general very time-consuming and usually lasts over several years. According to the court decision and determination of the owner, the Real estate Cadastre removes the duplicate entry.

4.3.5 Payment of Purchase Price

The purchase price of the real estate is the decisive moment for the buyer of real estate, even though it is finalised by the registry in the cadastre of real estate. Therefore the timing of the payment is crucial

Possible risks

If the buyer pays the price on the day of the contract signing or on the day of delivery of a draft of contribution to Land Registry and in case that registry is refused, the buyer cannot perform the ownership. In this situation the buyer cannot be sure that the seller would return the purchase price.

On the other hand, if the buyer pays the purchase price after deposit in the Land Register, the seller is in a disadvantageous position because he does not have ownership rights to real estate and he is in a situation when it is not certain that the buyer pays properly and in a timely manner the entire purchase price. If the buyer does not pay on the agreed date the purchase price, it is reason for the seller to void the contract. This action cancels the contract and the property owner is again the seller, but in the Real Estate Cadastre still the buyer is registered as the owner. In this case, the seller does not have the money, and in given time he is not entered in the Land Register as the owner of real estate. The registration of the title back to the seller may be made under an affirmative statement, or a court decision

The standard, and for both parties a compromise solution, is to deposit the purchase price into an escrow account, even though it increases the expenses of the whole process of the

ownership transfer. The custodian of the purchase price could be anybody, but normally it is a lawyer, a notary or a bank. Payment is then effected on the basis of an Escrow Contract that includes all rights and duties. The contract is concluded by the buyer, the seller and the custodian and precisely governs the deposit of the purchase price into escrow, the release of the purchase price to the seller and covers the situations where the purchase price is returned to the buyer. It is recommended that all the provisions of the Escrow Contract should accurately follow the respective provisions of the Purchase Contract.

In the case that the buyer has sufficient funds, then it is standard for the buyer to deposit the purchase price into escrow during the signing of the purchase contract and the purchase price is then released to the seller after recording the ownership right of the buyer to the purchased real estate into the cadastre of real estates.

In case the funds are to come from a mortgage, then the deposit and release of the purchase price from the escrow relates to the conditions and possibilities of drawing credit. This is to be modified individually, according to the conditions of the respective mortgage.

4.3.6 Different Owner of the Plot and of Building on it

Thanks to the invalid principle of "superficies solo cedit"[62] in the Czech Republic, the buyer must, during every acquisition, ensure the ownership title to the building and also the ownership right to the land on which it stands. The plot might be owned by the state, a natural person or some legal entity which might keep the plot or offer it for sale to the owner of the house, who might buy the plot and increase value of his property or might refuse it and is then obliged to pay the rent stated by the owner of the plot. The rent is usually not so high when it is owned by the state, but in general it is recommended to buy the plot if possible, because the rent of it might grow very high, depending on the will of the owner.

[62] ELIÁŠ, K. et al. *Občanský zákoník : velký akademický komentář : úplný text zákona s komentářem, judikaturou a literaturou podle stavu k 1.4.2008.* 1. Vol. 1. Praha: Linde, 2008, p. 483.

4.4 Comparison of Private and Cooperative Ownership

Table 1: Comparison of private and cooperative ownership

PRIVATE OWNERSHIP	COOPERATIVE OWNERSHIP
Higher purchase/sale price	Lower purchase/sale price
Obligation to pay transfer tax when purchasing/selling	No transfer tax
When rented to another person – called lease	When rented to another person – called sublease
Can be rented without agreement of other owners	Needs permission from cooperative members for sublease of flat
Timely administration needed to transfer ownership rights and register in Real Estate Cadastre- takes a few weeks	Less administration needed to transfer the shares in the cooperative (transfer the ownership rights to the flat)- takes a few days
Besides housing suitable also for investment or speculation	Generally suitable for own housing
Real estate can be used as a pledge	Buyer owns a stake in the cooperative, which establishes the right to occupy the flat, but does not own the real estate itself, therefore cannot guarantee with it when asking for a loan
Better opportunities for financing	Cannot use standard financing (mortgage), but can finance through a building savings
Can be bought by foreigner	Often cannot be bought by foreigners unless the cooperative changes the statutes
Can be executed	Share in cooperative is also possible to execute
Real estate can be divided between multiple people	Cooperative share is not divisible nor transferable between more people, joint rent can arise only between spouses

Source: Own processing.

The buyer of a cooperative flat should immediately *investigate the management* of the cooperative. There are cases when the cooperative went bankrupt or financial and tax matters were not in order. Special attention should be paid especially when a cooperative

has a construction activity and problems with cash flow may arise. During the execution of the cooperative property, the value of the shares of cooperative members may decrease. It should be pointed out that such an execution does not influence the lease of the flat, so the user of the flat does not automatically lose the accommodation due to the execution. If the cooperative receives a loan (usually to maintain the common parts of the house, such as new external facade, insulation or new plastic windows) it usually temporally increases the rent of the flat until the annuity is paid back.

