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The Bureaucratic Route of the Real Estate Sale Contracts

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Abstract: *This article comes to answer one of the most common questions we have from clients in the notarial practice: "What documents are required?". Although there are no two contracts alike, just as there are no two people alike, we can say that there is a general framework that is adapted to each situation. We will present what are the stages and the bureaucratic process that the seller and buyer go through in a real estate contract, but also what documents are required and what each of them is used for. The article is structured according to three moments in the authentication process: the procedures prior to authentication, those concurrent with authentication, and those after authentication. Of course, it is up to the notary the instruments the procedure if he considers that, in addition to those presented, other documents are needed to clarify the situation of a building. We will see that, although this bureaucratic route may seem cumbersome and sometimes even boring, it is important for the safety of the non-contentious civil circuit.*

Keywords: *sales contract, real estate, notary, authentication, land book.*

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Introduction

The contract for the sale of an immovable property is probably one of the most common conventions in life of a person, alongside with the employment contract and the legal assistance contract. However, consulting the normative acts and doctrine, we find that most of these elements treat primarily the theoretical part of such a contract. The rights and obligations of the parties, the formal and substantive conditions and the grounds for its termination or invalidity are discussed. But there is very little talk about the practical part of the real estate sale contract, about the route that the contract follows, starting with the moment when the price is negotiated and accepted by the parties, and ending with the tabulation in the land registry of the new owner.

This article aims to do exactly that: to present what are the stages that the parties go through, but also the legal act, in the transfer of ownership of a real estate. The central point of the operation is the expression of consent and the signing of the contract by the parties, therefore we will take into account this benchmark, analyzing the subject from 3 perspectives: procedures prior to signing the act at the notary (Bărbieru, 2023; Macovei & Bărbieru, 2018; Mihailovici, 2015; Macovei & Bărbieru, 2011).), procedures concurrent with signing the act at the notary, and procedures after signing the act.

Procedures prior to signing the document before a notary public

In the Latin legal systems, of which the Romanian legal system is part of, the notary public has a monopoly regarding the authentication of real estate sale deeds. Even if, unlike the Civil Code of 1864, the new Civil Code in force since 2011 no longer gives the authenticated act the power to mark the moment of transfer of ownership (this is represented by the moment of registration in the land book of the building, so that the birth and extinction of the real estate right occurs by registration in the land book, and proof of ownership is made with the land book extract- Civil Code, art. 885), the law delegated part of its state power to the notary, so any entries in the public registers are made on the basis of a notarized deed (Civil Code - art. 888). Of course, this is the rule, as there are also exceptional situations when registrations can also be made on the basis of other documents (enforcement reports, court decisions etc.).

Once the parties understand the economic details (price, payment method, access to a loan and possible related guarantees etc.) it is time for

them to reach a notary in order to prepare the file that will be the basis for concluding the sale contract.

In practice, before concluding the contract, the parties or the notary must prepare a series of documents that are necessary to clarify the legal situation of the property, so that both the buyer and the sellers' rights are respected and all the legal guarantees they owe each other are applied. As a rule, the documents required before signing the contract are as follows:

1. Identity documents of the parties: the notary must identify the signatory parties (Law on Notaries Public and Notary Activity no. 36/1995, republished, with subsequent amendments and additions-art.85). The identification is done with the valid identity document or passport, but only in exceptional situations, the normative act being limited to specifying that the identification with the passport is done "under the law". Thus, in practice, a person who does not have his domicile in the country, or who has his identity card exchanged, and has proof of this, can be identified with his passport. At the same time, identification can also be done exceptionally through a lawyer, if he assists the party, having a legal assistance contract in this regard. If any of the parties is represented at the conclusion of the act by a trustee, necessarily with an authentic power of attorney (principle of symmetry of form), then the prosecutor will be identified in one of the ways mentioned above. In addition, civil status documents may be required (for example, the marriage certificate of buyers);

2. Property documents of the estate: depending on each situation, these may be the agreement under which the seller acquired the right (contract of sale, donation, division, etc.), certificate of inheritance, a court decision, a property title issued under Law 18/1991 on the land fund, an Adjudication Act issued following a forced execution, etc.

