

THE LEGALITY CONTROL OF A PROPERTY TRANSACTION

By Mr Savvas Savvides, Attorney-at-Law and Partner at Michael Kyprianou & Co. LLC



michaelkyprianou
— Advocates - Legal Consultants

In recent years, after the occurrence of the flourishing sale of real estate and the hidden obstacles to the issuance of clean property titles, it has become necessary and a principal factor for prospective and interested buyers of real estate, to carry out any appropriate search and control through legal and technical procedures on the property concerned which they intend to purchase, with regard to verifying the legality of the property. To buy a property for any purpose and use is probably one of the most important financial transactions one makes. For this reason, according to the real estate offer of the immovable property for sale, the criteria for a good investment is primarily the purchase of real estate that is free of any legal or actual impediment, defect or encumbrance, which will make it possible for the issue of the separate title deed in the name of the new buyer.

Several cases have been brought before the Cypriot Courts with the main objective of the trial being to lift the legal and real barriers that make it impossible to transfer the property that has been purchased and that cause significant financial loss and costs to buyers of immovable property. Under these circumstances, the previous legislation that was in force and the observed practice where it was not mandatory to apply the so-called preliminary control of a prospective buyer in verifying the legality of the property in question, which presupposed the transfer of the purchased property immediately into the new owner's name.

Prospective and interested buyers should contact competent persons for the purpose of carrying out legal checks, i.e. the existence or non-existence of any real burden or impediment, as well as specialised professionals in order to ascertain whether real obstacles exist or not.

The point made at this stage is that the distinction between legal impediments and real ones needs to be clarified, and this briefly touches a topic that is open to extensive analysis.

Legal impediments are created by the fact that there are real burdens and prohibitions on the immovable property rights under the Transfer and Mortgage Law where it is semantically attributable to the existence of a right by another on the registered owner of one or more direct claims through a charge or obligation on the property. The encumbrances as recorded in the aforementioned law are described in the First Amendment to Law 9/65, which mentions the most common, such as Mortgages and the registration of a court decision (MEMO). In particular, encumbrances and/or prohibitions relate to a registered right on and against immovable property for collateral purposes.

A typical example is often found in the registration of a mortgage on a piece of land that has been built up in a group of vertical or horizontal properties by the registered owner of the property prior to the separation and issue of separate title deeds on each of the real estate available for sale, and are taken for that purpose and not repaid to the funding Banking Institution which, in order to secure the facility provided, enters the entire piece of land in a mortgage on the individual sales of the real estate.

Legal barriers, by disclosing their existence to prospective purchasers, and by appropriate legal advice, can be addressed and/or preventive measures taken to avoid falling into a negative property market.

On the other hand, the legal obstacles to encumbrances are subject to real barriers, which vary and relate to any appropriate certificate or licence document issued by the competent authorities to support the proper and legal construction of the building in question under the registered building plans and legal building standards issued by the competent public authorities.

Buyers are often asked to deal with the failure of sellers and construction companies to comply with planning and building permits, and are either called to justice for compliance and completion of authorisations approved by the authorities of the other contracting parties or are forced into financial disadvantage by the seller, and have to take care of themselves and the cost of completing the project, in order for the necessary certificates and permits to be issued, as well as comply fully with the technical legality of the building in question.

Purchasers in this case, through a thorough investigation of the certificates and permits for the construction of the property in question with the building (house, block of flats, commercial building), must contact legal and technical advisers to verify the issuance and compliance of the necessary permits and certificates. However, it should be noted that the audit is not only a matter of verifying the existence of these permits but also of their content as they may have been issued under terms and notes of omissions and/or deficiencies that impede the process of issuing clean title deeds.

Essential documents for the issuance of separate title deeds to new buyers include, but are not limited to, the final approval certificate or otherwise the final certificate, the building permit, and the town planning permit. This is where the authorities issuing certificates for the building's security, electrical control as well as archaeological control are involved. The public authorities in the issuing of separate titles carry out street, topographic, border control, site surveying and all research and verification of compliance with the technical specifications of a construction project. Such inquiries need to be verified prior to the purchase of a property following legal and technical supervision and investigations to ensure the purchase of a legal and technical property.

The modern real estate market has embraced this issue. Purchases are now being concluded on new bases and data as buyers have an extensive picture of the purchased property at the preparation stage of the purchase agreement, which generally protects both parties. Purchasers should be mobilized by any appropriate measure to secure the market they intend to enter and defend their property rights before taking an important decision to invest in a property finance line and/or return. Legal advice provides for legal control, the assignment of technical control by an expert, the preparation of negotiations with the seller in such a way so as to safeguard the interests of the buyer and the overall coordination of any appropriate and necessary action for the purchase of a good property that will prevent the buyer from experiencing unnecessary conflicts and problems.

The content of this article is valid as at the date of its first publication. It is intended to provide a general guide to the subject matter and does not constitute legal advice. We recommend that you seek professional advice on a specific matter before acting on any information provided.

For further information, please contact Mr Savvas Savvides at savvas.savvides@kyprianou.com or contact number 26930800. Lawyer, Partner and Director of the Paphos Office of the Law Firm, Michael Kyprianou & Co LLC.