When purchasing a flat as an *investment*, it is recommended to choose a private ownership, because it can be rented and generally disposed of without any limits. Particularly in a smaller house it can be expected to get engaged in an association of owners. The cooperative ownership is usually not understood as a speculative or investment tool, because the whole cooperative must agree with a sublease, and sometimes it is even necessary to pay a fee to the cooperative for such a sublease. A cooperative is generally better for housing purposes.

On the other hand, an advantage of a cooperative flat is the *lower price* , about 5-10% cheaper than the flats in private ownership, while it can be later converted into a personal ownership. One of the preconditions for the transfer of a cooperative flat to private ownership is that the flats in the house are defined as separate units and are registered in the Real Estate Cadastre and the second precondition is that the cooperative as such agrees with the transfer to private ownership.[63]

An advantage when buying or selling the cooperative flat in comparison with the private ownership is the *speed of administrative operation*. A transfer of a cooperative share (ie, more precisely, the transfer of membership rights and obligations arising from membership in the cooperative) can be carried out within a few days, while the transfer of private ownership in the Real Estate Cadastre sometimes takes several weeks. A transfer of a cooperative share is not subject to approval by the cooperative members (this is stipulated by law), the cooperative only notices it and thus there are no time losses that might arise from administrative delays.

[63]JAROŠOVÁ, J. *Na co si dát pozor při pořizování družstevního bytu*. iDNES. 2006.

The buyer of cooperative flat owns a stake in the cooperative, which establishes the right to occupy the flat, but does not own real estate itself; thusly it cannot be used as pledge. Therefore, it is not possible to use a *mortgage* as a financing tool, because a buyer cannot guarantee with the real estate, unless the buyer has available some other property that would secure the loan. A mortgage might be approved when the flat will be transferred to the private ownership within one year, but it must be supported by a statement of the cooperative that the house is already divided into units registered in the Real Estate Cadastre (or will be in near future) and the cooperative will transfer the cooperative to private ownership within one year.

4.4.2 SWOT Analysis of Buying Flat in Private Ownership

STRENGTHS	WEAKNESSES
• Higher selling price • Owner can dispose freely with flat-can be rented to another person without need for permission • Suitable for own housing and also for investment • Can be used as a pledge and therefore there exists more opportunities for financing, such as a mortgage • Can be divided among multiple people- during inheritance proceedings	• Higher purchase price • Obligation to pay Transfer tax • Transfer of ownership rights is time demanding- takes several weeks • Owner must take part in an association of owners and must subsidize fund of repairs
OPPORTUNITIES	**THREATS**
• Can be bought also by foreigners	• Prices are dependent on market changes, inflation and economic fluctuations

4.4.3 SWOT Analysis of Buying Flat in Cooperative Ownership

STRENGTHS	WEAKNESSES
• Transfer of ownership right to share in cooperative is very fast-takes a few days • Transfer tax is not paid, because real estate itself is not transferred • Lower purchase price	• Have to take care of cooperative management • If cooperative pays off annuity, the rent is higher • Cooperative share is not divisible nor transferable among more people-joint rent can arise only between spouses • Cannot use standard financing such as mortgage, because cannot be used as pledge • Sublease must be agreed upon by cooperative and permission might require payment of a fee in favour of cooperative • Lower selling price
OPPORTUNITIES	**THREATS**
• Can be transferred to private ownership, which increases the price compared to its lower purchase price	• Cannot be purchased by foreigners (if statutes do not state otherwise)

4.4.4 Comparison of Cooperative and Association of Owners[64]

These two terms might seem irrelevant to compare because a cooperative is a kind of ownership used in the Czech legal system, while an association of owners is not. In fact the common feature of both of these legal persons is to deal with the day to day operations and problems connected with the utilisation of the building.

The cooperative as a legal person has been elaborated in law and jurisdiction for a long time; it is known how statutes should look like, what to do in case of disputes or the inactivity of some members, etc., on the other hand the association of owners does not yet work on strict rules. Even the statutes are insufficiently processed. Especially in the case of smaller houses it might occur that, after the creation of an association the majority owner becomes absolutely idle, or, in worst cases, even commit a fraud, which causes problems

[64] DITMAROVÁ, M. Vlastnictví bytu a společenství vlastníků jednotek ve světle rekodifikace. *Právní Fórum*, 2011, p. 311.

especially to the other members of the association. Minority owners may bring a legal action for damages or remuneration to the fund of repairs, etc., but the association cannot function as such. This matter will certainly have to be somehow dealt with in case law in the future.[65]

The management activities of cooperatives and associations of owners have some advantages and also some risks. They usually take care of the repairs and maintenance of the common parts of the house and other issues. Poor management can get into insolvency, and for meeting its liabilities it guarantees with all its assets, therefore it affects all its members. The same holds true for an association of owners, even though the individual flats in the building are in a private ownership of its inhabitants, who may use them without restrictions, they must jointly take care of the common parts of the house. The association of owners might be developed by law automatically without the consent of members, it is enough that the house includes at least five units, of which at least three are in the ownership of three different owners. If the association takes a loan and is not able to pay it off, even the landlords may lose the flats in their private ownership.

