

## ARTICLES CLASSIFICATION

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**On the Real Estate (Special Performance) Act of 2011 is published in the Official Newspaper of the Republic of Cyprus according to the Article 52 of the Constitution.**

### ON THE SALE OF REAL ESTATE (SPECIAL PERFORMANCE) ACT WHICH ABOLISHES AND REPLACES THE SALE OF LAND (SPECIAL PERFORMANCE) ACT.

The Parliament of Representative votes as follow:

1. The present Act will be mentioned as the Sale of Real Estate (Special Performance) Act of 2011
2. In the present Law, unless stated otherwise in the text, "buyer" means the person in the name of whom, according to the agreement, real estate property will be transferred for consideration, and includes the transferee in the transfer agreement

"Real estate property" has the meaning attributed to the term by the Real Estate (Possession, Registration, and Appraisal) Act and includes actual right acquired with the registration of the lease agreement, which is registered according to the provisions of the same act.

“Prohibition” has the meaning attributed to this term by the Transferring and Mortgaging Real Estate Property Act

“Suitable District Land Registry Office” has the meaning attributed to this term by the Transferring and Mortgaging Real Estate Property Act

“Suitable District Land Registry Officer” has the meaning attributed to this term by the Transferring and Mortgaging Real Estate Property Act

“Court” means the district court of the province the real estate property is located in, or the High Court in its exercise of second degree jurisdiction

“Registered” has the meaning attributed to this term by the Transferring and Mortgaging Real Estate Property Act

“Registration of the real estate property” means, after the Court order for special performance agreement, the entry of the real estate property in the Land Register of the suitable Land Registry Office in the name of the person mentioned in this order

“Special execution agreement” means the execution, due to Court order, of obligations originating from the agreement including the registration of real estate property which constitutes the object of the agreement, in connection with which the conditions of this act were met.

“Security transferee” means the transferee in a security transfer agreement which has been deposited by virtue of the article 11.

“Security transferor” means the transferor in a security transfer agreement which has been deposited by virtue of the article 11.

“Encumbrance” has the meaning attributed to this term by the Transferring and Mortgaging Real Estate Property Act

“Deposit of the agreement” means the deposit of an exact copy of the agreement at the district Land registry office of the province the real estate property is located in for the creation of encumbrance on the real estate property concerned in the agreement

“Land Register” has the meaning attributed to this term by the Transferring and Mortgaging Real Estate Property Act

“Limited co-owned property” has the meaning attributed by the Real Estate Property (Possession, Registration, and Appraisal) Act

“seller” means the person or people mentioned in the agreement as sellers and are either registered owners of the whole real estate property or are registered co-owners of notional shares and includes the registered owners of the real estate property for which they have signed a distribution agreement, so that each owner has the right of free possession, use and disposal of the part attributable to them, as well as the considerer of real estate property in a consideration agreement.

“Agreement” means the agreement of exchange or transfer or consideration or distribution or real estate property agreement

“Consideration agreement” means the agreement between the provider, who is a registered owner of real estate property and the considerer who undertakes its development in exchange of the property being transferred to the considerer.

- a) Part or co-ownership of notional shares of the estate property, or
- b) Whole or part or co-ownership of notional shares of the real estate property, with simultaneous adoption of the obligation to transfer a part of it, after its development , from considerer to the provider of the real estate property.

“Transfer agreement” means the written agreement between the buyer in agreement (transferor) and a third party (transferee) with which the legal claims or and similar obligations, if any, are transferred from the transferor to the transferee either gratuitously or otherwise

“Security transfer agreement” means the written agreement between the buyer in an effective agreement (transferor) and a third party (transferee) with which the legal claims of the transferor are transferred to the transferee by the transferor according to the agreement, for purposes of securing financial obligation part of the real estate property, other than the co-ownership of notional shares, which is defined by the design or chart or otherwise and includes the dividing plot, part of the level, room office apartment, residence, shop or any other part of the land or construction, which, following the provisions of the Real Estate Property (Possession, Registration, and Appraisal) Act can be registered separately.

