

THE PROPERTY PURCHASE CONTRACT, PART II - LEGAL RISKS FOR THE BUYER

I. OVERVIEW OF RISKS

A property purchase contract always involves large sums of money, which is why it is important for the parties to take as few risks as possible and to protect themselves from the existing risks in the best way possible.

The following risks for the buyer are detailed below:

- Building contractor's lien
- Real estate lien on property gains tax
- Real estate lien on condominium contribution costs
- Warranties on the building

II. THE SELLER'S RISKS

1. Building Contractor's Lien

The seller often has minor renovation work carried out before the sale so that the property can be sold at the highest possible price (painting, plumbing, etc.). Building contractors can establish a lien on the property within four months of completing such work if the client (seller) does not pay the invoice. This can lead to a situation where the buyer purchases a plot of land and only after the purchase has been made does the building contractor secure the plot of land - now owned by the buyer - with a lien. As a result, the buyer ends up paying the building contractor's costs which weren't paid by the seller if he or she wants to prevent the property from being auctioned off.

2. Real Estate Lien on Property Gains Tax

The most common security measure in real estate purchase agreements is the security of the real estate gains tax. The real estate gains tax is owed by the seller and represents a tax on the realized sales profit. If the seller does not pay the real estate gains tax, the tax authorities may establish a lien on the real estate, which at that time no longer belongs to the seller (!). As a result, the buyer has to pay the real estate gains tax if he or she wants to prevent his real estate from being auctioned off by the tax authorities for the payment of the real estate gains tax.

3. Real Estate Lien on Condominium Contribution Costs

In the case of a purchase of a condominium unit, the buyer must clarify before the purchase whether the seller has paid all contribution costs to the condominium owners' association. This is because the condominium owners' association has a legal lien on the property for outstanding claims. This means that a lien can be placed on the apartment for unpaid contributions. If the buyer wants to prevent a corresponding auction, he must pay the outstanding amounts. After paying these premium costs, the buyer can take recourse against the seller, although he or she naturally bears the risk that the seller will not pay him or her anything.

4. Warranties on the Building

Buying an existing (and often older) house is comparable to buying a second-hand car. Accordingly, the warranty for the building is often excluded as far as legally possible. The building is purchased as viewed. Is it therefore important for the buyer to examine the object of purchase carefully and, if necessary, to take a specialist with him or her to the inspection.

The risk of the buyer then lies, in particular, in defects which were not visible at the beginning (e.g. if mold infestation of walls was painted over before the sale). If the buyer claims defects which the seller fraudulently concealed, he or she must be able to prove this in the event of a dispute (for example, an expert opinion on the property by a building surveyor). In addition, the notice periods must also be observed in the event of such defects. In other words: Immediately after discovering a defect, notify the seller in writing and assert the corresponding right (e.g. assumption of the costs for repairing the damage by the seller).

III. CONCLUSION

The purchaser must ensure that the aforementioned risks are covered in the best possible way in the property purchase contract. This will prevent a rude awakening after the purchase and save on expensive legal proceedings.

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