4.5 Parties of the Purchase Contract and their Tax Liabilities[66]

4.5.1 Transfer Tax

The real estate transfer tax (*daň z převodu nemovitostí*) must be paid upon the transfer of an ownership title to real estate. The current tax rate amounts to 3% on the tax base levied either from the purchase price including VAT (if applicable) or the value stated by a professional evaluator according to Act No. 151/1997 Coll. of Valuation Act (*zákon o oceňování majetku*)- the amount that is higher is used as the tax base. Specific provisions apply when the transfer of real estate is conducted by means of *usucaption*, public auction, and execution, contribution in a company, expropriation or another specific transfer of ownership title. The *seller* is liable for paying the real estate transfer tax with the buyer as a guarantor. If the purchase agreement sets out that the buyer must pay the tax instead of the seller, this contractual clause is not legally binding for the Tax Authority. Therefore, if the

[65] DVOŘÁK, T. *Vlastnictví bytů a nebytových prostor*. Vol. 1. Prague: ASPI a.s., 2007. p. 247.
[66] BLATNÝ, M. Odkup stavby a pozemku pro podnikání. *Daně a právo v praxi*, 2010, p. 43

buyer neglects his duty, the Tax Authority will impose the tax (incl. penalisation) on the seller.[67]

The real estate transfer tax is payable by the end of the third month following the month when some of the ownership transfer actions listed in § 21 paragraph 2 of the Inheritance, Gift and Real Estate Transfer Tax Act took place (e.g. registration of the transfer was made in the Land Register). Specific provisions apply for transfers of real estate that is not yet registered in the Land Register or for transfers by means of a public auction, execution or other specific transfers of ownership title.[68]

From the real estate transfer tax is excluded the first transfer of ownership to the new building which has not yet been used, a flat extension or penthouse which has not been used, if the transferor is a natural or legal entity and the transfer of the building is carried out in connection with their entrepreneurial activity, or if the transferor is a municipality.

As previously mentioned, for flats in a cooperative ownership, the tax is not paid, because the ownership is not transferred in Land Register, it is only a transfer of certain rights in the cooperative.

4.5.2 Value Added Tax (VAT)

The transfer of real estate is subject to the VAT under the circumstances set out in Act No. 235/2004 Coll. of the VAT Act (*zákon o dani z přidané hodnoty*). In general, most transfers of real estate are VAT exempt. The transfers of plots of land, except for building plots of land, are always VAT exempt. The transfer of other real estate, such as structures, flats and non-residential premises, are VAT exempt after three years from the issuing of the first occupancy approval or from the start of the use of the structure, whichever occurs first. The VAT is paid by the buyer to the seller, and the seller must pay the VAT to the competent tax authority. The VAT is at the moment object of negotiations of Czech legislators and the present status is that it has been agreed that from January 2012 the advantageous tariff on VAT which has been applied for purchase of flats up to 120 m^2 and houses up to 350 m^2 will increase from 10% to 14 % and further in 2013 to 17, 5%. The

[67] KUBÁNEK, M., ŠLAPÁKOVÁ, P. *The International Comparative Legal Guide to: Real Estate 2011, A Practical Cross-border Insight into Real Estate Law*. Global Legal Group, 2011.
[68] DVOŘÁK, T. *Vlastnictví bytů a nebytových prostor*. Vol. 1. Prague: ASPI a.s., 2007. p. 82

flats and houses with a greater size will remain the same 20% VAT and in year 2013 the rate will decrease to 17%. The VAT will then be unified.[69]

4.5.3 Income Tax

The seller is liable for an income tax, according to Act No. 586/1992 Coll. of Income Tax Act (*Zákon o daních z příjmů*)[70]. Non-entrepreneurial disposals of the property of natural persons are exempted. For companies, a rate of 19% (since 1.1.2011) generally applies. For companies' income abroad and natural persons the rate is 15%. Income is reduced by expenses needed for its acquisition in order to set a tax base.[71]

From income tax are excluded sellers who:

- have actually lived in the property for a minimum period of 2 years right before the transfer of the property
- have lived in the property right before the transfer for a period shorter than 2 years and will use the whole amount of money from the sale for a purchase, reconstruction or construction of another property for the purpose of living there
- own the property for a period longer than 5 years
- are a direct heir and inherit the property from a relative who owned it for a period longer than 5 years (if the period was shorter, the previous owner period is added together with the actual owner period)

4.5.4 Real Estate Tax

The Real Estate Tax was introduced instead of the former Agricultural Tax, House Tax and Dislocation Fee. The tax is thus composed of two parts, the Land Tax and Building Tax, and its legislation is contained in Act No. 338/1992 Coll. on Real Estate Tax.

