

## SUBJECT, ACQUISITION AND LOSS OF IMMOVABLE PROPERTY

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### ABSTRACT

The subject of the right to property are all things, which can belong to natural and legal persons, except those which by their nature or by the law (ex lege) cannot be subject to this right.

The right to property is guaranteed in the Constitution of the Republic of North Macedonia, as well as in the in the other relevant laws.

For the acquisition of ownership and other real rights over immovable property under the Macedonian law of ownership and other real rights, two conditions are required: legal title (iustus titulus) in the meaning of an obligatory basis as the reason of the transfer (causa) and the acquisition form (modus aquirendi), which is the registration of title.

**Keywords:** immovable property, iustus titulus, modus aquirendi

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**Declaration of interest:**  
The authors reported no  
conflict of interest related  
to this article.

## **Introduction**

The subject of the right to property are all things, which can belong to natural and legal persons, except those which by their nature or by the law (ex lege) cannot be subject to this right.

A thing is that part of tangible nature that should fulfill two conditions: material condition, to be under the power of man (fact. apprehension) and social condition, to have the character of goods eligible for exchange in traffic. This mean that subject to the right to ownership are things in trade (res in comercio).

The subject of the right to property quite limited may also be things out of circulation and things in restricted circulation.

Things out of circulation (res extra comercio) are public goods: roads, squares, parks, monuments, public buildings, airports, libraries, zoos, etc.

Things in restricted circulation for example are: drugs, weapons, explosives, poisonous chemicals, etc.

There are also things that cannot belong to anyone (res nullius). These things cannot be subject to the right to property. (Nuredin,2022) For exaple: free air, Republic of Macedonia, rainwater, water from Vardar, abandoned things etc.

## **1. Division of things into movable and immovable**

Property can be acquired over a thing. There are different types of things depending on their position in space, composition, nature, purpose and other characteristics.

Depending on the position in space, things are divided into movable and immovable things.

Depending on the content, things are divided into simple and complex things.

The parts of a complex thing in terms of purpose can be main and secondary.

Things, depending on their purpose, can be things of general interest of the state and things that are not of general interest of the state.

The basic classification of things in the positive law of the Republic of Macedonia is the division of things into movable and immovable.

Macedonian Law of ownership and other real rights does not define the word “thing”. In the context of the Law of ownership and other real rights, the term thing means movable things or immovable things. It has, however, excluded intellectual rights as things because they are regulated by a special law - Law on Industrial Property adopted in 2009. From here, in the broadest sense of the word, the subject of property rights can be movable things, immovable things and intangible rights.

So, the most important division of things according to Law of ownership and other real rights in Macedonian law is the division of things into movable and immovable things.

The division of things into movable and immovable is important from the point of view of the legal regime of the things. The differences are manifested in several areas: 1) the acquisition of property rights, 2) the transfer of property rights, 3) the protection of property rights and 4) the

termination of property rights. In the following, the focus will be directed to the legal regime of acquisition of property rights over immovable things.

## **2. Subject of immovable property**

According to article 13 of Macedonian Law of ownership and other real rights movable things are those that can move in their entirety or move from one place to another without damaging its essence. Immovable things are those things that cannot be moved from one place to another, without damaging their essence. Immovable property, in the sense is land (agricultural, construction, forestry and pastures) and buildings, as well as installations erected upon or under them and permanently joined to them, if otherwise is not determined by law. Things which by their nature are movable can be counted in the legal sense for immovable if they belong to a certain immovable thing or if the law equates them with immovable things. A typical example of such things in court practice are: agricultural machines, airplanes, ships, etc. In case of dispute, whether a thing is movable or immovable is considered that it is movable. According to the legal theory immovable thing by nature for example is the earth, earth particles, etc. Immovable thing is also anything mechanically or organically connected to the earth - buildings (houses, villas, pools, basements, garages, etc.), or everything that is embedded in the earth with a purpose to be there permanently, or anything built into the building or permanently attached to it (installations, pipes, heating, etc.). Trees, plants, fruits, etc are also immovable things.

The simplest way to determine if a thing is a permanent fixture would be to imagine turning the house upside down. The things that would fall can be seen as movable and those that would remain attached can be

seen as part of the immovable property; better known as fixtures in the offer to purchase.

### **3. Acquisition of ownership and other real rights**

Ownership and other real rights are acquired through the certain rules defined by civil codes and other means specified by a separate law.

