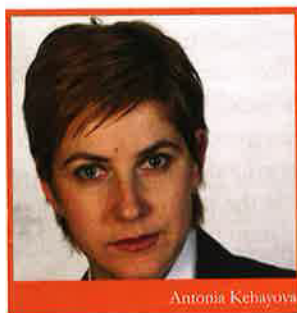


BULGARIA

Specifics in the Acquisition of Property Ownership Title Upon Public Sale



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Does buying land make you the owner of the buildings on that land as well? In many situations, the answer is yes, but in the context of the public sale of property within enforcement proceedings, this is not always the case.

The general rule in the Bulgarian Ownership Act and general real estate law is that when buyers acquire ownership over a property (land), they also become owner of the buildings and plantations on it, as long as those buildings are not subject to separate ownership rights. The basis for this concept is that if the previous owner had ownership rights on both the land and the buildings on it, the buyer, as the new owner, shall also receive the full title right over both the property and the buildings on it.

The essence of the ownership right transfer is the sale contract between the owner and the new proprietor. In the contract, the current owner expresses his will to transfer a specific property with a specific building on it for a certain price. In return, the proprietor expresses his will to acquire the property and pay that price. The contract is executed before a notary in the form of a notary deed for sale and purchase of property (this is the form required by Bulgarian law), and the proprietor pays the agreed-upon price. The executed notary deed has a transfer effect over the property, which from this moment on has a new owner. This is the most common scenario for transfer of property.

However, this is not exactly what happens when the acquisition

of a property (land) is a result of a public sale carried out within enforcement proceedings pursuant to the Bulgarian Civil Procedure Code. The public sale is the legal procedure for enforcement upon the debtor's property, transforming the debtor's property into cash against the debtor's will. It has a completely different nature than an ordinary property sale and excludes negotiations between the owner and the future proprietor. At the beginning, an enforcement agent imposes a restraint over the specific debtor's property so the latter cannot dispose of it for reasons other than satisfying the creditor's receivables. Then the enforcement agent announces the restrained property for public sale. Practically, any person or legal entity may decide and bid on the property. At the end of the public sale, the transfer effect of the own-

ership title over the property occurs with the payment of the purchase price by the buyer, on the one side, and with the entering into force of the award decree issued by the enforcement agent, on the other. The buyer in a public sale acquires all the rights that the debtor had on the property. The buyer cannot acquire ownership rights of the debtor which were not explicitly subject to the public sale and were not specifically in the enforcement agent's announcement of the public sale and in the award decree.

In light of this, the Bulgarian Supreme Court of Cassation ruled, in an Interpretative Judgment dated May 18, 2017 on interpretive case No. 5/2015, that as long as the building on the property subject to public sale (i) is not described in the enforcement agent's award decree, (ii) is not object to imposed restraint in the enforcement proceedings, (iii) is not described and evaluated by the enforcement agent, (iv) is not the subject of a public sale, and, most importantly, (v) represents a separate object of a separate ownership right, the ownership title on that building shall not be included in the transfer of the ownership title on the property in the public sale.

The Supreme Court of Cassation explicitly ruled, however, that serving buildings or edifices on the property subject to public sale that have no separate designation and are *not* separate subjects of ownership rights *do* represent part of that property and shall be transferred along with it, including when sold in a public sale. This applies especially for facility premises (*e.g.*, garages, sheds, fens, outbuildings, *etc.*) that have been designated only to serve the property or the building on it.

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