3. Cadastral documentation: this is the documentation drawn up by an authorized engineer in cadastre, who performs the measurements of the building, elaborates a survey as well as a report in which the technical coordinates of the building are recorded, and based on the admission of this report, the building has a land book opened for the first time. Thus, cadastral documentation is what in common language is called the "sketch" of the apartment. The buyer can compare this sketch with what he viewed in the physical form, to ensure that the property complies with the entries in the land book.

4. Tax certificate: it is issued by the City Hall of the locality where the property is situated, and in the event that there are two or more owners-sellers, they must all be registered on the tax roll. The purpose is to certify that the seller has paid up to date all the taxes he has to pay as tax to the state. The

validity of the tax certificate is 30 days from the date of issue, and the authentication of a sales contract without being based on a tax certificate, or based on a expired tax certificate, is sanctioned with the absolute nullity of the sales contract (The Parliament of Romania, Fiscal Procedure Code of 2015, art.159). The tax certificate is either requested by the seller and presented to the notary, or it is requested by the instrumenting notary;

5. Land book extract for authentication: represents the document issued by the competent Cadastre and Real Estate Advertising Office certifying the current situation of the real estate in the land book, as well as the existence of mortgages. The land book extract represents a "mirror" of the land book of the real estate, and consists of three parts: in the first part the real estate is described (address, useful area, share of possible common use spaces, land book number and cadastral number), in the second part is described the situation of the property (current owner, as well as possible disputes or specificities regarding him) and in the third part are described the special situations of the real estate (mortgages, easements, etc.). The land book extract for authentication is requested by the notary public prior to the authentication of the sale contract, and what is specific to him is that, by issuing it, the land book of the real estate is blocked for 10 days (Regulation of 8 February 2023 on acceptance and registration in the land book, approved by Order 600/2023 issued by the director of the National Agency for Cadastre and Real Estate Publicity - art.55). Thus, within this period, no other application can be submitted and no other operation can be performed on the land register in question;

6. Energy Performance Certificate: Documents recently introduced as mandatory in case of alienation of buildings(introduced by Law 372/2005 on the energy performance of buildings), it is necessary when alienating a dwelling or any real estate with an surface of more than 50 square meters. Energy certificates are drawn up by engineers authorized for this purpose, have an energy coefficient (depending on the energy performance of the building in question) and have a validity of 10 years from the date of issue. The authentication of a sales contract without presenting the energy certificate, or based on an expired energy certificate, is sanctioned with the absolute nullity of the contract;

7. Certificate from the owners' association: if a property that is part of a condominium (an apartment for example) or any other type of real estate assigned to an association of owners is alienated, then it will be necessary to present a certificate from this association, attesting that the seller is "up to date" in terms of expenses to the association. However, if there are unpaid debts, the contract of sale can be concluded with the

possibility for the buyer to take over these debts and pay them from his own sources. According to the law, in order to be valid, the certificate from the owners' association must be handwritten signed by the president and administrator of the association, and their name must be mentioned "clearly". The conclusion of a contract for the sale of an immovable property without presenting the certificate from the owners' association is sanctioned with absolute nullity (Law 196/2018 on the establishment, organization and functioning of associations of owners and management of condominiums -art. 33, par.2);

8. Proof of payment of expenses due to utility providers: the law does not provide for a certain document that must be presented in this regard. Thus, either the latest utility bills and proof of their payment can be presented, or certificates from the corresponding suppliers attesting the payment of all expenses. We also mention that there are situations in which these utilities are paid by the owners' association (especially regarding the supply of drinking water and sewerage). In this situation, the mere mention on the certificate from the owners' association that these expenses are also covered is sufficient;

9. Mandatory home insurance according to Law 260/2008 on mandatory home insurance against earthquakes, landslides and floods, amended by Law no. 243/2013.

Naturally, the above list is not exhaustive. The documents presented above are the most common in practice. Depending on each situation, however, the notary may request other documents provided by law. By way of example, these can be:

- in the case of land outside of the built-up area, proof that the right of first refusal procedure provided by Law 17/2014 on certain measures regulating the sale-purchase of agricultural land located outside the built-up areas and amending Law nr. 268/2001 regarding the privatization of commercial companies that manage public and private land owned by the state for agricultural purposes and the establishment of the State Domains Agency, such as the minutes of completion of the procedure for displaying the offer for sale, the address from the related Agricultural Directorate if any of the pre-emptors have exercised their right of pre-emption, the specific favorable opinion from the Ministry of Defense, if the land is less than 30 km from the state border;