The property rights are acquired:

- bases on the law;
- based on legal action;
- by inheritance;
- based on the decision of the competent state institution.

The right of ownership according to law is acquired by creating a new thing, by mixing and merging, by building on the land, by maintaining, by separating the fruits, by acquiring ownership from a non-owner, by occupation, by attachment and sedimentation, by changing the bed of a water flow and creation of an island and in other cases determined by law.

On the basis of an allowed legal action the purpose of which is acquiring ownership, the ownership is transferred from the previous owner to the acquirer, in a manner determined by law.

The right to ownership of a thing is acquired by inheritance at the moment of opening the inheritance of the property of the deceased, unless otherwise determined by law. After the validity of the decision on inheritance the heir has the right to request registering of the right to ownership of a real estate in the public books.

With a decision of a court or another authority, the right of ownership is acquired in cases and under conditions determined by law. The right of ownership is acquired at the moment of the validity of the court decision, or the finality of the decision of another authority if

nothing else is determined by law, nor does it derive from the purpose for which the decision was brought.

From here it can be noted that the right of ownership can be acquired in an original or derivative way. An original way of acquiring the right of ownership exists by law when the right of ownership is acquired legally, and derivative way when the acquisition of the right of ownership has a contractual nature. The division is made on the basis of the nature of the legal basis, that is, it is based on whether the legal basis is statutory or contractual.

Original acquisition of real subjective rights is that acquisition which does not depend on the will of the predecessor, or the right is established for the first time (the legal basis). Acquiring the right of ownership by road of occupation (appropriation of an abandoned thing) and maintainer of someone else's thing (with passage of time and conscientiousness of the holder) are examples of original acquisition which it does not depend on the will of the predecessor. The legal fact in these two cases is the appropriation of the object, that is, the holding of the object, and the legal basis is the law itself.

The derivative acquisition (acquisition) of real subjective rights is what which is the result of the agreement of the wills of the predecessor and the acquirer (the legal basis is agreed)

#### **4. Acquisition of immovable property**

The distinction between movable and immovable property is relevant with respect to the modes of acquisition and loss of property rights.

Macedonian's Law accepts these property rights: 1. ownership, 2. servitude, 3. pledge, 4. real burden and 5. long-time lease of construction

land. In this sense, the principle of the ‘numeric clausus’ of property rights is accepted in Macedonian's law.

For the acquisition of ownership and other real rights over immovable property under the Macedonian law of ownership and other real rights, two conditions are required:

1. legal title (*iustus titulus*) in the meaning of an obligatory basis as the reason of the transfer (*causa*) and

2. the acquisition form (*modus aquirendi*), which is the registration of title.

*Iustus titulus* is a valid basis of acquisition. *Iustus titulus* can have legal nature, contractual nature or judicial nature. Accordingly, for acquisition of ownership in immovable property, a valid legal transaction between transferor and transferee is required, which is the legal basis for the transfer of the ownership and the registration of ownership in the immovable property registry.

Immovable property rights must also be registered. So, the purpose of the *modus aquirendi* is to make the conveyance public (visible to others). Therefore, the *modus aquirendi* is required with third parties in mind. Registration of immovable property is mandatory (registration of the change) as only through registration can any property right be created (acquired).

Both *iustus titulus* and *modus aquirendi* are required for the transfer of ownership. In other words, registration without a valid legal ground is itself invalid.

#### **4.1 Acquisition of ownership in immovable property bases on the law**

The right to ownership (and other real rights) on the basis of law can be acquired through maintenance and construction on the land. In both

situations, in order to acquire the right of ownership in immovable property, there must be a legal basis and the conditions for the registration of the right to the real estate in the public books (the Real Estate Cadastre) must be met.

#### **4.2 Acquisition of ownership over immovable property by maintenance**

The Law of ownership and other real rights provides acquisition of ownership over immovable property by maintenance for a period of 20 years and only if the acquirer is acting in good faith. According to art 124 of Law of ownership and other real rights, a proprietary possessor acquires ownership of an immovable property, or a part thereof, after 20 years of uninterrupted prescription.

Consequently, ownership over immovable property can be acquired if the following terms are met:

- a) uninterrupted possession y for a period of 20 years and
- b) good faith of the acquirer.

