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When investing on the real estate market or buying a property for own use, it should be remembered that the purchaser becomes the owner of the rights to the property. However, before signing a contract it is worth checking what rights and restrictions are imposed on the subject of the transaction. All necessary information can be found in the land and mortgage register of a property, available at the district court competent for the given area. Special attention should be paid to limited rights in rem, which include usufruct, servitude, pledge, cooperative ownership right to premises and mortgage. Among the servitudes stand out: the land servitude, the transmission servitude and the personal servitude, which is the subject of analysis in this article. In addition to the servitude, it is worth considering a life agreement. What could be a better form of security for the seller: a personal servitude or a life agreement?

PERSONAL SERVITUDE

According to Article 296 of the Civil Code '(...) real estate may be encumbered in favour of a designated natural person by law, the content of which corresponds to the content of the land servitude (personal servitude)'. It follows that the essence of personal servitude is the possibility of encumbering the property in favour of a particular individual, which involves three possible cases:

- the person entitled to personal servitude may use the encumbered property to a specified extent,
- the owner of the encumbered property is restricted in his ability to carry out certain activities in relation to it,
- the owner of the encumbered real estate is not allowed to enforce certain rights which he is entitled to with respect to the proprietary real estate (that is, the one for whom the servitude is established), on the basis of the provisions on the content and is enforce of ownership.

The basis for establishing a personal servitude is a contract between the parties. The parties that can be distinguished by the use of the right on personal servitude are:

- entitled by virtue of personal servitude (a specific, named, natural person, not an owner),
- each owner of a property encumbered with personal servitude.

The law on personal servitude often refers to the law on land servitude. The main difference is that in case of a personal servitude, the person who is entitled is a particular individual, and not every owner of the property in charge, as in case of a land servitude. This means that a personal servitude is inalienable, non-transferable, not subject to inheritance and expires at the latest upon the death of the right-holder (it is a right of due date). Personal servitude cannot be acquired by positive prescription.



The most common type of personal servitude is residential servitude. Suppose Mrs. Sophie sells the apartment to her daughter. She wants to secure her own future, so the condition for her daughter to acquire the property is to establish a personal servitude for Mrs. Sophie. The contract clearly states that Mrs. Sophie can use all the rooms in the apartment, all the equipment and will contribute to the charges for the used utilities. Such a scenario is quite common, but a person not related to the owner may also be entitled to the servitude.

A person entitled to residential servitude may take a spouse and minor children who may remain in the apartment even after their majority. The entitled person may also take other persons, but only if they are maintained by him or if they are necessary for running the household. As mentioned earlier, personal servitude is not subject to inheritance, however, according to the Civil Code, it can be agreed that after the death of the person entitled to the servitude, his children, parents and spouse will be entitled to the residential servitude.

Another important aspect is the possibility of changing a personal servitude into a pension. This is possible when the right holder commits gross misuse in the enforcement of his right. A personal servitude cannot be completely abolished because of its nature as maintenance, as it would have the effect of worsening the life of the person entitled, but the rules on land servitude apply here.

LIFE AGREEMENT

According to the provisions of the Civil Code, a life agreement, like a personal servitude, is intended to provide a place of residence for the person selling the property. The main difference is that the subject matter of a life agreement is not only the right to live in apartment but also the assurance of life support. In practice, this means that the purchaser should accept the seller as a lodger, provide him with food, clothing, accommodation, access to the necessary utilities, as well as take care of his illness and cover funeral expenses.

The basis for the establishment of the life agreement is a contract between the parties. The parties are:

- the seller of the property (entitled), who may also reserve right to live in apartment for the benefit of a close person, e. g. spouse,
- the buyer of the property.

As with personal servitude, it is possible to convert the life agreement into a life annuity. This can be done when the relationship between the parties does not allow close contact with each other. In exceptional cases, at the request of the seller or the buyer, the life agreement may be terminated by the court.



SUMMARY

Both the personal servitude and the life agreement are intended to ensure that the seller can live in the property that is the subject of the transaction. The fundamental difference remains the way this right is enforcement. In case of a personal servitude, the entitled person may live and use the facilities in the encumbered property, but he covers the costs of his maintenance. The right to live in sold apartment (life agreement), on the other hand, is extended to ensure the entitled with a maintenance and proper care.



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AMRON Centre

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