[69] REAL-CITY. Koupit nemovitost do konce roku se vyplatí. 2011.
[70] zákon 586/1992 Sb., ve znění pozdějších předpisů
[71] http://www.businessinfo.cz/cz/clanek/dan-z-prijmu/dan-z-prijmu/1001654/44885/#a6

4.5.5 Practical Examples of Tax Liabilities According to Seller

The following illustrative examples give individual tax obligations for different sellers when selling a house with a garden, when:

- the price of the house is CZK 2.000.000
- the price of the garden is CZK 500.000

a) Seller owns the property 10 years

The seller does not have to pay *the income tax* in accordance with § 4, clause 1) point. b) Act No. 586/1992 on Income Tax, because that citizen owned the property more than 5 years, therefore it is not necessary to examine whether he actually lived in the property or not. If the citizen owns a property for less than 5 years, then it would be examined in accordance with the provisions of § 4 clause 1) point. a) that the seller had lived in the property for 2 years immediately before the sale, but only in the case of the house. In the case of land, always apply a five-year period.

In terms of *value added tax*, this case is not subject to tax; the seller is not a payee of a VAT and will not become one due to this transaction because he did not sell real estate for the purpose of an economic activity.

The taxpayer is required according to § 21 paragraph 2 of Act No. 357/1992 Coll. On Inheritance, Gift and Real Estate Transfer Tax Act to declare to the locally competent tax office a statement of taxable income by the end of the third month following the month in which the ownership transfer was admitted by the Real Estate Registry Register. The tax rate on a property transfer is 3% of the tax base according to Act No. 151/1997 Coll. If we assume that the agreed upon selling price is higher than the price estimated by the evaluator, and then the tax to be paid is CZK 75.000. If for some reason the seller fails to pay the transfer tax it will be recovered from the buyer as a guarantor.

b) Seller gained the property one month prior to its sale

The sale of the above stated property is subject to the *income tax*, because the condition exemptions stated in § 4, paragraph 1) point. a) and b) were not fulfilled, so the income from the sale will be taxed in the case of the citizen (non-entrepreneur) in accordance with § 10 paragraph 1) point. b) of the Income Tax Act as any other income. The expense will be the purchase price at which the taxpayer bought the house with plot. If it is a matter of inherited or donated property, the value will be established according to the Valuation Act at the date of acquisition. The difference between the price agreed in the purchase contract and the price established for the purposes of an inheritance tax or gift tax (when acquiring the real estate) will be taxed according to § 10 at 15%, the real estate transfer tax will be calculated and payable the same way as in previous case in point a). This income is not subject to deductions for social security and health insurance.

c) Seller is an individual who includes given real estate in trading property

In this case, the income from the sale is subject to the *income tax* under § 7 of the Income Tax Act, this case cannot apply the exemption; therefore it is not examined how long the seller has owned the property, or whether he lived in it. From obtained income will be deducted the expenditure - acquisition (residual) price of the property included in the trading property. The difference between revenues and expenditures is, in accordance with the provision § 16 of the Income Tax Act taxed at a rate of 15%. It is difficult to quantify the amount the seller has to actually pay from this transaction as the amount of taxes paid by a particular person affects a large number of other factors such as deductible items and tax credits. This income will further be subject to deductions for social security and health instance.

Real estate transfer tax will be settled same way as in points a) and b).

If the seller is a natural person, an entrepreneur payer of the *value added tax*, the property transfer will be exempted from the tax in accordance with § 56, paragraph 1 and 2 of the Value Added Tax Act, where the transfer of buildings is exempt from the tax after three

years from the issuance of the first occupancy permit or the date when it was first occupied, whichever date is earlier. A transfer of land is always exempt for VAT, except for the transfer of plots for the purpose of construction.

d) Seller of the real estate is the legal entity

That subject to tax are the collected revenues from the sold real estate in the taxable year (the decisive day for recognition of sales revenues is the day of the delivery of application for the ownership transfer at the appropriate land registry), less expenses which are formed at an amortized cost of the sold property (which is gradually amortized over the years) due to § 26 to 32 of the Act on Income Tax, that holds for a building and land acquisition costs, in which the land is registered in the books (land, according to the law on income tax cannot be amortized). The difference between revenues and costs are taxed by the actual rate of corporate income tax of 19%.

