

Joint real property: problems and issues

The right to own property is one of the fundamental rights guaranteed directly by the Constitution, while the ownership right of all owners has the same legal content and protection. The ownership of real property enjoys increased protection and requires that all documents related to it are executed in writing. The situation may be complicated when the real property is owned by several entities, specifically, as marital property or divided co-ownership.

The acquisition of real property for co-ownership does not appear so problematic. If either of the spouses acquires it during their marriage, it becomes a part of their marital property (hereinafter only the "marital property"). The exception arises when the spouses have modified the scope of their marital property, reserved the creation of their marital property as of the day of the termination of marriage, or the marital property has been cancelled by a court upon proposal of the spouse who does not pursue business. It generally applies that both spouses use items that are the subject-matter of their marital property jointly and also jointly pay expenses for the items or related to the use and maintenance thereof. Ordinary items related to joint items may be handled by either of the spouses; other matters require the consent of both spouses under the sanction of invalidity pursuant to the provision of Section 40a of the Civil Code. It is questionable which acts can be considered as ordinary acts in relation to joint real property. The term "ordinary" item is not defined by law. It is possible to deem items that are repeated and do not exceed the framework of ordinary management of a item as ordinary items. What can be considered, with regard to the common use of real property, e.g., a flat, as an ordinary item, results from the Decision of the Supreme Court of the Slovak Republic, file No. R 47/1984. The ordinary items

thereunder include items concerning the common use of a flat by spouses that are repeated or do not materially interfere in the common ownership. On the contrary, the donation of real property, the conclusion of a mortgage agreement, the conclusion of a lease agreement, all legal acts concerning the acquisition, exchange and sale of real property, etc., are not considered by judicial practice to be ordinary items. The Supreme Court of the Slovak Republic has stated, in its Decision, file No. R 39/1974, that if both spouses are purchasers under a contract on the transfer of real property, they both have to sign the contract as well.

Divided co-ownership may be created in all the ways in which ownership may be created. Courts review or, mainly in the past, reviewed cases of the creation of co-ownership relationships regarding real property based on the acquisition of the title thereto by prescription or construction of a structure as the originally acquired co-ownership. The fact that a certain person continuously possesses any real property for the period of ten years does not yet mean that upon the acquisition of the title thereto by prescription, the user automatically becomes its exclusive owner. In our opinion the condition that the person acquiring his right by prescription is convinced, in good faith and reasonably, that the whole

real property belongs to it as the exclusive owner should at the same time be fulfilled. The knowledge that it is entitled to an interest in common property only excludes the prescription exclusively to it.

The evaluation of the origin of divided ownership of a structure constructed by joint activities of several persons may be questionable. The participation of several persons in this activity is insufficient for the creation of co-ownership. Even in this case it shall be necessary to enter into a co-ownership agreement, the form of which is not stipulated by law. Given the fact that real property is concerned, it is suitable that it is done in writing. Legal title is then created upon registration with the Properties Register. A bigger problem can occur in case of cessation of co-ownership of joint real property. Divided co-ownership of joint real property pursuant to Act No. 181/1995 Coll., on Land Associations, is indivisible and may not be cancelled and settled pursuant to special regulations. The above-stated legal regulation relates to lands associations, such as, for instance, forest and grazing associations of owners of portions of joint real property, etc. The co-owners of the joint real property at issue are significantly restricted by the said Act, the goal of which is to avoid for example the division of

forest lands into smaller partials. The most frequent manner of settlement among co-owners is the partition of a common item. Real property poses a problem. Upon the partition thereof, items being independent both from the factual and legal side and capable of being registered with the Properties Register have to be created. In case of the partition of land, it shall be necessary to prepare a new graphical site plan of borders, provided that new parcels have been created. The partition of a structure is not always technically feasible. Even if it is, it is impossible to divide it in any manner. It applies that with the actual partition of a structure, the building may be divided either vertically, or into particular flats and non-residential premises. We believe that the horizontal partition is impossible, unless other criteria are fulfilled. If it is impossible to divide the structure among co-owners in the said manner, two options can be considered. Either the co-owners agree and carry out other construction alterations in such a manner that the structure is divisible, or it is possible to make money from the building and pay out individual co-owners according to their shares from the sum obtained. In case that co-ownership is cancelled and settled by the partition of real property, the court may also create, even without any proposal, an easement over the newly-created real property in favour of the owner of the newly-created real property. The creation thereof is a part of the settlement of the co-owners. It is necessary to realize that in the said case, it is possible to create the easement *in rem* (*in rem* are rights tied to an object as opposed to a person).



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