

Do's and Don'ts for real estate purchase agreements

by Oana Someșan, Avocat (Attorney at Law RO)

We have recently noticed a strong tendency of extending existing investments. While the majority of investors decides to purchase plots of land for establishing or extending existing properties, the number of investors seeking the purchase of completed properties consisting of plots of land and buildings erected by the landowner at the request (and according to the specifications) of the investor increases.

Despite the high contract value, the parties often fail to thoroughly check the legal and technical situation of the properties and to determine the content of the contract (i.e. exact warranties, rights and obligations of the parties).

Since this may have significant legal and economic consequences, we hereinafter present important „Do's and Don'ts“ to be taken into account when concluding real estate purchase agreements.

- **Do: Checking the legal and technical situation of the property**

Before purchasing plots of land and/ or buildings, it is recommended for every potential purchaser or investor to perform due diligence. This aims at determining the legal and technical situation of the property to be purchased, which in practice, can result in certain surprises such as significant damages leading even to the loss of ownership of the real estate purchased.

In most cases, also an environmental due diligence and additionally the measurement of the land are recommended.

- **Don't: Omission to conclude a purchase precontract in order to secure the real estate**

During the due diligence which can take some time due to the simple fact that documents have to be obtained/ prepared, the future purchaser should secure the transaction by means of a binding purchase precontract.

A precontract contains the parties' obligation to irrevocably purchase, respectively sell the property at the price and under the conditions set in the precontract. Obviously, a precontract includes certain conditions under which the final purchase agreement will be concluded. Typically, amongst them are a satisfactory result of the due diligence; according to the particularities of the project and of such due diligence results, additional preliminary obligations of the future seller may be agreed.

In order to make the precontract opposable to third parties (i.e. especially to prevent the purchase by third parties during due diligence), purchase precontracts must be registered in the Land Register of the property.

- **Do: Checking the legal and financial situation of the future seller**

Especially when the purchase precontract/ purchase agreement includes subsequent obligations of the seller (certain construction works etc.) and/ or termination clauses, it is highly

recommended to make investigations with regard to the future seller by accessing public registers (for instance the trade register, insolvency register, electronic archive for personal securities, websites of the financial administration and of the local courts) and to identify possible inconsistencies/ problems. In case there are significant debts or disputes of a certain potential commercial partner or in case insolvency procedures have been initiated, this will influence the willingness to conclude a contract.

- **Don't: Insufficient determination of the seller's duties when selling completed projects**

When buying of plots of land upon which the landowner builds at the request and according to the specifications of the investor, the purchaser should make sure the duties of the seller/ developer are regulated in a clear and detailed manner. This implies, for instance, that the seller is responsible for obtaining the building permit, the execution of construction works according to the specifications of the purchaser, the registration of the construction in the Land Register, obtaining the necessary fire protection permit, etc. These duties must be necessarily fulfilled before the property is transferred and the purchaser takes over the property.

- **Do: Sufficient securities of the seller and contractual sanctions**

Since real estate purchase agreements are extremely important, it is recommended to include sufficient representations in the contract. In case certain representations and warranties were or become inaccurate, certain sanctions (for instance contractual penalties, the right to remedy or even the termination of the purchase agreement) have to be agreed upon.

Conclusion

Given the contract value, real estate contracts are very important. Therefore, they must be prepared in a detailed and careful manner. The legal situation of the purchase object has to be verified from the very beginning, in order to establish the conditions for the effectiveness of the contract.

Contact and further information:



STALFORT Legal. Tax. Audit.
Bucharest – Bistrița – Sibiu

Office Bucharest:

T.: +40 – 21 – 301 03 53

F: +40 – 21 – 315 78 36

M: bukarest@stalfort.ro

www.stalfort.ro