- in case of sale of land with the use category "forest", it is necessary to comply with the pre-emption procedure according to the Civil Code (art. 1746) and the Parliament of Romania (2008), Law no. 46/2008 – Forestry Code (art.45). Thus, a notice will be requested from the City Hall stating that

the neighbors and co-owners of the land do not want to accept the seller's offer, as well as from the Forestry Directorate to which the land is assigned stating that it does not exercise its right of pre-emption, as the forest in question is not part of a forest enclave;

- in case of sale of buildings included on the list of historical monuments, proof is required that all stages specific to the right of pre-emption provided by Law 422/2001 (The Parliament of Romania, 2006) on the protection of historical monuments have been completed. Thus, the first rank preemptor is the state, through the County Culture Directorate at the location of the building. If he does not exercise his right of pre-emption, the preference shall be transferred to the Territorial Administrative Unit of the place where the property is located. If the second institution also fails to exercise its right, then the property is free for sale. In both cases, the two institutions shall issue opinions certifying their choice;

In addition to the above, the law allows the notary to request from the parties any other documents he deems appropriate to clarify the legal situation of the property. By way of example, these can be: in case of sale of a plot of land, an urbanism certificate showing its technical regime (what can be built); if there is a mortgage on the land book, an alienation agreement may be requested from the creditor, either proof of payment of the debt and its agreement to remove the mortgage from the land book; if there has been an update of cadastral documentation the new sketch, etc.

Once all these documents have been prepared and are in the sale file, an appointment can be made at the notary office chosen by the parties to sign the contract of sale.

Procedures concurrent with the signing of the document at a notary

On the agreed date and time, the seller and buyer meet at the notary's office to authenticate the contract. In practice, they are invited to an office to ensure confidentiality, and asked to read the *draft* of the contract they are about to conclude. If everything is in order, and they certify that it is in accordance with their will, a series of operations follows that ends with signing the original copy of the contract. These are:

1. Filling in the application: all notarial documents are made upon request (Law on Notaries Public and Notary Activity no. 36/1995, republished, with subsequent amendments and additions - art.78) (Parliament of Romania (2014). Law No. 36 of 12 May 1995). There is no standard form for it, each notary office being free to adopt the form it considers. As a rule, the application for authentication of a sales contract contains the following elements: name, domicile and personal identification

number of the parties, date, price, description of the property, mention that a sales contract is requested and handwritten signature of applicants;

2. Filling in ”know-your-customer sheets”: According to Law no. 129 of 11 July 2019 on preventing and combating money laundering and terrorist financing (Parliament of Romania (2019), as well as amending and supplementing certain normative acts, the notary public has the obligation to fill in with each client who concludes an agreement or a unilateral deed by which a sum of money is remitted, a „know-your-client sheet”, the form of which is an annex to the aforementioned law. Broadly speaking, this client form, which is filled in and signed by the parties, contains their name, domicile, residence, source of funds, who are the beneficial owners of the funds and whether the party or any of its relatives is a Politically Exposed Person.

3. Verification of notarial registers: The National Union of Notaries Public in Romania manages through the InfoNot service a series of registers in which various mentions are made regarding certain persons or certain acts concluded by persons. In the matter of the real estate sale contract, the main registers that could be checked are: the National Notarial Register of Matrimonial Regimes (RNNRM) – in which there are entries regarding the marital status and matrimonial property regime chosen by a person; National Notarial Register of Evidence of Power of Attorney and Their Revocations (RNNEPR) - is a register in which powers of attorney and their revocations are entered, and in the event that one of the parties to the sale contract is represented by a trustee, this register will also be checked; National Register of Support and Protection Measures (RNEMSO) - is a register in which are registered the persons who are under protection according to Regulation (EU) No 140/2022 on the establishment of the assistant as a measure for the protection of persons with disabilities, and its consultation aims to verify that one of the parties is not entered in this register and that his/her capacity and judgement are affected;

4. Signing the documents attached to the contract - if applicable;

5. Signing the contract. Once all these checks have been carried out, the last procedure at this stage is for the parties to sign the document. By signing, they certify that they have read the document and it expresses their will by consenting to its authentication. The notary will affix his signature and stamp on the authentication conclusion, which ascertains all those entered in the document and gives it authenticity. According to the law, the parties sign a single original copy of the concluded document, and this copy remains in the archive of the office, being issued duplicates, bearing only the signature of the notary(Law on Notaries Public and Notary Activity no. 36/1995, republished, with subsequent amendments and additions -art.98).

