

Did You Sell Your Movable Property with Title Retention? Watch the New Civil Code!

Regarding contracts on the transfer of title, the new Civil Code which entered into force on 15th March 2014 allows the seller to retain his title until the purchase price is paid in full, the expert of Kovács Réti Szegheő Attorneys at Law said to origo. Dr. Mónika Kapetz believes that it is in the seller's interest to register the retention of his title, particularly in the case of high-value movables, as this is the only means to defend himself against the acts of a malicious purchaser.

Title retention plays a similar role to that of a lien because the seller gets into a creditor's position in such a transaction as he has not received a part of the purchase price yet, while the purchaser gets into a debtor's position with respect to the same amount.

The Civil Code allows the seller to choose a security stronger than a lien and retain his title until the purchase price is paid in full. The legislators want to create publicity for this legal institution to strengthen its role as a security, so they modified the former rules and require registration of title retention.

New provision

This is not new in real estate trade because sale with title retention has always been noted on the encumbrance page of the title deed.

What's new is that the seller is required to register this fact in the land register with the identification of the purchaser, stressed the expert of Kovács Réti Szegheő Attorneys at Law.

In the new Civil Code, however, the registration obligation applies to movable properties as well. If the title to a movable property is recorded in an authentic register and its pledge is required to be listed by law, then the details of the purchaser and the retention of title must be entered in the appropriate list or, in the case of other movables, in the security register.

Register maintained by the Chamber of Civil Law Notaries

The security register is maintained by the Hungarian Chamber of Civil Law Notaries. The register truly attests that the declarant made a security declaration on the date and with the content shown in the register, underlined Mónika Kapetz.

The declarant is responsible for the truth of the declaration and the accuracy of the information contained therein, consequently the register is not deemed to be a certified public register.

All declarations will have to be made electronically. The parties can record the lien in the register themselves, without any administrative assistance.

Anyone wishing to make an entry in the security register must appear once before a notary public in person to sign up himself.

Legal consequences



The seller's failure to register the retention of his title may entail serious legal consequences. If no registration is available and anyone acquires title to the movable property from the purchaser in good faith and for consideration, that person will acquire title to the property and the lien established by the purchaser in favour of a third person will take effect even in lack of the purchaser's right of disposal.

Accordingly, it is in the seller's interest to register the retention of his title, particularly in the case of high-value movables, as this is the only means to defend himself against the acts of a malicious purchaser.

According to the expert of Kovács Réti Szegheő Attorneys at Law, it is absolutely recommended for sellers to use the register after signing up themselves and for purchasers to check the register before concluding a contract.