If the seller is a legal person paying the value added tax, the transfer of the building and land would be exempted from tax in accordance with § 56 of the Act on Value Added Tax.

The real estate transfer tax will be calculated and payable as stated in previous points a), b), c).

4.5.6 Practical Examples of Tax Liabilities According to Buyer

The same illustrative examples as in the case of the seller, given individual tax obligations of different buyers when buying a house with a garden:

- the price of the house is CZK 2.000.000
- the price of the garden is CZK 500.000

Generally, the buyer is only obliged to pay the real estate tax, but he is also a guarantor if the seller does not pay the transfer tax.

a) Buyer is a citizen - not entrepreneur

He is obliged to pay the *real estate tax* from the acquired real estate in accordance with the relevant provisions of the Real Estate Tax Act. He has to deliver a real estate tax declaration to the competent office by 31 January of the taxable period which is the calendar year. The change of the tax liability that will occur during the taxable year shall be disregarded.

Property tax is levied by the state on the taxable period as of 1 January.

b) Buyer is an entrepreneur - natural person

He can include the purchased real estate into his trade property at the earliest at the date of the accepted and registered change of ownership in the Real Estate Cadastre.[72] A building (not land) may depreciate according to the relevant provisions of the Income Tax Act, the real estate depreciation period is 30 years (in the case of an administrative building, the depreciation period is 50 years). The buyer is liable to pay the *real estate tax* the same way as was specified in the previous point a).

c) Buyer is an entrepreneur - legal person

The acquired property is entered into the books to the respective asset accounts at the date of the change of ownership in the Real Estate Cadastre. Real estate, excepting land, will be depreciated in accordance with applicable accounting and tax regulations [see. point b)], the company is obliged to pay a *real estate tax* as set out in point b).

[72] PODHRÁZKÝ, M. Vznik vlastnického práva k nemovitostem a daňově uznatelné náklady [on-line]. *Právní fórum*, 2010, p. 236.

5. Discussion of Outcomes

At the beginning of this diploma thesis the stated goal was to describe in detail the process of making a real estate purchase in the legal environment of the Czech Republic In, addition, the author also aimed at pointing out possible risks connected to a purchase contract realisation, in order to be able to safely conduct such a transaction in practice. To achieve this end, the author compared the private and cooperative form of ownership and also evaluated which of these forms of ownership is more advantageous, from the buyer's viewpoint. The basic hypothesis was formulated as follows: private ownership is generally more advantageous than cooperative ownership.

All buyers should be well aware of the legal and factual state of the real estate that they are interested in, and also should get to know the seller whom they will be dealing with to the maximum possible extent. At the same time, the seller should fully examine the solvency of the buyer. It is strongly recommended that the purchase contract is drafted by a legally educated person, preferably a notary or lawyer, ideally one experienced in real estate transactions, even if it results in higher costs for both parties (usually for the buyer). A poorly drafted contract can mean for both parties a financial loss, as well as lost time.

The purchase contract must include the essential requirements. Due to the following procedure of the deposit of the contribution in the Land Register in order to finalize the transfer of ownership, several items should be made crystal clear. It should be perfectly specified what is the subject of the purchase; unmistakably identify the parties of the purchase contract and the negotiated purchase price and the method of its payment. A very sensitive issue is the determination of the method of payment of the purchase price, while each possibility disadvantages one of the parties, an appropriate alternative in terms of eliminating the risk appears to be placing the purchase price into escrow.

For the detection of factual defects, it is recommended to thoroughly inspect the real estate, preferably in the presence of a construction or authorized expert. It is always necessary to have an expert to create a report, although it is not obligatory for the purchase contract on

the transfer of ownership to real estate, it is further required by the tax administrator to determine the amount of real estate transfer tax.

Basic guidelines to determine the legal defects, apart from the Land Register record, is the maximum possible knowledge of the seller and his acquisition of the titles to his real estate, his financial situation and potential liabilities, whether it is a natural person or a legal entity.

The two most common possibilities of ownership of real estate, private and cooperative ownership, were compared. To summarize, the most frequent and desired way of ownership is private ownership, as the owner can dispose with his property freely and independently. For this reason, many cooperative flats are nowadays transferred to private ownership using a statement of the owner that divides the house into units and further register these units in the Land Register as a flat of the individual owner. From my point of view each kind of ownership has its pros and cons. I would point out as some of the advantages of cooperative ownership would be their lower purchase price, and the shorter administrative process of the transfer of ownership. The further possibility to transfer it to private ownership later (if the cooperative agrees), which would most likely increase the selling price of the property. The cooperative is more suitable for one's own housing, because the potential to rent to a third person is possible only if the cooperative agrees to it and, moreover, it might be conditioned by a fee and also the purchase of a cooperative flat by a foreigner is generally not permitted unless the statutes allow it. Therefore, private ownership is more suitable as an investment, especially for a foreign investor. The hypothesis therefore cannot be excepted nor rejected.