3. (1)The deposition of the agreement by any one of the contributing parts is acceptable, only if-
  - a) There is entry in the Land register of the suitable Land registry Office, in the name of at least one of the sellers in connection with the real estate property
    - I. Which constitutes the object of the agreement
    - II. Which includes the part of the real estate property which constitutes the object of the agreement

It is understood that, if the object of the agreement is part of co-owned real estate property, for which there is no separate registration in the Land Register of the suitable Land Registry Office and the sellers are not all the registered owners, it is accompanied by a distribution agreement, signed by all the registered owners of the real estate property, whose signatures are duly certified and the part that constitutes the object of the agreement is attributable to at least one of the sellers in the agreement, who has the right of its free possession, use and disposal.

- b) The agreement is in writing, includes sufficient data of the identity of the contributing parts, fully describes the real estate property which is the object of the agreement, mentions the exchange and is signed by all the contributing parts and
- c) The agreement is deposited within 6 months from the date of signature, at the suitable district land registry office of the Division of Land Registry and Surveying of the province the real estate property is located in

It is understood that:

- i. In the case of consideration agreement the above scheduled dateline for the provider starts with the transfer of the real estate property to the considerer
- ii. In case there is no, during the said deadline, entry in the Land register of the suitable Land Registry Office in the name of at least one of the sellers in connection with the real estate property, which constitutes the object of the agreement which includes the part of the real estate property which constitutes the object of the agreement, the agreement can be deposited within 6 months of the date of the said entry
- iii. If the buyer is the transferee in a transfer agreement, which is concluded before the deposition of the agreement which it concerns and within the period of 6 months from the date of signing the agreement, the deposit of the agreement is accompanied by a copy of the transfer agreement and a certificate of tax settlement which is imposed by the Taxation on Capital Profit Act
- iv. If a transfer agreement is concluded concerning an agreement which is deposited in the suitable District Land Registry Office, a copy of the transfer agreement is presented to the suitable District Land registry Office and is attached to the agreement along with a certificate of tax settlement which is imposed by the Capital Profit Act

(2) Regardless of the provisions on the Agreement Act or any other Act it is forbidden to summarize in an agreement or a security transfer agreement which is concluded after the date of the commencement of this Act into force, a clause which forbids the deposit of the agreement or the security transfer agreement and any such clause is considered void from the beginning.

4. (1) The seller before mortgaging the real estate property which constitutes the object of the agreement which has not been deposited by the buyer, has the obligation to deposit the said agreement according to the provisions of the article 3, given that by the deposit date of the agreement the buyer has fulfilled his by then conventional obligations.

(2) Seller who omits to act according to the passage (1) is guilty of offence and, in case of his conviction, is subject to imprisonment up to 2 years or a fine not exceeding 5 thousand euros or both these sentences.

5. (1) Complying with the other conditions of this Act, the deposit of the agreement constitutes encumbrance on the real estate property which constitutes the object of the agreement and the encumbrance which is created by the deposit of the agreement follows the priority order received with its deposit

It is understood that when the real estate property which constitutes the object of the agreement is part of the real estate property registered in the name of the seller, the encumbrance lies on the whole property which is included in the registration existing in the name of the seller and, with the conduct of separate entry for the said section, the encumbrance is limited only on the part of the real estate property which is the object of the agreement

(2) Regardless of the provisions on the Property Transferring and Mortgaging Act, in case where before the deposit of the agreement there is already a deposited mortgage which burdens the real estate property which constitutes the object of the agreement, the buyer can pay to the mortgage lender, according to the terms of the repayment loan, the amount of the mortgaged debt attributable to the object of the agreement, as this amount is determined in the provisions of the passages (4), (5) and (6) of the article 7 and the mortgage lender is obligated to accept it as sum paid for the mortgage debt and in this case the encumbrance created with the deposit of the agreement precedes the encumbrance of the pre-existing mortgage, regardless of the full payment of the mortgaged debt:

It is understood that in respect with the agreements which are deposited in the suitable District Land Registry Office or have been concluded before the date of the commencement of this Act into force, the provisions of this passage are applied given that the written consent of the seller and the mortgage lender are brought for this purpose

(3) The encumbrance created with the deposit of the agreement until the issuing of an order of special execution of the agreement, according to the article 7 of this Act, or payment of compensation according to the passage (6) of this article, ensures each amount the buyer paid against the price of sale or each amount of the value of the object of consideration.