#### **4.3 Acquisition of ownership in immovable property by maintenance through registered proprietary possession**

The acquisition of ownership by maintenance in immovable property is also possible through registration of possession in the immovable property rights register.

A proprietary possessor acquires ownership of immovable property or a part thereof after 10 years of uninterrupted possession if he is registered as the proprietary possessor in the immovable property rights register and no objection against this registration is announced during this period.



According to article 124 of Law of ownership and other real rights, ownership is acquired if the following terms are met:

- a) uninterrupted possession of immovable property for 10 years,
- b) registration of proprietary possession in Cadastre, and
- c) no objection against this registration within 10 years.

#### **4.4 Acquisition of ownership in immovable property by construction on land**

Acquisition of ownership in immovable property by construction on land is a true example of extension of ownership over immovable property. The ownership of immovable property includes the area above and below the surface of the immovable property if there is an interest for its performance, unless specific legislation and third party rights do not provide otherwise. Unity of ownership exists in immovable property which means that the owner of the land is the owner of the land surface parts and parts under the earth surface (superficies solo cedit principle - anything built into the land goes with the land).

According to Article 10 of the Law on Construction Land of the Republic of Macedonia the objects built on the surface of the construction land, above or below the surface, with intended to remain permanently, are part of that construction land until they are separated from it, unless they are legally separated from that land by a real right or another right, which the holder of that right authorizes him on someone else's land to have an object in his own possession or if on the basis of concession or public private partnership the holder of that right authorizes him to have an object in its own possession.

#### **4.5 Acquisition of ownership in immovable property bases to inheritance**

The right to ownership of a thing is acquired by inheritance at the moment of opening the inheritance of the property of the deceased, unless otherwise determined by law (*iustus titulus*). After the validity of the decision on inheritance the heir has the right to request registering of the right to ownership of a real estate in the public books (*modus aquirendi*).

#### **4.6 Acquisition of ownership in immovable property bases on the contract**

Acquisition of ownership in immovable property bases on the contract is derivative way of acquisition of ownership. Acquiring Ownership in immovable property based on the contract requires two elements: 1) the legal title (*iustus titulus*) and 2) *modus aquirendi*.

From the moment of its creation the legal basis, until the moment of full fulfillment of the legal way of acquisition for the acquirer there is only legal hope that the real subjective right will be acquired.

In this regard, for the transfer of ownership the law requires that the agreement for the transfer of ownership needs to be in writing and concluded by both parties (transferor and transferee) in the presence of both parties before a competent court or a notary. In addition, the legal act must have mandatory content. The *intabulandi* clause is a mandatory content of the legal act by which the real subjective right to real estate is acquired. This cause expresses it the consent of the transferor for the acquirer to request registration of the acquired right in the real estate.

The transfer of ownership requires expression of will of both parties in the presence of a competent authority.

*Iustus titulus* for acquisition of ownership in immovable property for example is contract on purchase/gift/physical division/exchange, life support, decision on inheritance, etc. registered with the competent body of the Public Revenue Office with proof of paid real estate sale tax.

The statements verified by Notary Public may also serve as basis for registering the rights to the real estate, or accepting a newly defined boundary line and accepting the actual status given at a certified surveyor as integral part of the surveyor's report, whose submission is defined as mandatory with Law on cadastre.

Ownership is not won if the legal title is invalid, even if the thing is delivered or the right is registered.

Property rights to immovable are acquired by registering them in the real estate cadastre as a legal method of acquisition (*modus aquirendi*). According to the provisions of Article 143 of the Macedonian Law on real estate cadastre "The right of ownership and other real rights of real estate is acquired by registration in the real estate cadastre". The registration has a constitutive effect.

#### **4.7 Acquisition of ownership in immovable property based on the decision of the competent state institution**

Acquiring Ownership in immovable property based on the decision of the competent state institution requires two elements: 1) the legal title (*iustus titulus*) and 2) *modus aquirendi*.

The legal title is the decision of a court or another authority *exempli gratia* final, i.e. legally effective acts of state authorities (effective decision on privatization of construction land in state ownership, decision on expropriation, etc.), of bodies of local self-government units and the City of Skopje (decision on determining the legal status of illegally constructed facility, construction permit with complete construction-technical documentation, etc.), legal and other entities entrusted by law to perform public duties (notary public, debt collector, bodies of local self-government units – municipalities and the City of Skopje). With a decision of a court or another authority, the right of ownership is acquired in cases

and under conditions determined by law. The right of ownership is acquired at the moment of the validity of the court decision, or the finality of the decision of another authority if nothing else is determined by law, nor does it derive from the purpose for which the decision was brought.