6. Conclusion

The real estate environment is a very attractive field, because real estate generally does not lose much of its value and therefore is a safe investment tool for anyone who can afford it. The legal regulations of a real estate purchase in the Czech Republic is complicated, similar to the rest of the world, and a basic knowledge of relevant regulations is essential in order to avoid time and cost demanding failures. I would generally recommend to a potential buyer or seller who is not a professional in the field of real estate that they should use the skills of a reliable lawyer or broker.

To conclude I would like to point out that my work on this diploma thesis was a great contribution to my overall knowledge in the field of real estate transactions in the Czech Republic, and it is my hope that it will also benefit its readers.

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List of Graphs

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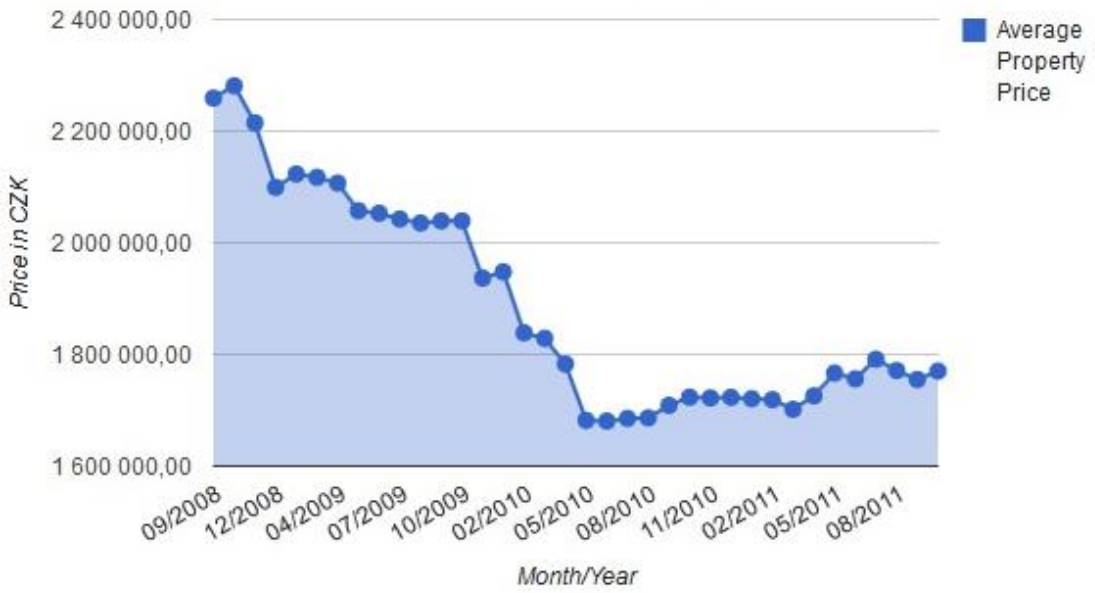
List of Abbreviations

Coll.	Collection
etc.	etcetera
e.g.	exempli gratia
Vol.	Volume
a.s.	akciová společnost (Joint Stock Company)
s.r.o.	společnost s ručením omezeným (Limited Liability Company)

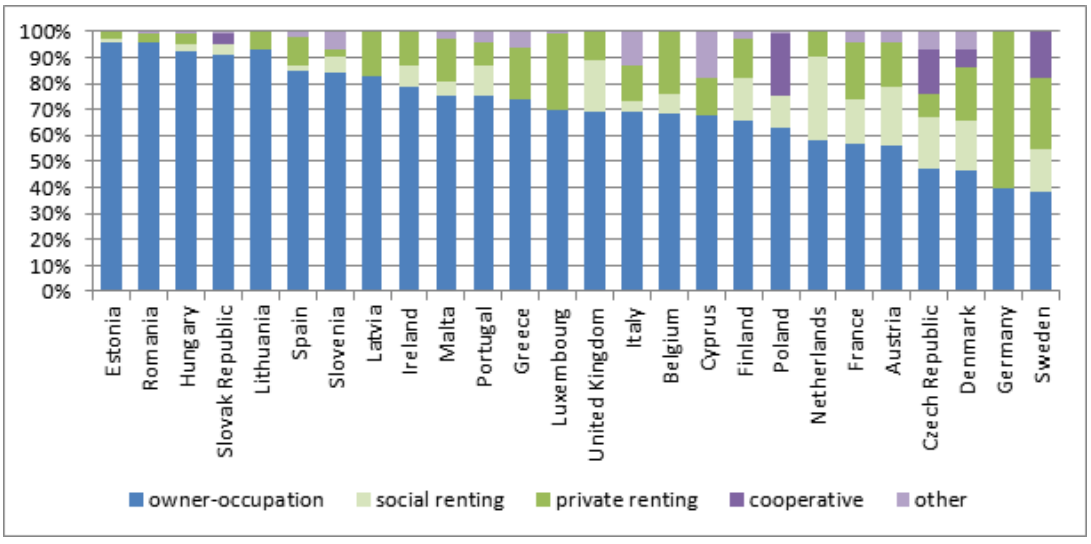
8. Appendices

Appendix 1: Average Listed Property Price in Czech Republic



Source: http://www.propertysecrets.net/blogs/czech_point/tag-investment_property.html