(4) The encumbrance is in effect until the cancellation or the withdrawal of the deposit if the agreement with which it is created or until the deadline expiration of the appeal deposit against court ruling with which it is ordered the deletion of the deposit and in case of registered appeal until the issuing of the ruling for the appeal.

(5) Regardless from the provisions of any other Act and despite the provisions of the passage (1) of this article regarding the encumbrance created with the deposit of the agreement, the provisions of the passage (1) of the article 29, the passage (1) of the article 31, the passage (6) of the article 41 and the passages (2) and (3) of the article 42 on the Property Transferring and Mortgaging Act, as well as the provisions of any other Act, which are mentioned in an earlier mortgage, or in the disposition of auctioning in connection with a subsequent mortgage, or the forced sale undistributed estate property , or the compensation payment due to forced expropriation or requisition, will be applied as if the deposition had recommend, complying with the shares, a mortgage by virtue of the abovementioned Acts instead of encumbrance by virtue of this Act:

It is understood that, the provisions of passage (1) of the article 29 and passage (1) of the article 31 on the Property Transferring and Mortgaging Act are not applied in cases where the agreement has been deposited before the commencement of this Act into force and it regards the whole interest on the selling real estate property, unless if the consent of the buyer is ensured

(6) In case, in which the Court does not issue the requested order of special execution of the agreement according to the provisions of the article 7, but instead awards compensations in favor of the buyer, given that the buyer has fulfilled all his obligations arising from the agreement, the encumbrance created from the deposit of the agreement according with the provisions of this Act acts as mortgage, from the date of the deposit of the agreement according with the provisions of the Property Transferring and Mortgaging Act, for the benefit of the buyer for the amount of the compensations mentioned in the Court ruling

(7) The deposit of the agreement according with the provisions of this Act, does not act so that it cancels or delays the sale of the real estate property which could have been order by the Court before the date of this deposit

6. (1) Every deposit is receptive of special execution, with Court order, issued by virtue of the article 7 and since the following terms have been complied with in connection with it:

- a) With the reserve of the provisions of passage (2), the agreement is deposited according with the provisions of passage (1) of the article 3 and
- b) The suit for issuing an order for special execution of the agreement is filled within the period of limitation foreseen in each act in force for the limitation of demands resulting from the violation of the agreement

(2) In case where the agreement is in writing but has not been deposited according with the provisions of this act or the agreement is oral the Court can order the special execution of the agreement when it judges it to be just and reasonable under the circumstances and if the rights of third parties resulting from pre-existing encumbrances or prohibitions are not affected and is satisfied that:

- a) In the agreement are fully defined the data of the identity of all the contributing parties and the object of the agreement,
- b) There is registration in the Land register of the suitable District Land registry Office, in the name of at least one of the sellers in connection with the real estate property, which constitutes the object of the agreement or which includes the part of the real estate property which constitutes the object of the agreement

7. (1) Despite the provisions of any other act, the Court with an order can order the special execution of the agreement under any terms as judged as necessary.

(2) the order for special execution of the agreement can provide order for taking all the necessary measures and approaches for ensuring the required, by any in effect act, certificates, licenses or approval for the conduct of separate registration for the disputed real estate property and or the appointment of a person other than the seller to take all the necessary measurements or take the necessary approaches or his replacement as well as an order for the implied expenses.

(3) The Court Order as to the expenses required for the completion of the procedure for the conduct of separate registration for the part of the property which is the object of this agreement, constitutes a burden as the registration of court ruling according with the article 53 on the Civil Procedure Act and burdens all the parts of the real estate property which are been conducted for separate registration.