Before proceeding further, it is advisable to make a brief mention of the payment of the price, which is itself a stage. There is no uniform provision or practice regarding when the price is paid, so from experience we encounter several situations: - there are notaries who introduce a commission pact by which, if payment is not made within a set deadline, the contract is terminated;

- In other situations, once the document is signed, buyers go to the bank where they have an account and make the payment, after which they return to the notary office with proof of payment, which according to the law is the payment order;

- More and more often in practice, payment is made then, on the spot, through the banking application installed on the buyer's phone, so that proof of payment can be provided on the spot.

The problem of the moment of payment could be solved elegantly, if the Romanian notary would adopt the solution found by the French legislator. In the case of a contract for the sale of immovable property in France, the seller transfers the amount of the price to the account of the notary's office prior to presentation for completion of the deed. After the contract is signed, it is the notary who transfers the value of the price to the buyer's account, therefore there can be no unforeseen situations, and the notary is a guarantor of its payment.

Finally, he also mentions that according to the Fiscal Code, cash payments higher than 50,000 lei cannot be made, so if the price is higher (and most of the time it is), it must be paid by bank transfer (Law no. 70 of April 2, 2015 for strengthening financial discipline regarding cash collection and payment operations and for amending and supplementing Government Emergency Ordinance no. 193/2002 on the introduction of modern payment systems - art.10).

Procedures following signature and authentication of the deed

Once the document is concluded and the parties issued the due duplicates, there are a number of procedures subsequent to their authentication. Some are related to the conduct of the parties, others are the responsibility of the notary according to the law:

1. Payment of fees and related fees. The notary public is entitled to collect fees for services rendered(Law on Notaries Public and Notary Activity no. 36/1995, republished, with subsequent amendments and additions -art.66). As a general rule, the buyer is the one who pays the notarial fee which is calculated in relation to the value of the transaction price; the buyer is also the one who pays the real estate advertising fee

related to the registration in the land book of the real estate of the new owner. The seller pays tax on income received from the transfer of real estate, which is 1% or 3% depending on since when does he own the property. We make it clear that although in the Code Tax(art.111) it is stipulated that the tax is paid prior to signing the contract, in notarial practice it is paid immediately after, when it is collected from each of the parties what is due. In addition to the above, the verification of notarial registers also charges a fee to be paid by each party for its related checks;

2. Tabulation in the land book. This operation is the responsibility of the notary. According to the law, he has the obligation to immediately communicate the document to the competent land registry service(Law on Notaries Public and Notary Activity no. 36/1995, republished, with subsequent amendments and additions -art.80). All collaboration with the Office for Cadastre and Real Estate Advertising is carried out electronically, through a digital platform called *E-Terra*. Each notary has an account and applications and related annexes, including the concluded document, are submitted, electronically signed by the notary, on this platform. Subsequently, the communication of the registration of the new owner in the land book is also transmitted electronically, through the same program.

3. Obligations of the buyer. As a new owner, the buyer must take care of a number of aspects that are specific to his new status. Thus he must:

- within 30 working days to register their ownership right on the tax roll within the Tax Service of the City Hall of the locality where the property is located, in order to pay the annual tax(Tax Code-art.461);
- register in the agricultural role (if applicable);
- register with the competent owners' association to inform them of the change of ownership;
- change the holder of contracts concluded with utility providers;
- conclude the compulsory insurance policy (PAD) according to Law 260/2008 on mandatory insurance of dwellings against earthquakes, landslides and floods, amended by Law no. 243/2013.

Conclusion

The steps presented above represent only a general framework, scaffolding on which the entire operation of concluding a contract for the sale of real estate is built. Do not understand that the procedures presented and the documents requested are the general rule, or that no further documents are needed to clarify the situation of a building. Notarial practice teaches us that no two acts are alike. However, the above applies in most instrumented cases. Naturally, in case of sale of a piece of land, a certificate

from the Owners Association or an Energy Performance Certificate will not be required, as in the case of selling an apartment, an urbanism certificate will not be required. The notary is the one who appreciates all these aspects, therefore, this trustee of the public power represents a key element in terms of the safety of the fluidity of the civil circuit.

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