As an exception from paragraph (1) of Article 174 from the Macedonian Law on real estate cadaster in the procedure for registering the real estate that remained with unregistered rights, if there is not *justus titulus*, the right to ownership of land and the right to ownership of the facilities, starting from the ground floor, which were recorded in the land cadaster, will be registered based on the data from the land cadaster.

After acquiring the right of ownership by a decision of a court or other authority, every natural and legal person has the right to request that this right be recorded in the public books (*modus aquirendi*) or the competent authority has the obligation *ex lege* to submit the application for registration to the cadaster *ex officio*.

In order the application to be approved by the authorized person before the Agency for real estate Cadastre, the application should be submitted in writing, the legal basis for registration, and a geodetic report prepared by a private surveying company or a sole proprietor (if needed) should be attached and fee for the service according to the Tariff to be paid

The application for registration of a change is mandatorily submitted in electronic form (by electronic means) by legal entities and other persons that are entrusted by law to perform public authorizations (notary public, debt collector, bodies of the local self-government units – the Municipality and the City of Skopje, the court, the public prosecutor's offices, the state attorney's office of the Republic of Macedonia, the ministries, the state administration bodies, the private survey companies on the basis of a certified power of attorney given by the right holder.

## **5. Loss of immovable property**

According to art. 166 of Law of ownership and other real rights the division of things into movable and immovable is also important from the point of view of the loss of real rights. If the object is immovable and the owner has abandoned it, the object becomes state property.

## **Conclusion**

The subject of the right to property are all things, which can belong to natural and legal persons, except those which by their nature or by the law (ex lege) cannot be subject to this right.

The right to property is guaranteed in the Constitution of the Republic of North Macedonia. As well as in the in the Law on Ownership and Other Real Estate Rights (Official Gazette of the Republic of Macedonia, No.18/2001 and its subsequent amendments); Law on Construction Land (Official Gazette of the Republic of Macedonia, No.17/2001 and its subsequent amendments); Law on International Private Law (Official Gazette of the Republic of Macedonia, No.87/2007 and its subsequent amendments); Law on Cadastre of Immovable Assets (Official Gazette of the Republic of Macedonia, No.55/2013 and its subsequent amendments); Law on Obligations (Official Gazette of the Republic of Macedonia, No.18/2001 and its subsequent amendments). The ownership of immovable property is registered in the public books kept by the Real Estate Cadastre of the Republic of North Macedonia. In the public book is registered the right of ownership and other real rights of the real estate, of the real estate data, as well as of other relevant rights and facts whose registration is determined by law.

## **References**

1. Law on Ownership and Other Real Estate Rights (Official Gazette of the Republic of Macedonia, No.18/2001 and its subsequent amendments);
2. Law on Construction Land (Official Gazette of the Republic of Macedonia, No.17/2001 and its subsequent amendments);
3. Law on International Private Law (Official Gazette of the Republic of Macedonia, No.87/2007 and its subsequent amendments);
4. Law on Cadastre of Immovable Assets (Official Gazette of the Republic of Macedonia, No.55/2013 and its subsequent amendments);
5. Law on Obligations (Official Gazette of the Republic of Macedonia, No.18/2001 and its subsequent amendments);
6. Gashi Haxhi, Acquisition and Loss of Ownership Under the Law on Property and Other Real Rights (LPORR): The Influence of the BGB in Kosovo Law, Hanse law review, Vol 9, 2013;
7. Nuredin A. (2022) Uluslararası İnsan Hakları Hukuku, Vision University Press.
8. Vlahna Cand. Kastriote, Kucu Hajredin KUÇI , Kuci3 Argona, Acquisition Of the Right of Real Servitude Over Immovable Property According to The Legislation in Kosovo with A Comparative View with Some Legislations of European Countries, Journal of Positive School Psychology, Vol. 6, No. 4, 2022;

9. Zivkovska, Rodna, Property right. Vol. 1, The concept of property right, things, ownership, Kochani: Europa 92, 2005;
10. Zivkovska Rodna, Przeska Tina, Shutova Milica, The derivative acquisition of real subjective rights in Macedonian positive law, Goce Delchev University - Shtip, Faculty of Law, 2019;