(4) The Court can decree special execution and in the case where before the deposit of the agreement there is already a pre-existing deposited mortgage which burdens the real estate property which constitutes the object of the agreement if it is satisfied that the buyer paid against the mortgaging debt the amount attributed to the object of the agreement and in the case in which this is a part of the real estate property, the amount attributed in the said part which is calculated based its rate value

(5) For the purposes of the passage (4) the rate value of the part of the real estate property corresponds to the percentage of the value of the said part in connection with its total value of the mortgaged property, and in cases of co-owned property it does not include the value of the limited co-owned property.

(6) The value rate of each part resulting according with the urban permit is defined by the seller and deposited in the Land Registry Office before the sale of any part.

(7) In case the suit for special execution of the agreement is made by the security transferee , the Court orders the registration of the object of the agreement in the name of the buyer and the simultaneous mortgage registration on the new title.

8. (1) Any person who secured a decree ordering the special execution of the agreement, must address within a year from the date of issuing to the suitable District Land registry Office for the registration of the real estate property, which constitutes the object of the agreement, in the name of the person mentioned in the order. The suitable Land Registry Officer, with the presentation of the court order or an official copy of it and after the documents required for the registration according with the provision of the Property Transferring and Mortgaging Act are brought, is concerned with the conduct of all the registrations necessary for the implementation of the order in the Land Register, regardless of any encumbrances or prohibitions which burden the real estate property or its owner and which follow the priority of the agreement for which the special execution is ordered, exempting the encumbrance created with the Court order, which is issued according with the provisions of the passages (2) and (3) of the article 7:

It is understood that the suitable District Land registry Officer, who is called upon to conduct the registration of the real estate property according to the court order which was issued by virtue of the provisions of this Act or the person in the benefit of whom the order was issued, can go to Court for instructions in connection with any issue resulting during the conduct of this registration and the Court can issue such instructions it sees necessary.

(2) In case there is already a deposited security transfer agreement and the security transferer in favor of whom the Court order was issued ordering the special execution of the agreement, denies or neglects to take the necessary actions for the execution of this order, the security transferee can take the said actions and go the suitable District Land Registry Office as foreseen by the passage (1):

It is understood that the security transferee can go to Court for instructions in connection with any issue that results regarding the above necessary actions for the execution of the order and the court can issue such instructions it sees necessary

9. (1) If any person, securing a Court decree ordering the special execution of the agreement, neglects or omits to go for the registration of the real estate property in his name and to take



all the necessary operations and acts to make possible the conduct of registration =, within one year from the date of the order, the right of the said person to claim special execution of the agreement is terminated and no registration of property in his name takes place in the Land register of the suitable District Land Registry Office, by virtue of authorization of the order, unless the period for which the order is in effect is renewed according with the provisions of passage (2)

(2) The court order for special execution of the agreement can be renewed for further periods which do not exceed one year each, if the Court judges it to be just and reasonable under the circumstances:

It is understood that, the application for renewal of the order will be deposited in Court before the termination period for which the order is in effect and the Court can renew regardless if the above period has ended.

10. When the real estate property is registered after the issuing of an Court order for the special execution of the agreement to any person, this property, after its registration, comes to the said person to the extent of the property right and to the advantage of the property by virtue of the agreement and the Court, which has ordered the special execution of the agreement, can order the delivery or the security of possession of the property to this person, as the court sees right.

11. (1) the transferee in a security transfer agreement can deposit this agreement, at the District Land Registry Office of the province the real estate property is located in which constitutes the object of the agreement which it concerns, whenever after it being signed and in case of its deposit the following provisions of this Act are applicable.

(2) the deposit of the security transfer agreement can be accepted only if

- a) The agreement concerned is already deposited
- b) It is in writing, includes sufficient data of the identity of the contracting persons and it is signed by the contracting persons whose signatures are duly certified
- c) It defines exactly the agreement it mentions
- d) It determines fully the financial obligation it secures

(3) the deposition of the security transfer agreement acts as a burden on the agreement which it concerns and preserves the priority order of the encumbrance created by the deposit of the agreement which it concerns, so that the security transferee gets the encumbrance created by the deposit of the agreement .

