

## Protection of "enclaved" buyers

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The New Foreclosure Law, which permits the commencement of the procedure for the foreclosure of immovable properties, affects not only the registered owners of immovable properties but also the buyers of immovable properties who were never registered as the owners of immovable property and found themselves "enclaved" in the danger of foreclosure of the property they have purchased, due to loan obligations of the Property Developers.

With the intention of protecting such enclaved buyers, the parliament has voted new legislation to ensure that enclaved buyers receive their title deed and to avoid foreclosure of their immovable property.

### **NEW LEGISLATION**

The new legislation on the Transfer and Mortgaging of Immovable Property (Amended) (No.10) Legislation of 2015 no. 139(I) of 2015, which came into force on 7 September 2015, aims to protect buyers of immovable properties who have paid for a mortgaged property and have deposited their contract of sale at the Land Registry Office, but are not the registered owners via a separate title deed.

### **APPLICATION PROVISION (article 44(K))**

On the basis of this new legislation, buyers can now apply to the Land Registry Office of the District in which their immovable property is located, for the transfer of the immovable property onto their name and the removal of any encumbrance/mortgage.

The main requirements are the following: 1) That the sales contract of the immovable property or part thereof has been filed at the Land Registry Office before the 31st of December 2014, and 2) That the purchase price has been fully paid or if the purchase price has not been fully paid then the Buyer can, for the purpose of the application, pay the remaining amount of the purchase price into a special temporary account within 30 days of the date written notice was served for this purpose by the Land Registry Office, and 3) That there is a registered title deed of the immovable property.

### **IMPACT OF THE PROTECTION OF ENCLAVED OWNERS**

With the filing of this application, irrespective if there is a pending procedure or not, including foreclosure procedures, bankruptcy etc., any such procedure is suspended until the full examination of the application. The determining factor for the suspension of other ongoing procedures is the payment of the immovable property's purchase price (or part thereof with a written declaration of the payment of the remaining amount), regardless as to whether there is a title deed for the actual property being

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purchased (assuming that the publication of a separate deed is feasible). At the next stage of the examination of the application, a title deed must be issued for the entire immovable property (time will be allowed for this) for the application to proceed.

If the application meets the relevant requirements, then at the same time the Land Registry Office will send notification to every interested party (buyers, sellers, lenders, and any other person that benefits from the encumbrances) concerning the transfer of title to the buyer's name and as regards the cancellation/mortgage release/encumbrance/restriction. It is worth noting that instead of complete cancellation of the mortgage/encumbrance, the lender and any other person that benefits from the encumbrances is entitled to apply for the mortgage/encumbrance to be transferred to another immovable property which belongs to them or if they do not have one, to a property of their guarantor in relation to the immovable property in issue (legal or actual person). It is implied that, any person who is to benefit from such mortgage/encumbrance/restriction (i.e. lender/bank) is entitled to submit an objection within 45 days from the date of the receipt of the notification for the following reasons: 1) the contractual obligations of the buyer towards the seller were not fulfilled or 2) the contract is null and void.

The conclusion of this procedure, in the event the objection is not successful, is the acquisition of the title deed by the enclaved buyer and the removal of every encumbrance/mortgage from their immovable property.

## **PROCEDURE IN A NUTSHELL**

- Application from the buyer/seller/lender or ex officio from the Land Registry Office.
- Postponement of any Procedure (divestment) if the purchase price of the immovable property has been partially or fully paid.
- Examination of the Application does not commence if neither the remaining amount has been paid into a special temporary account nor has a separate title deed been published for the subject of the contract.
- Examination of the Application commences when at least one of the points of the previous stage are complete and the Director examines the 3 aforementioned requirements (deposit of contract at the Land Registry Office, payment, title deed of the immovable property).
- Service of written notice to any interested party (lender, seller etc.) in relation to a) the transfer of the immovable property to the buyer and b) the writing off of the mortgage/ encumbrance in 45 days.
- Possibility of an objection from any person interested and/or benefiting from the mortgage/ encumbrance within 45 days of receipt of the notification.
- If evidence of objection exists – the transfer is suspended. If there is no evidence - the transfer process continues. The seller/lender is entitled to

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transfer the mortgage to another immovable property of theirs or to immovable property of a guarantor (in relation to the immovable property in issue).

- Transfer of immovable property takes place within 60 days of the service of notification to the buyer with the transfer fees at the expense of the buyer (10% reduction if the transfer is made within 60 days or 12 monthly instalments of the transfer fees). In the event of a delay, there is an increase of fees by 50%.
- Removal of the existing mortgage/encumbrance takes place before the transfer of the immovable property.

## CONCLUSION

The new legislation is judged to be fair as it is, undoubtedly, an important step for the protection of buyers who have paid off the agreed price or are in the process of paying it off, complying fully in this way with their contract and who have not received the separate title deed of the immovable property for reasons beyond their control.

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