Appendix 2: Housing tenures in the EU-27 (without Bulgaria) 2008



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Appendix 3 : Example of Draft of Contribution to the Land Register

VZOROVÝ NÁVRH NA VKLAD PRÁVA

Katastrálnímu úřadu pro .....,
Katastrálnímu pracovišti .....,
ulice.....čp. .....
PSČ ....., ...

Věc: návrh na zahájení řízení o povolení vkladu vlastnického práva a vkladu práva odpovídajícího

věcnému břemeni do katastru nemovitostí,

I. Navrhovatelé:

1) Prodávající, povinný z věcného břemene
pan(í) ...., r.č. ....., bytem.....
a
2). Kupující a oprávněný z věcného břemene
pan(í) ...., r.č. ....., bytem.....

II. označení práv, která mají být zapsána do katastru nemovitostí

1) vlastnické právo k nemovitostem:
budova č. p. ….postavená na pozemku parc. č. ……,
pozemek parc. č. St. ..... zastavěná plocha a nádvoří,
pozemek parc. č. ....,
pozemek parc. č. ....,
vše v katastrálním území.....,
ve prospěch kupující(ho) pan(í) ....,

2) oprávní z věcného břemene.....
ve prospěch prodávající(ho) pan(í) ....,

III. Převod nemovitosti a zřízení věcného břemene je realizován Kupní smlouvou a smlouvou o zřízení věcného břemene ze dne .....

Smluvní strany podávají n á v r h na provedení vkladu vlastnického práva a vkladu práva odpovídajícího věcnému břemeni do katastru nemovitostí z titulu uzavřené kupní smlouvy a smlouvy o zřízení věcného břemene.

Přílohy: kupní smlouva a smlouva o zřízení věcného břemene ze dne.... 4x
kolek v hodnotě Kč 500 1x
nabývací listina.....1x
.....
.....

V..... dne .....
Prodávající: Kupující:

....

Appendix 4 : Example of a Purchase Contract

VZOROVÁ KUPNÍ SMLOUVA

KUPNÍ SMLOUVA

uzavřená v souladu s ust. § 588 a násl. z. č. 40/1964 Sb. (občanského zákoníku) v platném znění, níže uvedeného dne, měsíce a roku mezi dle svého prohlášení k právním úkonům způsobilými účastníky:

I. Pan(í) ...., r.č. ....., bytem.....
(dále jen „Prodávající“)
a
II. Pan(í) ...., r.č. ....., bytem.....
(dále jen „Kupující“)

I.

Prodávající je na základě Smlouvy .....čj. ....., ze dne ..... výlučným vlastníkem těchto nemovitostí:

budova č. p. ….postavená na pozemku parc. č. ……,
pozemek parc. č. St. ..... zastavěná plocha a nádvoří,
pozemek parc. č. ....,
pozemek parc. č. ....,
v části obce..... a v katastrálním území..... .....,
vše zapsané na listu vlastnictví č. ……, pro obec....., katastrální území.....
a část obce ……., včetně všech součástí a příslušenství.
(dále jen „Nemovitosti“)

II.

1. Prodávající touto kupní smlouvou prodává Kupujícímu Nemovitosti včetně všech součástí a příslušenství popsané v čl. I. této kupní smlouvy.

2. Kupující Nemovitosti včetně všech součástí a příslušenství popsané v čl. I. této kupní smlouvy kupuje a přijímá do svého výlučného vlastnictví a zavazuje se za ně uhradit dohodnutou kupní cenu.

III.

Prodávané Nemovitosti jsou popsány a oceněny ve znaleckém posudku vyhotoveném ...., jmenovaným ..... soudem v .....…., ze dne ....., č. .....

IV.

1. Celková kupní cena je stanovena dohodou smluvních strana a činí Kč.....
(slovy: ..... korun českých);
z toho kupní cena za budovu čp. .... post. na pozemku parc. č. St. činí Kč .....
(slovy: ..... korun českých),
a cena za pozemky parc. č. St. .... zastavěná plocha a nádvoří, parc. č. ..... zahrada, parc. č. ..... ostatní plocha činí Kč..... (slovy: ..... korun českých).