(4) in case the security transferor does not fulfill his obligations that result from the security transfer agreement the security transferee can file suit for special execution of the agreement which it concerns according with the provisions of the article 7, so that a Court order is issued according to the passage (7) of the said article:

(5) in case which the security transfer agreement is deposited, the real estate property which constitutes the object of the agreement which it concerns cannot be transferred by virtue of the Property Transferring and Mortgaging Act, unless if the deposit of the security transfer agreement is withdrawn or deleted according to the provisions of this article

(6) in case where the financial obligation which is ensured by the security transfer agreement is fully paid or ceases to exist, the security transferee is responsible for the withdrawal of his deposit, appearing before the District Land Registry Office in the province the property is located in which constitutes the object of the agreement which it concerns and by bringing the necessary for this purpose documents

(7) When the security transferee

- a) Denies or neglects to withdraw the deposit of the transfer agreement even if the securing financial obligation has been paid or ceased to be, or
- b) Denies to accept payment of the amount of the financial obligation for which the security transfer agreement was granted, after it has become payable and takes steps for its withdrawal, or
- c) Is of unknown residence, is a company or partner who is longer in the partnership or is dead and the personal representative or his heirs are unknown and in these cases either the transferee cannot for any of these reasons to pay to the beneficiary the amount secured with the security transfer agreement, after this has become payable, either the financial obligation secured has been paid or ceased to be,

The security transferor can address to the court and ask for the issue of an order with which to order the deletion of the deposit of the security transfer agreement and the court can issue to its judgment the just under the circumstances order:

It is understood that, the suitable District Land registry Officer, with the presentation to him of this order issued by virtue of this passage with which the deletion of this deposit is ordered, or an official copy of it, takes all the necessary actions for the implementation of this order.

(8) In case where the security transfer agreement is deposited, the security transferor cannot without the previous consent of the security transferee to:

- a) Withdrawn the deposit of the agreement which concerns the security transfer agreement
- b) Cancels the agreement which concerns the security transfer agreement or
- c) Concludes transfer agreement

(9) In case where the security transfer agreement is deposited and the seller terminates the agreement which concerns the security transfer agreement, notifies simultaneously the security transferee for the termination of the agreement

(10) by virtue of this article consequences of the deposit of the security transfer agreement cease to be with the withdrawal of the agreement by the transferee or with the expiration of the deadline for filing an appeal against the court order with which its deletion is ordered and in case of filing an appeal with the issue of a decision in the appeal.

12. Regardless of the provisions of paragraph(c)of the passage (1) of the article3 and of the paragraph (b) of the passage 91) of the article 6, the Court can, after related application, to allow the deposit of the agreement or file suit for special execution, even if the specified for this time period is over, according with the under reference provisions, when it judges it to be just and reasonable for the protection of the buyer
13. No provision which is included in this Act is interpreted as depriving any Court from the right to adjudge compensation for violation of the agreement when the Court judges appropriate, instead of ordering special execution of the agreement
14. If any seller by virtue of the agreement in connection with which all the formalities defined by the article 7 or and 8 were implemented, dies after the formation of the agreement, the buyer can claim from the manager of the property of the seller every treatment, as deserved by this Act to claim from the seller
15. If any buyer of real estate property by virtue of this agreement in connection with which all the formalities defined by the article 7 oar and 8 were implemented denies to pay the price of the sale and accepts the property, the treatment of the seller by virtue of this agreement is constituted only by the compensations
16. (1) Despite the provisions of this Act, agreements which remain in effect and were conducted anytime before the commencement of this Act into force even if the specified time period under the termination on the Sale of Land (Special Performance) Act for the deposit of the agreement has passed, can, complying with the provisions of the article 3, to be deposited within a deadline of six months from the date of the commencement of this Act into force.  
  
(2) The provisions of this Act are enforced and in connection with the agreements which were conducted before the date of the commencement of the this Act into force and which are

already deposited at the suitable District Land Registry office before the commencement of this Act into force or which will be deposited according with the provisions of the passage (1) regardless if in connection with them there is on the said date any court order pending

17. The validity of this Act starts after the passing of three months from the date of its publishing in the Official Newspaper of the Republic
18. From the date of the commencement of this Act into force on the Sale of Land (Special Performance) Act is abolished.