2. Kupující se zavazuje uhradit dohodnutou kupní cenu tímto způsobem :
Dohodnutá celková kupní cena ve výši Kč..... (slovy: ..... korun českých) byla Kupujícím Prodávající uhrazena v plné výši ke dni podpisu této kupní smlouvy, což Prodávající stvrzuje svým podpisem na smlouvě.

V.

1. Prodávající prohlašuje, že prodává Nemovitosti, popsané v článku I. smlouvy, ve stavu odpovídajícím jejich opotřebení a dále prohlašuje, že mu nejsou známy žádné vady nemovitostí, na které by měl povinnost kupujícího upozornit.

2. Prodávající dále prohlašuje, že na Nemovitostech neváznou žádné dluhy, věcná břemena, zástavní práva ani jiné právní povinnosti či omezení, a že jim nejsou známy žádné faktické či právní vady prodávaných nemovitostí, které by bránily prodeji kupujícímu.

3. Prodávající se zavazují předat kupujícímu prodávané nemovitosti k jejich řádnému užívání nejpozději do ..... dnů ode dne doručení této smlouvy s vyznačenou doložkou o provedení vkladu vlastnického práva ve prospěch Kupujícího do katastru nemovitostí. Prodávající se zároveň zavazuje s předáním Nemovitostí předat Kupujícímu veškerou dokumentaci k prodávaným Nemovitostem.

VI.

Prodávající a Kupující prohlašují, že Prodávající Kupujícího se stavem nemovitosti ke dni uzavření kupní smlouvy seznámil, že se Kupující podrobně seznámil se znaleckým posudkem podle článku III. této smlouvy a dále prohlašují, že kupujícímu je stav nemovitosti znám a v tomto stavu nemovitost od prodávajícího kupuje a přejímá.

VII.

Závazkový právní vztah vyplývající z této smlouvy vzniká mezi účastníky smlouvy jejím podpisem. K přechodu vlastnického práva na kupujícího dojde provedením vkladu vlastnického práva do katastru nemovitostí na Katastrálním úřadu pro ..... kraj, Katastrálním pracovišti ....., kdy smlouva nabývá věcné účinnosti. Právní účinky vkladu vlastnického práva vznikají na základě pravomocného rozhodnutí katastrálního pracoviště o jeho povolení ke dni, kdy návrh na vklad byl doručen katastrálnímu pracovišti.

VIII.

1. Na základě této smlouvy bude po povolení Katastrálním úřadem pro ..... kraj, Katastrálním pracovištěm ....., proveden vklad vlastnického práva ve prospěch Kupujícího dle smluvního projevu učiněného mezi účastníky v článku II. této smlouvy.

2. V případě, že příslušný katastrální úřad zamítne povolení vkladu vlastnického práva na kupujícího, zavazují se účastníci kupní smlouvy k odstranění vytčených vad do 14 dnů, a to dodatkem k této smlouvě nebo novou kupní smlouvu, aby byly vytýkané vady odstraněny, případně že na pokyn příslušného katastrálního úřadu návrh na vklad náležitě doplní.

IX.

1. Daň z převodu nemovitostí dle příslušných právních předpisů hradí Prodávající. Podle ust.§ 21 odst.2 písm.a) zák.č. 357/1992 ve znění změn a doplňků, je povinen prodávající

podat místně příslušnému správci daně vyplněné přiznání k dani z převodu nemovitostí, a to nejpozději do konce třetího měsíce následujícího po měsíci, v němž bude dle této kupní smlouvy zapsán vklad vlastnického práva ve prospěch kupujícího do katastru nemovitostí.

2. Daň z převodu nemovitostí je ve smyslu ust.§ 18 odst. 2 zák.č. 357/1992 ve znění změn a doplňků splatná ve stejné lhůtě, která je stanovena pro podání daňového přiznání.

3. Správní poplatek spojený s návrhem na vklad do katastru nemovitostí hradí kupující.

X.

1. Vztahy mezi smluvními stranami výslovně neupravené touto smlouvu se řídí příslušnými ustanoveními občanského zákoníku.

2. Tato smlouva je vyhotovena v pěti stejnopisech, z nichž každá smluvní strana obdrží po jednom a to po provedení vkladu vlastnického práva do katastru nemovitostí. Jeden stejnopis smlouvy obdrží ....., a.s., pobočka ve ....., a to po podpisu této smlouvy.

3.Prodávající a Kupující prohlašují, že si tuto smlouvu před jejím podpisem přečetli, že byla uzavřena po vzájemném projednání podle jejich pravé a svobodné vůle, určitě, vážně a srozumitelně, nikoliv v tísni za nápadně nevýhodných podmínek. Na důkaz toho smluvní strany připojují k této smlouvě své podpisy.

V..... dne .....

Prodávající: Kupující:

....

Appendix 5: Extract from Land Register